

CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 13: Supporting Children in Police Custody and the Court System

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1. Introduction

This section focuses on the supports that should be provided for all children who are prosecuted in court. The Working with children in conflict with the law 2021: Standards (Scottish Government, 2021), Standard 5 specifies that:

“all children must have access to support when going through the judicial processes. Criminal court proceedings should only be engaged in exceptional cases and as a last resort in the public interest... The support provided to children in the court or judicial processes should be holistic and individualised. This includes practical supports to address identified needs, process and procedural guidance, links between justice system professionals and support until completion of the court process. This must include children’s rights-based legal advice, advocacy and representation. Once concluded additional support should be available for the child in relation to any court disposal, and rights of appeal, review or complaint”.

This requires that support is underpinned by and adheres to the guiding principles of the [United Nations Conventions on the Rights of the Child \(UNCRC\) 1989](#), [The United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act](#), [Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice](#) and [Getting It Right for Every Child \(GIRFEC\)](#). Each recognise all under 18’s as children and this is the definition used within this section.

The legal definition of a child in Scotland does not however fully reflect this position. Any child under 18 may be prosecuted in the criminal court from the age of 12 and all prosecutions require to be undertaken in a manner that is compatible with UNCRC. However, for those aged 12-15 and 16-17 who are an open referral or subject to Children’s Hearings measures, must be jointly reported under the [Lord Advocate’s guidelines](#), with the Crown Office and Procurator Fiscal Service (COPFS) and Scottish Children’s Reporter Administration (SCRA) decision-making in [jointly reported cases](#), providing the criteria by which such cases are considered. This has a significant impact on their treatment within the justice system and is in direct conflict with international human rights standards that recommend where there are differences in the treatment of 16- and 17-year-olds, which result in them being treated as adults within the justice system, those States parties should change their laws, with a view to achieving a non-discriminatory full application of their juvenile justice rules to all those under the age of 18. The Independent Care Review (2020, p. 41) has also stated that:

“Traditional criminal courts are not settings in which children’s rights can be upheld and where they can be heard”.

The [Children \(Care and Justice\) \(Scotland\) Act 2024](#) (“the 2024 Act”), once fully commenced, should significantly improve this position. Changes this legislation will bring include raising the age of referral to the Principal Reporter and whilst the Lord Advocate and Procurator Fiscal will retain the discretion to begin criminal proceedings and to prosecute children in court where appropriate, it is anticipated fewer children would have their cases dealt with through the criminal justice system. For those who continue to do so, the definition of a child will be changed to reflect those who are under 18, with these changes due to commence in 2027. Provisions have however commenced to enhance the welfare and

safety of children in criminal proceedings and that ended the use of Young Offenders Institutions (YOIs) for children aged under 18 in Scotland. Where a child requires to be remanded or sentenced to be deprived of their liberty, this can now only be in secure care (or a hospital setting in limited cases).

This section reflects the current position (i.e. before full commencement of the 2024 Act) and provides a detailed overview of how to uphold the rights of children in conflict with the law who are subject to prosecution through the court. It will be updated in due course to reflect the changes the Act will bring, with the most up to date information available on the Act page on the [CYCJ website](#).

To address concerns about traditional courts, the Scottish Government promotes the development of specialist youth courts for children and young people. The [Youth Court Blueprint](#) (CYCJ, 2023) outlines ten principles to be considered when developing and running a youth court. These include the need for children to be prepared for and supported through court processes, adapting the layout, communication styles and language with courts to adhere to trauma informed principles and the developmental needs of the child. Steps should be taken to accommodate speech, language and communication; cognitive; processing; social and sensory needs and to promote the child's participation, requiring adequate training for professionals. These principles are evident to varying extents in the approach adopted by the one youth court and several problem solving-style courts currently established in Scotland which deal with children and young people. However, the pace of youth court development has been slow, and most children who have their cases dealt with at court remain in the traditional adult court system. They require specific treatment and considerations to ensure their rights are fully respected during this process. The [Children's Rights at Court Guidance Toolkit](#) (Youth Justice Improvement Board, 2026) and [summary](#) have been developed to support these considerations. CYCJ has also published 3 [flowcharts](#) that help to explain some of the key steps in the process from a child being arrested and charged with an offence, through to the point of sentence.

The practice outlined in this chapter is intended to set the parameters for a minimum standard to be achieved when supporting children at court and gives an overview of 'good practice' principles for all partners involved. By embedding these measures in local practices, they will contribute to the continued efforts aimed at reducing the frequency and seriousness of offending behaviour and re-offending by children and upholding the rights of children. It is important to remember small differences can have a big impact on children's experiences and new more positive experiences can overturn previous negative experiences of the justice system (Miller et al., 2019).

These principles are also applicable to those over the age of 18, the distinct needs of whom have been identified by the [Scottish Sentencing Council](#); and there is a particular need for agencies to take account of their [corporate parenting responsibilities](#) as outlined in the [Children and Young People \(Scotland\) Act 2014](#). The recognition of additional supports for young adults is also supported by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), which state that "*efforts shall also be made to extend the principles embodied in the Rules to young adults*" (United Nations General Assembly, 1985:3). As with all practice, support to children in the criminal justice system should be alert that the child or another child or adult, could be at risk of significant

harm. If so, [child protection](#) procedures might require to be instigated, and where the harm involves a child aged over 16 or an adult, adult support and protection [legislative criteria](#) should be considered to determine if such [procedures](#) should be followed. Practitioners should also be alert to signs of exploitation (Scottish Government, 2026).

2. Objectives

[The Council of Europe directions on Child Friendly Justice](#) stress the importance of a multi-disciplinary approach to working with children involved in offending behaviour. The provision of support for all children subject to the rigours of the justice system requires a recognition that a one-size-fits-all approach is not appropriate. Flexibility is necessary to respond proportionately and appropriately, and court support should be tailored to the individual child and continuum of risks and needs presented. This may include emotional support; explanation of the process and possible outcomes; welfare checks; bail assessments; linking with housing services; accessing benefits, employment, or training; support to attend appointments such as with legal representatives; attending future court appearances; seeking a secure care placement; making information available to the court and the child's legal representative, including about any needs that may require consideration for modification to the court process; and linking with family, addiction services, health services and to promote participation, communication, health and wellbeing. Finding the most efficient and effective approaches to cases involving children who are appearing in court should be underpinned by the following objectives:

- To reduce the frequency and seriousness of children coming into conflict with the law (Scottish Government, 2011),
- Ensure that all children appearing in court have access to proper support throughout and information to assist their understanding and effective participation in the process upholding these rights (Scottish Government, 2011): *“To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options... Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate”* (United Nations Committee on the Rights of the Child, 2019, p. 9),
- Ensure effective and efficient multi-agency information sharing that is relevant and proportionate in order to achieve better outcomes for all children in the court process, in line with the principles of GIRFEC (Scottish Government, 2011),
- Efforts should be made to reduce the duration and level of system contact on children; streamline court processes; and ensure cases involving children should be dealt with without delay and prioritised, with sentences having greater impact upon children when imposed near the offences (e.g., through the use of preliminary or provisional decisions like the use of undertakings, presumption to divert, rolling up of charges as appropriate) (in line with Beijing rule 20 (1) and section 4 of the [Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice](#)),

- Ensure that children in conflict with the law receive the help they need, when they need it, to ensure their best chance of achieving their potential (Scottish Government, 2011), through proportionate, appropriate, timely, and meaningful, needs based support, however the child has come to appear at court,
- To uphold the rights of children appearing at court (Youth Justice Improvement Board, 2026) and practice in a trauma-informed manner,
- Ensure robust community alternatives are available as meaningful alternatives, to promote the use of community-based disposals, maximise the use of diversion and the children's hearings system, and minimise the use of remand to only the most serious of cases (see [Section 17](#)),
- Enhance community safety and promote community confidence as to how the risks and needs where children are in conflict with the law are being managed and addressed,
- All professionals receive necessary interdisciplinary training on the children's rights, needs, and on proceedings that are adapted to them, including to ensure developmentally, systemically, and trauma-informed contact and interventions, and are fully trained (UN Committee on the Rights of the Child, 2019), and
- Children's hearings measures should not be terminated because a child is subject to the court system. Rather, this should be considered an indicator of risk and vulnerability (Social Work Scotland, 2019); see [Section 16](#)).

3. Children in police custody

The [Criminal Justice \(Scotland\) Act 2016](#) ("the 2016 Act") aims to enhance efficiency and bring the appropriate balance to the justice system so that rights are protected, whilst ensuring effective access to justice for victims of crime. The child's wellbeing is a primary (though not only) consideration before deciding whether to; arrest them; hold them in custody; interview them regarding an offence; or charge them with an offence. The Act has been amended by [s.15](#) of the [2024 Act](#), with these provisions commencing on 30th March 2026, to define a child as anyone under the age of 18. Taking cognisance of the evolving capabilities of 16/17 year olds the Act provides greater choice for this age group in certain aspects, whilst still recognising the safeguards all children require. Further information on these provisions, their practical implementation and roles and responsibilities is contained within the Youth Justice Improvement Board (2026) guidance but in summary these mean:¹:

Notification:

- The local authority must be informed when any child is arrested and enters police custody and at various other notification points if the child is aged 16/17 (for example if the child declines to have notification sent to another adult) (s.41). This information will be shared with the child's home local authority often via justice social work or out of hours.
- For children aged under 16: their parent (includes guardian and any person who has the care of the child) must be informed and asked to attend (s.38(3)(a); 39(2)).

¹ NB all sections relate to the 2016 Act unless otherwise stated

- For children aged 16/17 years old: A named adult (over 18) informed if child wishes it and adult reasonably named-can be asked to attend if child wishes (s.38(3)(b); 39(3)).
- The local authority can advise intimation should not be sent to parent/named adult and who may instead be appropriate to send this to (s.41(9)).
- Intimation can be delayed and these rights ceased in exceptional circumstances (s.38).

Visits and interviews:

- For children aged under 16: Visit by parent must be accommodated (s.40(1)).
- For children aged 16/17 years old: Visit by named adult must be accommodated if the child wishes (s.40(2)).
- The local authority can visit at any child at time where it has grounds to believe it would safeguard and promote the child's wellbeing (s.41). It is good practice to ensure such a visit is undertaken.
- The purpose of these visits are to provide support to the child (including emotional or practical support e.g. the provision of clothing and other necessary items), information (including as detailed in the [children's letter of rights](#)) and to promote and ensure the child's wellbeing.
- Access can be restricted or refused in exceptional circumstances. The local authority would be informed (s.40; 41).
- For children aged 16/17 years old: Police Scotland should seek the support of a trained Appropriate Adult where owing to mental disorder, the person appears to the constable to be unable to understand sufficiently what is happening or communicate effectively with the police (s.42).
- No child can consent to interview without a solicitor being present (s.33). Where any child openly declines a solicitor or where no direct instructions have been provided, the solicitor cannot act on the child's behalf as is consistent with their [Code of Practice](#). Police can only in exceptional circumstances interview the child without a solicitor being present (s.32).

Release/Before court:

If a child has been arrested and charged, there is a presumption of liberty and a duty on police not to detain people unreasonably or unnecessarily (s.50) which must be balanced against the factors detailed within the Lord Advocate's [guidelines](#) on liberation by the police. Police officers must explore all alternative options to avoid detaining a child in custody prior to an appearance at court, with the need to safeguard and promote the wellbeing of children a primary consideration (Scottish Police Authority, 2023s.51) Therefore, the child may be:

- Released - a report may be submitted to the Procurator Fiscal (singly or jointly with SCRA), diverted to local [Early and Effective Intervention \(EEI\)](#) processes, referred to SCRA (singly), or made subject to police direct measures (access can vary by age and options include a verbal or written warning, restorative justice warning, recorded police warnings, or Anti-social Behaviour Fixed Penalties). Children can also be released on investigative liberation which enables release with conditions (for up to 28 days) with the power to re-arrest;

- Released on an [undertaking](#) (s.26) - the child needs to appear on a stated court date and until that time comply with attached conditions. Anyone being released on an undertaking is asked if they wish to consult with a solicitor prior to an undertaking being accepted. Where a child is being released on an undertaking, the presence of a parent or named adult should also be considered to support the child and ensure that the child understands the requirements placed on them and any conditions. Where a child wants an adult to be present and no one is available, the local authority should be informed and consideration given to whether the child should be visited. All courts have locally agreed times for children appearing on an undertaking;
- Kept in a place of safety – A alternative place of safety to a police station must be considered for all children under 18 who required to be held for an appearance at court. Places of safety are as defined under the [Children's Hearings \(Scotland\) Act 2011](#) s.202 (1) as:
 - a. residential or other establishment provided by a local authority,
 - b. community home within the meaning of section 53 of the Children Act 1989 (c.41),
 - c. police station,
 - d. hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
 - e. the dwelling-house of a suitable person who is so willing, or
 - f. any other suitable place the occupier of which is so willing.

Secure care can only be a place of safety when the requirements under regulation 12 of [The Secure Accommodation \(Scotland\) Regulations 2013](#) are met. These are that having consulted with the child, each of their relevant persons and the head of secure care unit, that the Chief Social Work Officer (CSWO) is satisfied that a placement in secure care would be in the child's best interests, appropriate to the child's needs and the secure care criteria is met. The child can only remain in secure care for as long as the head of unit and CSWO agree this is necessary. The CSWO has a duty to review the child's case in consultation with the Head of Unit as per Regulation 13 within 7 days of the child's placement (even if the child is no longer within secure care).

The decision as to an appropriate place of safety should be reached through discussion between police and social work. As the child is in police custody when a decision on a place of safety is being made, the use of an alternative will only be possible with police's agreement, and they will need to be satisfied that identified needs and risks can be appropriately managed. It can be challenging to identify and agree an alternative place of safety in practice, with local variation in what can be provided noted.

The Procurator Fiscal will be advised where a child is being held in a place of safety, which usually happens at the same time as the child is jointly reported to the Procurator Fiscal and the Principal Reporter. The Principal Reporter must be advised as soon as possible if the Procurator Fiscal decides not to prosecute and a constable

has grounds for suspecting an offence has been committed (s.53). Where the child is not being prosecuted, they must be kept in the place of safety until the Principal Reporter decides to convene a hearing or gives direction for the child to be released².

- Kept in police custody - only if an Inspector or above certifies that keeping the child in a place of safety other than a police station would be impractical, unsafe, or inadvisable due to the person's state of health (physical or mental) (s.22). A Child Detention Certificate must be issued to be produced to the court when the child is brought before it, documenting the reason(s) why a child is remaining in police custody, the child's views, feelings and wishes reflecting UNCRC along with those of their parent, guardian or named adult.

For all children under 18, their parent (includes a guardian and any person who has care of the child), if they can be found, and unless the constable has grounds to believe this will be detrimental to the wellbeing of the child, must be informed that the child is being released on an undertaking or that the child is to appear at court having been held in police custody or a place of safety. They must be informed of the date and court that the child is appearing at, the general nature of the offence the child has been accused of committing and for some children that the parent's attendance at the court may be required under s.42 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") (s.23).

The local authority must be informed that the child under 18 is being released on an undertaking or is to appear at court from police custody or a place of safety, of the date and court that the child is appearing at, and the general nature of the offence the child has been accused of committing (s.24). For children aged under 16 and 16/17 year olds who are an open referral or subject to measures through the Children's Hearings System: "*Where the local authority receive such notification, they are required to make investigations and submit to the court a report which will include information on the home surroundings of the child and from the education authority on the school record, health and character of the child*" (s.42 of the 1995 Act). When the 2024 Act fully commences this will apply for all children, however under the Whole System Approach, the child's home local authority should ensure the court has the information required to inform every child's appearance at court. Where a child is otherwise released, the local authority will also be informed. This information will be shared with the child's home area and also, where a child is appearing at court, the criminal justice social work services in the local authority whose area the court the child is appearing at sits, via an automatic notification. An interim Vulnerable Persons Database notification will also be completed. Where more than one local authority is involved, they should liaise including in terms of ensuring the child will have appropriate support at court. The child's home local authority should have an agreed process for ensuring information about a child who has been within police custody is shared with the appropriate team/service to enable any further support to be considered, including under the [Whole System Approach](#). The court the child

² Until the age of referral to the Principal Reporter is raised to 18, SCRA will have no jurisdiction for the children aged 16/17 and not already an open referral to SCRA or subject to compulsory measures and will not be able to take any action. In addition, these children cannot be jointly reported so notification will not come via this route.

is appearing at will also be notified with information including the child's name, address, date of birth and whether the child has a recorded "violence marker".

Further changes will come when Regulations commence under the Children (Care, Care Experience and Services Planning) (S) Act 2026 that will enable police officers and where appropriate, to take under 18s to an alternative location instead of police custody. This chapter will be updated to reflect these changes in due course.

4. Court

4.1 Pre-Court

In addition to information sharing by police as detailed above, for the Procurator Fiscal (PF) in marking a case for a child, may contact social work services. Where bail is to be opposed the PF will inform social work services. This information usually goes to Criminal Justice Services (CJS) single point of contact under the Management of Offenders (Scotland) Act 2019. Local arrangements will be required to ensure CJS links with appropriate children and family social work services. Publicly available court lists will **not** include children who appear in custody courts. The notice of those appearing for scheduled diets is available on the [Scottish Courts and Tribunals](#) website five days in advance, though this does not provide details of age.

For both singly and [jointly reported cases](#) the child's [social worker](#) (or representative from social work services) should reach out locally to the Scottish Children's Reporter Administration (SCRA) and the 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 prosecution proceeded with. These agencies can likewise reach out to social work ([CYCJ, 2024](#)). This action should be incorporated into the local authority court support process and clearly identify whose responsibility it would be to contact and discuss with the PF. The final decision is for the PF to take in line with the joint agreement with SCRA. The decision to prosecute a child must be undertaken in a way which is compatible with UNCRC requirements and should a court find this has not been the case, the 2024 Act provides options for the reconsideration of proceedings. 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.

In informing approaches to children at court, the responsible local authority social work team, as per locally agreed procedures, should review case records and contact the child, their parent/family/carers, and other key agencies to gather information to be made available to justice agencies. The child may not be known to local social work services-however all children should be or have been known to health or education services, who should be contacted. Key information should include:

- The child's current and past circumstances;
- Key relationships;

- Legal status;
- Education;
- Health including the child's developmental stage; past experiences of trauma; health and neurodevelopmental assessment, including developmental histories for both the child, the prenatal period and the family environment; communication capabilities and needs; and substance misuse;
- The child's needs, strengths and identifiable risks.

Information specific to the child's court appearance should include:

- Any anxieties or worries the child has about court;
- Steps that might help the child participate at court;
- The child's views on how they can best participate in proceedings (including on where they sit, who supports them, scheduling regular breaks, or agreeing signs the child can give to indicate they don't understand);
- Any modifications or adjustments that may be required;
- Any information that suggests the child is at risk of harm to themselves or others or is at risk from others (including any co-accused or family members, be that their own or other's).

Information as to what supports might be helpful for the child in meeting their needs and to support their participation in proceedings; plans for how this could be undertaken; and requests for adaptations should be gathered and shared ahead of the start of proceedings, as early as possible. Social work (court-based, justice, and/or children and families depending on local support arrangements), the child's defence agent, police, and PF, can all share this information with SCTS. However, requests for adaptations would usually come via the child's lawyer or COPFS staff (if information is known to them), ahead of the child's first appearance. Information from social work will, usually, be provided with any bail assessments and the information will be shared directly with courts via designated email addresses. Local authorities are responsible for ensuring local processes are in place governing this information sharing, which practitioners should familiarise themselves with. The SCTS website also provides contact details for all Scottish courts (use [this link to browse for required court](#), then select 'show location' to see email and phone contacts), should details for alternate courts be required. Where a bail assessment is not required, the above information should still be shared utilising the same processes and designated email addresses. Court staff will share this information with the judiciary who will make the decision. The child should be aware of what information is being shared and with whom. Court staff will share this information with the judiciary who will make the decision.

Consideration should also be given at each appearance as to what the child might need at future appearances, and adjustments should be detailed within paperwork and discussed at the intermediate diet or first diet/preliminary hearing. Early contact by social work with the child's defence agent is crucial, recognising their key role as a conduit to the court, including in requesting modifications, but also that they may have no previous knowledge of the child. In line with the Council of Europe Guidelines (2011) lawyers representing children should be knowledgeable and trained on children's rights and related issues and capable of communicating with children.

As far as possible, ahead of the child's court appearance it should be considered:

- Whether the child's physical attendance is needed. The specific court hearings where virtual courts can be utilised is detailed [here](#). Where a child is [detained](#), all secure care centres and some police facilities are places from which a video link can be used.
- When the child will appear. Under the Scottish Government (2021) Standards, "5.2 Where a child is at risk of entering custody or being deprived of their liberty (either by virtue of being remanded or sentenced) their case should be heard as early as possible in the court day to support their transition into custody". It is recognised that making decisions can take time and having set times for children to appear can be challenging, with local Sheriff Principals best placed to decide how children's cases ought to be programmed to safeguard children's welfare. All agencies should try to fulfil their responsibilities as soon as possible, whilst ensuring due process is followed.
- What entrance to court they should use - if possible sperate from adults.
- Where they will go on arrival. Where a child is appearing from custody, in line with the Youth Justice Standards (2021) they should not be the court cells wherever possible and as the risk assessment of police, transport providers, court security staff, social work and supporting agencies permits.
- Which waiting area will be used - there should be a designated, private waiting area for children and their supporters.
- In which courtroom the case will be held - where possible the child should be shown the courtroom in advance either virtually or in person. This is in line with (Council of Europe, 2011, p. 17): "before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved".
- Arrangements for transporting and supporting the child at court.

The child and as necessary their parents/carers should be provided with as full information about what will or could happen at court in an understandable format. How well a child is informed of what to expect when engaging with court and associated justice system processes can profoundly affect their overall experience and wellbeing (Plotnikoff, 2002). What is possible locally and in a particular case can vary, making it difficult to always tell a child what will or will not happen at court (Brown & Vaswani, 2023). There are some resources available that could help - a [video](#) for the Glasgow Youth Court; there are virtual courtroom tools of every court in Scotland on the Victim Support Scotland [website](#); and some courts might have their own pictures or videos.

The Criminal Procedure (Scotland) Act 1995 requires that: *Any child being conveyed to or from any criminal court, or waiting before or after attendance in such court, shall be prevented from associating with an adult charged with an offence unless they are a relative or co-accused (s.42(9))*. This currently only applies to certain children and will be extended to apply to children by the Children (Care and Justice) (Scotland) Act in 2027.

Every court in dealing with a child who is brought before it as an offender shall have regard to the welfare of the child and shall in a proper case take steps for removing him from undesirable surroundings (s.50(6)). This applies to all children.

Where the court estate cannot permit separate facilities for children as detailed above, discussion should take place on local alternatives (for example the child waiting in a nearby local authority building for their court appearance).

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. The [Bail and Release from Custody \(Scotland\) Act 2023](#) makes changes to the law in relation to decision about granting bail to people accused of a crime. It also allows justice social workers to provide information to be considered for bail purposes, and for prosecutors and defence agents to challenge this information and share their views on the risks associated with bail. Social work should therefore provide information to;

- Explain the child's needs and circumstances, including past and current service involvement, current legal orders, and offer a robust alternative plan to remand, including how risks could be managed including via formal risk management processes for example [Care and Risk Management \(see Section 15\)](#);
- How any plan will uphold the child's rights and the child's views of the plan;
- Aid the PF in deciding whether these legal tests in respect of bail 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.

The PF's attitude to bail may be influenced if they are equipped with more information. The final decision regarding bail is a matter for the court and can be refused even where the PF has not opposed bail, therefore when a child is going to appear in court and there is a likelihood they will be remanded, the responsible local authority should explore individualised alternatives to remand for the court to take into account including supervised bail, in accordance with bail supervision guidance, and electronic monitoring. All alternatives to remand should be carefully considered, and advised to the PF, child's lawyer and court, with the assumption that a child must only be deprived of their liberty where no other option can keep them and others safe.

Where the indication is that bail will be refused, the local authority should begin the process of seeking a secure care placement by contacting the [secure care centres](#) (as children can no longer be remanded to [Young Offenders Institutions](#)) and consider transport options (including [secure transport providers](#)).

4.2 Appearing in court

Approaches as to how support in court is provided vary depending on area and court but all children should be able to access support to understand, participate and aid them through the court process and at every appearance. It should be clear across social work services who provides this support locally. This could include dedicated court-based support services for children; court based social work service; children and families or justice teams; agreements with third sector providers, or a combination of these services. In the absence of

dedicated court support services for children, [court-based social work](#) as part of their role should offer the child information on the court process to ensure they have some understanding of what will happen and support at court. The minimum requirements of court social work are set out in the [Justice Social Work – Reports and Court-Based Services: Practice Guidance \(2026\)](#) and should be read in conjunction with the [Community Payback Practice Guidance \(2022\)](#). Where the child has an allocated social worker/member of staff from social work services, they should wherever possible attend court with the child.

Children are entitled to have a parent, guardian or chosen adult at court to support them and parents have rights and responsibilities to their children, although these vary dependent on the child's age and parent's legal status. The United Nations Committee on the Rights of the Child (2007:16) recommended that "State parties explicitly provide in law for the maximum possible investment of parents or legal guardians in the proceedings against the child...to promote parental involvement, parents must be notified of the apprehension of their child as soon as possible." The 1995 Act details that parent(s) or guardian(s) of children under the age of 16 are required to attend all the court hearings if they reside within a reasonable distance of the court, unless the court is satisfied that it would be unreasonable to require their attendance (s. 42(2)-when the 2024 Act fully commences this will apply to all under 18s).

The child should also have legal representation and where required the support of someone who can advocate for them, support and assist them to express their views, or to do so on their behalf. This could include an independent advocacy worker, children's rights officer, or specialist, such as a speech and language therapist to support their communication needs. These supports should not be at the expense of the child's parent, guardian or chosen trusted supportive adult being present. A full explanation of the support available will enable the child and their support system to determine their right to choose whether they want additional assistance and support. All those present are alert to the child's presentation and able to intervene if the child appears to them to be distressed, confused or overwhelmed, or there be some other concern for their welfare.

As detailed in the pre-court section, information on the child's needs should be shared and all options that allow adaptations or modifications to be made to court for the child should be considered. Adjustments, at the discretion of the judiciary, can include:

- Use of special measures (s.271F of the 1995 Act allows for the use of special measures when a child is appearing at court as an accused to give evidence (as per s.271F) including the use of a live television link (s.271J) and a supporter (s.271L). The process for application are as set out in s.271C and 271F and require application by the child's defence agent for judicial consideration pre-trial.
- Closed courts (as per s.142 of the 1995 Act in summary cases involving children the court should be closed. Under s.16 of the 2024 Act, s.70B and s.142A of the 1995 Act allows closed courts to be used in solemn proceedings, and in both summary or solemn proceedings, where such a case involves an adult co-accused, but requires that the court in deciding how to undertake proceedings have regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings). The use of closed courts uphold the child's right to privacy as per the

[Beijing Rules](#) and recommendation of the United Nations Committee on the Rights of the Child (2007:19), with the children and young people citing the benefits of closed courts: "... This is to allow the child or young person to listen to proceedings and fully participate without fear of someone hearing their business or judging them for the way they behave in court" (Brown & Vaswani, 2023, p. 2). There are also arguably wider implications for the child's rehabilitation, which could be made harder should cases be held in public or the child can be seen by others when waiting for their case or leaving court. The presence of a social worker / other supporter of the child is permitted when the court is closed and should be encouraged and is consistent with the Council of Europe (2011: 84) "being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings". In the event that the judiciary do not agree to the child having a supporter, information about what happens in the closed court should still be shared with the child's social worker to support the child after court and to inform the child's plan.

- A modified court day, including a shorter day, more time to process information and questions, and slowing down the court process e.g. breaking it into 30-minute segments with breaks to aid the child's concentration (Judicial Institute, 2025). Adjournments can be sought by the child or other parties' representatives in a case;
- Proceedings should take place more slowly, at a pace that allows the child time to take in information, understand this, and form and express views. Ensuring children's understanding supports fulfilment of their participation rights but also has positive implications for engagement and compliance. According to Bevan (2016:7) "research suggests that people are more willing to comply with rules set by legal authorities if they understand the processes and believe that those authorities act in ways that are procedurally just."
- Considering whether the child should be in the dock or at the table (including sitting beside their lawyer to aid informal communication or with a family member and could move to another position still at floor level when giving evidence) where this is in the child's best interests, and risks, security arrangements and the requirements of the court permit this (Judicial Institute, 2025). If in the dock, consideration should be given to allowing the child to be accompanied by a support worker, advocacy worker or suitable adult.
- Courtroom configuration including the courtroom's dimensions; where individuals are positioned and the distances involved; whether there are direct lines of vision between different parties; and noise disruption (Brown & Vaswani, 2023) and General Comment No. 24 (2019), para. 46).
- Using straight-forward, simple language, giving one instruction at a time and avoiding the use of jargon or complex language. The Council of Europe (2011; 21) state that information "*should be provided to children in a manner adapted to their age and maturity, in a language which they can understand, and which is gender and culture sensitive*".

- The use of communication aids and supports such as presence of a speech and language therapist, visual supports including timelines or timetables, or the use of writing or drawings.
- Providing refreshments and snacks, which would be provided by whoever was transporting the child, responsible for the child at court or their supporter.
- Removal of wigs and gowns.
- The use of virtual courts.

(Further information is contained within the [Equal Treatment Bench Book](#); Youth Court Blueprint; [Children's Rights at Court Guidance Toolkit](#); and [Sections 5, 6 and 8](#) of this guidance).

Under s.142(1) of the 1995 Act *Where summary proceedings are brought in respect of an offence alleged to have been committed by a child, the sheriff shall sit either in a different building or room from that in which he usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings.* This provision is extended by s.16 of the 2024 Act, which allows the same in solemn proceedings and in summary or solemn proceedings, where such a case involves an adult co-accused, but requires that the court in deciding how to undertake proceedings have regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings. The [Opinions](#) of the [Court](#) regarding conduct in two summary cases involving children in the first challenge of the UNCRC Incorporation (Scotland) Act 2024, underlines the importance of all parts of s.142 being complied with.

The 2024 Act also inserts s. 50(7) of the 1995 Act so that *In complying with subsection (6) the court must, in particular, consider what steps might be taken to facilitate the participation of the child in the proceedings while safeguarding the child's welfare and, where reasonably practicable, take those steps.* Where these steps cannot be taken, this decision and reasons should be recorded.

In addition to the information that should be shared ahead of a child's court appearance, the social worker supporting the child or court-based social work should also provide information to the sheriff either directly (through court notes) or via the child's defence lawyer to inform decisions and promote the child's best interests (CYCJ, 2024). A member of social work staff should be available at court to answer any questions, with the [Youth Court Blueprint](#) suggesting that social workers should routinely be called upon by the sheriff in order to provide an update on the child or young person.

4.3 Bail and remand

Unless a case is disposed of the first time it calls in court, one of the early [judicial decisions](#) will relate to whether the child should be ordained to appear at the next calling of their case, whether they should be remanded until their next court appearance, or whether they should be released on bail. Research carried out by McEwan et al. (2020, p. 23) highlighted the ability of children to comply with bail conditions as a particular concern: "strong agreement

that support to aid children in navigating their court journey - particularly where bail conditions are in place - is required”.

Article 37 of the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) explicitly states that:

- Children and young people who are deprived of their liberty should be able to challenge this quickly in court.
- Children and young people must only be arrested, detained, or imprisoned as a last resort and for the shortest possible time.
- Every child or young person who is deprived of their liberty must be treated with respect.
- Every child or young person who is deprived of their liberty must be separated from adults, unless it is better for him or her to be with adults.

It is essential to ensure that the courts have alternatives to remand available to them that provide robust wraparound support packages, which may also include bail supervision as an alternative to remanding children (as detailed below). These must be evidence-based, manage risk of harm and lead to positive outcomes to provide decision makers with confidence in their effectiveness. It is anticipated that ensuring robust services are in place will ultimately reduce the use of remand, thereby supporting children in their own community, leading to better outcomes for both. In circumstances where remand is being considered, information relating to the available risk management and reduction processes (as outlined within the [Framework for Risk Assessment Management and Evaluation \(FRAME\)](#)) and standards for risk practice with children aged 12-17 years ([Care and Risk Management Procedures \(CARM\)](#) for local authorities and partners)), may support the child to remain in their community (see [Section 15](#)). The provision of such information to Sheriffs, PFs and defence solicitors regarding the level of supports and risk management procedures available can inform the decision to release a child into the community. Decision makers need to have confidence that these are robust evidenced-based supports and services that lead to positive outcomes-efforts should be made locally to raise the profile and knowledge of available supports, including with PFs and the judiciary. For more information on alternatives to deprivation of liberty, see [Section 17](#).

The 2024 Act ended the use of YOIs for under 18s in August 2024, instead requiring that where a child is to be deprived of their liberty this should be in secure care (hospital settings can be used in limited circumstances). The [Secure Accommodation Network Scotland \(SAN Scotland\)](#) should be consulted in the first instance where there is an indication bail will be refused, but where there are no beds identified, all centres should be contacted to discuss any possible options (such as use of an emergency bed) or when a bed is likely to become available, to be able to provide the Sheriff with this information. [The Havana Rules](#) states that detention before trial should be avoided where possible and limited to exceptional circumstances. Therefore, all efforts should be made to apply alternative measures to detention, which should only be used as a last resort (Nowak, 2019). Evidence shows that detention in Scotland is not being used as a last resort or for the shortest time possible, with many children reporting being subject to prolonged periods on remand with no option for community-based alternatives (McEwan et al., 2020). This sentiment is also mirrored in England and Wales (Bateman, 2020).

Bail Supervision

Bail supervision may be necessary for some children and early identification enables support services to be put in place at the earliest possible stage. Judges, Sheriffs, PFs and defence agents can request assessments for bail supervision and these should be automatically undertaken when court social work are notified that bail is being opposed. The [National Guidance on Bail Supervision](#) states that bail supervision must be available to all under-18s. In what guidance calls “the rare instances” where this is not provided by workers trained to work with children, additional input from Children’s Services must be sought and provided where possible (Scottish Government, 2023). This is to ensure any bail supervision assessments are appropriately informed and recognises that the specific needs and responses required for children are distinct from those of adults (for more information see the [Bail Supervision Guidance \(2022\)](#) Annex 1). Bail supervision is intended to have a monitoring and support role for the child. Additional support to adhere to the conditions may be required that is reflective of their age and stage of development, level of understanding and considerate of their holistic needs. The level of weekly contact can vary depending on whether the case is a summary or solemn matter. Supervision aims to encourage and support the child to keep any court appearances or meet other court requirements, such as: appointments for preparation of reports; support to access appropriate services to meet their assessed needs; and working with them to avoid breaching bail by further offending (Scottish Government, 2011). This recognises that additional support for children to adhere to bail conditions may be required, reflective of their age and stage of development– with it important that any mental health, learning, neurodivergent and SLCN needs are considered. Successful completion of a period of bail supervision increases the child’s chance of being made subject to a community disposal if their case progresses to sentencing (Scottish Government, 2012). Electronic Monitoring is an option along with or without bail supervision if a court wishes to do so.

Bail supervision may be particularly appropriate for children, offering them support to adhere to their conditions. Experience has shown that reminding those aged under 18 that breaching bail conditions could lead to custody, may also be enough to deter breaches. A 2019 evaluation study into a bail supervision scheme (BSS) for children aged 12-17 in Dublin at high risk of bail denial by Naughton et al. (2019), showed positive changes in the young people’s behaviour, with a 72% reduction in reoffending behaviour in the six months post involvement in the scheme. The young people who completed the BSS with a planned exit also showed marked improvement in complying with bail conditions as the intervention progressed, with the majority who completed the intervention showing full adherence to bail conditions on exit from the scheme. Furthermore, 85% of the young people who completed the BSS with a planned exit received a community disposal at sentencing. The focus of the scheme was providing support to caregivers through use of multi-systemic therapy (MST), to increase their ability to manage and encourage positive change in the young person’s behaviours and within the family dynamic. This research highlights the importance of not just focussing support and intervention on the child but recognising the importance of the systems around the child in supporting and facilitating change. In order that courts can take appropriate decisions about children pending trial and/or sentence, they must be satisfied that they have all relevant information about the child and that appropriate bail supervision or support schemes are available.

Bail Information Reports

Bail should not be refused due to a lack of information about the child's circumstances (Scottish Government, 2011). As detailed above, efforts should be made to gather information about the child from as soon as social work services have been notified a child will be appearing at court, and the same process as for bail assessment will also be used to share information about the child's needs and to support their participation in proceedings; plans for how this could be undertaken; and requests for adaptations. Limitations to the information gathered should be acknowledged when sharing this with the court, PF, or other appropriate parties, particularly when they are appearing from police custody/an alternative place of safety and timescales are restricted. The [Bail and Release from Custody \(Scotland\) Act 2023](#) requires the court on a person's first appearance to give an opportunity to JSW to provide information to the court to inform the bail decision and enables additional information to be requested at any point during the case.

Where a child is known to be homeless, every effort should be made to secure an address before they appear in court (Scottish Government, 2011). The court social worker or court support staff, once aware of a child appearing and where no alternative family address is available, should liaise with housing colleagues and make a referral to the housing department. Care should be taken in arranging an address, to ensure any concerns expressed by the PF are considered; for example that it should not be close to the victim (Scottish Government, 2011). Occasionally it may not be possible to obtain an alternative address before the end of the court day, but every effort should be made to do this at the earliest possible opportunity.

Remand Options

When a child is to appear in court, the responsible local authority should make enquiries regarding secure care provision and availability when there is a likelihood that the child may be remanded. Where a child is remanded, the court will commit the child to the relevant local authority to be detained either in secure accommodation, in which case the local authority has no discretion as to the child's placement, or to a suitable place of safety chosen by the local authority (under section 51 of the 1995 Act) (Nolan, 2024b). Social work should consider all possible places of safety and also what support could be put alongside such a placement. In the latter case, secure care can be such a place of safety provided the requirements under regulation 12 of [The Secure Accommodation \(Scotland\) Regulations 2013](#) are met. For all remand cases, the local authority is responsible for the arrangement and management of the child's placement, including completion of the Individual Placement Agreement, and reviews. The Scottish Government have agreed to fund the cost of remand placements since the commencement of the 2024 Act. Local authorities must inform the Scottish Government through the childplacementmanager@gov.scot mailbox, when a child is remanded to secure care, in order for the Scottish Government to fund this placement. Local authorities should also inform the Scottish Government when the placement comes to an end. The local authority is responsible for the arrangement and funding of all secure transport including for future court appearances as needed. If the child has been remanded to secure care the child has to be securely transported. It is good practice that there are local arrangements for contingencies and an agreed accessible space where the child can wait for transport after court, with appropriate supervision and support, including after hours.

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. There are various issues in respect of remand to a place of safety that lack legal clarity - therefore local authorities should clearly communicate to the court what they consider to be an appropriate place of safety (whilst communicating the local authority could change this without recourse to the judiciary); the limitations to such remands e.g. that the child cannot be electronically monitored or deprived of their liberty in a non-secure setting; and other alternative options which could potentially provide greater levels of restriction and monitoring (e.g. via electronically monitored or supervised bail) ahead of any such measure being made.

Where a child is not being supported at court and is remanded to secure care, the child should be interviewed prior to leaving court by the court social worker or court support worker (Scottish Government, 2010). It is crucial the child is supported to understand the decision of the court, what will happen next, where the child will be going, and transport arrangements (as per the [Secure Care Pathway and Standards](#)). Where there is an assessed level of immediate risk to the person (e.g. risk of suicide) or to others (e.g. where a specific threat against another has been made), or where there are concerns about the welfare and/or well-being of the person, this information should be recorded by social work and shared with the secure care centre and transport provider, either via the agreed [pro-forma](#) or other templates (Scottish Government, 2023).

When a child has been remanded, a post-admission meeting is usually held within 72 hours. This is where the responsible local authority should share any additional relevant information and assessments that were not shared pre-or-post-admission and outline existing care plans (Nolan, 2024a). Where the child does not already have a child's plan, this should be developed based on a comprehensive assessment of strengths, needs and risks, guided by GIRFEC principles and informed by appropriate structured risk assessment tool(s) and risk formulation. This meeting is an opportunity for the multi-disciplinary team to gain an informed understanding of how to meet the child's needs. An Individual Placement Agreement will also be completed. When a child has been placed into secure care as a place of safety by the local authority, as per the secure care regulations, the Chief Social Work Officer should review the child's case within 7 days, then as often as necessary, and at least within every 3 months (see CYCJ, 2024 for more details).

A child who is remanded or sentenced and placed in secure care may also remain subject to a Compulsory Supervision Order (CSO), which will have its own review requirements. Any decision to terminate should be based on a need and risk assessment as outlined in the [Social Work Scotland 2019 position paper](#).

Even if the child is not a looked after child, under the 2024 Act all children who are remanded or sentenced and placed in secure care should be treated as such. In accordance with [The Looked After Children \(Scotland\) Regulations 2009](#), local authorities should review the care plan of a looked-after child placed away from home in a residential establishment within 7 days, then 6 weeks of the placement, 3 months after and then within 6 months of the previous review. In the case of an emergency placement, the first review should be within 3 working days. Often these different review meetings are coordinated and in keeping with

depriving a child of their liberty for the shortest period necessary, meetings may be held more frequently depending on individual needs and locality practice.

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.

4.4 Sequencing and timescales in court cases involving children

In upholding child-friendly justice undue delays should be avoided, providing a speedy response whilst also respecting the rule of law and due processes (Council of Europe, 2011).

Solemn Cases

The [1995 Act](#) s.65 outlines the time limits associated with cases appearing in court. When an individual has been charged on indictment, then the timescale for initial appearance in court (whether High Court or Sheriff Court) is 11 months for the preliminary Hearing, and first diet respectively, and in both cases the trial should be commenced within 12 months. Any individual remanded until liberated in due course of law should not be detained by virtue of that committal for a total period of more than:

“(a) 80 days, unless within that period the indictment is served on him, which failing he shall be entitled to be admitted to bail **[F11]**; or

F12 (aa) where an indictment has been served on the accused in respect of the High Court:

(i) 110 days, unless a preliminary hearing in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail: or

(ii) 140 days, unless the trial of the case is commenced within that period, which failing he shall be entitled to be admitted to bail.”

The lengthy timescales relate to the complexity of jury cases. The defence agent of a child placed on petition will receive most statements within 28 days, which ensures that the child knows what the nature and strength of the case against them is at an early stage (Scottish Government, 2011).

Summary Cases

[The Summary Justice System Reform Model](#) was developed and agreed by the main criminal justice organisations in 2007. It provides the national framework for the handling of summary cases, following on from the package of Summary Justice Reforms (SJR) including the [Criminal Proceedings etc. \(Reform\) Scotland Act 2007](#).

One of the greatest obstacles to working effectively with children involved in offending behaviour is the knowledge that they are due to appear again in court during their sentence in respect of other charges that were outstanding at the time of sentence (Scottish Government, 2011). The detrimental impact of outstanding matters on the factors known to promote desistance and reintegration are well established. Cases for an accused should be rolled up where possible where it is known that there are outstanding cases. There could be occasions where it may not be practical to roll up certain cases, depending upon the stages at which the outstanding cases are in the court process. Details of outstanding cases are accessible on the Scottish Criminal History system.

COPFS electronic system can identify cases of repeat offences. When the police report a case, the system performs a check against the name of the accused and his/her Scottish Criminal Record Office (SCRO) number. The PF will seek to roll up any outstanding charges. Where the cases are all live within the one court this can be done by using the process for accelerating diets, under s. 137 of the 1995 Act. This may be done on the motion of the PF, or the defence, or on joint motion. The PF can also apply to have cases pending in different courts within the Sheriffdom moved using the provision for transferring cases (s.137A of the 1995 Act).

Where two or more complaints against the same accused are calling on the same day in the same court, the court, on application by the prosecutor, can try the complaints together as one trial under s.152a(2) of the 1995 Act. There are no notice requirements for the prosecutor to make any applications under this section, and the court is to grant such an application where it appears that it is expedient to do so. The two complaints will be treated as separate complaints for the purposes of sentencing.

Defence agents have a responsibility to assist in identifying outstanding cases, as may a social worker who has knowledge of the child. If there is an option to roll up outstanding charges, then the benefits of doing so should be explained to the child (Social Work Scotland, 2019). On occasions, concern is expressed that an agent may be doing his/her client a disservice by drawing the court's attention to other outstanding charges. The child, however, is much more likely to derive benefit from any sentence imposed, if it is known that there are no further cases pending.

Summary Cases - Trial Diets

Where a child pleads not guilty and their case is proceeding to trial, cases should be allocated the earliest available trial diet (Scottish Government, 2011).

5. Completion of Justice Social Work Court Reports

When a child pleads guilty or is found guilty, the court must request social work to prepare a justice social work report (JSWR). The court social worker should contact the relevant social work service for an appointment, which should be passed to the child and/or their parent/carer before they leave court that day (Scottish Government, 2011).

The requirements for writing court reports are set out in the [Scottish Government Justice Social Work Reports and Court Based Justice Social Work Services Practice Guidance](#) (2026). The [Beijing Rules](#) 5(1) specify that the juvenile justice system should emphasise the wellbeing of the child and that any response should be proportionate to the circumstances of the child and the offence. This also must include an understanding of the level of responsibility of the child for that offence.

All reports must comment on the option of remittal to a children's hearing for advice or disposal, restriction of liberty orders and of the responsibility of Scottish Ministers if the child is sentenced via section 205 or 208 of the 1995 Act (Scottish Government, 2021). The [Scottish Government Justice Social Work Reports and Court Based Justice Social Work Services Practice Guidance](#) (2023) highlights the specific considerations necessary in relation to 16- and 17-year-olds and should be referenced alongside the [Community Payback Order Practice Guidance](#) (2022) to ensure all justice social work reports (JWSR) provide the appropriate information to inform sentencing decisions. Both these documents emphasise the importance of applying the [GIRFEC](#) principles for all under 18s, highlighting that “despite the fact that young people find themselves being dealt with in the adult system, they are not adults and have unique needs and risks which require to be considered in a young person-centred approach. Adolescence is a time of development and many young people who offend do not continue to do so in adult life” (Scottish Government, 2010, p. 54). They should include the Child’s Plan, in line with the requirements of [GIRFEC](#). Plans should be tailored to meet the needs of the child, as should the disposal options included within the report. To ensure that information for the court is as comprehensive as possible, liaison should take place between all social work services, and where appropriate, other partners who have been working with the child (Scottish Government, 2011). It may be helpful to contact the child’s solicitor to discuss the proposed disposals and explain how they would address the risks and needs of the child.

Reports must be informed by relevant risk and needs assessment tools - a structured professional judgement (SPJ) risk assessment tool should inform all risk assessments - and in accordance with GIRFEC and the requirements of child friendly justice standards (Scottish Government, 2021). The selection of appropriate risk instruments is the responsibility of the practitioner and the agency, and may be guided by criteria outlined by the [Risk Management Authority](#) (Scottish Government, 2011). This is to ensure that all risk assessments are informed from a developmental perspective that recognises children are not mini-adults. Risk assessments should seek to develop an understanding of harmful behaviour within the experiences of that child and how these may be driving, maintaining, and perpetuating the harmful behaviour. This individualised understanding of the risk behaviours should inform meaningful and appropriate risk management and reduction strategies as well as creating safe, developmentally appropriate, opportunities for the child to learn and thrive. Failure to utilise appropriate risk assessment tools leaves practitioners in an indefensible position. CYCJ recommends that practitioners working with children and some young people should utilise the Short-Term Assessment of Risk and Treatability: Adolescent Version (START: AV) in the majority of cases where criteria are met. Depending on the service structure, these practitioners may be located in Children’s Services, Adult Justice Social Work or specialist teams such as Youth Justice or Throughcare/Aftercare. Ideally a home visit should be carried out in completing a report with any child or young person to ascertain their home

circumstances, any barriers or enablers to compliance, and any wellbeing concerns, which may require a response under Child or Adult Protection.

The Scottish Sentencing Council (SSC) [Sentencing young people guideline](#) is applicable to all young people under the age of 25 years. It reflects the considerations required in sentencing all under 25-year-olds, emphasising the need for particular considerations of maturity and rehabilitation, taking cognisance of the evidence base on brain development research, as well as Scottish law on the sentencing of young people, treatment of young people more generally and the UNCRC. An annual review has been [completed](#), with a three year review to follow. The SSC website has some useful [videos](#) that sit alongside the guideline, with the JSWR guidance detailing in more length the information that supports the sentencer to fully apply the guidelines.

5.1 Remittal to a Children's Hearing

When a child or young person who is aged 17 years and six months, or less, pleads guilty to, or is found guilty of an offence, the court may dispose of the case by remitting it to the Children's Hearings System (CHS) or the court can seek the advice of the Children's Hearing prior to disposing of the case. In these circumstances report writers must always comment on this option, being clear that remittal is being considered with a view to robust tailored work and interventions being undertaken which will address both identified needs and risks and reduce harmful behaviours. The lead professional must evidence this in reports. The rules that apply to advice and remit to a Children's Hearing, in accordance with the 1995 Act, are set out below:

Child on a CSO (under 18 years) (s.49(3))

- The Sheriff or Justice of the Peace Court **must** obtain the advice of a Children's Hearing before disposing of the case.
- The High Court **may** obtain the advice of the Children's Hearing before disposing of the case.
- After considering the advice of the Children's Hearing the sentencing court either disposes of the case itself or remits it to the Children's Hearing for disposal.

Child not subject to a CSO (under 16 years) (s.49(1))

- The Court **may** remit the case to a Children's Hearing for disposal without first seeking the advice of a Children's Hearing.
- The Court **may** obtain the advice of a Children's Hearing and then dispose of the case itself or remit it to a Children's Hearing for disposal.

Child not subject to a CSO (16 -17.5 years) (s.49(6))

- Applies only when a child is charged summarily.
- The Court **may** obtain the advice of a Children's Hearing before disposing of the case.
- After considering the advice, the Court **may** either dispose of the case itself or, if the Children's Hearing has so advised, remit it to a Children's Hearing for disposal.

Appendix 1 provides two flow charts setting out the advice and remittal process for children under 16 and those over 16.

The rules regarding remittal will change when Part 2 of the 2024 Act is commenced, likely 2027-this guidance will be updated to reflect those changes in due course. The use of remittal remains low, as concluded by the Independent Care Review (2020).

It is important for report writers 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 depriving a child of their liberty would be a consideration were the court disposing of the case (Scottish Government, 2011). If the case is remitted to the Children's Hearing, the Hearing will decide how to dispose of the case which can include making a CSO, or, if there is a CSO in place, whether to continue or vary that Order. In making, continuing, or varying a CSO where the hearing is of the view a child meets the criteria for secure care in [s.83 \(4\) of the Children's Hearing \(Scotland\) Act 2011](#) they must consider the use of a Movement Restriction Condition (MRC). [An MRC](#) should form part of a robust wraparound plan that seeks to manage and reduce the risks posed by aspects of the child's behaviour. The Hearing should only authorise the secure placement of a child where they are satisfied they meet the criteria, and such measures are necessary. A child cannot be kept in secure accommodation for longer than three months unless, on review of the case, the Children's Hearing continue that authorisation. In this way, the length of the child's detention is based on their level of need and risk rather than on a pre-determined 'sentence', which better supports their reintegration to the community.

The [Scottish Sentencing Council website](#) and [the child's journey](#) outlines the broad range of Orders available to the court and when they can be used, which can be used as standalone disposals or in conjunction with other disposals, such as Community Payback Order.

Appendix 2 considers some of the sentencing options that might lead to subsequent court reviews and briefly outlines some different court approaches.

6. After Court

6.1 Support

Decisions of the court should be explained to the child slowly and with simple language, with any legal language explained (if it must be used) (Judicial Institute, 2026). Consideration should be given to doing this in private before ahead of the decision being read in court and the child's comprehension and understanding of the decision should be checked (Youth Justice Improvement Board, 2026). The decision should be reiterated by social work and the child's lawyer, with the child given the chance to ask any questions. The child and their parent/guardian should be informed of any future court dates and any conditions or orders fully explained, including the requirements it will place on them and the potential consequences of not complying are explained in a developmentally appropriate way (Scottish Government, 2011). The child may require support to comply which can include

even basic support like text and phone calls to remind of appointments and court dates nearer the time and in some circumstances providing a means of getting there (Scottish Government, 2022). Any further support the child may be entitled to for example from universal or specialist services, including as a care leaver, should be offered to the child.

Where a child is made subject to a community-based disposal, initial appointments to see their allocated worker should be made (Scottish Government, 2011). It is preferable to have the same worker support the child to attend any subsequent appointments, as appropriate to their needs, capacity, and existing support networks. These would include appointments to address needs that could affect their ability to comply with the requirements of the court and avoid reoffending, including future court dates, liaising with solicitors, the sourcing of training, employment, or education.

6.2 Deprivation of liberty

In case of a sentence of detention being imposed, as detailed previously, no child can be placed in a YOI and now would be placed in secure care (for more information on roles and responsibilities read our [briefing paper](#) and [webinar](#) on the ending of YOIs). The responsible local authority should ensure that the JSWR and any other background reports or assessments go with them to the secure care centre (Scottish Government, 2011). The Scottish Government are responsible for the arrangement, funding, transport, and management of placements for children who are sentenced to be detained and have been convicted on indictment or for murder. This includes where a child has subsequent cases. Where such a sentence is likely, the lead professional should make contact at the earliest opportunity with the Children and Young Person's (CYP) Placement Manager, (childplacementmanager@gov.scot) mailbox or 07867 390282 (during office hours) or 07554 332310 (out of hours) For more information see [Section 16](#).

6.3 Outstanding charges

In case of a sentence of detention being imposed, defence agents should learn whether there are any outstanding cases in relation to the child and link with the PF to have these accelerated as quickly as possible (Scottish Government, 2011). Defence agents should likewise arrange with the Responsible Officer to have any pending community sentence breached or reviewed and brought back to court for sentence (Scottish Government, 2011). Similarly, defence agents should ascertain whether there are any outstanding fines, and if so, link with the Fines Enforcement Officer with a view to having the alternative imposed. In exceptional circumstances, e.g. where there is no defence agent, social work can write to the PF or the court, as appropriate, to follow these up.

6.4 Maintaining Compulsory Supervision Orders

Should a child have been remanded or sentenced to be deprived of their liberty in secure care, for the duration of that placement the child should be treated as if they were a looked after child, with the corresponding duties for corporate parents and local authorities (as per section 24 of the 2024 Act). These children will become a care leaver if they cease to be

“looked after” on or after their 16th birthday, in which case they would have the same rights to aftercare entitlements as any other care leaver (as per [The Looked After Children \(Scotland\) Regulations 2009](#)).

CSOs under the CHS should not be terminated purely because a child has been remanded or sentenced to be deprived of their liberty (Social Work Scotland, 2019). This measure could be beneficial for a child experiencing the complex transition on returning to their community. Where a child is subject to a CSO and having been remanded or sentenced and placed in secure care, returns to the community prior to turning 18 years, offences can continue to be jointly reported, continuing a welfare-based approach and allowing a Children’s Hearing to deal with these. Whilst a child may express the wish to terminate their CSO, it is the responsibility of the lead professional and team around the child to articulate the reasons for continuing the order to ensure they receive the right level of support. When a child subject to a CSO disengages, in line with the Kilbrandon principles, non-engagement can be a reason to ensure compulsory measures are in place and every effort should be made to improve the child’s response, considering their individual needs and views. Responsibility for the decision to terminate lies with children’s panel members, thus it is important professionals recognise the child’s position: they have a responsibility to advocate for what has been assessed as in their best interests. A comprehensive need and risk assessment (Scottish Government, 2011) with clear evidence to support any recommendations should be supplied to assist the panel members in their decision-making process.

It is essential to plan for their return, and identify the right supports at the earliest stage, as recommended in the [Secure Care Pathways and Standards Scotland](#) (2020) and earlier [Scottish Government Reintegration and Transitions Guidance](#) (2011) ensuring the child and those important to them are included in these discussions and decisions. A child could be placed in secure care for various short periods of remand or sentence which could impede any stability they may have gained, resulting in, or compounding accommodation issues, as well as difficulties accessing benefits and employment or training. Subsequently, extensive support packages may be required.

6.5 Breaches of community sentence

The specific penalties for breaching a community sentence vary in relation to the type of sentence, but in all cases the decision about what sanction to impose for breach rests with the court (Scottish Government, 2011). These sanctions could include imposing a fine; varying the original order; revoking the original order and imposing any alternative disposal, including custody, which could have been imposed for the original offence; or revoking the original order and imposing a sentence of deprivation of liberty for a term within statutory timescales (Scottish Government, 2011).

The importance of complying with a community sentence should be communicated to a child both at the time of sentence and during the lifetime of the order imposed (Scottish Government, 2011). It is also important that the court is in possession of as much information about the child as possible and is aware of all the options available to them to avoid custodial sentences for all children where appropriate.

7. Conclusion

This section highlights the complexities associated with navigating the court system and why all children should be able to access support from their earliest contact with the court system, throughout that journey and beyond. They are children first, and accordingly, all responses and supports must be developmentally and systemically trauma-informed and uphold children's rights. All opportunities must be maximised to reduce the often-traumatic experience of children in the court system. Robust supports that are proportionate and able to respond to individual levels of need and risks are crucial for both judicial and community confidence. This requires professional recognition and understanding of not just when risk can be managed, but transparency in what that looks like, the limitations to any risk practice, and importantly, when it is assessed that the level of risk posed cannot be managed in the community at that time.

The provision of child friendly justice must be underpinned by a willingness to understand, adhere to and uphold, children's rights. This is the responsibility of all agencies, services, and professionals to deliver; the inconsistencies and inequalities faced by children in Scotland in the court system can only be addressed through effective multi-agency partnership working, and a Whole System Approach.

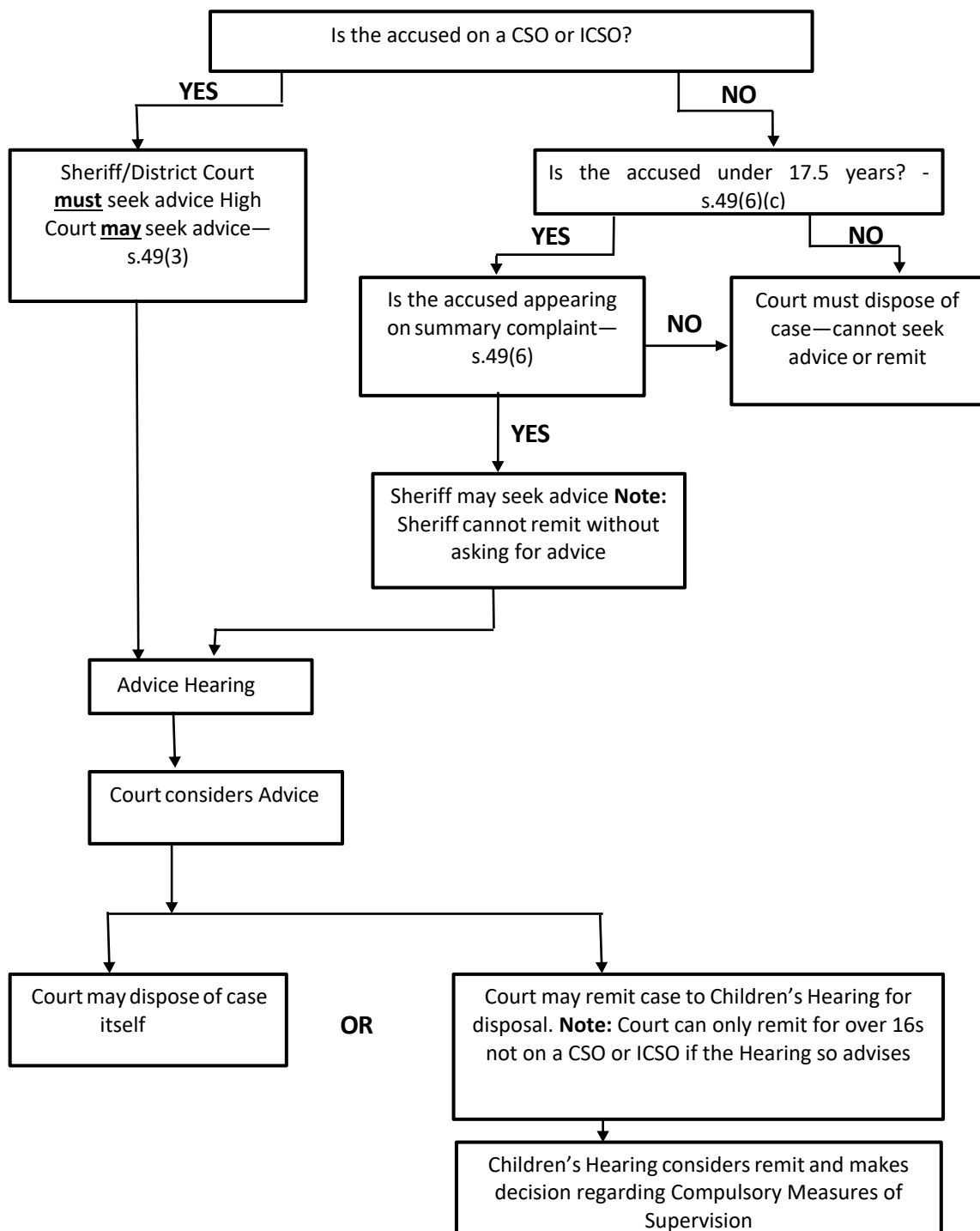
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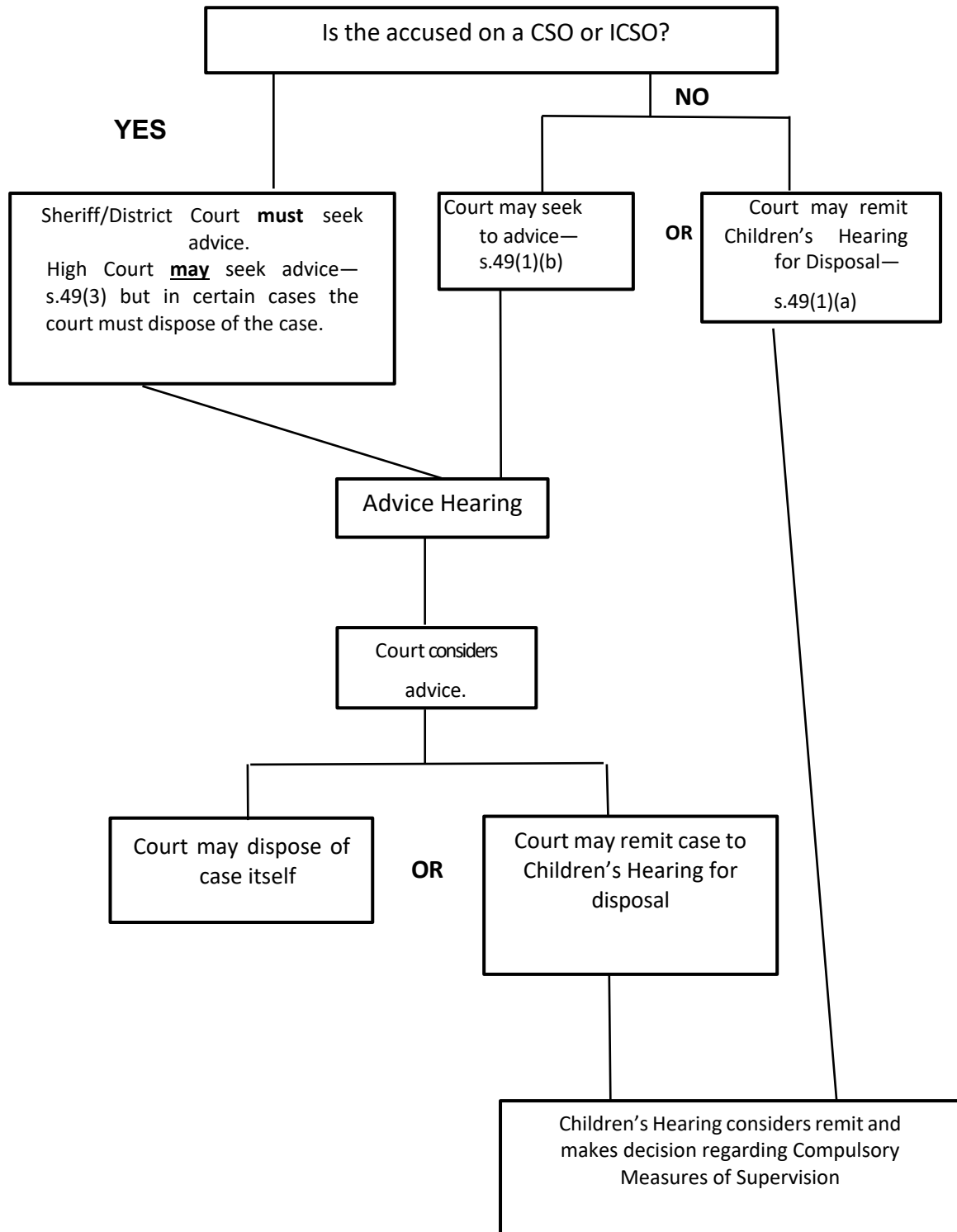
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Appendix 1

Responsibilities and Options in relation to Children's Hearings for accused persons over 16 in terms of S.49 of the Criminal Procedure (Scotland) Act 1995



Responsibilities and Options in relation to Children's Hearings for accused persons under 16 in terms of S.49 of the Criminal Procedure (Scotland) Act 1995



Appendix 2

Court decisions that may lead to subsequent court reviews

Structured Deferred Sentence

The Structured Deferred Sentence (SDS) is not a disposal post-conviction but ahead of sentencing (see [national guidance](#)). An SDS is a period of deferment within which the child agrees to engage with social workers, or a third-party agency, to address areas of need and risk underlying the child's involvement in offending behaviour. Actions should be proportionate and meaningful to develop strengths and build capacity to avoid further offending. The period of deferment is usually three months to allow the intervention to be undertaken, following which a further report would be submitted to the court outlining the progress made. The court may then defer for good behaviour for a further period (at which point the hope would be for an admonishment), or to allow specific aspects of work to be completed. The court may also choose to sentence the child using the wider range of options available to them. SDS cannot be breached. However, should an individual not engage with the identified intervention during the period of deferment, then it is likely that the court would impose a sentence which has further elements of compulsory conditions that may have significant consequences if breached.

Community Sentences

As highlighted previously, children often have difficulties adhering to the conditions associated with bail orders and community sentences, particularly over extended periods of time. Their suitability for children could therefore be questioned and it is crucial supports are provided alongside any such measures which recognise the specific needs of the child (Miller et al., 2019; McEwan et al., 2020). This is one of the reasons why a supervision requirement, which should not be confused with a CSO made by the CHS, has been made mandatory for all under 18s as part of a [Community Payback Order \(CPO\)](#). This means that they will have an allocated worker who will provide support to fulfil the requirements of their Order. As with Bail Supervision schemes, judges, and Sheriffs need to be satisfied that robust community sentences offer appropriate alternatives to custodial sentences.

There is provision for continuing regular judicial oversight of the response of the child to the [Community Payback Order](#) or Drug Treatment and Testing Order (DTTO), and progress reviews could be suggested within the JSWR to enable the court can consider progress of the order imposed. Reviews are not always requested and are done so at the discretion of the court at the point of sentencing. A supervising officer may request a review of an order for a specific purpose. This periodic return to court could be undertaken by means of regular Court Review hearings where non-compliance can be addressed, or fast track breach process instigated. The regularity of such hearings is at the discretion of the presiding judge or sheriff, considering the circumstances presented in each individual case. In addition to planned reviews, where a child breaches their electronic monitoring as part of a CPO or a [Restriction of Liberty Order \(RLO\)](#), a breach report could be submitted and the child recalled to court.

Where children are subject to court orders, the judge or Sheriff who imposed the order should, where possible, deal with any reviews or breaches of the order or any new offences.

Glasgow Youth Court

The Glasgow Youth Court is a judicially led initiative, operating since June 2021 within the Glasgow Sheriff Court, for those aged between 16 and 24-years-old subject to a SDS.

CYCJ conducted research into the workings of the Glasgow Youth Court. Key findings from the research can be found [here](#) and an Information Sheet relating to Youth Courts, which can be accessed [here](#).

Reflecting on these findings, with the help of Kevin Lafferty (STAF) and videographer (Beth Chalmers), CYCJ have developed a [video](#) to address some of these questions for the benefit of young people, justice social work staff and other Youth Court professionals.

Lanarkshire Structured Deferred Sentencing Courts

The Lanarkshire SDS courts were piloted at Lanark and Hamilton summary courts between March 2018 and March 2019. The aim was to improve sentencing outcomes for children and young people aged 16-21 years old. The [evaluation](#) of the service was positive finding an:

- 84% completion rate, compared with 40% for CPOs for children and 77% for deferred sentencing overall;
- Low reoffending rates during engagement with the pilot (only 9% reoffended);
- Almost all of those who engaged (21 out of 25) were subsequently admonished.

Key learning from the pilot included that:

- The crucial mix of Justice and Children and Family Social Work to promote a welfare-led, holistic approach whilst children and young people navigating the justice system, with this welfare focus key.
- A multi-agency approach is important, with housing and mental health support is particularly crucial;
- All SDS courts should have consistency of personnel including dedicated sheriffs, and those who can step in as necessary, that are invested in the welfare-led ethos of SDS-;
- The ability to flexibly use SDS is an advantage rooted in the voluntary nature of SDS;
- Sentencing running concurrently (SDS and CPOs in this example) do not appear to improve outcomes;
- SDS should be the first consideration when sentencing young people as this can “down tariff” them;
- Prolonged engagement with the justice system increases the risk of negative outcomes.

Intensive Supervision Courts

Intensive supervision courts are also being piloted in England and Wales with the aim of diverting individuals with complex needs from short-term custodial sentences into enhanced

community-based sentences, namely a high-end Community Order (CO), or Suspended Sentence Order (SSO). These have been evaluated (Ministry of Justice, 2025).

The [Centre for Justice Innovation](#) also have a lot of information on court reforms and problem-solving courts.