

Youth Justice

Background

[A Guide to Youth Justice in Scotland: policy, practice and legislation](#) published by the Centre for Youth and Criminal Justice (CYCJ) provides a comprehensive overview of significant historical developments in terms of how Scotland deals with children and young people who offend, and outlines relevant policy, rights and legislation.



A key feature of the approach taken to children and young people who offend in Scotland is its grounding in welfare principles. This means that children and young people who commit offences and those who are in need of care are dealt with within the same system. This system, unique to Scotland, is based on an acknowledgement that children who offend have key welfare needs that must be addressed; likewise, children whose welfare needs are not being met are often in danger of offending. The genesis of this approach lies in the report published by the Kilbrandon Committee in 1964, which in turn formed the basis for the Social Work (Scotland) Act 1968.

The Kilbrandon committee was established following concern in the late 1950s and 1960s that change was needed in the way society dealt with children and young people in trouble or at risk. The [Kilbrandon Report](#) recommended a national coordinated system to deal with children in need of compulsory measures of care and stressed the importance of early intervention. In April 1971, Children's Hearings took over from the courts most of the responsibility for dealing with children and young people under the age of 16, and in some cases up to 18.

Despite this, the [CYCJ](#) notes that legally 16- and 17-year-olds not subject to a Compulsory Supervision Order imposed by a Children's Hearing have tended to be dealt with in the adult criminal justice system. Indeed many young people still receive custodial sentences: Scotland imprisons more 16- and 17-year-olds than almost anywhere else in Europe.

There have been a number of important developments in the years after Kilbrandon that are pertinent to the area of youth justice, and these are explored in this document.

What is youth justice?

'Youth justice', in the Scottish context, can be understood to encompass the individuals, institutions and services with which young people up to the age of 18 come into contact as a result of their involvement in offending behaviour ([CYCJ definition](#)). An important caveat attached to the above definition is that, in the contemporary context of youth justice, much of the focus is on the wider system and the whole person, as embodied in policies such as Getting it Right for Every Child (GIRFEC) and the Whole System Approach (WSA), discussed later in this briefing.

The parameters for youth justice practice in Scotland have been broadly set as those young people between the ages of 12 and 18 who offend or are at risk of offending ([CYCJ](#)). No individual can be arrested and charged with an offence if they are under the age of 12. This is because the 'age of criminal prosecution' is 12 years, which means children under this age cannot be prosecuted or punished. This should not be confused with the 'age of criminal responsibility', which relates to "the age below which the child is deemed to lack the capacity to commit a crime" (Scottish Law Commission, quoted in [CYCJ](#)). In Scotland, the age of criminal responsibility is eight, which is young by international standards: it has been found that only 16 countries in the world have a lower age of criminal responsibility.

Trends in youth offending

The annual report on the [Scottish Policing Performance Framework \(SPPF\) for the 12-month period 2013-2013](#) reported on the level of crime detected by the police across during that period. Findings relating to the number of detected crimes and offences by children and young people (eight to 17 years old) include:

- A total of 43,117 crimes/offences were recorded as having been committed by children and young people.
- More than half of these (23,237) were recorded as 'miscellaneous' offences, which includes breach of the peace, common assault and alcohol-related offences. In other words, less serious or 'anti-social behaviour' type offences.
- A small proportion of crime involved violence (533 recorded crimes) or indecency (809 recorded crimes).
- Crimes of dishonesty (6,988 recorded cases), vandalism, fire-raising, malicious conduct etc (6,084) and drugs/other crimes (5,466) were more common.

[Youth Justice in Scotland: Fixed in the past or fit for the future?](#), a report published by the CYCJ, helps to fit the above figures into the wider context:

- 95% of young people were not charged with any offending behaviour at all during 2012/13, underlining the reality that the vast majority of young people abide by the law.
- Around 23,726 children and young people, or 4.7% of all those aged eight to 17 in Scotland, were involved in offending behaviour over the same period.
- These figures have been on a consistent and downward trajectory since 2008/09, when police forces started reporting on this.

But, a limitation of these figures, as is pointed out in the report itself, is that these only report *detected* crimes. Therefore, it is possible that differences in the number of offences may be caused by varying detection rates rather than variations in the actual level of youth offending.

The report also brings in data from the [Scottish Crime and Justice Survey \(SCJS\) 2012-13](#). The SCJS provides us with an alternative data set by asking a representative sample of 12,000 adults living in Scotland about their experiences and perceptions of crime.

- The SCJS identified a 22% reduction of overall crime in 2012/13 since 2008/09, compared with police data suggesting that recorded crime fell by 27.8% in the same timeframe.
- A weakness of the SCJS is that it excludes young people aged under 16 for practical reasons, despite the survey's own acknowledgement that younger age groups are more likely to be victims of crime than adults.
- SCJS also asks victims of crime whether they had any contact with the offender or offenders and whether they felt able to say anything about them. The victim was able to say something about the offender in relation to 47% of crimes and of these, 19% of offenders were perceived to be school-age children.

But, the CYCJ report notes that adults in general have been found to overestimate the involvement of young people in offending. Comparisons between survey data and recorded crime statistics have indicated that adults are likely to believe young people are involved in a much higher rate of crime than is actually the case (See [SCCJR 'Scottish Crime and Justice Survey: victimisation'](#) and [SCCJR 'Crime and the media'](#) for more information).

Explanations of youth offending

Explanations behind children and young persons' involvement in criminal activity are varied and complex (See [SCCJR 'Theories and causes of crime'](#) for full discussion of the various explanations for criminal activity, including criminality of children and young people).

Children's Hearing System

The Children's Hearing System (CHS) is unique in its basis in welfare principles and in the fact that it deals both those children and young people who have committed an offence and those whose needs are not being met, under one system. Children and young people enter the CHS when they have been referred to the Children's Reporter. There are a number of **grounds for referral** (discussed below). Referrals can be made by a range of individuals and public bodies.

The Scottish Children's Reporter Administration (SCRA) has published [Online Statistics for 2014-15](#) relating to referrals, as well as a [Statistical Analysis](#) of these figures. Figures for the 12-month period 2014-15 show that:

- A total of 15,858 children were referred to the Children's Reporter over this period. These children accounted for 27,538 referrals.
- The vast majority of children were referred by the police (10,361), with social work services referring the second highest number of children (4,699).
- Other sources of referral included education authorities (1,221 children), court (249), health (226), reporter (187), child's relative (155), Procurator Fiscal (88), the child themselves (five) and other sources (273).

The figures also show that the most common grounds for referral for the period 2014-15 were lack of parental care (6,016 children, 6,829 referrals) and where the child or young person had committed an offence (2,872 children, 6,838 offences).

Further statistics can be found [here](#).

Grounds for referral, as defined in Section 67 of the Children's Hearing (Scotland) Act 2011, include if the child or young person:

- is likely to suffer serious harm to health or development through lack of parental care
- has been the victim of a schedule 1 offence (a physical, emotional or sexual offence against a child), is likely to have a close connection with someone who has committed such an offence or is likely to become a member of the same household as another child who has been the victim of a schedule 1 offence
- is or is likely to be exposed to persons whose conduct may mean that the child or young person is abused or harmed or their health, safety or development will be seriously adversely affected
- has or is likely to have, a close connection with a person who has carried out domestic abuse
- has or is likely to have, a close connection with a person who has committed an offence under the Sexual Offences (Scotland) Act 2009
- is accommodated by a local authority or is the subject of a permanence order and special measures are needed to support them
- has committed an offence
- is misusing drugs or alcohol
- has behaved in a way that has had or is likely to have, a serious adverse effect on the health, safety or development of themselves or another person
- is beyond the control of parents or carers
- is not attending school regularly without a reasonable excuse (e.g. illness would be considered a reasonable excuse)
- has been, is being, or is likely to be, forced into a marriage or civil partnership, or is, or is likely to become, a member of the same household as a such a child.

When a child aged 12 or over commits an offence and is arrested and charged by the police, the police must decide what action should be taken. In an instance where the child is suspected of committing a very serious offence or a road traffic offence, the police can submit a report to the Crown Office and Procurator Fiscal Service (COPFS) (See [SCCJR 'Scottish criminal justice system'](#)). However, in reality, the vast majority of cases in which a child under 16 has committed an offence are referred to the Children's Reporter. In some cases, the police may find it appropriate to submit a report jointly to the Children's Reporter and the COPFS. In addition, upon receiving a report, the COPFS may decide to refer the case to the Children's Reporter, if he or she believes it appropriate to do so ([SPICe Briefing: Children and](#)

[the Scottish Criminal Justice System](#)). The [Joint Agreement in Relation to the Cases of Children Jointly Reported to the Procurator Fiscal and Children's Reporter](#) makes clear that:

- “In relation to children **under the age of 16 years**, there is a presumption that the child will be referred to the Children's Reporter in relation to the jointly reported offence.”
- “In relation to children **over the age of 16 years**, there is a presumption that the PF [procurator fiscal] will deal with the jointly reported offence.”

As noted, the [Children's Hearing System](#) was introduced by the Social Work (Scotland) Act 1968. The hearing system was incorporated into the Children (Scotland) Act 1995 and the Children's Hearing (Scotland) Act 2011.

The publication [Children's Hearings Scotland: Practice and Procedure Manual](#) provides a detailed overview of the processes involved with Children's Hearings in Scotland. Some fundamental aspects of the system include:

Child

A 'child' as defined by the Children's Hearing (Scotland) Act 2011, is a person who is:

- Under the age of 16
- Aged 16 or 17 and subject to a Compulsory Supervision Order
- Under 16 when referred to the Children's Reporter until the Children's Reporter decides not to arrange a children's hearing or a substantive decision is made by a children's hearing
- Of school age where the ground of referral is non school attendance
- Aged 16 or 17 and whose case has been remitted to the Principal Reporter by the Sheriff after they have pleaded guilty to, or been found guilty of, an offence until a substantive decision is made by the hearing

The overarching principles

There are three 'overarching principles' which apply when hearings are making decisions about a child:

1. The need to safeguard and promote the welfare of the child throughout the child's childhood is the paramount consideration.
2. The child must be given an opportunity to express a view and this view must be taken into account in line with the child's age and maturity.
3. An order is only to be made if it is considered better for the child than if no order was made.

It is important to separate these principles from *reasons* for making a decision.

Roles in the process

- Panel member: one of a group of three who make up a children's hearing and who takes legally binding decisions about a child. Although decisions are made individually, panel members work as a team throughout the hearing. Panel members are ordinary members of the public from all walks of life who volunteer for the role.
- Children's Reporter: has a legal responsibility to receive and make decisions on referrals about children who may be in need of statutory measures of care.
- Safeguarder: a person appointed by a pre-hearing panel, children's hearing or sheriff to safeguard the interests of the child; is appointed from the national Panel of Safeguarders.
- Solicitor: a legally qualified person who must be registered with, and is regulated by, the Law Society of Scotland.

Hearing orders

There are four orders a hearing can make:

1. Compulsory supervision order (CSO)

The CSO can be imposed at the hearing if it is satisfied that **it is necessary for the child's protection, guidance, treatment or control.**

There are three requirements for an order to be a compulsory supervision order:

- i. It must contain at least one of the measures listed below:
 - a. the child resides at a specified place
 - b. authorisation for the person in charge of the specified place to restrict the child's liberty
 - c. non-disclosure (either directly or indirectly) of the specified place
 - d. a movement restriction condition
 - e. a secure accommodation authorisation
 - f. that the implementation authority arranges a specified medical examination and/or treatment of the child, subject to the child giving consent if of an age where he or she can provide consent
 - g. a contract direction
 - h. any other condition which the child must comply with
 - i. the implementation authority carries out specified duties in relation to the child
- ii. It must specify a local authority which is responsible for giving effect to the order. This is called the 'implementation authority'. The implementation authority should be 'the relevant local authority', which is defined as:

- a. the local authority in whose area the child predominantly resides or
 - b. where the child does not predominantly reside in the area of a particular local authority, the local authority with whose area the child has the closest connection.
 - iii. It must specify the 'relevant period'. This is how long the compulsory order will last. The relevant period begins with the day the hearing makes the order and can last for a maximum of one year, or to the child's 18th birthday, whichever comes first.
2. Interim compulsory supervision order (ICSO)
An ICSO can only be issued if there is no existing compulsory supervision order in place. The test for making an ICSO is that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary **as a matter of urgency** that the interim compulsory supervision order be made.
 3. Medical examination order (MEO)
A medical examination order is an interim order a children's hearing can make in the situation where a child has an unmet medical need.
 4. Warrant to secure attendance
A warrant to secure attendance gives a police officer the power to search for and apprehend a child, keep the child in a place of safety and bring the child before a children's hearing.

Hearings and Options

The first children's hearing a child and **relevant person(s)** attend is likely to be a grounds hearing. A Children's Reporter will refer a child to a grounds hearing if, following investigation, they are satisfied that one of the grounds listed in the 2011 Act (**see above for information on grounds for referral**) applies and that it is necessary for a Compulsory Supervision Order be made for the child or an existing order to be reviewed.

Relevant person: a person is automatically a relevant person if they are a parent or hold parental rights. An individual can also be deemed by the panel to be relevant if they have had significant involvement in the upbringing of the child.

Where the grounds for the hearing should be understood by the child and/or relevant person(s) but have not been accepted by one or more of those persons, there are two options available to the hearing:

1. Discharge the referral. This would mean the end of the hearing unless there is a second purpose to the hearing.
2. Direct the Principal Reporter to make an application to the Sheriff to determine whether the grounds are established. This is known as 'making an application for proof'.

If the statement of grounds is accepted in full by the child and the relevant person(s) present, the hearing may proceed to a full discussion of the child's circumstances.

The following options are open to the hearing following the discussion:

1. Discharge the referral. Where, following discussion, the hearing is satisfied that a Compulsory Supervision Order is not required for the child, they should discharge the referral.
2. Make a Compulsory Supervision Order. If the child is already subject to a CSO the options are to continue, vary, or continue and vary the existing order.
3. Defer the hearing to another day. The hearing may then issue an ICSO or an interim variation of a compulsory supervision order if the panel consider it necessary as a matter of urgency.

Outcomes from Hearings for children and young people

A [Statistical Analysis 2014-15](#) carried out by the Scottish Children's Reporter Administration provides some key facts about the outcome for children and young people following a hearing. Some key facts:

- CSOs are the most common intervention made by Children's Hearings. They are also the only longer-term option available to hearings. At Children's Hearings in 2014/15, 3,223 children and young people were made subject to new CSOs. At March 31 2015 there were a total of 10,733 children and young people in Scotland subject to CSOs. This is 1.2% of all children and young people in Scotland.
- Children's hearings can also make short-term decisions to address emergency and/or high-risk situations where measures have to be put in place immediately. These include Interim Compulsory Supervision Orders, Interim Variations of Compulsory Supervision Orders and Places of Safety Warrants. These interim orders/Places of Safety Warrants numbered 2,670 in 2014/15.

GIRFEC

Getting it right for every child (GIRFEC) was first introduced as a concept in 2004 as a new national approach for working with children and young people in Scotland. The Scottish Government (then known as the Scottish Executive) formally published proposals known as GIRFEC in April 2005.

The Scottish Government published its [Guide to Getting It Right For Every Child](#) in June 2012 and continually updates the relevant section of the [website](#). According to official publications, GIRFEC is intended to be consistent way for all people and agencies to work with children and young people. In this sense, it underpins all children's services and can also be used by practitioners in adult services who work with parents or carers. Now that GIRFEC is firmly established, it influences all existing policy, practice, strategy and legislation affecting children, young people and their families.

The stated values and principles of GIRFEC are:

- Promoting the wellbeing of individual children and young people
- Keeping children and young people safe
- Putting the child at the centre
- Taking a 'whole child' approach
- Building on strengths and promoting resilience
- Promoting opportunities and valuing diversity
- Promoting additional help that is appropriate, proportionate and timely
- Supporting informed choice
- Working in partnership with families
- Respecting confidentiality and sharing information
- Promoting the same values across all working relationships
- Making the most of bringing together each other's expertise
- Co-ordinating help
- Building a competent workforce to promote children and young people's wellbeing.

Thus, GIRFEC encourages earlier intervention by professionals to avoid crisis situations at a later date, and so that children and young people receive the help and support they require. The framework set out in guidance notes outlines the process for assessing risk, identifying concerns, recording concerns, and developing a plan of action in response to concerns.

Preventing Offending by Young People: A Framework for Action

In June 2008 the Scottish Government published the strategy document [Preventing Offending by Young People: A Framework for Action](#), which is jointly agreed upon by the Scottish Government, the Convention of Scottish Local Authorities (**COSLA**), Scotland's Children's Reporter Administration (SCRA) and the Crown Office and Procurator Fiscal Service (COPFS).

COSLA: stands for the Convention of Scottish Local Authorities. This is the body that represents the interests of (until 2015, all 32) local authorities in Scotland, in relation to its dealings with the Scottish Government.

The paper states that:

“In driving forward our work, we will focus on the following areas:

- Prevention
- Early and effective intervention
- Managing high risk
- Victims and community confidence
- Planning and performance improvement”

On ‘preventing offending by young people’ the paper notes that “In reality, the evidence shows the only way to prevent ‘deeds’ is to address needs. Individuals are often both victims and offenders: each aspect needs our attention”, expressing Kilbrandon principles.

The paper also draws inspiration from GIRFEC when it notes: “Through the voluntary interventions with children and families under the Getting it Right For Every Child framework, and the work of the Children’s Panel where compulsory measures are required, the offending behaviour of young people is considered as part of a broader picture of who they are. Interventions are designed to be early, holistic and with a presumption that children stay in their communities.”

In addition, the paper acknowledges the importance of *prevention*, and refers specifically to the [Early Years and Early Intervention](#) joint policy statement by the Scottish Government and COSLA. This, the paper makes clear, “is about moving from intervening when a crisis happens towards prevention, building resilience and providing the right level of support before problems materialise”, an effort which includes health, education and other public services and voluntary organisations.

Early and effective intervention

Early and effective intervention features prominently in the paper:

“Where the need for intervention has been identified, relevant agencies must act promptly, and in line with what other agencies are doing, to promote responses that are timely, proportionate, effective and that inspire community confidence. It is crucial that all agencies are able to provide early and effective responses based on an appropriate assessment of the individual’s circumstances, not least that children and young people can relate their actions to the impact and consequences and learn from this experience.”

Whole system approach

Building on GIRFEC and Preventing Young Offending by Young People: A Framework for Action, the Whole System Approach (WSA), which was launched in September 2011, is an approach that aims to reduce offending by young people. As detailed by [CYCJ](#), the WSA involves “putting in place streamlined and consistent planning, assessment and decision-making processes for young people who offend, ensuring they receive the right help at the right time.” The WSA works across all systems and agencies, bringing the Scottish Government’s key policy frameworks into one overarching approach for young people who offend. The WSA emphasises early and effective interventions for low-level offences, offering support and advice to young people in order to address needs and change behaviour; diversion from prosecution; robust alternatives to secure care and custody; effective risk management through the Children’s Hearing System as opposed to adult courts; and supporting young people’s reintegration back into the community.

In June 2015, the SCCJR published an [Evaluation of the Whole System Approach to Young People Who Offend in Scotland](#).

In terms of detail about the strategy, the report notes:

- WSA encompasses three main policy strands: Early and Effective Intervention (EEI), which aims to reduce referrals to the Children’s Reporter by making use of pre-referral screening (PRS); Diversion from Prosecution, which aims to keep young people away from the criminal justice process; and Reintegration and Transition supporting young people in secure care and custody, and planning for their reintegration into the community.
- An aim of the WSA is to try to ensure that only those under 18 who really need formal measures – such as compulsory supervision by the Children’s Hearing System, prosecution, secure care or custody – are taken through the process.

The evaluation was conducted by:

- Examining the operation of WSA in three local authorities in Scotland, each with a very different geographical, demographic and organisational backdrop. The study combined scrutiny of WSA policy documentation and guidance notes, with a set of 33 qualitative interviews with WSA practitioners and stakeholders, observations of WSA meetings in each case study area, and qualitative analysis of relevant management data (See [SCCJR 'Research skills and methods'](#) for discussion of qualitative research methods including interviews).

In terms of backdrop to the review:

- Patterns of recorded crime show a distinct fall over time in all three case study areas which pre-date either Early and Effective Intervention (EEI) or WSA; however, there is evidence to suggest that there has been significant falls in youth offending since the mid-2000s, which ties in with the early implementation of *GIRFEC* and the *Preventing Offending by Young People: A Framework for Action on youth offending*.

Early and Effective Intervention (EEI)

EEI, within the WSA aims to deliver a timely, appropriate and proportionate response to young people aged between eight and 17 reported for offending. The key objectives are:

- to ensure children are not only referred to the Children's Hearing System, where it is likely that compulsory measures will be required (to reduce the number of inappropriate referrals);
- to support a faster and more focused response to those reported for offending;
- to promote better information-sharing and more consistent decision-making;
- to reduce anti-social behaviour and re-offending rates;
- to work within the Getting it Right for Every Child (GIRFEC) framework to ensure the young people receive appropriate help from a coordinated multi-agency forum.

EEI operates using the pre-referral screening process (PRS), which diverts people away from the formal criminal justice system. Young people aged 16 and 17 became eligible for PRS in September 2013. Prior to this, eligibility was limited to eight- to 15-year-olds. In some authorities eligibility is extended to young people on supervision (taking into account the number and type of previous involvements), however this varies across Scotland.

Figure 1 illustrates how PRS operates to divert individuals from having their case considered by the Procurator Fiscal and/or Children's Reporter.

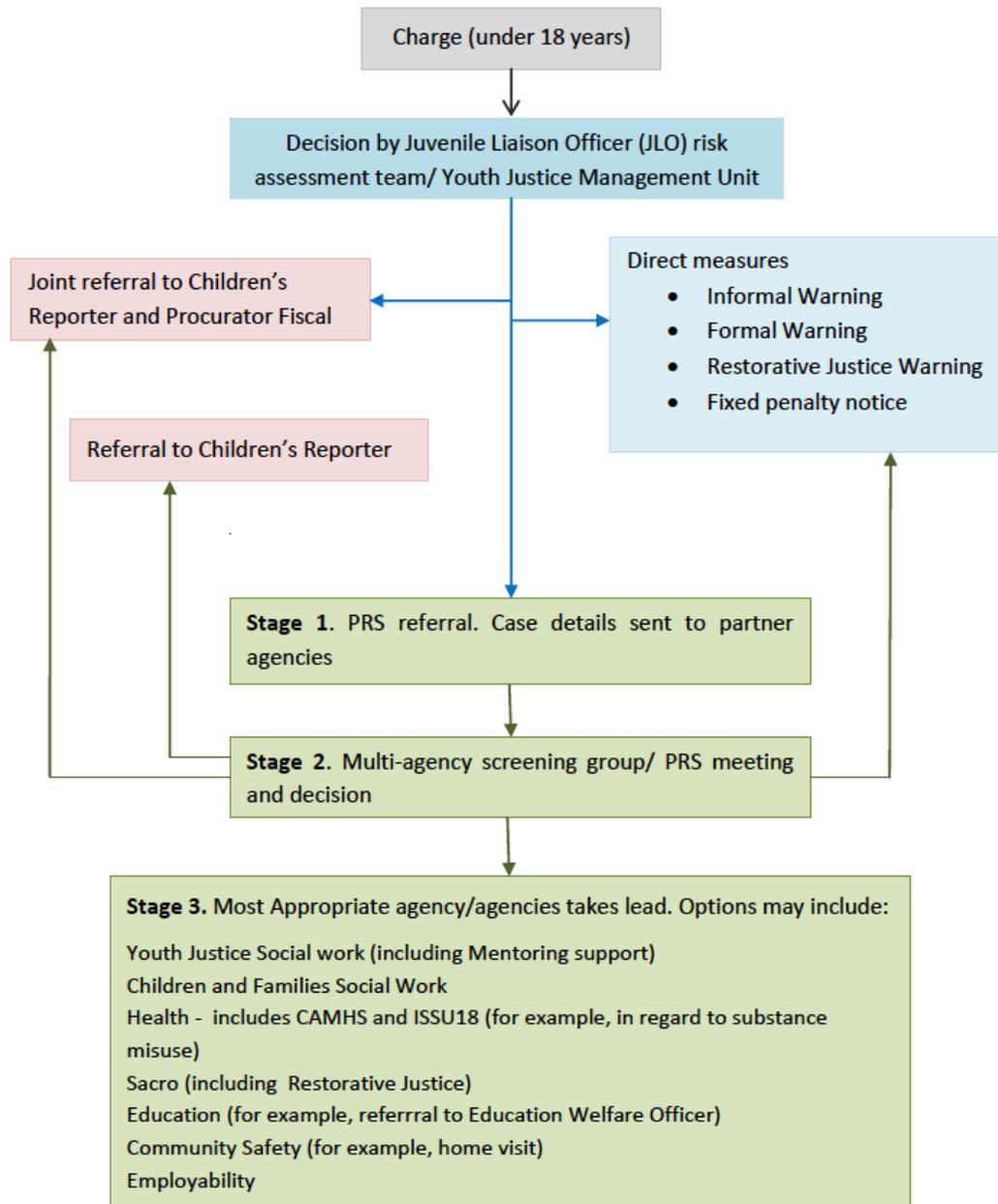


Figure 1. Source: SCCJR (2014) Evaluation of the Whole System Approach to Young People who Offend in Scotland

Pre-referral screening (PRS)

The pre-referral screening process is triggered by a police charge. Police charges in relation to those aged 17 and under are referred in the first instance to the Police Juvenile Liaison (JLO) staff risk management team (this is sometimes named differently depending on the local authority), who consider whether: a case is suitable for early intervention; should be referred to the Scottish Children's Reporters Administration (SCRA); or should be jointly referred to SCRA and the Procurator Fiscal.

Findings from the evaluation include:

- In each authority, the role of the police in directly facilitating the WSA appeared to be well-established by good working relationships. JLOs were attuned to the importance of communicating WSA values to their front-line colleagues, and reiterating the message that by reducing the likelihood of prosecution for young people, more police time could be spent addressing serious crime.
- The main points of discussion at multi-agency meetings concern:
 - who is currently working with the young person;
 - offending and welfare concerns;
 - identification of both risk factors and protective factors;
 - agreement of the most appropriate agency for diversion, or;
 - agreement that the case should be referred to SCRA or the Procurator Fiscal on the grounds of welfare needs and/or persistent offending.

Within the PRS process, offending behaviour is treated as a flag for welfare concerns, rather than a substantive issue in its own right.

- It is not possible to quantify the extent to which the fall in referrals is related to the WSA practices employed by the local authorities, however the overall trends are encouraging, and consistent with falling levels of recorded youth crime in Scotland. It is too early to assess trends in relation to 16- and 17-year-olds.
- PRS Outcomes: A range of outcomes are available to partner agencies, including: police warning letters; diversion to Education; allocation to a social worker; diversion to community safety (for example, a home visit by a community safety officer); or referral to Children's Reporter. If a young person refuses to engage with the service offered, the case is referred to the Children's Reporter.
- Overall, the evidence presented in this section of the report suggests that there is widespread support for PRS, particularly because it has brought together a wider range of partners to deal with individual cases. The role of the police in facilitating the WSA is well established and promotes good working

relationships, with the JLOs in particular acting as drivers for change within Police Scotland.

- Eligibility for PRS appears to vary across authorities. In some areas it is still predominantly used for under 16s and less often for 16- and 17-year-olds.
- Improvements in partnership working across agencies was reported in all three local authority areas and it was evident that the WSA had been a galvanising factor in driving this change in relationships.
- Practitioners had clear views that the WSA improved outcomes for young people through multi-agency working, close information-sharing and the strong incorporation of welfarist values in decision-making and practice. In this respect, WSA supports the Kilbrandon principles.
- It appears that those who are still being referred to hearings, although smaller in number, are being referred to a higher number of hearings on average than previously. This fits the hypothesis that those who continue to be referred to the Children's Hearing System are those at the most serious end of the spectrum who are likely to be more in need of compulsory measures of care.
- Whilst we must be cautious about making any claims about the impact of WSA and EEI on overall crime rates within local authorities, EEI and PRS allows young people to receive appropriate levels of support, whilst passing through the process with relatively little contact with formal agencies. Within the PRS process, offending behaviour is treated as a flag for welfare concerns, rather than a substantive issue in its own right.
- Fixed penalties: In 2013/14, 4,364 fixed-penalty notices were issued to 16- and 17-year-olds, compared to 401 police warnings. There is debate concerning the efficacy of monetary penalties for reducing the risk of reoffending. Fines also carry the risk of a custodial sentence, should a person default (fail to pay). Whilst the overall number of fixed-penalty notices issued to 16- and 17-year-olds fell by 46 per cent between 2009/10 and 2013/14, the relatively high numbers of such penalties issued to young people seems antithetical to the aims of the WSA.

Secure accommodation and custody

As already mentioned (see 'hearing orders' above), one of the orders a Children's Hearing can make is a Compulsory Supervision Order (CSO). The hearing might stipulate that the child who is subject to a CSO reside at a certain address, which could include residential care, or even secure accommodation. Secure accommodation can also be imposed by the criminal court system (see [SCCJR 'Scottish criminal justice system'](#)).

When a young male aged between 16 and 21 is sentenced to a custodial sentence or is remanded by the court (see [SCCJR 'Who's in prison? A snapshot of Scotland's prison population'](#)), he will generally be detained in Scotland's only male Young Offenders Institution in Polmont. When a young female receives a custodial sentence, or is remanded by the court, she will usually be held within a separate facility for young offenders within Scotland's only female establishment, HM Prison and Young Offenders Institution Cornton Vale ([Scottish Government website](#)). See [SCCJR 'Women in Prison'](#) for further discussion on women prisoners

Secure accommodation

[Scottish Government \(2015\) Children's Social Work Statistics, 2013-2014](#) provides the most up-to-date information with regard to children's social work services and secure accommodation:

- Local authorities have a responsibility to provide support to certain vulnerable young people, known as 'looked after children'. At July 31 2014 there were 15,580 looked after children. There are several types of placements that looked after children or young people could be placed in, including at home (where the child is subject to a Supervision Requirement and continues to live in their normal place of residence), foster care, residential unit or school, a secure unit or kinship placement (where they are placed with friends or relatives).
- Secure care normally refers to accommodation for vulnerable young people who are likely to **abscond** and are at risk of harm to themselves or others. These individuals are usually placed in secure care on welfare grounds by the Children's Hearing System or the Criminal Justice System.

- There are five secure accommodation facilities across Scotland, with a total capacity of 90 individuals:

- Edinburgh Secure Services: 12
- Good Shepherd: 18
- Kibble: 18
- Rossie School: 18
- St Mary's Kenmure: 24

Abscond: to voluntarily leave place of residence (e.g. care home) without permission.

The average cost per week of a secure bed during 2013-14 was £5,328.

- There was an average of 74 residents in secure care accommodation throughout 2013-14, a decrease of four per cent from 77 residents in the previous year and continuing the downward trend (the average number of residents throughout 2010-11 was 87).
- At July 31 2014, there were 1,470 children being looked after in residential

accommodation; of these individuals, 82 were being cared for in secure accommodation.

- 64% of young people in secure accommodation on July 31 2014 were male and just over 40% were aged 16 or over. Young people in secure care tend to be older than those looked after and on the child protection register. Due to the specialist nature of secure accommodation, it is only appropriate for older children. 79% of young people in secure care accommodation are 15 or older.
- 94% of young people in secure care accommodation on July 31 2014 had at least one additional support need and by far the most common category of additional support need was “other social, emotional and behavioural difficulties” (79%).

An independent **working group**, Securing Our Future Initiative (SOFI), was convened in September 2008. It was asked to develop proposals for making the best use of Scotland’s secure resources to improve outcomes for young people and their communities; and to address the challenges relating to capacity. [SOFI published its report](#) in February 2009, making nine recommendations.

Working group: a committee or group appointed to study and report on a particular question based on its findings.

Scottish Government ministers and COSLA published their [joint response](#) in April 2009, accepting the recommendations in full. The secure care framework came into effect in July 2011.

Secure care – outcomes

[SCRA \(2010\) Secure Authorisations in Scotland’s Children’s Hearing System](#), a report by the Scottish Children’s Reporter Administration, was conducted over the period from April 2008 and March 2009 using a case study approach in which SCRA files of children and young people who received secure authorisations at hearings in 2008/09 were examined. A **sample** of all case studies was used, representing 44% of the 225 young people who received secure authorisations in 2008/09. The sample covered urban, rural and island communities spanning a range of local authorities across Scotland. The report includes some key findings with regard to outcomes of children and young people whose cases were reviewed.

Short-term outcomes – at six months:

- 25% of the young people still had secure authorisations.
- 92% of the young people who still had secure authorisations were in secure placements.

- 96% of the young people were still involved in the Hearings System six months after the secure authorisation was made.
- 95% of the 75 young people who no longer had secure authorisations were still involved in the Hearings System. All had supervision requirements: 49% in residential care; 45% lived with a relevant person; 4% living with foster carers. 1% were in independent living.
- For the 96% still involved in the Hearings System (including those still in secure accommodation), most were still offending and/or continued to misuse drugs and/or alcohol.

Longer-term outcomes:

- 33% of young people had further secure authorisations by Children's Hearings in the period from six months after the first 2008/09 secure authorisation to the date of the data collection.
- There was no evidence of improvements in young people's mental health. It often took a significant amount of time to get access to the appropriate mental health services (e.g. psychiatric assessments).
- Whilst the time in secure accommodation did not eradicate negative peer relationships (and often these in the family), some young people did appear to be more able to distance themselves from bad influences after leaving. For 14% of the young people there were improvements in their relationships, particularly with their parent(s).
- Where it was recorded, 12% of young people were involved with the criminal justice system, with 67% of these receiving custodial sentences (some of which were to be served in secure accommodation and others in Polmont YOI or in prison).

Research which investigated outcomes for individuals who had experienced a placement in secure care was published in the [Scottish Journal of Residential Child Care](#) in 2008. This study, although more dated than the most recent statistics published by the Scottish Government, looked specifically at outcomes for individuals who had spent time within secure care accommodation. In this study, data were collected on 53 young people shortly after their admission to secure care between October 2002 and 2003. The data were obtained from records and interviews held with social workers, key workers and some young people.

- Just over half (56%) of the young people were aged 10 or younger when their families were first referred to social work services. As children became older, reasons for first referral more often related to their behaviour such as offending,

truancy or being beyond parental control. A number of the young people were known or suspected to have experienced abuse and neglect.

The secure accommodation placement experiences:

- Most young people indicated that they had been very upset and distressed at the shock of finding themselves in secure accommodation; however, most reported they were able to settle down in a short time period.
- Plans for individuals for the duration of their placement were developed through a system of formal reviews and individual discussions which took place between the young person and key worker or social worker. All the young people stated that they had been involved in the development of their care plan.
- The importance attached to the key worker relationship varied across units. In some units, developing positive relationships with staff was viewed as central. The majority described their relationships with staff as 'very good'.
- In some units, more emphasis was placed on the use of structured programmes. At the time of the research, the programme 'Offending is Not the Only Choice' was offered in three months. In a unit for girls, massage and aromatherapy sessions had been organised. The girls had sessions on personal issues, sexualised behaviour, moral dilemmas, personal health and contraception.
- Arrangements for involving outside agencies varied across units. In some instances other agencies came in to help young people address specific issues during the placement, whilst others engaged with the young person to support their transition out of the unit.
- The kind of service young people received from their social worker also varied, depending on the distance between the unit and home area, social work staffing levels in the employing authority and the kind of relationship the worker had been able to establish with the young person.
- Virtually every young person received an education while in secure accommodation.

Benefits of the secure placement at the point when the placement ended:

- Overall, social workers considered that there had been benefits for young people in that all were considered to have been kept safe and to be healthier than they had been when admitted. Young people indicated that in some cases, secure accommodation had kept them 'safe' and reduced the likelihood of future risk-taking behaviour.
- In relation to 58% of young people, social workers believed there had been an improvement in the behaviour which had resulted in the secure placement. This

was generally attributed to good relationships having been established with staff, the young person having appreciated the consequences of their problematic behaviours and enough change in the young person's life circumstances. For the remaining people, acknowledged improvements were qualified with doubts about whether these reflected lasting changes.

- Some social workers were disappointed that the behaviours which resulted in the placement had not been more specifically addressed, especially in relation to drug use. Some felt that the fit had not been good enough between the young person's specific needs and the programmes.

Life after the secure placement:

- One of the disadvantages of secure accommodation is the extent to which it disrupts continuity of the young person's life. Yet disruption of existing patterns is useful for some people if risky behaviours are to be avoided.
- The main sources of community support for young people leaving secure accommodation were workers from the Throughcare teams and Intensive Support projects such as Includem. Projects concerned with drug use and offending also featured in much of the evidence.
- Providing the service through an individual or group of workers with whom the young person could effectively engage was particularly important. There were particular benefits in a number of cases where the working relationship had been established while the young person was still in the secure setting.
- Alongside placement and community support, the provision of suitable education or work experience was key to providing adequate structure and support when young people moved on. A number of difficulties meant this could often be the weakest link in the transition package and, in some cases, social workers believed that lack of suitable educational placement had resulted in the young person not achieving his or her educational potential.

Circumstances and outcomes after two years:

- Improvements were identified in relation to 43% of young people; there had been no change in relation to 30%, and for 20% the behaviour had deteriorated.
- The group whose problematic behaviour had increased were typically involved in drug use, often with associated offending.
- In relation to wellbeing, half of the young people were considered to be in a better or much better position than they had been when admitted to secure accommodation.

[Scottish Government \(2015\) Education Outcomes for Looked After Children 2013/14](#) shows that **looked after** school leavers have lower educational attainment than all school leavers as a whole.

- 40% of looked after leavers in 2013/14 left school with one or more qualification at SCQF Level 5 or better, compared to 84% of all school leavers.
- However, it should be noted that this 40% is up from 28% in 2011/12.
- 74% of looked after leavers left school with one or more qualification at SCQF Level 4 or better, compared to 96% for the school leaver population as a whole. Again this represents an improvement, from 67% in 2011/12.
- Looked after leavers are less likely to go into positive destinations after they leave school: 73% of looked after leavers, compared to 92% of all leavers.
- **However**, it must be noted that this data for **looked after** young people refers to all young people who are looked after by the local authority, including within the community, in a local authority home, as well as in a residential care institution. These figures do not apply specifically to those young people who live in secure care.

Custody

[CYCJ](#) notes that outcomes for young people who have been detained in custody tend to be poor. It is because of this realisation that the Scottish Prison Service (SPS) has committed to a new [Vision for Young People in Custody](#).

As with secure care, the local authority where the child usually resides should maintain the role as Lead Professional during the young person's period in custody.

[SPS \(2014\) Vision for Young People in Custody:](#)

Facts and figures about young people in custody in Scotland:

- At November 17 2014 there were in custody:
 - Boys 16-17: 48
 - Young men 18-20: 391
 - Girls 16-17: 1
 - Young women: 24
 - In custody in total: 464
- On average around 33% of the young people in custody are on remand
- 37% are serving a custodial sentence for the first time
- Around 34% have been in care
- Almost 90% have been excluded from school
- Of young men, 68% were under the influence of alcohol at the time of their offence (compared with 43% of adult men)

The paper states that “the aim is ‘to use the time the young person spends in custody to enable them to prepare for a positive future’ by providing, in a safe and secure environment, experiences which will build their knowledge, skills and employability and promote their successful reintegration to their communities and desistance from offending”. It is stated that the SPS will seek to achieve this, alongside its partner agencies, through:

1. From the outset, developing with each young person a phased, individual plan for their time in custody and reintegration into the community, and carrying it through with them.
2. Providing experiences based on the young person’s individual plan that will enable them to progress and achieve outcomes across four strands of learning, which mirror those of *Curriculum for Excellence*.
3. Establishing the conditions that will maximise the likelihood of positive change and minimise the damaging effects of exclusion.

Alternatives to secure care and custody

It is important to bear in mind that secure care and custody are last resort for young people who offend. In its 2011 guidance document – [Alternatives to Secure Care and Custody: Guidance for Local Authorities, Community Planning Partnerships and Service Providers](#) – the Scottish Government stated its commitment “to promoting and supporting community-based alternatives to secure care and custody; to work constructively with the courts; to work with partners to develop robust interventions to reduce reoffending”.

The guidance goes on to discuss what robust alternatives to custody services should include. The service requirements for various schemes are outlined, and how local authorities and community planning partnerships should manage these services.

Further reading

Barclay, A., Hill, M., Hunter, L., Kendrick, A., Malloch, M., McIvor, G. and Walker, M. (2008) ‘The outcomes of secure care in Scotland’. *Scottish Journal of Residential Child Care*. Feb/Mar 2008, 7 (1) 1-23. Available from:

http://www.celcis.org/media/resources/publications/SJRCC_Feb-Mar08-web.pdf

Children’s Hearings Scotland (2015) *Background*. Website:

<http://www.chscotland.gov.uk/the-childrens-hearings-system/background/>

Children's Hearings Scotland 2013) *The Children's Panel- Life Changing Practice and Procedure Manual*. Available from:
<http://www.chscotland.gov.uk/media/18967/practice-and-procedure-manual-colour-.pdf>

CYCJ (2014) *Youth Justice in Scotland: Fixed in the past or fit for the future?*
Available from: <http://www.cycj.org.uk/wp-content/uploads/2014/09/Youth-Justice-in-Scotland.pdf>

CYCJ (2015) *A Guide to Youth Justice in Scotland: policy, practice and legislation*.
Available from: <http://www.cycj.org.uk/wp-content/uploads/2015/07/Section-1-Background-Policy-and-Legislation.pdf>

CYCJ (2015) *Youth Justice in Scotland: the roles and responsibilities of key partners*.
Available from: <http://www.cycj.org.uk/wp-content/uploads/2015/06/Section-2-Youth-Justice-in-Scotland-roles-and-responsibilities.pdf>

SCCJR (Murray K, McGuinness P, Burman M and McVie S) (2015) *Evaluation of the Whole System Approach to Young People Who Offend in Scotland*. Available from:
<http://www.sccjr.ac.uk/wp-content/uploads/2015/06/Evaluation-of-the-Whole-System-Approach-to-Young-People-Who-Offend-in-Scotland.pdf>

Scottish Home and Health Department, Scottish Education Department (1964) *The Kilbrandon Report*. Available from:
<http://www.gov.scot/Publications/2003/10/18259/26879>

Scottish Government (2008) *Early Years and Early Intervention: A Joint Scottish Government and COSLA policy statement*. Available from:
<http://www.gov.scot/Resource/Doc/215889/0057733.pdf>

Scottish Government (2008) *Preventing Offending by Young People: A Framework for Action*. Available from: <http://www.gov.scot/Resource/Doc/228013/0061713.pdf>

Scottish Government (2009) *Securing our Future: A Way Forward for Scotland's Secure Estate – A response from the Scottish Government and COSLA*. Available from: <http://www.gov.scot/Resource/Doc/270300/0080508.pdf>

Scottish Government (2011) *Alternatives to Secure Care and Custody: Guidance for Local Authorities, Community Planning Partnerships and Service Providers*. Available from: <http://www.gov.scot/Resource/Doc/351924/0118157.pdf>

Scottish Government (2012) *Guide to getting it right for every child*. Available from: <http://www.gov.scot/resource/0039/00394308.pdf>

Scottish Government (2013) *Scottish Policing Performance Framework Annual Report 2012-13*. An Official Statistics Publication for Scotland, November 2013. Available from: <http://www.gov.scot/Resource/0043/00437520.pdf>

Scottish Government (2014) *Scottish Crime and Justice Survey 2012/13: Main Findings*. Available from: <http://www.gov.scot/Resource/0044/00447271.pdf>

Scottish Government (2015) *Children's Social Work Statistics, 2013-2014*. Available from: <http://www.gov.scot/Resource/0047/00474429.pdf>

Scottish Government (2015) *Children, young people and families: wellbeing*. Available from: <http://www.gov.scot/Topics/People/Young-People/gettingitright>

Scottish Government (2015) *Education Outcomes for Looked After Children 2013/14*. An official statistics publication for Scotland: Children, education and skills. Available from: <http://www.gov.scot/Resource/0048/00482449.pdf>

Scottish Government (2015) *Young Offenders Institutions*. Available from: <http://www.gov.scot/Topics/archive/law-order/offender-management/offender/custody/YOI>

SCRA (2010) *Secure Authorisations in Scotland's Children's Hearing System: An exploration of decision-making, placements, outcomes and social backgrounds*. Available from:

http://www.scra.gov.uk/cms_resources/Secure%20Authorisations%20Research%20Report%2Epdf

SCRA (2015) Official Statistics 2014-15. Available from:

http://www.scra.gov.uk/publications/online_statistical_service.cfm

SCRA (n.d.) *Joint Agreement in Relation to the Cases of Children Jointly Reported to the Procurator Fiscal and Children's Reporter*. Available from:

http://www.scra.gov.uk/cms_resources/Joint%20Agreement%20-%20Children%20Jointly%20Reported%20to%20PF%20SCRA.pdf

SIRCC (2009) *Securing Our Future: A Way Forward for Scotland's Secure Care Estate*. Available from: <http://www.celcis.org/media/resources/publications/B2.pdf>

SPICe (McCallum, F.) (2011) *Children and the Scottish Criminal Justice System*. SPICe Briefing 11/53, 14 July 2011. Available from: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_11-53.pdf

SPS (2014) *Vision for Young People in Custody*. Available from: http://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName=SPS_Young_People_Strategy_Dec_2014%5B1%5D2884_1559.pdf