

INSIGHTS

A SERIES OF EVIDENCE SUMMARIES

71

Understanding the implications of children's rights for Scottish youth justice

DR JOHANNE MILLER & DR FERN GILLON

JULY 2023

Acknowledgements

This *Insight* was reviewed by Helen Albutt and Clare McGuire (NHS Education Scotland), Diane Dobbie (South Lanarkshire Council), Michelle Donnelly (The Law School, University of Strathclyde), Claire Lightowler (Clan Childlaw), Caroline McDonald (North West Health and Social Care Partnership), and Scottish Government colleagues from the Children's Care and Justice Policy Team.

Comments represent the views of reviewers and do not necessarily represent those of their organisations. Iriss would like to thank the reviewers for taking the time to reflect and provide feedback on this publication.



Series Coordinator **KERRY MUSSELBROOK**
Commissioning Editor **LOUISE BOWEN**
Copy Editor **STUART MUIRHEAD**
Designer **IAN PHILLIP**



This work is licensed under the Creative Commons Attribution-Non Commercial-Share Alike 2.5 UK: Scotland Licence.
To view a copy of this licence, visit <https://creativecommons.org/licenses/by-nc-sa/2.5/scotland/>
Copyright © July 2023

Key points

- Youth justice in Scotland is currently in a state of flux due to policy and legislative proposals and changes.
- Despite the efforts of practitioners, the response to the COVID-19 pandemic has resulted in pockets of policy and practice, which continue to jeopardise procedural fairness and child-friendly justice.
- There are considerable complexities in applying UNCRC in youth justice and some aspects have failed to be adequately addressed in the proposed implementation.
- It is argued that the realisation of rights that will be experienced by children and young people can only take place through systemic and cultural change. This should extend to all children and young people in the justice system, irrespective of status across all areas of the youth justice system, and beyond the current scope of 18 years old.

Introduction

A core aim of the Scottish youth justice system since the Kilbrandon report (1963) has been to reduce the stigmatisation and criminalisation of children and young people due to the strong link between needs and deeds (McAra and McVie, 2014). Due to our understanding that those over-represented in the justice system are the most vulnerable in society and typically from the poorest areas, Scotland works on a 'maximum diversion – minimum intervention' approach (see Bywaters, 2020 for discussion regarding inequalities and intervention).

This *Insight* provides practitioners with an overview of the current and developing youth justice policies, and a discussion of the proposed United Nations Convention on the Rights of the Child (UNCRC) incorporation into legislation in Scottish youth justice.

Youth justice in Scotland is currently in a state of flux due to policy and legislative proposals and changes. This evidence summary also captures

the changes that have been and are occurring, and outlines some implications for practice.

There are four main parts to this *Insight*. The first three summarise policy and legislative changes before closing with discussion of the implications on practice of these current and ongoing developments:

- 1 The changing context of youth justice in Scotland
- 2 Post-pandemic policy and legislation
- 3 The UNCRC and its incorporation into Scottish youth justice
- 4 Policy and practice implications

Conceptualising how these changes influence practice is important for any practitioner who engages with children and young people in Scotland; the changes represent a fundamental reframing of how we view children and young people. In addition to policy and

practice shifts, there needs to be cultural change to enable us to be rights-respecting. This *Insight* also seeks to raise practitioner awareness of the legislative and policy shifts towards rights-respecting justice in Scotland.

Youth justice in Scotland is currently in a state of flux

The changing context of youth justice in Scotland

Building on the previous strategy, Preventing Offending¹ which concluded in 2020, Scotland's current youth justice vision for the period 2021-2024, is A Rights Respecting Approach to Justice for Children and Young People². The vision defines children as under the age of 18 and young people as under the age of 26. The definition of a child and the implications of this is a complex area in youth justice, but for clarity, we (the authors) also use these age-groups in reference to any children and young people in the Scottish youth justice system. This includes cross-border placements and refugee and migrant status, for example.

The priorities set out within the vision are about ensuring that the youth justice system is UNCRC³ compliant. It aims to increase awareness of UNCRC, and enable children and young people to have a say in the decisions, services and supports that affect them. The vision also seeks to build on previous

achievements regarding the Whole System Approach (WSA), Early and Effective Intervention (EEI), improving victim services, and ensuring a trauma-informed approach is taken (Scottish Government, 2021). Alongside the vision is a live action plan⁴ that will evolve over the years of delivery.

The Youth Justice Standards⁵ were released in January 2022 as part of the action plan. These modernise the previous version (2012) to take account of developments around rights, corporate parenting and The Promise⁶. The Standards place rights-based practice at the heart of service design and delivery, signified by the addition of children's rights and participation as the primary Standard. Additionally, Secure Care Pathways and Standards⁷ embed rights in relation to the care that children in, or on the edges of, secure care should expect to receive. Both sets of standards clearly situate children's rights for those children who are experiencing extreme vulnerabilities, needs and risks in their lives.

1 <https://bit.ly/40wUzLe>

2 <https://bit.ly/3V4HDLn>

3 <https://bit.ly/3KY7kbO>

4 <https://bit.ly/41tXXrz>

5 <https://bit.ly/3AqQVYD>

6 <https://thepromise.scot>

7 <https://bit.ly/3L6jyzt>

Scotland undertook a root and branch review of the care system (The Independent Care Review, 2020⁸). In addition to a range of complimentary themes (i.e. poverty, whole family support, data collection), The Promise⁹ plan details the necessary changes to the youth justice system required to meet the conclusions of the Independent Care Review. These include redesigning the Children's Hearing System (CHS) to extend referrals to 16 and 17-year-olds, promoting community alternatives to secure care and custody, and overhauling the use of deprivation of liberty.

Aligning with rights-based approaches, The Scottish Sentencing Council published sentencing guidelines¹⁰ in 2021. For the first time in Scotland these created separate guidelines for the judiciary to follow when sentencing young people aged 16-25 in courts. The guidelines place rehabilitation as the primary purpose of sentencing, and in line with The Promise and UNCRC, state that custody should be the last option for young people (The Scottish Sentencing Council, 2022).

Looking to the future, the Children's Care and Justice Bill (2022)¹¹ is expected to be the vehicle that brings many of the priorities and visions of UNCRC and the above policies into legislation. The consultation of the Bill closed in June 2022, providing an indication of the appetite and potential areas of tension and challenge around implementation. Broader issues in relation to rights and future intentions of the Bill are discussed later in this *Insight*.

Post-pandemic policy and legislation

COVID-19 conditions brought into stark view the importance, implications and vulnerability of rights-based practice and policy under unique and trying conditions. COVID-19 impacted children and young people in a number of significant areas (well documented are disrupted education¹², mental health¹³ and wellbeing¹⁴). A recent Children's Rights Impact Assessment¹⁵ focusing on children in the justice system and those in secure care in Scotland during

8 <https://bit.ly/3mY4fkm>

9 <https://bit.ly/420bSph>

10 <https://bit.ly/3L5bTBI>

11 <https://bit.ly/3L40vFL>

12 <https://bit.ly/3KYaGLW>

13 <https://bit.ly/41AAo09>

14 <https://bit.ly/3LrkbF8>

15 <https://bit.ly/41TVGpm>

COVID-19 found that legislation brought in during this time failed to adequately address the specific needs of this group of children (Lightowler and Nolan, 2021). For example, in contrast to Article 37 of the UNCRC (Inhumane Treatment and Detention), the Coronavirus (Scotland) 2020¹⁶ legislation brought in to permit the early release of prisoners did not include those on remand, which is the case for the majority of children detained in Scotland. This is just one example, illustrating the powerful use of rights both as a tool to improve future practice and also to hold to account failings in the current system.

Physical separation during COVID-19 forced 'participation' to be reconceptualised, and brought to prominence the pervasive issue of the 'digital divide'¹⁷ [1], particularly for those expected to attend hearings or courts virtually. The move to digital and hybrid participation has raised significant rights considerations in relation to UNCRC Articles 12, 13, 16 and 40. While acknowledging the immediate requirement to introduce virtual Children's Hearings, Porter and colleagues (2021) identified participation, privacy, and representation concerns around the initial use of

virtual hearings. They also identified that although there will be positive impacts of online participation for some children, children's voices were also being lost in virtual hearings, further emphasising the need for advocacy and legal representation for children.

The Coronavirus Recovery and Reform Act (2022)¹⁸ extended many temporary measures until November 2023, with yearly reviews to occur until November 2025. This means that virtual or hybrid hearings will continue in the hearing system (SCRA, 2022). The same extension, and therefore concerns, are also occurring at the courts. That is, unless evidence is being presented which means that an in-person hearing is put in place. Additionally, this Act has continued with extended periods for compulsory supervision orders (CSOs) of up to 18 months and interim CSOs of up to 44 days. People placed in secure accommodation can still be held without review for up to 96 hours and there is also continued use of electronic documents despite there being difficulties using these. Moreover, people in police custody can be held in a police station while virtually attending a court, with additional powers given to police, prison officers and security guards. Temporary

¹⁶ <https://bit.ly/3L93sol>

¹⁷ The digital divide is the unequal access to digital technology.

¹⁸ <https://bit.ly/3oJ2kRf>

provisions concerning early release of prisoners are also extended under this Act, continuing to exclude those on remand. As discussed above, this means the exclusion of children and young people on remand from early release.

The lasting impact of the pandemic is still to be fully realised. We know it has exacerbated poverty and exclusion, increased vulnerabilities and barriers to accessing support, left children in locked settings facing conditions akin to solitary confinement, and put pressure and delays on services and systems. Therefore, it is more important than ever to enforce rights and keep children from the damaging reach of the criminal justice system. Smithson (2022) declares, '...the aftermath of the pandemic, the urgency to completely re-imagine the purpose and the ethos of the youth justice system has never been more apparent'. We support this assertion.

UNCRC and its incorporation into Scottish youth justice

All children have the same rights as adults within human rights treaties, but additionally the UNCRC details specific rights of those under the age of 18 due to their ongoing development, vulnerabilities, and

reliance on adults. The UNCRC framework is the most widely ratified human rights treaty ever (Ridell and Tisdell, 2021) and has been informing strategies and policies within Scottish youth justice both formally and informally since inception in 1989.

The Scottish Parliament unanimously passed the UNCRC Bill (2020)¹⁹ to fully and directly incorporate the UNCRC into Scots Law, although a UK Government challenge was upheld in the Supreme Court that delayed full incorporation into Scots Law (McCall-Smith, 2022). Amendment to the UNCRC Bill is ongoing and when completed it will be presented in the Scottish Parliament for reconsideration. Incorporation of the UNCRC into Scots Law means public bodies will be legally required to uphold the convention and can be taken to court if they do not uphold the promises made under the UNCRC.

In addition to these legislative duties, state and voluntary organisations working within youth justice will be required to implement cultural changes incorporating the rights of the child into practice. This changes how we deliver youth justice in Scotland.

¹⁹ <https://bit.ly/3mXsajV>

When discussing the implementation of the UNCRC into youth justice there are two specific juvenile justice Articles that must be taken into account:

Article 37: Inhumane Treatment and Detention

Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care and be able to keep in contact with their family. Children must not be put in prison with adults.

Article 40: Juvenile Justice

A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society. (UNCRC, 1989)

For minimum standards to be applied administering juvenile justice, Articles 34 and 40 should be taken together with guidelines (Beijing Rules, Havana Rules

and Riyadh guidelines). And alongside the following Articles: Article 3, Best interest of the child; Article 6, Life, survival and development; Article 9, separation from parents; and Article 12, Respect the views of the child. Collectively these signify that children and young adults should be informed and empowered around their rights; that adults and services understand their responsibilities and obligations in terms of upholding and promoting rights; and children are empowered to exercise choice, participate and influence decisions about their lives or things that impact them.

Policy and practice implications of implementing UNCRC

Although we consider different systems and practices of youth justice, this next section of the *Insight* focuses on discussing the implications of implementing UNCRC for three areas: definitions of childhood and Age of Criminal Responsibility (ACR); participation; and the implications of the Children's Care and Justice Bill.

DEFINITIONS OF CHILDHOOD AND AGE OF CRIMINAL RESPONSIBILITY

Consideration of defining a child, young person or young adult has wide connotations and should be

explored further given that Scotland's justice system has adopted a whole-system approach for dealing with young people who offend. Nordic countries make clear distinctions; anyone under 15 is defined as a 'child', those 15-17 are named as 'young people' and those 18-20 are deemed 'young adults' (Lappi-Seppälä, 2011). In line with Article 12 we should include young people's opinions on this, as it has already been found in Scotland that young people who hold adult social roles and statuses such as being a parent or maintaining a tenancy, would prefer to be known as 'young adults' rather than as 'young people' or 'children' (Miller and Anderson, 2021). These social roles should also be considered when writing reports and sentencing children and young people. Having clear definitions which are commonly used by all statutory organisations that deal with children, young people and young adults would increase transparency, and support the cultural and structural changes occurring in society regarding changing conceptions of childhood.

One of the first and most prevalent areas of tension related to Article 40 is Age of Criminal Responsibility. The Scottish ACR was raised from age 8 to 12 in December 2021 with a three-year review period put in place. However, this fails to meet the minimum

requirements set out by the committee on the Rights of the Child, which has set a minimum ACR of 14 (UNCRC, 2019). This is recognised in The Promise and supported by key rights defenders in order to prevent the criminalisation of children in Scotland. We argue that there has been a missed opportunity in the Children's Care and Justice Bill to increase the age, when instead the consultation asked about bringing in earlier review periods. Any increase in age would have implications for practice, as large numbers of children and young people would potentially be removed from the formal youth justice system. A reshaping and reorganising of service and support would likely be required, alongside a cultural recognition that although behaviours may be concerning they would no longer be criminal.

PARTICIPATION

Article 12 states children capable of forming their own views have a right to express those views in all matters which affect them, in due accordance with their age and maturity. In relation to youth justice in Scotland, the UNCRC Article 12 (1989) also states:

'...in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or

an appropriate body, in a manner consistent with the procedural rules of national law.' (UNCRC, Article 12, 1989)

This highlights the child's right to be heard in all decisions which affect them, and this is of the utmost importance in relation to decisions made throughout the criminal justice system. While Article 12 has galvanised efforts around participation (Daly and Rap, 2018), voice alone is not enough (Lundy, 2013), particularly where there are power imbalances, as is often the case in justice systems. Due consideration should be given to supporting children and young people to provide their views in safe and inclusive ways. Their views should be clearly documented, particularly in relation to important decisions (Porter, 2019), and outcomes and decisions appropriately communicated back to them using language they understand. It is, therefore, important for practitioners to consider the extent to which their systems resemble child-friendly justice and have clear processes for rights breaches, where children are supported to raise concerns. Ensuring the voice of the child is heard and part of the decision-making processes concerning them is essential in fully incorporating the UNCRC. This is an area in which work is to be done.

A positive addition to the landscape is the introduction of the progressive Bairns' Hoose²⁰, based on the Icelandic 'Barnahus' model, which works with child victims and witnesses to enable their safe and meaningful participation in court processes. Nineteen organisations petitioned the Scottish Government to ensure the model is extended to children over 12 who are accused of offending behaviour. Consultation²¹ with children and young people in this group also indicated that the model would be useful to them. Not extending the model to this group represents a missed opportunity to create transformational change.

At the lower threshold of the youth justice system, Early and Effective Intervention (EEI) has made great strides in ensuring child-friendly justice within Scotland, helping divert children and young people from more formal measures (UNICEF, 2020). Despite successes in EEI, Gillon (2021) highlights how children are not directly involved in EEI decision making and that the practice of including their voices is not common in EEI in Scotland. EEI is an effective mechanism in helping divert young people from more formal measures and adult systems adhering

20 <https://bit.ly/3NclF69>

21 <https://bit.ly/3HeWihr>

to Article 37, but Article 12 must be incorporated to ensure that EEI processes are working within the UNCRC Bill. It is essential that practitioners consider ways to include the voices, views and experiences of children and young people at all levels of the system, including early intervention and prevention.

A welcome addition for practitioners with regard to Article 12 is the introduction of the national advocacy scheme²² which should enable access to advocacy for all children and young people referred to Children's Hearings Scotland (CHS) regardless of the grounds of their referral. Advocacy is central to children and young people's rights being realised. However, for young people attending criminal courts these options are not available. We argue that the Children's Care and Justice Bill must go further and include advocacy for all young people up to the age of 25, including defendants, in line with sentencing guidelines.

A good example of advocacy at the level of criminal courts is Northern Ireland's use of intermediaries for any vulnerable person within the justice system, including defendants (Taggart, 2018).

²² <https://www.hearings-advocacy.com>

Intermediaries work with vulnerable people from point of arrest to sentencing and afterwards to ensure that communication between the system and those involved in it are understood, and that people understand court processes and the outcomes that they are given.

Children and young people can feel discriminated against because of their age, or they are not believed, thought to be exaggerating or telling lies when they raise concerns (Gillon, 2022). This has implications when children and young people are in courts or when workers are completing background reports. The child must be heard but similarly they must not be asked to continually repeat their trauma. Based on levels of the child or young person's maturity, social workers must decide whose voice is given precedence and highlight the complexities at play when incorporating rights.

The introduction of sentencing guidelines for young people will be implemented by the judiciary with the primary purpose of sentencing as rehabilitation. This will require social workers to promote children's rights to advocacy and representation as a means of amplifying their voice and ensuring their rights. It will require equal access to justice across Scotland,

and increased awareness of what UNCRC practice involves and how best to implement it. If these principles are not fully realised, at best, this will result in a postcode lottery of rights-based practice.

IMPLICATIONS OF THE CHILDREN'S CARE AND JUSTICE BILL

The first areas of consultation in the Bill are long awaited in youth justice. While the procurator fiscal would still retain the right to prosecute specific cases in criminal courts, it is proposed that the maximum age of referral to the principal reporter is raised to 18 for all children on both offence or care grounds. Doing so would remove appropriate children from attending criminal courts and increase the numbers referred to the children's hearing system. This would be in line with the UNCRC and a welcome move.

Raising the referral age would require an extension of the range of options available under compulsory measures. In particular, we need to consider movement restriction conditions (MRC), currently only in place when a child meets the criteria for being placed in secure care. Yet, we know from existing research that children and young people do not engage well with restrictive orders (Miller and Anderson, 2021), and

that they can cause psychological harm to a young person. So, although an MRC typically contains higher levels of support compared to a restriction of liberty order (RLO) disposed by the court, we need to be aware that these are still a deprivation of liberty and that in line with UNCRC, should be used as a last resort. We need to come up with new and robust ways of managing risk within the community to support young people presenting with complex needs, and this should be from a wide and varied range of intensive supports that include housing, counselling, mental health, education, employability and mentoring.

There is complexity when applying rights to justice. Part of the Bill consultation asked whether victims should be provided with more information on the child that harmed them, including the measures that were put in place. Consultation responses largely supported this being taken forward. This highlights the complexity between opposing sets of rights agendas, for example, the balance between victim rights and children's rights. It also exemplifies how children's rights become more fragile when we are considering children who cause the most serious harm, or where children do not meet our conceptual expectations of a child, in either appearance, manner or capability.

Within courts and sentencing, another area of consultation was the possibility of changing court experiences to include aspects similar to those present in structured deferred sentencing (SDS) in South Lanarkshire. For example, having separate, closed courts for young people in which the sheriff directly addresses them. Being directly addressed meant that Article 12 was enacted for the young people by ensuring their participation. This was found to be one of the main reasons why the young people engaging in the pilot believed in procedural justice (Miller and colleagues, 2019). While we know very little about young people's experiences in courts in Scotland, we do know that young people generally feel that they are voiceless within formal systems (Tyler and Hugo, 2002), that they are poorly equipped (McEwan and colleagues, 2020), and that it can be a site of trauma itself (Miller and colleagues, 2019).

The Bill puts forward that deprivation of liberty be the last option. If this is decided on, then Young Offender Institutes (YOIs) or custodial institutions should be replaced with secure

Young people generally
feel that they are voiceless
within formal systems

care options or age-appropriate settings. This is a welcome request in removing children and young people from custodial settings. If we take the definition of young people to mean up to age 25, then secure care settings and other age-appropriate settings should be offered. However, there are complexities and tensions when considering potentially competing needs and considerations of different age groups within one location. However, we are not meeting UNCRC standards until we reach the point where no child is dealt with through an adult court.

The implications of sentencing options for young people and secondary offending or breaching is an area requiring attention that does not seem to be addressed in the Children's Care and Justice Bill or elsewhere. With the introduction of custody as a last

resort in the new sentencing guidelines for 18–25-year-olds, there may be an increase in community orders and those attending secure care or age-appropriate facilities. However, this is an area that we need to focus on. Already, most sentences provided to

those aged under 25 are community orders and we know that 40% of those aged 18 and under do not complete the order and breach (Scottish Government, 2018), often resulting in further offences known as 'secondary offences'. Secondary offending via breaches of community payback orders was found to be the second highest offence that participants in the SDS evaluation were presenting with. We know that orders that are only about compliance, such as unpaid work or RLOs, do not work as well with young people. There is a clear evidence base that welfare-led support encourages sentence completion and desistance. For social workers or the judiciary, consideration of the ability of young people to complete orders means providing packages of support that are welfare-led.

Seeing children involved in offending as 'children first' should not be a complex idea, considering the longstanding Kilbrandon (1968) approach, which highlights that those who present for offending are often those in need of care and protection. Furthermore, we have a broader understanding that children and young people involved in offending are often the most vulnerable, victimised and traumatised in our society. Much of the proposed implementation of this Bill seems to be focused on those aged up

to 18, but further extension of rights for those up to 25 and those presenting in courts, is required. This may suggest the need for further cultural shift to include the UNCRC and fully embed rights for all.

Conclusion and resources

Despite a fertile context and strong policy commitment to embedding children's rights, this *Insight* highlights that there are complexities at play and that further cultural shifts are required for UNCRC compliance. There are also numerous areas of tension implicit in both the conceptual and practical application of rights. Lightowler (2020), drawing on Armstrong's (2018) critique, cautions that rights can be enshrined into harmful, paternalistic, and bureaucratic systems:

'...unintended consequences can flow if rights-based change is concerned with technical compliance and bureaucratic box ticking, rather than deep soul searching and improvement based on grappling with first principles.' (Lightowler, 2020, 29)

Similarly, we should be critical of the notion that systems of punishment can ever be 'child-friendly'. There is increasing recognition of the need for services

and organisations to be trauma informed. This acknowledges the prevalence and impact of adversity and trauma, which can lead to distressed behaviour and other concerning actions. However, we note the need to be critical of the application of underlying principles of trauma and adversity (see Walsh's critique²³) and question if spaces of punishment can ever be trauma informed (Vaswani & Paul, 2019). Arguably, improvements will be experienced by children and young people through the deliberate embodiment of rights by practitioners, but in order to achieve rights-respecting practice, practitioners need to be aware of the changing context of youth justice.

As we take positive steps towards child-friendly justice, for example, by moving away from the use of custody, we cannot simply assume that alternatives are necessarily rights-respecting, even if they are less harmful. Alternatives must be carefully considered. We must be cautious that expansion of new areas of practice are proportionate and appropriate, and that children are involved and informed, in order to avoid the potential for net-widening and up-tariffing. There must be a supportive policy and legislative framework based

23 <https://bit.ly/3Nbc7ti>

on UNCRC, with organisational and process changes supported by a whole system approach. The success of rights in achieving child-friendly justice will rest on the systems and professionals within them to embrace this.

Support is available on policies and resources in youth justice via the Children's and Young Peoples Centre for Justice²⁴, The Children's Commissioner²⁵, and Together Scotland²⁶ which provide up to date information on policy and practice. Lightowler's (2020) Rights Respecting? report provides an overview of UNCRC in the Scottish context. Another helpful tool when implementing UNCRC or introducing new policies is a children's rights impact assessment²⁷ and this should include the voices of children and young people²⁸.

In relation to participation, the Lundy model is a gold standard and supportive tool, see here for a webinar²⁹ from Professor Laura Lundy on participation within youth justice. For further support and guidance, or to help shape and influence compliance, practitioners

24 <https://www.cycj.org.uk>

25 <https://www.cypcs.org.uk>

26 <https://www.togetherscotland.org.uk>

27 <https://bit.ly/3NcLkwB>

28 <https://bit.ly/41NYMeC>

29 <https://bit.ly/3V4m4dQ>

can also call on the policy documents outlined in section one, policy leads e.g. Whole System Approach coordinators, The Promise team, and strategic partnership groups within their organisations.

Both systemic and cultural change is required to achieve rights-respecting justice for children and young people in Scotland. This paper has provided insight into UNCRC incorporation in Scotland, as well as emphasised potential tensions. It is crucial that practitioners are comfortable in applying UNCRC as it is at the practice level that children and young people will experience rights-respecting justice.

References

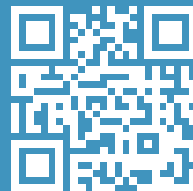
- Armstrong S** (2018) Securing prison through human rights: unanticipated implications of rights-based penal governance. *The Howard Journal of Crime and Justice*, 57, 401-421
- Bywaters P, Scourfield J, Jones C** et al (2020) Child welfare inequalities in the four nations of the UK. *Journal of Social Work*, 20(2), 193-215. <https://doi.org/10.1177/1468017318793479>
- Daly A and Rap S** (2018) Children's participation in youth justice and civil court proceedings: have states made sufficient progress? In Kilkelly U and Liefgaard T (Eds.) *International children's rights law*. Singapore: Springer
- Gillon F** (2021) Grappling with the complexity of Early and Effective Intervention (EEI). Glasgow: Scottish Centre for Crime and Justice Research <https://bit.ly/42fa8sr>
- Gillon F** (2022) Thinking about justice. Glasgow: Children and Young People's Centre for Justice <https://bit.ly/41VcZ9t>
- Kilbrandon R** (1968) The Kilbrandon report. Edinburgh: HMSO <https://bit.ly/3L5bhf1>
- Lappi-Seppälä T** (2011). Nordic youth justice. *Crime and Justice*, 40, 1, 199-264
- Lightowler C** (2020) Rights respecting? Scotland's approach to children in conflict with the law. Glasgow: Children and Young People's Centre for Justice <https://bit.ly/40GTyjl>
- Lightowler C and Nolan D** (2020) Children in conflict with the law and children in secure care: children's rights impact assessment (CRIA) <https://bit.ly/3Hcb8W7>
- Lundy L** (2013) 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33, 6, 927-942
- McAra L and McVie S** (2014) Maximum Diversion – Minimum Intervention. *Scottish Justice Matters*, 2, 3, 21-22 <https://bit.ly/3NcweaE>
- McCall-Smith C** (2022) Making rights real through human rights incorporation. *Edinburgh Law Review*, 26, 87-93
- McEwan D, Maclean H, Dyer F** et al (2020) Use and impact of bail and remand with children in Scotland. Glasgow: Children's and Young Peoples Centre for Justice <https://bit.ly/3LqCIWr>
- Miller J, Abercrombie B and Lavercombe G** (2019) Evaluation of South Lanarkshire structured deferred sentencing for young people. Report for South Lanarkshire Council <https://bit.ly/3LtlgvZ>
- Miller J and Anderson S** (2021) A qualitative exploration of the attitudes of young people to the sentencing of young people in Scotland. Report submitted to the Scottish Sentencing Council. Scottish Sentencing Council <https://bit.ly/440aH19>

- Porter RB** (2019) Recording of children and young people's views in contact decision making. *British Journal of Social Work*, 50, 6, 1796-1815
- Porter RB, Gillon F, Mitchell F et al** (2021) Children's rights in Children's Hearings: the impact of Covid-19. *The International Journal of Children's Rights*, 29, 2, 426-446
- Ridell S and Tisdell EKM**, (2021) Transforming children's rights? Dilemmas, challenges and implementation. *Journal of Social Welfare and Family Law*, 43, 1, 1-7
- Scottish Government** (2018) Age of Criminal Responsibility Bill: CRWIA <https://bit.ly/41B0jF9>
- Scottish Government** (2021) Justice for children and young people – a rights-respecting approach: vision and priorities. Scottish Government. <https://bit.ly/3V4HDLn>
- Smithson H, Nisbet A, Larnier S et al** (2022) The youth justice system's response to the Covid-19 pandemic children's welfare needs and vulnerabilities. Research Paper 2. Manchester: Manchester Centre for Youth Studies
- The Scottish Sentencing Council** (2022) Sentencing young people: sentencing guideline. Edinburgh: Scottish Sentencing Council <https://bit.ly/3L5bTBI>
- Taggart J** (2018) Defendant intermediaries in the criminal justice system: is Northern Ireland leading the way? LSE Law – Policy Briefing Paper No. 30
- Tyler T and Huo Y** (2002) *Trust in the law: encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation
- UNCRC** (1989) Convention on the Rights of the Child. Geneva: UN <https://bit.ly/41YMu3g>
- UNCRC** (2019). General comment No. 24 (2019) on children's rights in the child justice system. Paragraph 22. CRC/C/GC/24. Geneva: UN
- UNICEF** (2020) A rights-based analysis of youth justice in the United Kingdom. Report and recommendations. UNICEF. <https://bit.ly/3Ndjel1>
- Vaswani N and Paul S** (2019) It's knowing the right thing to say and do: challenges and opportunities for trauma-informed practice in the prison context. *The Howard Journal of Crime and Justice*, 58, 4, 513-534

About the authors

Dr Johanne Miller is currently a senior lecturer in Criminology at the University of the West of Scotland. Prior to working in academia, she was a youth worker for ten years within Glasgow working with children and young people involved in the justice system in Scotland. She has a vast interest in the lived experiences of those with justice experience. Her research interests are youth justice, youth studies, cultural criminology, and creative research methods.

Dr Fern Gillon's research centres on the impact of the Scottish Youth Justice system and experiences of children and young people in conflict with the law. Fern is particularly interested in developing creative, participatory research methods which empower children and young people. Fern is a Research Associate on ESRC funded project Public Health Youth Violence Reduction (PHYVR) at Glasgow University, and also a Research Associate at the Children and Young People's Centre for Justice (CYCJ).



Scan for more Iriss Insights

www.iriss.org.uk/insights
enquiries@iriss.org.uk

improving lives through
knowledge, evidence and innovation