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## Criminal Justice Committee

# Stage 1 report on the Children (Care and Justice) (Scotland) Bill from the Criminal Justice Committee



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# Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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# Introduction

1. The [Children \(Care and Justice\) Scotland Bill](#) ("the Bill") was introduced in the Scottish Parliament on 13 December 2022.
2. The Bill makes changes to the law in relation to the care of children and the involvement of children in the criminal justice system. The changes relate to the children's hearings system and several parts of the criminal justice system. This includes courts that hear cases relating to children and the places where children can be detained.
3. The Parliament's Education, Children and Young People Committee is the lead committee for the Bill, with the Criminal Justice Committee acting as a secondary committee.
4. The Criminal Justice Committee has focused in the main on two provisions in the Bill which fall within its remit; see below.

## Remand, committal and detention of children

5. In sections 16 to 18 of the Bill, the Scottish Government proposes removing the ability for children to be remanded or sentenced to detention in young offenders' institutions (YOIs) or prisons, instead requiring that where a child is to be deprived of their liberty this should normally be in secure accommodation<sup>i</sup>.
6. The Scottish Government argues that, whilst it is recognised that YOIs have made great improvements, they are not primarily designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, nor the high staff to child ratio sometimes necessary to meet the needs of these children.
7. Ministers are also of the view that the automatic transfer to a YOI when a child turns 18, having been placed previously in secure accommodation via the criminal justice system, whether following remand or sentence, is disruptive and potentially damaging. This transfer from secure care to a YOI when a child turns 18 happens irrespective of the length of custodial sentence that remains, even if this period is very short.
8. The Government argues that a child who is in a facility for children does not need to move to adult provision immediately on turning 18 and continuation of their placement should be possible. However, this should only be permitted if this is in the young person's best interests and is not contrary to the best interests of other children within the secure care facility.
9. In light of the above, the Bill contains the following provisions which were the focus of the Criminal Justice Committee's scrutiny:
  - Enable children who are remanded or committed for trial or sentence to be

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<sup>i</sup> Policy Memorandum. Available at: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-and-justice-scotland-bill/introduced/policy-memo-accessible.pdf>

detained in secure accommodation (where the court requires) or a place of safety chosen by the appropriate local authority, whether the child has already been subject to compulsory measures via the children's hearings system or not. It also states that once a person has attained 18 the court may commit the person to a YOI (section 16)

- Provide that the Scottish Ministers may make regulations relating to children detained in secure accommodation through a criminal justice route, which may include providing that a child may remain in secure accommodation up to a maximum age of 19 (sections 16 and 17)
- Bring greater consistency to where children convicted of an offence may be detained, in particular a new section 208A is inserted into the Criminal Procedure (Scotland) Act 1995 to provide that for those children convicted on indictment (including for murder) they may not be detained in a prison or a YOI. It is provided instead that the Scottish Ministers may direct that the child be detained in secure accommodation. It is expressly provided that the age limit at which someone can be sentenced to detention in a YOI is 18-21 (section 17 (with the resulting definition changes at section 18))
- Remove legislative references to remand centres as there are no such facilities in Scotland and no intention to re-introduce them (section 19)

## The rights of children in police custody

10. In addition to the above, the Committee scrutinised the proposals in the Bill relating to the rights of children held in police custody (section 11).
11. Under this Bill, the Scottish Government wants to ensure that there is a more consistent approach to the upholding the rights of all children when in police custody. In its view, all people under age 18 are children and should have enhanced rights when in police custody, with provision made under section 11 of the Bill.
12. The Scottish Government cites research which it says confirms that police stations and cells can be frightening, distressing and traumatising places for children, which by their very nature their ability to be child-centred *is* limited. In the Government's view, children report that it can be difficult to understand what is happening to them, what their rights are and how these can be upheld. Therefore, Scottish Ministers argue that it is important that children are only kept in police custody when this is necessary and proportionate.
13. The Criminal Justice (Scotland) Act 2016 provides that every precaution should be taken to ensure that a person is not unreasonably or unnecessarily held in police custody, and in taking a decision as to whether to hold a child in police custody, the wellbeing of the child is a primary consideration. Guidelines issued by the Lord Advocate set out a presumption of liberty, unless factors such as the serious nature of the offence, a significant risk to victims or witnesses and the nature and timescale of further enquiries, justifies police custody.
14. The Bill proposes that if a child who is being prosecuted for an offence is in police

custody, and is not being liberated by the police, the place of safety must not be a police station unless it would be impracticable, unsafe or inadvisable for reasons of the child's health to be kept anywhere else. The provisions proposed mean that this will now extend to all children under the age of 18 so that an alternative place of safety is considered for all children and except in limited circumstances, children should not be kept in police stations.

15. The Scottish Government suggests that a local authority will now be informed when any child under 18 is in police custody. In its view, this ensures that the local authority can visit a child if they believe this would best safeguard and promote the child's wellbeing.
16. For a child under 16 in police custody, the Government proposes that their parents will always be informed and asked to attend the police station reflecting parental responsibilities and international human right instruments, unless the local authority advises this would be detrimental to the wellbeing of the child.
17. From age 16, respecting the evolving capabilities of a child, the Government suggests that the child will have the choice to nominate that another adult other than a parent is notified of their being in custody (subject to the local authority being able to give information that intimation should not be sent because that may be detrimental to the wellbeing of the child). The child can also request that no intimation is sent, the adult is not asked to attend the police station, does not have access to them, or for attempts to make contact to cease. In such instances the local authority should be notified. Likewise, in any case, should parental or another adult access to the child be refused or restricted, the local authority should be notified.
18. The aim of the Scottish Government is to ensure every child has an appropriate person notified and no child is left in police custody without being visited by either a parent, another adult or the local authority.
19. Similarly, amendments to notifications to parents/local authority to inform that a child is to be brought before court should enable the child to be supported. In terms of local authority notification, Ministers argue this should provide an additional and earlier means of identifying children who will be appearing at court and potentially afford more time to ensure appropriate support can be put in place for the child as required.
20. In respect of solicitor access, the Scottish Government deem this is an important right and safeguard for children. The Scottish Government therefore do not deem the ability of any person under 18 to waive access to a solicitor to be appropriate, with provisions made in section 11 that no one under 18 can consent to being interviewed without having a solicitor present.

## **Scale of the issue**

21. At the time of publication of this report, there were 7,578 people held in prison in Scotland. Of these, 5 were aged 16 to 17 and 155 were aged 18 to 20. The average figures for these age groups since April 2014 (the start of the statistical series published by the Scottish Prison Service) were 39 and 285 respectively.<sup>ii</sup>



22. Of the 5 under 17s, 4 were untried, and of the 18 to 20 year olds, 73 were untried.
23. In his evidence to the Committee, Gerald Michie, the Governor at HMP&YOI Polmont said that at the time of his evidence, Polmont held 7 young people, of which 5 were men. These young people were held in a separate wing to adult prisoners, occupying half of a wing comprising 44 cells. These were on a floor with other, older offenders above and below them. <sup>1</sup>
24. Mr Michie also told the Committee that aside from one young person (16-17 year old age bracket) who had spent around 8 months as a prisoner in Polmont, the average stay for a person in this age bracket was 11 days based on data from the previous 9 months. <sup>2</sup>
25. We also heard in evidence from Linda Allan, the mother of a young women who took her own life whilst in Polmont and who is now a researcher and campaigner, that young people are particularly vulnerable and at risk of suicide, especially in the first weeks after their incarceration. She cited figures from her own research which showed that two young people under the age of 18 have died since 2005 and, for the under-25s, the figure increases to 49, 70% of whom took their own lives within the first three months of detention. <sup>3</sup>

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ii SPS Prison Population, available at: <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

# Our scrutiny

26. The Committee heard from the following at its meeting of [29 March](#):

## Panel 1

- Linda Allan
- Kate Wallace, Chief Executive, Victim Support Scotland

## Panel 2

- Jim Shields, Service Manager, and Professor Lorraine Johnstone, Consultant Forensic and Clinical Psychologist, St Mary's Kenmure Secure Care Centre
- Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland
- Gerald Michie, Governor, His Majesty's Young Offenders Institution Polmont, and Sue Brookes, interim Director for Strategy and Stakeholder Engagement, Scottish Prison Service
- Alison Bavidge, National Director, Scottish Association of Social Work

27. Members also heard from the following at their meeting of [19 April](#):

- Angela Constance, Cabinet Secretary for Justice and Home Affairs
- Natalie Don, Minister for Children, Young People and Keeping the Promise
- Scottish Government officials.

28. Members of the Committee also heard informally and privately from two members of the public who had lived experience of secure care or being a young person in prison. We are very grateful to them for speaking to us and this has contributed to our understanding of the issues involved. An anonymised [note of the session](#) has been produced.

## Key issues raised

29. The Criminal Justice Committee has focused in the main on two provisions in the Bill which fall within its remit. Namely, the proposals around the use of secure care rather than YOIs and the rights of children held in police custody. As such, we took little if any evidence on other provisions in the Bill. These matters will be covered by the lead committee.

## Age limits

30. In the Bill., the Scottish Government proposes removing the ability for children to be remanded or sentenced to detention in young offenders' institutions (YOIs) or prisons, instead requiring that where a child is to be deprived of their liberty this should normally be in secure accommodation. The Government also proposes that a child who is in a facility for children does not need to move to adult provision immediately on turning 18 and continuation of their placement should be possible.
31. Several witnesses commented on the general principle of detaining a young person in a YOI as opposed to a secure care centre and also what the most appropriate age limit should be for such a decision . The Committee also looked at whether other, non-age related factors, should be taken into account.
32. Witnesses who appeared at the Committee expressed general support towards the principle underpinning the provision in the Bill. That is that young people are better held in a secure care environment rather than a young offender's institution.
33. This support was based on a view that the nature of the support available in secure care, the design of a secure care home compared to a YOI, the level of staff training and the higher staff to young person staffing ratios etc were all more conducive to meeting the needs of a young person and encouraging rehabilitation.
34. For example, Sue Brookes of the Scottish Prison Service said that "a custodial setting is not the best environment in which to work with children" and that "something age appropriate is wanted". In SPS's view, "16 and 17-year-olds are best managed in a different setting".<sup>4</sup> Her colleague, Mr Michie, added that, as Governor at HMP&YOI Polmont, he "fully endorse[d] the ambition of the Promise that no 16 or 17-year-old child should be in our care". His view was that, "morally, it is absolutely the right thing to do".<sup>5</sup>
35. In her evidence, Linda Allan was of the view that despite their best intentions, prison officers were not experts in trauma-informed support/counselling or suicide prevention. She said young people need access to skilled professionals such as child psychology services and experts in mental health and trauma.<sup>6</sup> As such, YOIs were not the right place for young people to be held.
36. These views were supported by other witnesses such as representatives of HMIPS, the Scottish Association of Social Work and St Mary's Kenmure Secure Care Centre.
37. The general view that this particular provision in the Bill was to be supported "as a

first step"<sup>7</sup> was commonly held. For some though, this was to be seen as a precursor to extending the age range to 25 years of age. The rationale for this extension in age was the work undertaken by the Scottish Sentencing Council on [guidelines for sentencing people](#) within this age bracket.

38. For example, Professor Lorraine Johnstone of St Mary's Kenmure described 18 years of age as "rather an arbitrary cut off"<sup>8</sup> whilst Linda Allan said that the Bill, whilst welcome, did "not go far enough" and was "quite confusing in terms of the new sentencing guidelines that were published in 2022 and the robust research into neural development". She noted that these guidelines apply to people under the age of 25, and questioned "why would a bill be introduced that does not reflect that robust research".<sup>9</sup> She argued that no child or young person should be sent to prison and "they should be sent to a therapeutic environment that reduces reoffending and keeps them alive".<sup>10</sup>
39. Whilst support for the general principle in sections 16 and 17 of the Bill was widespread, there were nuances a range of in the views expressed to the Committee. Although some witnesses such as Wendy Sinclair-Gieben supported the extension of the principle to the age of 25, some witnesses called for and a more flexible system where other, non-age related factors, were taken into account and where there was a more individualised approach and not one based solely on age.
40. Wendy Sinclair-Gieben, Chief Inspector at HMIPS, said that she accepted that it was easier to have an arbitrary age that everyone could work to but questioned whether it was possible to move to a system which was individualised and based on a multi-disciplinary assessment of risk. This system could see some higher risk, younger individuals held in a YOI or prison and not secure care whereas, some older individuals, who were low risk and assessed as having "immaturity issues" could be held in secure care and not a YOI.<sup>11</sup>
41. Similarly, Sue Bookes said that the age range contained in the Bill should allow for some flexibility<sup>12</sup> whilst Jim Shields of St Mary's Kenmure said "we really should be focusing on the research and what we now understand about the developmental age of a child and the vulnerabilities that come with that."<sup>13</sup>
42. Other witnesses, such as Kate Wallace of Victim Support Scotland, called for a system based on robust risk assessments. She said it was important that any move towards the provisions in the Bill did "not have a detrimental impact on or increase the risk to other children and young people who are in secure accommodation because [...] they might be there for their welfare or because they are fairly low-level offenders."<sup>14</sup>

## **Type of crime and seriousness of offence**

43. For some of the witnesses who gave evidence of the Committee, one key part of any assessment which could be used to determine the location of a young person after conviction should be the serious of the offence committed by the young person.

44. For example, Kate Wallace said that, in her view, the risk of harm to the young person themselves or others they were held with along with the seriousness of the offence(s) committed were the two factors that were needed in any assessment on where a young person should be held after conviction<sup>15</sup>.
45. She also argued that crimes such as a murder, culpable homicide, certain domestic abuse offences, rape and serious sexual assaults could be treated as a group when it came to the destination after conviction and that there could be some form of separated accommodation within a secure care environment for the detention of such young people.<sup>16</sup>
46. Expressing support for this idea, Professor Johnstone said it could help reduce the risks from other residents who may take against the idea of a young person sentenced to such a serious offence being held alongside them.<sup>17</sup>

## Information provision and notification of victims

47. During the Committee's consideration of the relevant provisions in the Bill, the wider issue of information provision to victims of crime was raised and what information, if any, can be provided when the accused or convicted person is a young person.
48. In her evidence, Kate Wallace noted that, victims of a crime committed by a young person were not entitled to the same information as if an adult had harmed them, as there is no victim notification scheme in place when a child is the offender and that information relating to the proceedings of children's panels is not publicly available as these are held in private.<sup>18</sup>
49. She said "what we have at the moment is a system and an approach that prioritises the rights of children who have harmed over either adults or children who have been harmed, who are not entitled to and do not get any information about what has happened with their case". She questioned why "children who have harmed are being prioritised over the victim, who may be a child, and is not able to participate in proceedings as the UNCRC would suggest that they should be able to."<sup>19</sup> She called for information sharing provisions to be added to the Bill to address this deficit.<sup>20</sup>
50. Alison Bavidge of the Scottish Association of Social Work described this balance between the rights of a child accused versus those harmed by them as "knotty". She called for an assessment of other jurisdictions that have greater transparency and understanding amongst their society on how things work for children.<sup>21</sup>

## Resources and implementation

51. The Committee also heard evidence on the need for careful implementation of any provisions in the Bill and for assurances that adequate resources will be put in place to fund the changes necessary.

52. The representatives of St Mary's Kenmure Secure Care Centre were confident that sufficient spaces existed in their facility to take in any 16 to 18 year olds who would no longer be held in a YOI <sup>22</sup> . They noted though that there needed to be "certainty" <sup>23</sup> on future funding and that a "well-thought-out and detailed proposal" was now needed. <sup>24</sup> Professor Johnstone called for "investment in the buildings" and a move towards a secure care model modelled along the lines of the new women's community custodial units in Glasgow and Dundee <sup>25</sup> .
53. It was also noted that staff in secure care centres received significantly higher levels of training in care, trauma-informed practice than those in the prison service and that there was a danger that an effort to increase recruitment to the secure care centres to meet a growth in numbers of young people held could be at the expense of removing trained staff from other parts of the social work or health sectors <sup>26</sup> .
54. According to Professor Johnstone and Alison Bavidge, some upfront investment in secure care was needed to sit alongside continued investment in other forms of detention in the short-term as part of a 'spend to save' programme <sup>27</sup> .
55. The Committee also heard about issues relating to the funding of secure care places and, particularly about the reliance on cross-border placements which attract a higher rate. Professor Johnstone, for example, told the Committee that:
- ” We currently operate with what is referred to as a bed rate. An amount is allocated to us from Scotland Excel for our bed rate; that is what we get per child, so to speak. We have to have a percentage occupancy for the facility to be viable, because we obviously have to have a certain number of staff for X number of children and for X number of resource. If an organisation falls below its occupancy rate, it will start to run in deficit. For us, it waxes and wanes. However, more recently, there have been crossborder placements, as you have heard from other witnesses. At times, we have relied on crossborder placements to ensure our financial sustainability so that we can meet the needs of our Scottish children.

## Children and police custody

56. The final issue explored, albeit briefly, by the Committee were the provisions in the Bill relating to the rights of children held in police custody.
57. During her evidence, Alison Bavidge was questioned whether vulnerable children held in police custody could be exploited by, for example, organised crime groups, because of the need to nominate an adult or other person to be notified of their detention. Some vulnerable young people could feel themselves pressurised to nominate an inappropriate person. She said this issue needed "to be worked through" and that we needed to give children "the opportunity to exercise some control, but that can be done with good support from the police and good relationships with the local social work departments." <sup>28</sup>
58. Witnesses were also questioned on the provisions in the Bill which would mean that all children under the age of 18 should be taken to an alternative place of safety and

except in limited circumstances, children should not be kept in police stations. One possible location would be secure care centres.

59. In his evidence, Jim Shields thought that this was a good proposal but that the barrier to this working would be largely financial. He said any such moves would be "pushing at an open door" but noted that this could be challenging financially for a local authority, especially if the situation arose at short notice<sup>29</sup>. His colleague, Professor Johnstone, noted, more generally, that it costs about four times more to keep a young person in secure care than a prison<sup>30</sup>. His view overall was that "children who are subject to compulsory supervision measures should not be held in police custody any longer than possible".

## Views of the Scottish Government

60. At its meeting of [19 March](#), the Committee took evidence from Angela Constance, Cabinet Secretary for Justice and Home Affairs, and Natalie Don, Minister for Children, Young People and Keeping the Promise. The following summarises the views we heard.
61. The Cabinet Secretary for Justice and Home Affairs told the Committee that the purpose of the Bill "is to ensure that all children, irrespective of their deeds, should be able to be placed in secure accommodation, notwithstanding that, when those children come of age, they can transfer to a young offenders institute and, depending on the length of their sentence, progress into the adult system."<sup>31</sup>
62. The Minister added that, in the Scottish Government's view:
- ”** YOIs are not primarily designed to be therapeutic environments for children. Secure care centres are specifically designed to be trauma informed and age appropriate. They offer a high staff-to-child ratio of skilled professionals to meet the complex needs of young people.<sup>32</sup>
63. On the issue of age, and whether it was possible to extend the provision in the Bill to an older age group (e.g. 18 to 21, or 21 to 25) in line with sentencing guidelines, the Minister for Children, Young People and Keeping the Promise said that the Government could "certainly look at that in the future"<sup>33</sup> and that "we absolutely recognise that people under the age of 25 are still developing".<sup>34</sup>
64. However, the Cabinet Secretary stated that she wished "to be clear that extending secure accommodation that is for children in order to meet the needs of offenders who are adults is not an option."<sup>35</sup> As such, "there are no plans to remove young offenders institutions because secure care—other than with the exceptions that the minister has outlined—applies for children up to the age of 18."<sup>36</sup>
65. Additionally, in her evidence to the Committee, the Cabinet Secretary was definitive that the plans for secure care rather than YOIs for those aged 18 and under applied irrespective of the crime committed. She said, "all children who have offended and for whom a custodial disposal is required will, if they are under 18, go to secure accommodation in the first instance."<sup>37</sup>

66. She did indicate, however, that someone with, for example, a learning disability, could be considered as suitable to stay in secure care past their 18th birthday but, again, only up to their 19th birthday. That would be based on an individualised assessment of their needs and those of other children. <sup>38</sup>
67. The Scottish Government ministers were also questioned about resources and whether there would always be sufficient beds in secure care if those aged 18 and under would no longer be placed in a YOI. The Minister said that "at the moment, a young person should never have to go to a young offenders institution because there is no capacity, and that will be at the forefront of things as we move forward." <sup>39</sup> The Cabinet Secretary added that "we need to be confident that we have the capacity to meet the needs of children who are being displaced and shifted from the criminal justice system into secure accommodation" and that this matter will be the focus of the national resourcing and implementation group that was due to start work in June 2023. <sup>40</sup> She confirmed "we have capacity". <sup>41</sup>
68. In relation to the issue of information provision, the ministers were not asked about victim notification schemes but did confirm that there was scope within the Bill when it came to the children's hearing system, for principal reporters to provide information to victims. This will now be a duty to inform a person of their rights to request certain information as already allowed for in existing legislation. <sup>42</sup>
69. Finally, on the issue of police custody and places of safety, both ministers stressed that it was their view that police cells were not appropriate places in the main for young people and that "other than by exception, where it is necessary and proportionate and to avoid further harm, a police station would not be considered a place of safety." <sup>43</sup>
70. They also stressed that local authorities would be informed in the case where a young person was required to make contact with an adult when detained and that they would be in a position to advise the police on the suitability of who was to be contacted. <sup>44</sup>



## Conclusions and recommendations

71. The Children (Care and Justice) (Scotland) Bill is a proposal introduced by the Scottish Government in December 2022. The Criminal Justice Committee was appointed as a secondary committee at Stage 1 and has been scrutinising two of the provisions in the Bill. Others will be looked at by the Education, Children and Young People Committee as the lead committee.
72. In the main, we have been focussing on the Scottish Government's proposals that young people (aged 16 to 18) will no longer be sent to a Young Offender's Institution (YOI), irrespective of the crime committed, but will be sent to a secure care centre. Additionally, those aged 18 to 19 who are in secure care will not transition to a YOI upon reaching 18 years of age if it is their best interests and those of others they are held with. They will continue in secure care until they reach 19 years of age. The Committee has also been looking at the rights of children held in police custody.
73. The Committee is grateful to all those organisations and individuals who gave evidence to us and we thank them for their time. We are particularly grateful to the two individuals who we met privately to talk about their experience of being a young person in secure care and in a prison. This has helped inform our scrutiny.

### Secure care or a YOI?

74. The Committee recognises the strong support from many of the witnesses that we spoke to for the principle that young people aged 18 or under should no longer be held in a YOI and are better held in a secure care environment.
75. We also note though that some witnesses wished the age range for this provision to be extended, perhaps up to 25 years of age, to bring this in line with the sentencing guidelines for young people issued by the Scottish Sentencing Council. They describe this Bill as an important first step in that process.
76. Additionally though, we note the calls from others that age alone should not be the only factor to be taken into account when making such decisions and that more individualised assessments were needed, with scope for flexibility.
77. Some of this need for flexibility relates to risk and whether a young person who was of greater risk of harming others or risked being harmed themselves may be better held in some other form of detention than a standard secure care setting. This could be a separated section within a secure care centre or a prison. Some of the need also related to the seriousness of the offence committed, with some witnesses expressing a view that certain categories of offence (e.g. murder, rape and serious sexual offences) need to be treated as a group and perhaps differently than other offences when it came to the type of detention.
78. The Scottish Government, whilst recognising some of the research in this area and the current sentencing guidelines, stated clearly that it had no plans at the moment beyond what is currently in the Bill to extend the provisions beyond the age of 18 (allowing for the exception in the Bill to the age of 19 in certain circumstances) and thereby enable a young person aged between 18 and 25 years of age to be held in

a secure care centre and not a YOI or adult prison.

79. Neither did the Scottish Government have any plans for individualised assessments to be used at sentencing as a tool to inform the most appropriate location for them to be held in. This flexibility could have allowed for a young person (of 18 years or less) convicted of a very serious offence to be sent to a YOI/prison, or an older person convicted of a less serious charge (say aged 19 to 25) who had additional support needs to be sent to a secure care environment and not a prison.
80. Whilst we appreciated the significant cost implications that would be involved, based on the limited evidence we heard, we believe there is a case for a more flexible, individualised system and not one based on age alone. Any changes that would raise the age that a person is sent to secure care rather than a YOI should be made by primary legislation.

## **The rights of children in custody**

81. The Committee broadly welcomes the provisions in the Bill around the rights of children held in police custody. We also note the Scottish Government's assurances that local authorities will be able to advise Police Scotland about the appropriateness of any adult who is to be contacted about a child's detention. We would, however, ask the Scottish Government to seek to prevent individuals with the potential to exploit vulnerable young people, such as organised crime groups, from being able to do so.
82. Furthermore, as we will discuss in the section to follow, we are concerned about resources and the view expressed to us that one barrier to the ability of Police Scotland to move a person to an alternative place of safety such as a secure care centre rather than hold them in a police cell will be the financial implications on local authorities. This issue has to be addressed by the Scottish Government, with adequate resources in place for this to be implemented.

## **Information provision and victim notification**

83. Although not a major part of our scrutiny, we note the views expressed to us that there is a deficiency in the Bill which will mean that victims of a crime committed by a young person are not entitled to the same information as if an adult had harmed them, as there is no victim notification scheme in place when a child is the offender. We recognise though that young people, even if convicted of a crime, have certain rights that need to be respected.
84. The Committee highlights this particular issue to the Scottish Government and asks for consideration as to how the wider needs of victims can be met, including information sharing. The Committee notes that the Victims, Witnesses and Justice Reform (Scotland) Bill maybe a vehicle for any change in this context.

## Resources and implementation

85. We note the Scottish Government's assurances that there will always be sufficient places for any young person (aged under 18) to be placed in secure care rather than a YOI, irrespective of the current arrangement which can see secure care centres take cross-border placements in order to break even and because they are paid at a higher rate (as detailed in paragraph 55).
86. As we have expressed above, we call on the Scottish Government to ensure that there are sufficient resources in place to ensure that this Bill is implemented correctly. These related to sufficient spaces within the secure care sector to house young people if the current use of YOIs is reduced, and that sufficient, well-trained staff and other experts are made available for the young people's health, mental health and education needs. Such expertise needs to be additional and not simply transferred in from other parts of the social care or health sectors, which would then suffer as a result.

## Terminology – young offenders' institutions

87. A member of the Committee raised concerns about the use of the term 'young offender institution' and whether this name stigmatises young people and should be changed. This was discussed, but there is no agreement amongst Committee members to include a recommendation for any specific further action.

## General principles of the Bill

88. As a secondary committee, it is not the role of the Criminal Justice Committee to make a recommendation to the Scottish Parliament on the general principles of the Children (Care and Justice) (Scotland) Bill. This is a matter for the lead committee. As such, as a collective, we express no view on the general principles of the Bill. We ask, however, the Education, Children and Young People Committee to take our views on the aforementioned provisions into account when doing so as lead committee.

**Criminal Justice Committee**

Stage 1 report on the Children (Care and Justice) (Scotland) Bill from the Criminal Justice Committee, 7th Report, 2023 (Session 6)

- 1 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 21.
- 2 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 40.
- 3 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 5.
- 4 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 5.
- 5 Ibid.
- 6 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, cols 16 to 18.
- 7 Wendy Sinclair-Gieben, Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 19.
- 8 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 19.
- 9 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 4.
- 10 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 8.
- 11 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 41.
- 12 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 25.
- 13 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 21.
- 14 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 5.
- 15 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 6.
- 16 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 10.
- 17 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 32.
- 18 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 2.
- 19 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 9.

- 20 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 14.
- 21 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 31.
- 22 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 37.
- 23 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 29.
- 24 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 35.
- 25 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 22.
- 26 Professor Johnstone, Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 44.
- 27 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 44 and 47.
- 28 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 31.
- 29 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 43.
- 30 Scottish Parliament, Criminal Justice Committee, Official Report, 29 March 2023, col 44.
- 31 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 4.
- 32 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 3.
- 33 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 14.
- 34 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 13.
- 35 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, cols 22 to 23.
- 36 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 14.
- 37 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 19.
- 38 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 23.

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- 39 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 6.
- 40 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 5.
- 41 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 17.
- 42 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 18.
- 43 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 21.
- 44 Scottish Parliament, Criminal Justice Committee, Official Report, 19 April 2023, col 24.

