

Reimagining custody for children in Scotland

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Over the last 20 years Scotland has made remarkable in-roads in reducing the number of children in custody. In 2010 the under-18 wing in HMPYOI Polmont opened with 120 boys. Today (August 2024) that figure stands at only 8 children, and there are plans, through new legislation in the Children (Care and Justice) (Scotland) Act 2024, to have no children under 18 in custody in Scotland by the end of the summer 2024. Furthermore, Scotland is also aiming to reduce the number of children in secure care settings in accordance with current policy directives and is undergoing a process of reviewing secure care within Scotland, to meet the recommendations of our Independent Care Review,¹ and the legal obligations under the United Nations Convention on the Rights of the Child (UNCRC). Although children continue to be held in police custody, alternatives are also an area under development in Scotland.

Drawing upon research evidence and policy documents, this article will explore the policy, practice and other changes over the past two decades in Scotland which have focused on a 'rights lens' and contributed to achievements and a new position for children in detention in Young Offender Institutions (YOI), secure care and police custody. Documents and evidence that have influenced change will be examined; the incremental steps to creating the necessary environment for policy and practice change; the tangible changes to practice on the ground; and the development of alternative provisions for children. In outlining the progress made and the lessons learned from these Scottish developments, this article will contribute to the knowledge base, as well as having relevance to scholars, practitioners and policymakers in many other jurisdictions who are concerned with children's rights, child-friendly justice, penal reform and alternatives to custody.

Deprivation of Liberty

'Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood' (p. 4).²

In Scotland, children are deprived of their liberty in numerous ways, for various reasons and within different establishments on both welfare and justice grounds. Deprivation of liberty includes police custody; detention awaiting trial and/or following sentencing within secure care or YOI; placement in a secure care or mental health facility for protection, assessment or treatment; or detention as part of the immigration or asylum system.³ This section focuses on juvenile justice detention in Scotland in the form of YOI, police custody and secure care.

The best interests of the child must be at the heart of all decisions relating to children in the youth justice system (UNCRC article 3) which is also a priority under Scottish Government policy, Getting It Right for Every Child (GIRFEC), and deprivation of liberty only as a last resort (article 37b). The Whole System Approach (WSA), a specific youth justice policy, introduced in 2011, advocates that secure care should be used where possible rather than YOIs but that alternatives to secure care should always be considered first.⁴ Children in conflict with the law, and especially those who cause the most harm, and deprived of their liberty, can have a variety of complex needs. Many have experienced trauma, adversity, abuse, exploitation, bereavement, loss and neglect, and been placed in very vulnerable situations:⁵ 'Those who come persistently into contact with the justice system over time tend to be amongst the poorest and most vulnerable people in our cohort'.⁶ Two recent studies show evidence that this is also the case for children in secure care. The majority have high levels of exposure to adverse childhood experiences,

1. <https://thepromise.scot/what-is-the-promise/independent-care-review>
2. Nowak, M. (2019). *The United Nations global study on children deprived of liberty*. United Nations.
3. Kilkelly, U. (2023). Child First and Children's Rights: An Opportunity to Advance Rights-Based Youth Justice. In S. Case, & N. Hazel (Eds.), *Child First: Developing a New Youth Justice System*. Springer International Publishing.
4. Scottish Government (2011). *Whole System Approach to Young Offending*. Scottish Government.
5. Vaswani, N. (2014). The Ripples of Death: Exploring the Bereavement Experiences and Mental Health of Young Men in Custody. *The Howard Journal of Crime and Justice*, 58(4), 341-359.
6. McAra, L., & McVie, S. (2022). *Causes and Impact of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35*. University of Edinburgh.

reside in areas of high deprivation and are living in relative poverty.⁷

Recent research in Scotland shows that many of these characteristics are shared with children aged 12-15 who are referred to the Scottish Children's Reporters Administration on offence grounds. Their study concludes: 'For many of the 400 children in this study, (79 girls, 321 boys), their lives were characterised by adversity, trauma, neglect, exposure to harmful behaviours by others, victimisation and exploitation (including criminal exploitation and sexual exploitation), often compounded by socioeconomic disadvantage' (p. 4).⁸

Young Offenders Institutions (YOIs)

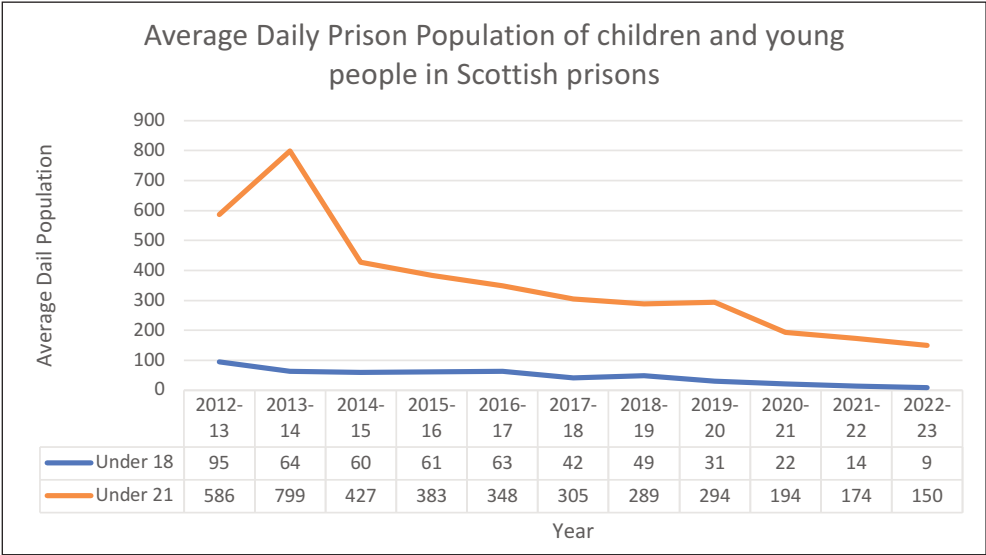
The UNCRC explicitly recognises that children, by their very status, require further protections in addition to those enshrined in human rights statutes. Alternatives to depriving children of their liberty should be the default position, and detention should only be used for those who present a risk to themselves or others, as a last resort and for the shortest time possible (article 37b).

Research evidence highlights the detrimental long-lasting impact of YOI placement on children, negatively affecting psychological, social and physical developmental opportunities and having lasting adverse consequences to future life chances. A heartbreakingly

stark fact is the number of children who have taken their own lives in YOI in Scotland,⁹ which includes a child only last month (July 2024). The Expert Review of Provision of Mental Health Services at HMPYOI Polmont highlighted key areas of improvement including the social isolation of children in custody, and the need to support engagement with family and friends.¹⁰ Working in a trauma informed way was also highlighted by evidence as being crucial when working with some of the most distressed children in custody. Research with over 200 prison officers in Scotland highlights this practice as being 'lacking' or 'unable to happen' within YOIs due to the conflict between care and control.¹¹

This raises several questions of why children are in YOIs in the first place when research tells us it is detrimental and traumatising. It is debateable to say children coming out of YOIs are 'changed for the better' and that YOIs are only being used as a last resort after all other alternatives have been explored. Many organisations have been campaigning to change legislation within Scotland to prevent further deaths and the negative impacts and outcomes custody can have. This has led to a significant reduction in the use of custody over the past 10 years (see figure 1), and the imminent planned removal of children from YOIs through the Children (Care and Justice) (Scotland) Act 2024.

Figure 1. Average daily prison population of prisoners aged under 21 in Scotland during the last 10 years¹²



7. Gibson, R. (2021). ACEs, Distance and Sources of Resilience. CYCJ; Gibson, R. (2020). ACEs, Places and Status: Results from the 2018 Scottish Secure Care Census. CYCJ.

8. Scotland's Children's Reporters Administration (2022). Children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland. SCRA.

9. Lightowler, C. (2020). Summary: Rights Respecting? Scotland's approach to children in conflict with the law. CYCJ.

10. HM Inspectorate for Prisons in Scotland (2019). Report on an Expert Review of the Provision of Mental Health Services for Young People entering and in Custody at HMP YOI Polmont. HMIP.

11. Vaswani, N., & Paul, S (2019). 'It's Knowing the Right Things to Say and Do': Challenges and Opportunities for Trauma-informed Practice in the Prison Context. The Howard Journal of Crime and Justice, 53(4), 513-534.

12. <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/11/scottish-prison-population-statistics-2021-22/documents/scottish-prison-population-statistics/scottish-prison-population-statistics/govscot%3Adocument/scottish-prison-population-statistics.pdf>

The first part of the Children (Care and Justice) (Scotland) Act 2024 to be enacted will be the removal of children from YOIs to secure care. This Act will prevent any child under age 18 being remanded or sentenced to a YOI or prison from this date. It recognises all children under the age of 18 as children, and by giving them this status, upholds their rights under the UNCRC.

Police custody

Unfortunately, not all areas of practice within Scotland uphold children's rights in line with the UNCRC.¹³ The detention of children in police custody being a focus on this paper. Children have advised that police custody is the most traumatising aspect of their justice journey, impacting upon their mental health, wellbeing and overall development. This is not a unique position to Scotland:¹⁴ 'I was crying myself to sleep, I was taking an anxiety attack, and I was an emotional wreck that night. Then I was just like crying all weekend, they would come in every so often and say 'are you alright?' and I'd be like 'aye' but even though I was greetin' they would just walk away...' (p. 7).¹⁵

In response, Police Scotland have given a public acknowledgement that police cells are not suitable Places of Safety for children to be detained. However, until there is a change in legislation to prevent children being 'required' to be taken to a police station to have their 'rights upheld' by having access to a solicitor, and more suitable places of safety available, there is currently no other option within Scotland.

The number of children detained in police custody in Scotland is extremely high, especially when compared to the number who end up being restricted of their liberty within secure care or YOI. This raises the question of why there are so many children being detained in police custody in the first place. The Scottish Police Authority highlighted that 4,261 children were detained in police custody in 2022/2023

including 33 children aged 12 and 1,268 children aged under 16.¹⁶ Similar figures from Police Scotland over the same period indicate that 875 children detained in police custody were held overnight, and 268 for more than 24 hours.¹⁷

Indeed, Vaswani highlights that, despite such a promising policy context developed through GIRFEC, the WSA and more latterly through UNCRC incorporation and the Children (Care and Justice) (Scotland) Act, the experiences of children in police custody 'indicate a sizeable gap between the espoused vision and values of youth justice policy in Scotland, and the reality of lived experience' (p. 7).¹⁸

Alternative trauma informed environments are being explored on a small-scale basis in Scotland as an alternative to police custody. The hope is that the need to take children to a police station will be changed in future legislation, to ensure a more rights respecting response to all children in conflict with the law can be achieved.

Secure care

Secure care in Scotland is defined as: 'a form of residential care that restricts the freedom of children under the age of 18. It is for the small number of children who may be a significant risk to themselves or others in the community. Their needs and risks can only be managed in a secure setting. Secure care aims to provide intensive support and safe boundaries to help these highly vulnerable children re-engage and move forward positively in their communities.'¹⁹ Secure care offers a controlled environment that provides safety and security for children referred through the Courts and Children's Hearings system. It has been described as 'the most containing and intense form of alternative care'.²⁰

154 children were placed in secure care in 2022/23, which is a 3 per cent increase on the previous year. On average, 59 children were in secure care on any given day, 37 of which were from Scotland and 22 from outwith.²¹ The Secure Accommodation Network

Research evidence highlights the detrimental long-lasting impact of YOI on children.

13. Together Scotland (2023). *Report reveals Police Scotland pulled tasers on 41 children last year*. Together Scotland; McCall-Smith, K. L. (2022). *Solitary Confinement, Torture and Children: Applicable minimum standards*. University of Edinburgh, School of Law.
14. Bevan, M. (2021). The pains of police custody for children: A recipe for injustice and exclusion? *The British Journal of Criminology*, 62, 1–17.
15. Vaswani, N. (2025). Children's experiences of police custody and the implications of trauma-informed policing, *Youth Justice*, 25(1), 108–125.
16. Scottish Police Authority (2022). *Places of Safety for Children in Conflict with the Law - Delegates' Pack*. SPA.
17. See footnote 15: Vaswani, N (forthcoming).
18. See footnote 15: Vaswani, N (forthcoming).
19. Scottish Government. (2020). *Secure Care Pathway and Standards Scotland: Equality Impact Assessment*. Scottish Government
20. Gough, A. (2017). *Secure Care in Scotland: Young People's Voices*. Centre for Youth & Criminal Justice.
21. Scottish Government. (2024). *Children's Social Work Statistics 2022*. Scottish Government.

Scotland (SAN) indicated that on August 2, 2024, 57 children were living within secure care centres in Scotland. Scotland has reduced its secure care capacity over the past 15 years. Currently, there are four secure care centres in Scotland run by four independent charities providing 78 beds. Children can be placed in secure care on welfare or offence grounds through the Children's Hearing System (CHS), Courts or by Chief Social Work Officers.

As with police custody and YOIs, there has been much criticism of secure care from the children who have been placed there, many of whom have described their experience as being very traumatising.²² This led to a secure care national advisor being appointed within Scotland to listen to the views of children, young people and young adults with experience of secure care and recommend how improvements could be made. Based on these views and recommendations, the Secure Care Pathway and Standards, were created to improve the experiences of children who are in, or on the edges of secure care, and embed a GIRFEC approach. These 44 standards were co-produced with children, young people and adults with experience of secure care, and set out what all children should expect before, during and after any stay in secure care. These standards made changes to practice within secure care to ensure a more trauma-informed rights-based approach. All four secure care providers in Scotland are now annually inspected by Scotland's Care Inspectorate against these standards.

In December 2022, the Children and Young People's Centre for Justice (CYCJ) was commissioned to undertake a review of secure care and alternatives to secure care and meet the calls from various reviews, including the independent care review, evidence and the plan to remove all children from YOIs through the Children (Care and Justice) (Scotland) Act: 'Scotland's response to the small number of children who need this level of security, care and protection must look radically different... There must be absolute clarity that the underlying principle of Secure Care is the

provision of therapeutic, trauma-informed support' (p. 80).²³ The report for this work was published in September 2024.²⁴

Children in Secure Care

Many children currently in secure care have a wide range of complex needs, experiences of trauma and adversity, exploitation (sexual and criminal), health and mental health issues. Some children are there for their protection and others due to the risk of harm posed by aspects of their behaviour towards self, others, and, in some circumstances, a combination of harms presented through distressed behaviour.²⁵

Research has suggested that over three-quarters of children in Scottish secure care are placed there as a consequence of welfare needs, rather than solely due to their involvement in offending behaviour.²⁶ However recent research demonstrates that many children who are accommodated on 'welfare' grounds also have a history of conflict with the law.²⁷ According to these authors, the level of harm caused by the 'welfare' population often surpasses that of those who enter via the criminal justice route, and ultimately, regardless of the grounds, the children within secure care have the same risks and needs.

Due to the evidence, and the ethos in Scotland of seeing children through a rights lens, looking at 'needs and not deeds', children requiring protection from themselves, and those who have caused harm to others, are all deemed to require care and protection and live alongside each other. This is not the same position taken in other parts of the United Kingdom, where children are kept separate depending on what grounds they have been detained.

Historic Review

Looking back on how Scotland has progressed to the position of taking a rights-based approach to children in conflict, this shift did not happen overnight.

The first part of the Children (Care and Justice) (Scotland) Act 2024 to be enacted will be the removal of children from YOI to secure care.

22. Utting, E., & Woodall, T. (2022). From Care to Custody? In P. Willmot & L. Jones (Eds.), *Trauma-informed forensic practice* (pp. 93-110). Routledge.

23. See footnote 1.

24. Children and Young People's Centre for Justice (2024). *Reimagining Secure Care: A Vision for the Reimagined/Future World report*. CYCJ.

25. See footnote 7: Gibson, R. (2020).

26. Gough, A. (2016). *Secure Care in Scotland: Looking Ahead*. Centre for Youth and Criminal Justice.

27. Hart, D., & La Valle, I. (2021). *Secure children's homes: placing welfare and justice children together*. Department for Education.

In the early 20th century, and prior to the 1968 Social Work Scotland Act, there had been an explosion in 'approved' and 'correctional schools' — borstals, a form of deprivation of liberty, where children (overwhelmingly boys) were sent for education and training, often with a punitive element. Reports from adults who were sent to these establishments when they were children, described them as 'brutal', where they were treated very harshly and there was a lot of violence.²⁸ During this time, the number of boys in court and being sent to borstals was increasing, along with a post-war rise in the overall levels of youth crime.

In 1961 in response to these rising levels of youth crime, the Kilbrandon Committee was established to offer a solution. After reviewing the backgrounds and behaviour of the children appearing in court, the committee recommended taking a welfare-based approach that viewed children in conflict with the law as children in need of support. The committee recognised the 'needs' of these children and proposed a single system for dealing with all children. This included those who would otherwise have been brought before the courts for offending, and for those beyond parental control or in need of care and protection. The aim was to offer early support to general wellbeing to avoid criminalisation and stigmatisation.²⁹ This was the first step in Scotland of recognising children have rights, and punishment was not the answer. This led to the creation of the Children's Hearing System (CHS) in 1971, through the Social Work (Scotland) Act 1968. The CHS was founded on the key principle that the child's best interests should be paramount in decision-making and the welfare principle must be the key test guiding decisions concerning the necessity and extent of compulsory intervention. The CHS was very successful in diverting children from court process with a focus on community-based interventions as alternatives to secure care and remains today as the main judicial process for children in Scotland.³⁰

Alternative trauma informed environments are being explored on a small-scale basis in Scotland as an alternative to police custody.

Changes were also being made during the 1970s and 1980s, to where children were being detained. Correctional schools and borstals were replaced by secure accommodation, which focused on the welfare needs of the child and not punishment. This focus on welfare shifted by the mid-90s where Scotland saw a new statutory framework which placed public protection above 'the best interests of the child'. New legislation through the Children (Scotland) Act 1995, viewed children who caused the most harm as less deserving of their rights.

This more punitive approach continued into early 2000s, when Labour came to power in the UK, taking a 'tough on crime' stance.³¹ Policymakers in Scotland soon followed suit, with the creation of the Antisocial Behaviour etc (Scotland) Act 2004. This Act further criminalised children and young people through the 'creation' of many new offences and as a result, more children experienced police custody and were detained in YOIs and secure care.³² These developments were not popular with youth justice practitioners, who put pressure on the Scottish Government to respond differently to children.³³ In response, the Scottish Government undertook a review, leading to a more enlightened approach based on the original Kilbrandon principles — Getting it Right for Every Child: Proposals for Action (GIRFEC) was published. Although not solely in relation to youth justice, this was for all children's services and placed children at the centre of all decision making in relation to them. In 2007 GIRFEC was adopted by the incoming SNP Government and remains the central policy document for children in Scotland today.

GIRFEC is a way of working which focuses on improving outcomes for all children by placing them at the centre of thinking, planning and action. It applies to all services that work directly with children or make decisions that impact on children. Many of the principles of GIRFEC were given a legislative grounding with the passing of the Children and Young People

28. Vaswani, N., Dyer, F., & Lightowler, C. (2018). *What is Youth Justice? Reflections on the 1968 Act*. Social Work Scotland.

29. Burman, M., et al. (2006). The End of an Era? Youth Justice in Scotland. In J. Junger-tas & S. Decker (Eds.), *International Handbook of Juvenile Justice*. Springer Verlag

30. Burman, M., & McVie, S. (2016). Getting it Right for Every Child? Juvenile Justice in Scotland. In S. Decker (Ed.), *International Handbook of Juvenile Justice*. Springer International Publishing.

31. See footnote 28: Vaswani et al. (2018).

32. McAra, L. (2006). Welfare in Crisis? Youth Justice in Scotland. In J. Muncie and B Goldson (Eds.), *Comparative Youth Justice* (pp. 127-45). Sage.

33. See footnote 29: Burman, M., et al (2006).

(Scotland) Act 2014. Following a stakeholder consultation in 2021, the Scottish Government published a refreshed policy on GIRFEC. This refresh aligns GIRFEC with other areas of policy development, including the UNCRC and recommendations from Scotland's independent care review.

With a specific youth justice focus, the synergy created by shifting political attitudes, and a renewed value placed on evidence, Scotland was able to adopt a new approach. Research within Scotland highlighted that sustained and formal justice system contact including custody had a detrimental, rather than beneficial impact on desistance.³⁴ These studies showed that through early intervention, increasing diversion, minimal formal intervention and robust community alternatives to deprivations of liberty, were overall more effective, in reducing reoffending. These areas became part of a policy initiative and was called a Whole System Approach (WSA). The WSA was introduced in 2011, which along with GIRFEC, remains a youth justice priority today. At the core of this approach is the recognition that children are not 'mini adults' either in terms of their development or maturity,³⁵ and that children involved in offending, especially those involved in more serious and violent behaviour, are often extremely vulnerable with multiple, complex needs.³⁶ The WSA calls on those who support children in conflict with the law to take a holistic approach that focuses not only on the behaviour in question, but the wider ecological, environmental and family issues at play, to ensure children and young people receive the right help at the right time.³⁷

Under the WSA, alternatives to secure care and YOIs were to be priorities, which did, once embedded, see significant reductions in their use. For children who present with the greatest risk to themselves or others, where community measures were assessed as not being appropriate, either through the CHS or courts, secure

care was to be prioritised over YOIs. For children under age 16, legislation was amended to prevent them going to YOIs and the age of prosecution was raised from 8 to 12 through the Criminal Justice and Licensing (Scotland) Act 2010. For children aged 16 and 17 in conflict with the law, there remained an anomaly in Scottish legislation. Children aged 16 and 17 on an order through the CHS were legally defined as a child and therefore eligible to go to secure care. Children aged 16 and 17 not on an order through CHS were defined as an adult and not eligible to go to secure care — a YOI being the only option. This led to a two-tier approach in Scotland, one that up-held children's rights, and one that did not.

Prior to the WSA, child prison numbers were at a record high in Scotland.³⁸ Through the implementation of WSA, and further reiterations within Government Policy — including advancing the WSA to age 21 and changes in practice, evidence in Scotland suggests that substantial progress was made in reducing youth offending in general and the overall numbers of children in secure care and YOIs.³⁹ Through this approach, the number of children being referred to the CHS on offence grounds, appearing in court and in YOIs substantially reduced placing Scotland was in a more progressive rights-based position for the next phase of policy and legislation.

With a specific youth justice focus, the synergy created by shifting political attitudes, and a renewed value placed on evidence, Scotland was able to adopt a new approach.

'How' we made changes in Scotland

Scotland has seen increasing appetite for welfare-based Government policy and legislation in relation to children in conflict with the law over the past 15 years, returning to the ethos of Kilbrandon that was lost in the 2000s. This has led to an increase in the age of criminal responsibility (ACR) from 8 to 12 in 2021 through the Age of Criminal Responsibility (Scotland) Act 2019,⁴⁰ and a new Youth Justice Vision and Action Plan — 'Justice for children and young people — a

34. McAra, L., & McVie, S. (2010). Youth crime and justice: Key messages from the Edinburgh Study Youth Transitions and Crime. *Criminology & Criminal Justice*, 10(2), 179-209.

35. Nolan, D., Dyer, F., & Vaswani, N. (2019). Just a wee boy not cut out for prison - Policy and reality in children and young people's journeys through justice in Scotland. *Journal of Criminology and Criminal Justice*, 18(5), 533-547.

36. See footnote 6: McAra, L., & McVie, S. (2022).

37. Gibson, R., Vaswani, N., & Dyer, F. (2024). Supporting practice in Scotland: lessons from the Children and Young People's Centre for Justice. In J. Price & S. Creaney (Eds.), *Knowledge and Skills Partnerships in Youth Justice*. Routledge.

38. See footnote 35: Nolan, D., Dyer, F., & Vaswani, N. (2019).

39. Murray, K., McGuinness, P., Burman, M., & McVie, S. (2015). *Evaluation of the Whole System Approach for children and young people who offend*. Scottish Government.

40. The ACR in Scotland may increase further in Scotland as a 3-year review was included in legislation that was enacted at the end of 2021.

rights-respecting approach' that aims to uphold the rights of children in conflict with the law, reduce the numbers of children in YOIs in 2021, to stopping using them altogether by 2024: 'We want Scotland to be the best place in the world to grow up, where all children and young people are loved, treated with respect, their voices are heard, their rights respected, and their outcomes improved'.⁴¹

This move in Government policy in Scotland to uphold children's rights has been a position that has developed over the years and influenced by stakeholders and practitioners within the youth justice field. The Children and Young People's Centre for Justice (CYCJ) published a report in 2020,⁴² calling for Scotland to ensure its youth justice system was truly 'rights respecting', to uphold the terms of the UNCRC. 'Rights Respecting? Scotland's approach to children in conflict with the law' was the first report to translate the UNCRC into Scottish specific actions to improve policy, practice and experience in youth justice, and contributed to a change in Government policy and thinking in 2021.

This position of viewing children as children, and children in need, was enhanced further in Scotland by the Lord Advocates Guidelines which changed the presumption of children who were jointly reported to the Procurator Fiscal and CHS, in favour of keeping children out of criminal courts and when they did appear in Court, that their age and stage of development was taken into account, through new sentencing guidelines for young people up to age 26: 'Sentencing of younger people often requires a more individualistic approach, taking into account the particular personal characteristics of the young person concerned. For example, depending on the age and maturity of the young person, their culpability in relation to the offence might be lower than that of an

adult.....In addition, we recognise that many young people who have committed offences have experience of trauma, including higher than average experience of traumatic bereavement, and we will consider how that should be taken into account in sentencing' (p. 1).⁴³

These developments within sentencing practice and youth justice policy have greatly contributed towards Scotland taking a leading role within the UK in upholding children's rights. This has contributed to the position of legislation that directly incorporates the UNCRC into Scots law (UNCRC Incorporation (Scotland) Act 2024), and indirectly through legislation acknowledging all under 18s as children. This allows for the necessary changes within practice to ensure all children are treated as such, including removing them from YOIs and extending the CHS to all children under 18. Thus, further reinforcing the welfare position in Scotland, and correcting the previous disparity in law. The Children (Care and Justice) (Scotland) Act 2024 was passed by the Scottish Parliament in April 2024 and given Royal Assent on June 4, 2024.

Achieving a more progressive rights-based approach for children deprived of their liberty in Scotland has been achieved in part due to a shift in the paradigm within youth justice over the past 20 years and a willingness from our current Government.⁴⁴ Practice and policy changes on the ground have led to changes in legislation, and children been seen through a 'rights lens' when deprived of their liberty. Using a rights-based approach also allows us to clearly see where there are 'rights-breaches' for children in conflict with the law. As shown within this paper, we need to remove children from traumatising environments like police custody and achieve the UNCRCs recommendation of any deprivation of liberty truly being a last resort and for the shortest time. These are areas that still needs to be addressed in Scotland.

41. Scottish Government (2021). *Justice for children and young people - a rights-respecting approach: vision and priorities*. Scottish Government. Scottish Government.

42. Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. CYCJ.

43. Scottish Sentencing Council (2022). *Sentencing Young People: Sentencing Guideline*. Sentencing Council.

44. See footnote 3: Kilkelly, U. (2023).