A Guide to Youth Justice in Scotland: policy, practice and legislation

Introduction

Whether you are a practitioner, researcher or educator, you should be familiar with the latest policy and practice legislation in youth justice.

That’s why the Centre for Youth & Criminal Justice (CYCJ) has produced ‘A Guide to Youth Justice in Scotland’. This resource is aimed at practitioners and managers who work with children and young people who offend or who are at risk of offending. It is also valuable for academics, educators and anyone else with an interest in youth and criminal justice.

This document is intended as an overview of the 10 sections that comprise the guide, which can be accessed on our website.

The guide is supported by the Scottish Government’s Youth Justice Strategy, which was refreshed and launched in June 2015.

To ensure that the information we are providing is relevant, accurate and meaningful, this guide will be reviewed annually. The next revisions will be made in June 2016. Please get in touch at cycj@strath.ac.uk if you have any queries or wish to access a specific section.

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1. Background, Policy and Legislation

In brief

With youth justice sitting in both children and families and criminal justice services and the Children’s Hearings and criminal justice systems, this section aims to offer some understanding of the parameters in which services dealing with children and young people who offend are framed. It gives an overview of the time frame and historical developments of youth justice in Scotland, from the Kilbrandon Report to present day.

How youth justice has developed in Scotland - timeline

It all started with the Kilbrandon Report…
Since 1964, a welfare approach has underpinned social work with children and young people who offend in Scotland. This was the result of work undertaken by the Kilbrandon Committee in 1964, which formed the basis of the Social Work (Scotland) Act 1968. The principles of justice and welfare underpinning this approach are still a fundamental feature of social work practice in Scotland today.

1960: A Committee was set up in 1960 under Lord Kilbrandon in response to concern that change was needed in the way society dealt with children and young people in trouble or at risk. The result was the Kilbrandon Report, which recommended a national co-ordinated system to deal with children in need of compulsory measures of care, and stressed the importance of intervening early on.

1968: Decisions on what action was needed in the welfare interests of the child were to be the responsibility of a new and unique kind of hearing. These findings were incorporated into the Social Work (Scotland) Act 1968.

1971: Children’s Hearings took over most of the responsibility for dealing with children and young people under 16 years and in some cases up to 18 years who commit offences or are in need of care and protection. This radical way of dealing with children and young people who offend is a fundamental principle of the Children (Scotland) Act 1995 and the Children’s Hearing (Scotland) Act 2011.

2002: Scotland’s Action Programme to Reduce Youth Crime was introduced in response to Audit Scotland’s review of Scotland’s Youth Justice System: ‘Dealing with Offending by Young People’.

2004: Getting it right for every child (GIRFEC) was first introduced as a concept in 2004 as a new national approach to working with all children and young people in Scotland. GIRFEC is the Scottish Government’s strategic vision for all services that are either delivered to, or which affect, children.

2005: The Scottish Parliament passed the Management of Offenders etc (Scotland) Act. This introduced a legislative basis for agencies to work together not only to assess and manage Registered Sex Offenders, but also any other individuals who are considered to pose a danger to the public.

2008: The Scottish Government published the strategy document ‘Preventing Offending by Young People: A Framework for Action’. This outlines a shared vision of what national and local agencies working with young people who offend, or are at risk of offending, should do to prevent, divert, manage and change that behaviour.

2012: Scottish Government published Preventing Offending by Young People: A Framework for Action – Progress (2008-2011) and Next Steps. This report demonstrated what had been delivered under the five key strands of the Framework since 2008.


Read this section here.

2. Youth Justice in Scotland: the roles and responsibilities of key partners

In brief

Youth justice in Scotland involves many professionals, agencies and organisations. This section will give an overview of who is involved, in what capacity, and how they work.

These include:
The Scottish Government
Youth Justice Champions Groups
Champions Groups, supported by CYCJ, were created when the Scottish Government updated the Preventing Offending by Young People – A Framework for Action, launched in 2008 to reflect a new approach to people who offend/are at risk of offending. This framework now incorporates the Whole System Approach, which put into place streamlined and consistent planning, assessment and decision-making processes for all young people under 18 who offend, ensuring they receive the right help at the right time.

The Whole System Approach suggests that many young people could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives. To achieve this, a number of areas were identified as priorities. In ensuring that these themes were taken forward strategically it was agreed that Champions Groups would be established for each one. These focused on:

- Early and Effective Intervention
- Managing High Risk
- Reintegration and Transitions
- Vulnerable Girls and Young Women

The revised strategy - Preventing Offending: Getting it Right for Children and Young People, published in June 2015, identifies three key themes and it is likely that over time the champions groups will be realigned around these:

- Advancing the Whole System Approach
- Improving Life Chances
- Developing Capacity and Improvement

Read this section here.

3. Theory and Methods

In brief

This section introduces some important research concepts, and explores current intervention methods and the theories underpinning these.
Some of the many social work theories in this area include:

**Desistance theories**

Maruna (2001) identified three broad theoretical perspectives important to understanding desistance:

- **Maturational Reform Theories** focus on the established links between age and certain criminal behaviours. The suggestion here is that children and young people can outgrow certain behaviours as they mature.
- **Social Bond Theories** suggest that if the individual has family ties, positive social relationships and are in education or employment, they are less likely to offend as they have more to lose than those who have no social bonds. Where these ties exist, they create a reason to 'go straight'. Where they are absent, people who offend have less to lose from continuing to offend.
- **Narrative Theories** stress the importance of subjective changes in the person's sense of self-identity, personal and social 'connectedness' or integration, which in turn are reflected in changing motivations, greater concern for others and consideration of the future.

**Child Development**

Children and families and youth justice practice within both universal and specialist services is informed by child development theories which have a resonance for promoting positive social and emotional development and reducing vulnerability to future offending.

**Attachment theory**

Attachment is an emotional bond to another person. Theories on attachment contribute to understanding of how attachment to primary caregivers and the caregiver's ability to respond may affect a child's social and emotional development. Parents and carers who are available and responsive to an infant's needs establish a sense of security.

Research suggests that failure to form secure attachments early in life can have a negative impact on behaviour in later childhood and throughout life.

**Brain development theory**

Research into brain development offers a neurological perspective on the damaging effects of pre-birth and early childhood abuse, neglect and exposure to violence, including domestic abuse, on infant brain development.

Read this section here.

**4. Early and Effective Intervention**

**In brief**

This section focuses on Early and Effective Intervention (EEI) with children and young people who are at the early stages of being involved in low to moderate level offending behaviour. EEI is considered within the context of the legal frameworks for children and criminal justice services relating to single and multi-agency work with eight to 18 year olds in Scotland.
Prevention…or intervention?

There is often a degree of overlap between the terms prevention and early intervention. A useful distinction between the two terms is offered by Moira Walker (2005) and the Framework for Action (2008):

- ‘Prevention’ refers to activities to stop a social or psychological problem arising in the first place
- 'Early intervention' is activity aimed at halting the development of a problem which is already evident

Key points

- Children and young people who start to offend come from a range of social backgrounds and cultures, and possess a wide range of personal difficulties and individual strengths requiring a range of responses
- The majority of anti-social behaviour and youth offending takes place in areas of economic and social deprivation. Therefore early intervention has implications for community planning strategies if it is to be effective in reducing offending.
- Research indicates that poor parental supervision and monitoring is a key feature for young people who offend
- Sixteen and 17 year olds who get involved in offending behaviour can be dealt with in the Children’s Hearing System or the adult criminal justice system depending on whether or not the young person is subject to a compulsory supervision order (CSO).
- There can be confusion between the terms early intervention and diversion

Read this section here.

5. Managing Risk of Serious Harm

Violence: “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation” (World Health Organisation, 1996).

In brief

This section considers children and young people who present a high risk to themselves and others, the reasons for why this might be and the risk assessment and intervention methods that have proved effective.

The ‘high risk’ category of children and young people, sometimes referred to as the ‘critical few’, refers to those who present with offending behaviour of a serious nature including sexually harmful behaviour and/or violence.

Key points

- There are a small but significant number of children and young people who present a high risk to themselves and others
They are considered to be at high risk because their behaviour has already caused serious harm to a victim

Many young people involved with offending of a serious nature will have complex needs and may have experienced multiple traumas in their lives

Not all individuals who have been involved with offending of a serious nature will necessarily offend again and part of the assessment and intervention process will be to determine the risk of recidivism (the likelihood of another offence occurring)

Whatever the approach taken, the child or young person should be at the centre of processes tailored to their unique needs and age and stage of development

Read this section here.

6. Reintegration and Transitions: Youth justice practice at the interface of the Children’s Hearings System and the Criminal Justice System

In brief

This section provides an overview for practitioners working with young people at the interface between the Children's Hearings System (CHS) and the Criminal Justice System (CJS) and those in and leaving secure care and custody. It summarises key practice themes, and complements recent Scottish Government guidance and Criminal Justice National Standards and Outcomes.

Key points

- In Scotland, young people who offend can be dealt with in either the Children’s Hearing System or adult court. The full range of powers available through the Children's Hearings System should be utilised as far as possible, particularly for 16 to 18 year olds. This includes avoiding the premature termination of Compulsory Supervision Orders to enable young people to be dealt with in this system for longer and utilising the capacity of Sheriffs and Judges to remit to a Children’s Hearing for advice and/or disposal.

- Developmentally 16 and 17 year olds are considered children, and are deemed as such under the Children’s Hearings (Scotland) Act 2011 if subject to a Compulsory Supervision Order through the Children’s Hearing System. Otherwise, legally, they are deemed to be adults and can be treated as such if involved in offending.

- Diversion from prosecution schemes can be utilised as a form of early intervention which aims to address unmet needs and reduce the prospect of further offending behaviour

‘Transitions’ in this section refer to:

- Children and young people moving from the Children’s Hearings System to the Criminal Justice System
- Children and young people moving from children’s to adult services
- Children and young people moving from secure care to custody
- Children and young people moving from school to employment, training and/or further/higher education
- Children and young people moving from childhood into adolescence in developmental terms
Meanwhile, the term ‘Reintegration’ concerns:

- Children and young people returning from secure care to the community
- Children and young people returning from prison to the community
- Children and young people moving from being ‘looked after’ to no longer being ‘looked after’ following the termination of a Compulsory Supervision Order (CSO)

Read this section here.

7. Vulnerable Girls and Young Women

“Effective working with girls and young women who have been drawn into the criminal justice system is considerably hampered by a set of interrelated problems” (Batchelor, S and Burman, M. 2004)

In brief

This section draws on literature and evidence to illustrate to those in frontline services how outcomes for girls and young women might be improved by applying good practice principles more holistically from a gendered perspective. It also aims to provide an understanding of what works, for professionals and agencies involved in decision making processes which impact on the lives of girls and young women.

Key points

- Historically, there has been a tendency to group girls and young women’s offending and risk taking behaviours alongside those of boys and young men. This is due in part to the relatively low numbers of girls and young women and their invisibility within systems predominantly designed for males.
- Literature and evidence on offending behaviour in young people has tended to be presented under the assumption that girls and boys are the same. Most current services available to address offending and other risk taking behaviours are derived from the principles of ‘What Works?’ which stem from theories of male offending and often do not meet the needs of females.
- It is generally accepted that although there are similarities in some risk factors associated with offending behaviour in boys and girls, some are more strongly associated with girls, and there are differences in how girls and boys respond to risk factors and practice interventions.
- Relationship issues feature strongly in girls’ offending and risk factors related to recidivism are more associated with poor parenting, dysfunctional family environment and absconding. A correlation exists between the victimisation and abuse of young women, traumatic and distressing experiences, and high risk behaviours such as substance misuse and self-harm.
- Violence is a common theme across both genders and while girls do engage in physical aggression, relational aggression is more prevalent. Girls and young women can present challenging behaviour which is unpredictable, violent and manipulative, and themes within this are substance misuse, negative peer association, absconding and sexually risky behaviours.

Read this section here.
8. Residential Childcare

In brief

This section provides an overview of information to social workers intending to place or who are supporting a young person in residential care.

Key points
- Residential childcare should be recognised as being an important, valued and integral part of children’s services that can offer the best possible care and protection for children and young people of all ages, which builds their resilience and prepares them for the future challenges they will face.
- Young people living in residential care must manage, in addition to often complex familial relationships, usually four or five close living relationships with other young people.
- Research has noted gender differences in approaches and learning styles for girls and boys.

Read this section here.

9. Speech, Language and Communication Needs in Youth Justice

“From the earliest moments of human development, genetic, environmental, physiological and social factors combine to shape the individual as a communicator”

In brief

This section was the result of collaboration between TalkLinks, the Royal College of Speech & Language Therapists and Autism Network Scotland. It explores key issues in communication development, examines difficulties common in the youth justice population and identifies the applications of this knowledge to practice.

Key points
- Communication development begins before birth, and progresses rapidly through the first year of life and beyond. Following birth, the most important single influence on development of communication is the child’s relationship with the primary caregiver or caregivers, usually one or both parents.
- Speech, Language and Communication Needs (SLCN) are extremely common in youth justice populations. Most studies to date have focussed on prevalence of language difficulties in males, with 50% to 70% of this group found to have significant difficulties with language function. Young people with SLCN involved in the criminal justice system may be regarded as presenting a ‘perfect storm’ of vulnerability and lack of protective factors.
- The high rates of SLCN in young people in custody mean that young people in these environments have others with communication difficulties as their primary source of interaction.

Read this section here.
10. Mental Health

In brief

The aim of this section is to offer some advice and guidance to youth justice practitioners in the area of mental health. It is not a review of the evidence base, nor is it a comprehensive summary of all mental health problems and their treatments. The primary purpose is to provide key information for practitioners to facilitate the identification of some of the more common mental health presentations encountered in youth justice. This includes a brief introduction in terms of policy context, service structure, what we know in terms of mental health needs of children and young people and a note on the classification of mental health difficulties. The section is concluded by some general advice with regards to responding to vulnerable children and young people.

Read this section here.