

CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 16: Reintegration and Transitions

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1. Introduction

'Reintegration and Transitions' is an umbrella term frequently used to describe policy and practice relating to children and young people who are at the interface between services, systems, and processes. In this section 'transitions' refers to the transitioning of children and young people:

- Moving from child to adult services
- Moving from school to employment, training, and further/higher education
- Moving from childhood to adolescence and young or emerging adulthood in developmental terms
- Moving from the Children's Hearings System (CHS) to the Criminal Justice System (CJS)
- Moving from the community to secure care or custody; from secure care to custody; and Young Offenders Institutions (YOI) to adult prisons.

'Reintegration' refers to:

- Children and young people moving from having a legal order in place, for example a Community Payback Order (CPO) or Compulsory Supervision Order (CSO), to having no such order; and
- Children or young people returning from secure care or custody to their community.

This section will focus on the transition from the CHS to the CJS; moving to and from secure care or custody; and reintegrating back into the community. Information will be provided on the importance of good practice and how this can be achieved to deliver the best possible outcomes for young people. However, this guidance must be seen in the context of the changing political landscape within Scotland. The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act](#) 2024 received royal assent on 16 January 2024 and the [Children's \(Care and Justice\) \(Scotland\) Act](#) passed Stage 3 on 25 April 2024. This monumentally changes how children are dealt with in both the CHS and CJS and means that children under the age of 18 years old will no longer be placed in YOIs.

Reintegration and transitions practice was one of the areas prioritised under the Whole System Approach (WSA) ([see Section 1](#) of this guidance); since April 2023 local authorities have [extended WSA processes](#) to young adults up to the age of 21. This section should be read in conjunction with the Scottish Government's guidance to support implementation of the WSA, in particular the [Reintegration and Transitions Guidance](#) and the online resource '[The child's journey: A guide to the Scottish justice system](#)'.

2. The Policy Context

In 2020, the Independent Care Review (2020) findings set out a vision, 'The Promise', that identified five foundations that must be built on: The vision highlighted the importance of 'Voice' and of meaningful and appropriate engagement with children by compassionate caring workers. Where it is safe for children to stay with their families they should be

supported to do so; the 'Family' must be supported to provide loving and nurturing experiences and to overcome any difficulties that may get in the way. Where it is not possible for children to remain with their family, they must be provided with 'Care' that allows them to live with their brothers and sisters, where it is safe to do so and for as long as it is needed. The 'People' who support Scotland's children must develop relationships where children are listened to, and workers should be compassionate in their care and decision-making. The 'Scaffolding' of help must reflect a system that supports children, their families and the workforce when needed; it must be responsive and ready when the support is required (Independent Care Review, 2020).

The Promise (2020) briefing summary for [youth justice](#) illustrated that there was a need for a new approach to children who come into conflict with the law in Scotland, one that is more in keeping with the Kilbrandon principles. These children's rights must be upheld, by ensuring that their health, education, and participation needs are met. Decision-making processes must promote children's participation, and this should take place within appropriate environments, not within the traditional criminal courts. CYCJ's evaluation of [Glasgow Youth Court](#) (2023) gives insight into an alternative approach. It also concluded Children should not be placed within YOIs; this setting is viewed as deeply inappropriate for Scotland's children.

In 2022, The Promise Implementation Plan was published (Scottish Government, 2022b). The Plan set out measures that promote transformational change for children who come into conflict with the law. Scottish Ministers pledged to "end the placement of 16 and 17 year olds in Young Offenders Institutions without delay" and to "fund care based alternatives to custody" (Scottish Government, 2022b, p. 6). In support to ending children in YOIs, the Scottish Government commissioned the Children and Young People's Centre for Justice (CYCJ) to undertake a piece of work using the [Reimagining Justice](#) framework. Reimagining Secure Care commenced in December 2022 and the project is currently in phase 3.

The Promise Implementation Plan will take forward the recommendations from the Children's Hearings System [review, published in May 2023](#), which was led by Sheriff David Mackie and overseen by a Hearings System Working Group. Any legislative change requirements will be put forward in the anticipated Promise Bill.

The Promise Implementation Plan (Scottish Government, 2022b, p. 71) "tells us that a new approach to youth justice in Scotland is required. An approach which continues to align with the UNCRC, that proceeds from a rights-respecting approach, supports all children under the age of 18 and young people up to age 26 to participate in decisions about them, directs positive support to families, and offers that support through safe and caring relationships". As part of the plan, it was agreed that an annual grant of £200 over ten years would be provided to 16–25-year-olds with care experience to give them additional security. This was to help to reduce some of the financial barriers that many children and young people face as they move on to more independent living. A subsequent [consultation](#) has proposed that a one-off lump sum payment of £2,000 may be more beneficial. Four years since the Independent Care Review findings were launched, it is recognised that progress has been made, but there is still lots to do.



A new approach to children in conflict with the law in Scotland will be implemented through the Children (Care and Justice) (Scotland) Act, once commenced. Provisions include the following:

- Define a child as those under the age of 18 years old as set out in the [UNCRC](#) across key pieces of care and justice legislation
- 16- and 17-year-olds will not be accommodated within YOIs, instead children who require to be deprived of their liberty will normally be placed within secure care
- Children who come into conflict with the law 'need care and support rather than punishment' and through raising the age of referral to the Principal Reporter, it is likely fewer children will have their cases dealt with via the CJS
- There will be changes to the measures that can be attached to a CSO, including decoupling the secure accommodation and movement restriction condition criteria, which could support more children to remain in their community as an alternative to deprivation of liberty
- The definition of secure care will be amended to clarify that this is a service provided for the purposes of depriving children which must also provide establishment, appropriate care, education and support for the purposes of safeguarding and promoting the welfare of the children who are accommodated there, taking account the effects of trauma which the children may have experienced
- Scottish children who are remanded or sentenced and placed in secure care must be treated as a child "looked after" by the local authority, with the associated rights including to access aftercare
- Scottish Ministers can make regulations to allow children who were remanded or sentenced to secure accommodation under the age of 18 to remain within this service to a maximum age of 19
- Requires Scottish Ministers to prepare and publish standards, applicable to a "secure transportation service" in relation to children and young people (those under 19). There will be a duty on providers of secure transportation services to meet the applicable standards, and on those commissioning a secure transportation service to ensure that the service meets the applicable standards.

Provisions that would end the use of YOIs for children are due to commence by the end of 2024. Further information on the Act is available on the CYCJ website, which will continue to be updated. If you have any queries, please get in touch.

'[A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities](#)' (2021) sets out a vision and action plan prepared by the Scottish Government and Youth Justice Improvement Board members. This plan is under regular review and update and sits within this action plan. The overarching action involves the need to work in partnership to deliver what is highlighted by reviews, research and the Promise as crucial to support better outcomes for children and young people.

On 7th February 2023 the Scottish Parliament debated the [motion](#) of the UNCRC (Incorporation) (Scotland) Bill. To help prepare for this debate the Children and Young People's Commissioner Scotland (CYPSC) prepared a [joint briefing for MSPs](#). The continued commitment to delivering this Bill, despite restrictions imposed by the Supreme Court judgement in 2021, resulted in its passing in January 2024. This places children's rights at the forefront for children in conflict with the law. For further information see Section 3.



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In 2023 we saw the passing of the [Bail and Release from Custody \(Scotland\) Act](#). This legislation refocuses the use of remand by emphasising that it be reserved for those individuals who either pose a public safety risk or “present a significant risk of prejudice to the interests of justice”. The Act also introduces changes that will impact on preparation and planning around being released from prison.

3. Transitions from Children’s Hearings System to the Criminal Justice System

[CYCJ](#), the [Scottish Government](#) and the [Independent Care Review](#) published research that informed the need for a review of the CHS. The Independent Care Review (2020, p. 41) concluded that “despite the principles of Kilbrandon that aimed to ensure a welfare-based approach to offending, a significant number of children involved in offending behaviour are dealt with in criminal courts rather than through the Children’s Hearings System...Traditional criminal courts are not settings in which children’s rights can be upheld and where they can be heard”. While significant efforts were made under the Whole System Approach (WSA) to improve on this position, Dyer (2016) also highlighted that the majority of children who end up in court could have had their behaviour addressed through the CHS, with too many children still being prosecuted as adults in adult courts, resulting in lifelong consequences. This has important implications for children’s rights (see [Section 3](#)); Article 40 of the [UNCRC](#) stresses the importance of diverting children from judicial processes. Many children entering the CJS have a range of unmet needs that can lock them into a cycle of reoffending if they remain unmet (CYCJ, 2016; Scottish Government, 2008). Whilst this situation should be improved with the ability for all 16/17 year olds to access the CHS where necessary when the provisions of the Children (Care and Justice) Scotland Act are commenced in full, the Lord Advocate and Procurator Fiscal will retain the discretion to begin criminal proceedings and to prosecute children in court. As a result, some children will still transition between the two systems and given that a timetable for commencement of provisions is still under development, the following section [reflects the current position \(i.e. before commencement of the Children \(Care and Justice\) \(Scotland\) Act\)](#). There are various situations which can result in failure to maximise the use of the CHS to manage assessed needs and risks in a child-friendly, age and developmentally appropriate way.

3.1 Premature Termination of Compulsory Supervision Orders (CSOs)

Historically while a CSO may be continued until a child reaches the age of 18 years old, there is anecdotal evidence and concern about the premature termination of CSOs, particularly on or around a child’s 16th birthday. In research by Nolan, Dyer, and Vaswani (2017) children reported the negative impact of the premature termination of their CSO and the differential experiences between the CHS and the adult courts, with the former described as a much more positive, inclusive and understanding child-friendly system. Henderson (2017) looked at decisions made for 113 children on CSOs aged between 15½ and 16, who had a hearing which made a substantive decision within three months of their 16th birthday. Seventy two percent of children’s CSOs were continued past their 16th birthday, in most cases, in recognition of the child’s vulnerabilities and the need to support them in the transition to further education and/or increasing independence, as well as following the recommendation of social work (Henderson, 2017). In some cases, where these orders were terminated, this decision did not consider the child’s current needs and circumstances, it was simply because of their age (Henderson, 2017). A more recent scoping study by Lightowler

(2022), looking at the legal support needs of children and young people in conflict with the law, indicated that the termination of CSO's continues to be an issue.

The premature termination of CSOs has significant implications, including limiting the future ability of children to be supported via the welfare based CHS, where most children can receive the care and support they need, in keeping with their age and stage of development (Dyer, 2016; Lightowler, 2020, 2022). The ineligibility of 16- and 17-year-olds not on a CSO to be referred to the CHS has been a longstanding systemic inequity and one that will in due course be addressed by commencement of the Children (Care and Justice) Act. However, as it stands, for these children who cannot access the CHS, entry into the adult CJS as the means of dealing with new or subsequent offending will often be accelerated, bringing with it a raft of negative outcomes. This can also contribute to a failure to uphold children's rights (Dyer, 2016; Nolan et al., 2017). This was illustrated in research by the Inspectorate of Prosecution in Scotland (2018). In the sample of cases examined, 16- and 17-year-olds who were not subject to a CSO were twice as likely to be prosecuted compared to those who were subject to these measures. Such a decision can increase the vulnerability of children by limiting access to legislative childcare entitlements; these were introduced in recognition of the particular needs experienced by looked after children, and aimed to ensure that any transitions for these children are graduated and prolonged. The introduction of [Staying Put Scotland guidance](#) and the duties on local authorities under [Parts 10 \(Aftercare\)](#) and [Part 11 \(Continuing Care\)](#) of the *Children and Young People (Scotland) Act 2014* have made this possible. The Children (Care and Justice) (Scotland) Act has afforded 'looked after' to all children who will be placed by Scottish Local Authorities into secure care.

Research, guidance and reviews have recommended against the premature termination of CSOs (Henderson, 2017), including the Social Work Scotland (SWS) Position Statement '[Children between 15 and 17 in the CHS](#)'. This stressed that children should continue to be supported on a CSO between the ages of 16 and 18 when this is appropriate and justified. It is not appropriate to base a recommendation for the termination of a CSO solely on:

- The child's outstanding offences, (this will fast track children into the adult CJS and often prison)
- The age of the child (unless approaching 18)
- The child's failure to engage with services that are assessed as necessary, recognising this can indicate increased vulnerability and risk, rendering support and protection under childcare legislation of greater importance
- The fact that the child is in the adult court system or has been given a custodial sentence.

Similarly, the [Supporting Young People Leaving Care in Scotland](#) guidance states that children should remain looked after up to the age of 18 years old if that is in their best interests. This general principle applies regardless of care setting and includes those looked after at home, with the early termination of CSOs based on factors such as age, or levels of engagement, to be avoided. The Scottish Government's [Looked After Children Strategy \(2015\)](#) also recommended that:

"Corporate parents in a position to influence young people panels should "presume against" recommending the ending of a compulsory supervision order around the child's 16th birthday unless continuing the compulsory supervision order would lead to a significant and negative impact on the young person's wellbeing." (Scottish Government, 2015, p. 37)

Despite this, a variety of arguments continue to be cited as the basis for terminating CSOs, although there is a change in policy direction as indicated elsewhere. The premature termination of CSOs should be avoided and challenged evidentially by all parties working with the child. Below is a list of arguments and counterarguments regarding the premature termination of CSOs:

- **'The child is not engaging with services.'** To be placed on a CSO, the test for compulsion outlined in the [Framework for Decision Making By Reporters](#) requires to be met, which states: "the lesser the motivation to change, or the willingness to co-operate, the more likely that a CSO is necessary" (SCRA, 2013, p. 2).
- **'They're a full-grown adult now.'** 16- and 17-year-olds are children, not adults, grounded in law, with research highlighting that brain development continues well into the twenties. New patterns of repeated experiences and healing, nurturing relationships promote lifelong learning and development (Kohlstaedt, 2010; McEwan, 2017; O'Rourke et al., 2020). Children are often vulnerable and may demonstrate a difficulty in making positive choices. By prematurely terminating the CSO they may quickly come into conflict with the law and end up in the revolving door of the CJS, leading to periods in custody where there are limited opportunities for interventions to effect change.
- **'The child is more likely to engage if supervised under a Community Payback Order (CPO).'** Both CSOs and CPOs require that a child has an allocated social worker with whom they meet regularly for purposeful contact. CSOs are extremely flexible in nature, and it would be surprising if a child, with an Offender Supervision Requirement as part of a CPO, would be able to receive a form of service provision that was significantly different in focus or more robust. Moreover, the costs of non-compliance with any of the requirements of a CPO are significant (Bateman, 2011; Nolan, 2017b, 2018a).
- **'The child has already been made subject to a CPO; therefore, the CSO has become redundant.'** In fact, this dual status may prove beneficial. Depending on the age of the child and length of any CPO imposed, if the CSO is terminated and the child subsequently breaches the CPO, or the Order ends before the child is 18, they may lose the support and services provided within the CHS, including the possibility that further offences might be considered by a Children's Hearing rather than the Court.
- **'The child is in secure care or custody.'** The length of time for which they are detained will vary depending on whether they have been remanded or sentenced. The length of detention may be short and the premature termination of a CSO would lead to a situation where the local authority no longer has a legal duty to provide a service and support to the child.
- **'The child will not be able to obtain supported accommodation if they are subject to a CSO.'** This should not be the case.
- **'The child wants to be treated as an adult, believes he/she has outgrown the CHS and emphasises that his/her views must be given consideration.'** While the child's views should always be considered, as per [UNCRC](#) and domestic legislation, their ability to manage risky situations during adolescence and to make informed decisions is likely to be as limited as that of children who are not "looked after", who rely on their parents and carers for support and advice for many years (McEwan, 2017). In making any assessment and recommendation, all responsible Corporate Parents must weigh up the child's desire to be treated as a "grown up" in the "adult



system" with the child's best interests and the significant negative consequences that may stem from their non-compliance with Court.

3.2 The Failure to Utilise Remittal to the Children's Hearings System

As detailed in [Sections 1 and 11](#), Scotland currently has legislative measures in place to enable children aged under 18 years old who appear in court to be remitted to the CHS for advice or disposal. The right of children to be diverted from formal judicial processes and the promotion of specialised systems for child accused is enshrined in the UNCRC. Contemporary data is not available, but what we do have indicates that, while significant progress has been made in relation to children who come into conflict with the law, there has been little change in the proportion of requests for advice from criminal courts to the CHS, and criminal proceedings where the outcome was to remit to a Children's Hearing remain extremely low (Dyer, 2016; Henderson, 2017)). On average, only 10% of those children aged 16 and 17 attending summary court are referred to the CHS from the Sheriff Court for advice and 6% for disposal between 2009/10 and 2013/14 (Dyer, 2016). In 2015/16, the court requested criminal advice from Children's Hearings for 109 young people, 49 of whom were remitted by courts to Hearings for disposal (Henderson & CYCJ, 2017). This was echoed by the (Independent Care Review, 2020) which concluded that the proportion of remitted cases remains low. Statistics show that 97 of the 14,178 children's hearings held in 2022/23 were to consider children remitted by a sheriff (SCRA, 2023).

It is imperative that all social workers are familiar with s.49 of the [Criminal Procedure \(Scotland\) Act 1995](#) which outlines in detail the circumstances in which a child found guilty of an offence in an adult court may have their case remitted back to a Children's Hearing for advice and/or disposal (see [Section 1 and 11](#); [SWS, 2019](#)). Moreover, all social workers should follow guidance as detailed in [Section 1](#), which clearly states:

"the report writer must **always** comment on the option of remittal back to the Children's Hearing, (where the subject of the report meets the criteria of being under 17 years and six months) **but** it is critical to be clear that remittal is being considered with a view to work being undertaken which will address both the needs and risks already identified as well as being tailored to the young person's stage of development." (Scottish Government, 2010, p. 52)

Research indicates that this did not always happen in practice and geographical variations were noted (Dyer, 2016; Henderson, 2017). The rules regarding remittal will change when Part 2 of the Children (Care and Justice) (Scotland) Act are commenced-this guidance will be updated to reflect those changes in due course.

4. Children in Transition to and from Secure Care and Custody, and Reintegrating into their Communities

4.1 Children's Rights

The [UNCRC](#) outlines the rights of every child, including those children who come into conflict with the law and are deprived of their liberty (for further information see [Section 3](#)). [The United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#) was passed by the Scottish Parliament in January 2024, enshrining the UNCRC in domestic law. The UNCRC specifies every child should be "fully prepared to live an individual life in



society" (United Nations Committee on the Rights of the Child, 1989, p. 2), with children having a right not to be punished in a cruel, inhumane or degrading way (Article 37); the detention or imprisonment of children must be lawful, and only used as a measure of last resort and for the shortest appropriate period of time. There must also be alternative services that can provide intensive supports in the community. The child's needs and age must be respected; this includes separating children from adults unless this is not in their best interests. They must have access to legal advice, advocacy and other assistance and be able to challenge their detention and have the right to family contact. They have the right to be treated in a manner that is consistent with their sense of dignity and worth, requiring the use of institutions that are specifically designed for children, that promote the child's reintegration and assume that the child will play a constructive role in society. These rights and obligations enshrine a focus on reintegration, support and throughcare (Article 40). In addition, services and supports should be made available to fulfil children's rights: to health and healthcare (Article 24); education (Article 28 and 29) and leisure (Article 31). Children who are the victims of neglect, exploitation, abuse, torture, or any other form of cruel, inhumane or degrading treatment, should be supported in their physical and psychological recovery, and social reintegration, in an environment which fosters the health, self-respect and dignity of the child, be this in the community, secure care or custody (Article 39). The services and facilities responsible for the care or protection of children must meet the standards established by competent authorities, particularly with regards to safety, health, the number and suitability of their staff, and competent supervision (Article 3).

The [Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\)](#) reinforce the above and include specific articles on detention pending trial (Article 13) and least possible use of institutionalisation (Article 19). Part 5 relates to institutional treatment: and under part 5, children deprived of their liberty should be provided with care, protection, and all necessary assistance - social, educational, vocational, psychological, medical and physical - with a view to assisting the child to play a constructive and productive role in society in the future. The importance of support for children returning to the community is also highlighted under Articles 28 and 29, with the commentary stating:

"The importance of care following a period of institutionalization should not be underestimated...This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society." (United Nations General Assembly, 1985, pp. 16-17)

While the language used above is extremely dated, the principles remain the same, and children in conflict with the law need support and care to re-integrate into their communities. Similarly, the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty \(The Havana Rules\)](#) further reiterate and extend the above principles. They make reference to the need for the rehabilitation; planning for the period of detention; the range of supports that should be made available; matters while the child is detained (such as regarding the use of restraint and complaints processes); and reintegration planning and support. The Havana Rules specify that all children should benefit from arrangements that aid their return to society, family life, education, or employment (thus promoting successful transitions). These include support with accommodation, employment, clothing, and finances, and services should begin this prior to release. The importance of community and family involvement is also stressed. They establish minimum standards for what children deprived of their liberty should expect from the services and staff, including in respect of: admission; the



environment and accommodation; education, work, and training; leisure time; healthcare; family contact; restraint; and complaints. These factors are also echoed in the [Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice](#).

This means that the provision of a support package for children during a period in which they're deprived of their liberty, and upon return to the community, is a legal obligation rather than an option. This should "ensure reintegration and look to get young people back to the place where they would have been if their liberty had not been deprived" (Lightowler, 2020, p. 20). In spite of this, the UNCRC (2019) in [General comment No. 24 on children's rights in the child justice system](#) reiterates that further steps should be taken to minimise children being deprived of their liberty and to ensure that their rights are upheld. To maintain contact with their family, children should be supported by placing them as close to their families' place of residence as possible; and contact should only be limited in exceptional circumstances. The environment, education and accommodation provided should support reintegration; health needs should be met; and contact with the wider community promoted. Moreover, it is recommended that the use of restraint should be minimised; but where a child presents as a danger to themselves or others, the incident must be recorded, evaluated, and reviewed - restraint must not be used for disciplinary purposes or involve the infliction of pain and should be the option of last resort. Solitary confinement or isolation should not be used for children, and any disciplinary measures should uphold the child's dignity. In their [concluding observations](#), the United Nations Committee on the Rights of the Child (2016) highlighted a range of areas in which the UK could do more to take forward the principles and provisions of the UNCRC. Recommendations included: the need for better monitoring and data collection on the number of children in detention; adoption of approaches to reduce the number of children in detention; ensuring restraint is only used to prevent harm to the child or others, and that it is not used for disciplinary purposes, and pain-inducing restraint is banned; establishing the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time; ensuring that detention is not used discriminatorily against certain groups of children (including children in care); and removing all children from solitary confinement (United Nations Committee on the Rights of the Child, 2007, 2016). Similar recommendations were made by the United Nations Human Rights Committee (2015) in its [Concluding Observations](#) and the United Nations Committee Against Torture

(2019). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/6&Lang=En The [Scottish Government's response](#) to the United Nations Committee's Concluding Observations highlights the range of mechanisms in place to support, monitor and regulate the effectiveness of child-accessible complaints processes, an area previously highlighted as requiring improvement.. The main areas of concern leading to recommendations requiring urgent measures related to "non-discrimination (para.33), abuse, neglect and sexual exploitation and abuse (para.33), children deprived of a family environment (Para.38), mental health (Para.43), asylum-seeking, refugee and migrant children (para.50) and administration of child justice (para.54)" United Nations, 2023, p.2). Issues relating to poverty; statutory guidance in the use of restraint; unexpected and avoidable deaths; the deprivation of liberty of vulnerable children, insufficient supports before and after alternative care; and the use of segregation and solitary confinement continue to feature.

These international conventions are consistent with Scotland's national practice model Getting It Right For Every Children ([GIRFEC](#)) and the propose Getting It Right For Everyone ([GIRFE](#)), [The Promise implementation plan](#) and the [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#). This underlines the crucial



importance of all practitioners understanding children's rights and supporting the adoption of a rights-based approach to reintegration and transitions.

4.2 Scotland's Approach to Children Deprived of their Liberty

Nowak (2019) in a 'Global Study on Children Deprived of their Liberty' found that child detention continues to be overused. Children in secure care and custody are some of our most vulnerable, disadvantaged and excluded children in society. These children will often have already faced multiple adverse experiences, including: abuse (sexual; physical and emotional); neglect (physical and emotional); household dysfunction (familial substance abuse; familial mental illness; domestic violence in the home; incarceration of a household member); moves of home and school; community violence; and associated trauma (Gough, 2016, 2017; Johnson, 2017; Moodie & Gough, 2017; Smith, Dyer, & Connelly, 2014; Youth Justice Improvement Board, 2017). These pre-existing vulnerabilities and disadvantage can often be exacerbated for the child by the additional experience of being deprived of their liberty (Armstrong & McGhee, 2019; End Child Imprisonment, 2019; N Vaswani & Paul, 2019). It is well established that depriving a child of their liberty, even for very brief periods, impacts on their wellbeing, in both the short and longer-term, with children experiencing "...fear, isolation, trauma and harm in addition to discrimination, stigma and disempowerment." (Mendez, 2015; Nowak, 2019, p. 8). While children are deprived of their liberty they are at greater risk: of violence; of having their rights and opportunities violated and deprived; of being traumatised /retraumatised; and of experiencing institutional or context-specific trauma (Armstrong & McGhee, 2019; End Child Imprisonment, 2019; Lightowler, 2020; Nowak, 2019; N Vaswani & Paul, 2019). It is also recognised that the removal of children from their families and communities to secure care or custody interferes with processes and factors generally thought to promote desistance, including developmental processes, positive links with the community, family ties, employment and housing (Rutherford, 2002) (see [Section 9](#) for more on desistance). This has led Nowak (2019, p. 23) to conclude that "deprivation of liberty constitutes a form of structural violence against children" and the treatment of children during these times may amount to torture. Moreover, the transitions to and from secure care or custody are major, often traumatic, life events for children, which in addition to the negative effects this experience can bring, may render children susceptible to a range of further negative outcomes on return to the community (Bateman, Hazel, & Wright, 2013; Hollingsworth, 2013).

As part of the WSA, alternatives to secure care and custody should be utilised wherever possible and appropriate, although there are issues regarding the consistent availability of high-quality alternatives nationally (Moodie & Gough, 2017; Scottish Government, 2011a, 2011c). Although secure care and custody both deprive children of their liberty, there are a number of differences between the two environments and for those children whose needs and risks cannot be managed in the community, secure care should be utilised instead of custody (Gough, 2016). This is because secure care is first and foremost a form of care, not punishment, which is deemed to provide a more age-appropriate service, offering relational and therapeutic, trauma- and attachment-informed support, a far greater ratio of staff to children, and a more child-centred environment and design (Gough, 2016; Lightowler, Orr, & Vaswani, 2014). In addition, although small scale, research by Nolan et al. (2017) shows that children with experience of both secure care and custody advised that while they were in secure care they benefited from increased freedoms and material provisions, and better contact and links with family, education provision and preparation for leaving, stating that they preferred secure care to custody.



Secure care centres in Scotland are registered, regulated and inspected by the regulatory bodies: the Care Inspectorate and Education Scotland (Gough & Lightowler, 2018). The workforce must be registered and qualified to provide care and education for children in secure care (Gough, 2016). Registration results in staff having to meet fitness to practice standards and qualification requirements (Scottish Social Services Council, 2022). There are differences between settings regarding the use of restrictive practices, such as separation and segregation, searching and restraint. Scottish Prison Service (SPS) introduced CR2 training with child, young people and women populations, this is a non-pain compliant programme for dealing with people in distress, and this practice is being extended to the wider prison population. Previous practices, around which there is a lack of publicly available data on usage, could be seen as a violation of multiple children's rights (Scottish Government, 2017). In addition, the [Secure Care Pathway and Standards](#) has set out 44 standards of practice that secure care centres utilise, in partnership with Local Authorities (LAs) and other agencies, to promote children's care and wellbeing as part of a participatory and rights-respecting approach. The Standards set out what children can expect before, during and after their experience in secure care.

When a child is deprived of their liberty, a period of stability is essential, with predictability supporting the child's care and wellbeing needs. Encouraging healthy development to promote both positive identity formation and the opportunity to live a fulfilling life in the community is important. To achieve this it is crucial that staff establish supportive and respectful relational practice that enables children to feel safe and secure, so that they develop trust, self-awareness, agency and regard for themselves and others (End Child Imprisonment, 2019). This should take place within therapeutic, and trauma-informed caring relationships, where children's needs are met and their rights upheld (Independent Care Review, 2020). Some children in secure care stated that this type of placement had saved their lives and being in custody had prevented more serious offences from being committed, or harm being caused (Gough, 2017; Nolan et al., 2017; N Vaswani, Paul, & Papadodimitraki, 2016). N Vaswani and Paul (2019) concluded that even with the best available training and interventions, safe and trusting relationships are difficult to build in prisons due to the purpose of prison, the inbuilt power imbalances, the restricted regime, a climate of fear, building design, and a lack of in-depth trauma related support. Despite this, relationships are still formed within this environment (Whitelaw & Gibson, 2023). The skills and qualifications for staff mean that a truly trauma-informed approach in such environments however is challenging. While the intention under WSA was that secure care should be utilised and actively considered as a possible place of detention rather than custody, it has taken legislation to ensure that this becomes customary practice and as detailed above, by the end of 2024 custody should no longer be an option for Scotland's children. Scottish Government figures showed that in recent years there had been between five and ten times the number of 16-to-18 year olds in HMP&YOI Polmont on sentence or remand than in secure care(Gough & Lightowler, 2018; Nolan, 2020).

Scotland's approaches to children deprived of their liberty gained unprecedented attention, with major reviews and inspections suggesting an alternative approach was needed ([Justice Committee, 2019](#); [Children and Young People's Centre for Justice, 2022](#); HM Inspectorate of Prisons for Scotland (HMIPS), [2019b](#), [2023](#)). While the 2019 inspection by HM Inspectorate of Prisons for Scotland (2019b) of HMP&YOI Polmont identified a range of positive factors - including: relationships between staff and children/young people; the range of evidence-based opportunities available; and partnerships with the community, it concluded that the establishment has the architecture and staffing appropriate to an adult prison and best practice in child-centred thinking requires a different approach, closer to that used within



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secure care centres. The most recent report by HMIPS (2023, p.6) has gone further and states that they:

“...would like to see expedited the removal to secure care of the very small number of children still held in HMP YOI Polmont. Despite the significant cultural shift observed, HMIPS believes that children should not be held in prison while more therapeutic alternatives are available in Scotland.”

Similarly, the Scottish Parliament Justice Committee (2019, p. 37) inquiry into secure care and prison places for children in Scotland recommended that:

“...whenever our judicial system decides to take away a child or young person's liberty then it is incumbent that they are provided with the best possible care and services in order to keep them safe, meet their needs and aid their rehabilitation back into the community...”

The Independent Care Review (2020, p. 91) concluded that “Young Offenders Institutions are not appropriate places for children and only serve to perpetuate the pain that many children have experienced. There are times where it is right for children to have their liberty restricted, but that must only be done when other options have been fully explored and for the shortest time possible within small, secure, safe, trauma-informed environments that uphold the totality of their rights”. They also stated that Scotland’s response to children needing secure care must change, resulting in a number of recommendations being made that aligned with those of the Scottish Parliament Justice Committee (2019). There was sufficient momentum to change our approach to children deprived of their liberty as is reflected in the passing of the [Children \(Care and Justice\) \(Scotland\) Act](#). It is also clear that for strategies to be effective, a multi-agency and multi-disciplinary approach is necessary (McAra & McVie, 2022).

4.3. Throughcare Support

This section details the key components of throughcare support for children who are currently placed within secure care or custody. Whilst by the end of 2024 the use of custody for children should have ended, the key components of throughcare support and information subsequently contained in this section remain applicable for children in and leaving secure care. Throughcare, sometimes called resettlement, refers to a range of supports provided by social work and other services (both from within and outside the justice system, statutory, and third sector) to children entering secure care or custody and their families. This support extends from the point of sentence or remand to secure care or custody, and their subsequent return and reintegration to the community (Malloch, 2013a; Scottish Government, 2011c). The Youth Justice Board (2018) in England and Wales concluded that the aim of resettlement should be to support the child's identity shift from one that is pro-offending to a position of being pro-social. While this builds on the research by Hazel, Goodfellow, Liddle, Bateman, and Pitts (2017) who advocated that effective and sustained resettlement or reintegration involves a journey of shifting the young person's perception of themselves from being in conflict with the law to one that promotes a positive contribution to society and a new narrative for how they relate to others, the picture is more complex than this as multiple factors impact on a child or young person both being deprived of their liberty and engaging in behaviour that brings them to the attention of authorities (Whitelaw and Gibson, 2023). Relational and appropriate support is recognised as the foundation for achieving improved outcomes and positive futures, including reducing the likelihood of



reoffending and ultimately supporting desistance (Youth Justice Board, 2018). The second aim of throughcare support is to aid the transition for young people returning and reintegrating to their community from secure care or custody. It must be noted however that the majority of children placed within secure care present a risk to themselves rather than others (SCRA, 2021).

Throughcare is distinct from Continuing Care and Aftercare for care leavers (as defined in the [Children and Young People \(Scotland\) Act 2014](#)) but for a variety of reasons it is arguably even more critical for children and young people who have been deprived of their liberty. Many children in secure care and custody will also have continuing care and aftercare entitlements-when the provisions of the Children (Care and Justice) (Scotland) Act are enacted all children will be remanded or sentenced to secure care and will be treated as being “looked after”, with resulting entitlements including aftercare. The [Care Inspectorate](#) (2022) have published a guide for services, while [Dennell, McGhee and Porter](#) (2022) have identified barriers to continuing care implementation. Cameron, Broderick, and Carnie (2017) found three fifths of children sampled in the Scottish Prison Services Prisoner Survey in 2017 reported being in care at the age of 16 years old; this figure remained consistent in the follow up survey in 2019 (Broderick & Carnie, 2019). Day, Bateman, and Pitts (2020) highlighted that for care experienced children, deprivation of liberty and resettlement is more disruptive than it is for their non-looked after peers. The focus on survival - and strategies to ensure this such as self-reliance – is often driven by experience, and a sense that others cannot be relied upon; this leads these children to focus more on the here and now, rather than the future. This is a key aim of resettlement support, and in promoting desistance. It has been echoed by Baker (as cited by Fitzpatrick, Hunter, Staines, and Shaw (2019)), who stated care experienced children felt that they had no space to get things wrong and lacked wider family support networks to fall back on. It is important that workers understand and can communicate entitlements to children who have looked after status. Research has shown children are often unaware of, or do not identify with, their care leaver status and do not know what is available to them (Nolan et al., 2017; Scottish Care Leavers Covenant, 2015). In seeking to address this, a [protocol for the identification of looked after young people and care leavers by justice agencies](#) was developed, and while all practitioners should be familiar with, and utilise this, care experience is not always identified. It is crucial that all practitioners can support children to access what they are entitled to, advocating on their behalf to ensure corporate parenting duties are fulfilled (Scottish Care Leavers Covenant, 2015). This includes the ability, under the [Children & Young People \(Scotland\) Act 2014](#), to request an assessment of need (Part 10, Aftercare), which local authorities **must** undertake; if eligible needs are identified, they **must** ensure that these needs are met until the young person’s 26th birthday. This may be achieved directly or in collaboration with other named corporate parents or other agencies.

Except for the work of [Beyond Youth Custody](#), research specifically focused on the throughcare needs of, and effective practice with, children aged under 18 is limited, the Beyond Youth Justice Custody partnership concluded in 2018. The Beyond Youth Custody programme produced a significant body of evidence about effective resettlement for children leaving custody and this has continued to be developed by the Youth Justice Board (2018) in England and Wales, who made resettlement and transitions between services a strategic priority (Youth Justice Board in England and Wales, 2018). The following sections will draw upon the programme’s [Framework for Effective Resettlement and the Scottish Government’s rights-respecting approach to justice which supports the promotion of WSA and keeping children out of the criminal justice system](#) ([Scottish Government, 2021](#)). This will be explored

within a changing context and increasing understanding of what children and young people need from those who support them.

4.4 The Role of Services

To achieve the aims of throughcare, services need to provide two types of support: personal and structural support. While previous guidance focused on individual change and exploration of identity we have an “improved understanding of children in contact with the youth justice system (*which*) has revealed that increasingly they have multiple needs and vulnerabilities” ([Youth Justice Board for England and Wales](#), 2021, p.5), and our approach needs to prioritise their interests, needs and potential while being developmentally informed and cognisant of structural inequalities and barriers rather than focussing on individual change.

Personal support

Personal support relates to individualised help for children to see the way forward towards a more positive identity and future, and the pathways that can help to achieve this (Hazel et al., 2017). This need to help conceptualise an alternative future adulthood is particularly important for children, for whom the ability to have hopeful conversations and build hope has been absent (Miller and Baxter (2019). This involves helping to build children’s self-belief and self-esteem, and promoting and reinforcing positive change (Bateman & Hazel, 2013; Rajah, Kramer, & Sung, 2014). Personal support begins with helping children to: identify their current strengths and future goals; understand their previous experiences and barriers; and establish supportive, caring, and hopeful relationships. Staff should identify, plan and facilitate activities that will help these goals to be achieved, and support and sustain change (Hazel et al., 2017).

Personal support should also involve preparation for transitions into and out of custody and secure care, as these can be stressful, overwhelming and disorientating experiences for children, and they have the potential to be traumatic or retraumatising (N Vaswani & Paul, 2019). Such transitions require the readjustment to new structures and routines and, becoming familiar with a new environment and renegotiating relationships, to the extent that:

“...children’s related experiences [in the weeks post-release] are consistent with symptoms of adjustment disorders which carry increased risks of long-term psychiatric illnesses and suicide” (Bateman & Hazel, 2015, p. 3).

It is therefore unsurprising that the period immediately following release can be associated with increased risk of breach, reoffending and other negative outcomes, with Bateman and Hazel (2015, p. 7) concluding that:

“the period immediately after release has been identified as a window of opportunity during which (*children and* young people may be committed to giving up offending (Bateman et al., 2013). The shock of leaving custody, however, if not addressed, might tend to undermine that commitment, thereby reducing the prospects for desistance.”

It is therefore crucial that:

- Children are prepared early for a return to their community, how this may feel and difficulties that may be faced. Familiarity with the Secure Care Pathway and



Standards is relevant for children leaving secure care. Periods of time outwith the secure care centre or temporary release may be beneficial.

- We listen to children's assessment of their readiness for return to the community and how this can be supported, requiring the embedding of children and their views in these processes and the provision of choice for future plans including future living arrangements (Scottish Government, 2020).
- Careful planning is undertaken, recognising that returning to the community may have both negative and positive associations for the child, and complexities that can be associated with this.
- Children know as early as possible where they will live when they move on, support is established pre moving on, they understand all plans and contact arrangements.
- Enhanced emotional and practical support is provided at the point of transitions.
- Children are given time and flexibility in this adjustment period and a responsive, structured timetable and activities for the initial period and beyond is considered, as are contingency plans and strategies to promote the plan's progress.
- Supports are provided not just in the initial days and weeks but in the longer-term based on the needs of the child, and plans move at their pace.
- Supports are based on positive, hopeful, empowering and well-developed relationships (Bateman & Hazel, 2015; Gough, 2017; Malloch, 2013a; Scottish Government, 2020).

Structural support

Structural support facilitates the changes needed to enable the child to follow their chosen pathway and to address barriers to change (Hazel et al., 2017). Structural support requires: the coordination of planning and services, both within secure care and custody and the community; continuity of support including following return to the community; flexible and timely support and exit planning (Hazel et al., 2017). Areas often requiring structural support include those which are recognised as underpinning effective reintegration and contributing to desistance - namely accommodation, education, training and employment, health and substance misuse, involvement of families and financial stability. These are also factors children have highlighted when asked about their wishes for the future and identified as components of hope - a home and housing; a job, education or skills; health and self-esteem; a family and trusting relationships; and some sense of stability, security and normality (Miller & Baxter, 2019). While support in each of these areas is important, they should not become "ends in themselves"; it's critical that a joined-up, holistic, forward looking and strengths-based approach is adopted (Hazel et al., 2017). The following information highlights the importance of attention being devoted to each of these areas and identifies points for their consideration in practice.

Accommodation

Housing problems may pre-date and be exacerbated by, or result from, entry to secure care or custody, with accommodation consistently identified as a key concern for children moving on from where they have lived (Scottish Government, 2015). In the Talking Hope project (Miller & Baxter, 2019) children and staff in secure care expressed concern about the identification of suitable placements to move on to, a lack of choice and control, as well as time to develop relationships with new supports in place. Similarly, the (Care Inspectorate, 2020) review into the deaths of looked after children, where children were aged between 16 and 18 and deemed to be at high risk of self-harming and suicide, showed there were limited options available for their return to the community; this meant that some returned to

reside with family members or into supported accommodation arrangements which carried a high likelihood of breakdown, subsequent homelessness and further trauma-related harm. This was echoed within the Nolan, Whitelaw, and Gibson (2023) 'Journey of Implementation' report and in research by Day et al. (2020, p. 5) where care experienced children shared concerns in which living arrangements dominated, meaning other considerations, including how they might construct a positive future for themselves or utilise the support that was being offered, became secondary. In the 2017 Scottish Prison Service (SPS) prisoner survey, (Cameron et al., 2017) found that 41% of children reported losing their tenancy or accommodation when they entered custody and 29% reported not knowing where they would live on release. The Youth Justice Improvement Board (2017) highlighted that 66% of children in HMP&YOI Polmont stated it was very important to receive support to find accommodation, the second most important factor behind gaining help to find employment.

While loss of accommodation and homelessness are the most obvious concerns, Shelter Scotland (2015) and the Scottish Government (2015) have highlighted wider accommodation-related issues such as: loss of possessions; accrual of arrears; shortage of appropriate, secure and supported accommodation on release; and lack of skills in managing a tenancy. There is also evidence that accommodation is a particular issue for women, with more than half losing their tenancy when they entered prison (Broderick & Carnie, 2018; Scottish Government, 2012a). The implications that result from housing issues are wider and intersect with a range of the other areas impacting on effective reintegration. The Howard League for Penal Reform (2020, p. 2) states: "a roof over a child's head is not sufficient to reintegrate a child into the community, but an address is essential to enable planning to meet a child's needs for education, leisure, health and other important networks of support". It is well established that children who experience accommodation difficulties on release are significantly more likely to reoffend than those who have stable accommodation (Bateman et al., 2013; Malloch, 2013a; Scottish Government, 2015; Shelter Scotland, 2015).

At a practice level, housing-related service provision during the throughcare process is nationally inconsistent. For people in custody, SHORE housing standards have been developed to improve this situation (Scottish Government, 2015; Scottish Prison Service, 2017). The aim should be that every child leaving secure care or custody has suitable accommodation that is identified prior to their return to the community, with the Secure Care Pathway and Standards (2020) detailing the importance of choice, visiting, building relationships and full involvement in planning for this move (Gough, 2017; Scottish Prison Service, 2017). In addition, supports should be provided to children, both while in secure care/custody and on release, from a range of providers including public, third sector and specialist housing services. These services should include:

- All those involved with the child proactively enquiring about their housing situation and providing informed housing advice and support
- Identifying housing needs at the earliest opportunity
- Informing appropriate agencies (e.g. landlord, DWP, mortgage provider) in the event of a change of circumstances when a child enters custody. Where possible, the child should be supported to maintain their accommodation.
- Securing the property and/or retrieving and storing possessions
- Accessing support from specialist services, such as Shelter Scotland, who can provide specialist advice and guidance
- Making accommodation-related arrangements for dependents and potentially transferring tenancies to other family members/relevant persons
- Dealing with abandonment or eviction proceedings



- Support to deal with historical housing issues
- Contacting and supporting relatives who may provide accommodation on release
- Identifying and accessing safe, suitable, and sustainable accommodation for return to the community by providing information about processes and starting early any necessary assessments and applications (homeless legislation enables an application to be made eight weeks prior to leaving custody; if the local authority fails to accept or act on this they are also failing to uphold that individual's legislative rights - see SHORE housing standards for more information). There are examples of how this has been creatively supported and enabled, for instance, through the use of virtual visits to show potential tenancies so that they are secured prior to release.
- Advocating on the child's behalf; making arrangements for moving into accommodation; establishing support and coordinating appointments for their return to the community.
- Support to develop independent living skills and in tenancy management, recognising that the child may not have previously lived independently.
- Responding promptly to changes in housing circumstances.
- Fulfilling corporate parenting responsibilities towards looked after children and care leavers, recognising care experienced children are at greater risk of homelessness (Dore, 2015; Nolan, 2016b; Scottish Government, 2015, 2019c; Scottish Prison Service, 2017; Shelter Scotland, 2015; The Robertson Trust, 2017).

Education, training and employment

Disengagement from education and poor educational experiences are very common for children in secure care and custody, with persistent truancy, school exclusion and a lack of attainment strongly associated with committing offences (Scottish Government, 2011b; Youth Justice Improvement Board, 2016). Attainment levels and positive post-school destinations for looked after children have continued to improve over the past decade, although they still lag behind when compared with all pupils (Scottish Government, 2019a). 2020 - 21 data indicates that looked after children continue to leave school earlier (37% left school at S4 or earlier compared to 11% of their peers), obtain lower qualification levels (only 2% will attain at level SCQF 7 compared to 24% of all school leavers), and are less likely to go on to positive destinations (although 71% were found to be in positive follow up destinations, this was a drop from 75% the previous year) (Scottish Government, 2022a). Research also indicates almost half of young men in custody reported experience of school exclusion - for many this began from primary school - but more than 70% report that they enjoyed school some or all of the time (Smith et al., 2014; Youth Justice Improvement Board, 2017). However, further research has shown that care leavers are likely to achieve academically later in life (Sacker, Murray, Lacey, & Maughan, 2021; Ward & Stein, 2021).

It is important that throughcare support pays attention to the disadvantage that children are likely to have experienced educationally; the time children spend in secure care or custody must be utilised to support and enhance learning (Independent Care Review, 2020). These experiences, when coupled with: the stigma of having a criminal record; the requirement to disclose unspent and certain spent convictions (as well as the complexities surrounding disclosure); and structural conditions which may impact more heavily on those with convictions, render the accessing of education, training and employment for those leaving secure care and custody more complex (Malloch, 2013a; McGuinness, McNeill, & Armstrong, 2013; Nolan, 2018b; Nugent & Schinkel, 2016). [The Disclosure Scotland Act 2020](#) and subsequent implementation planning and guidance may further identify some of



these barriers. A lack of employment and issues in accessing education on return to the community have been identified as key concerns. The Youth Justice Improvement Board (2017) reports that 72% of children spoken to in HMP&YOI Polmont stated that it was very important to receive support to find employment.

Education, training, and employment is generally associated with reduced involvement in offending and increased desistance. Benefits include: establishing financial stability; reducing unstructured time; providing a daily routine and positive social relationships; having a positive impact on identity and goals; the accumulation of human and social capital; and promoting self-esteem, purpose, hope and direction (Kendrick et al., 2008; Piacentini, Weaver, & Jardine, 2018). It is, however, noted that the nature and quality of the employment is a factor here; this will interact with the individual's goals, priorities and concerns and influence their self-identity (Weaver, 2018). Education, training, and employment opportunities should not be the sole focus of reintegration support, but this support should include:

- Ensuring information about any additional support needs, learning styles, and what can help is shared when a child enters secure care or custody (see [Scottish Transitions Forum \(2017\)](#) for the principles of good transitions for children with additional support needs).
- The provision of creative, holistic, motivational, and individually tailored approaches; these should support learning, and encourage children to utilise education, training and employability support and opportunities while in secure care and custody.
- Offering a wide range of high quality educational, vocational, and community-based experiences and qualifications; children should be supported to attain and achieve at the highest standard, with help to develop their interests, skills, strengths and hopes for the future.
- Taking training, the pursuit of qualifications, timings of exams etc. into account in determining the most appropriate time for transitions; this should continue upon entrance to/return from secure care or custody, where possible. For this to be possible within secure care, a smooth handover of information, and changes to the SQA exam process, are needed.
- Providing good quality information and support regarding the disclosure of criminal records including the periods of disclosure, what needs to be disclosed, how this can be managed etc. ([see Scotland Works for You](#)). This may include helping the child to access specialist support and ensuring that everyone is clear about the impact of accepting grounds and offences on disclosure checks.
- Making efforts to have education, training and employment in place pre-release and recognising the need for providing the right opportunity/course/job, at the right time, with appropriate, ongoing, coordinated, flexible and wraparound support to sustain this, recognising that the journey to employment is often less linear for children in conflict with the law (Bateman et al., 2013; Gough & Lightowler, 2018; Smith et al., 2014; Who cares? Scotland, 2014; Youth Justice Improvement Board, 2019).

Health and substance misuse

Children involved in serious and persistent offending may have additional health and wellbeing needs, including in relation to their mental and emotional health (Gough, 2016; Scottish Parliament Justice Committee, 2019). Research in one Scottish secure care centre highlighted high levels of post-traumatic stress (65%), depression (65%), and dissociation (18%) in the children who participated (Barron & Mitchell, 2018). Similarly, in the [2018](#)



census of Scottish children in secure care in Scotland, 35% of children had attempted suicide in the year prior to admission, with 53% experiencing suicidal ideation; 22% had received a trauma diagnosis over that timeframe; staff within secure care noted that for 24% of children there was a suspected, undiagnosed mental health concern, but only 36% of children had received support from the NHS's Child and Adolescent Mental Health Service (CAMHS) in the year prior to admission (Scottish Parliament Justice Committee, 2019). In addition, Armstrong and McGhee (2019) highlighted that children in custody had higher rates of suicide and higher rates of factors associated with self-harm and suicide, including: depression; anxiety disorders; psychotic symptoms; and attention deficit hyperactivity disorder (ADHD). Children in custody were found to be more vulnerable than those in the community. Girls and young women in secure care and custody are particularly likely to suffer from mental health issues, self-harm, suicidal behaviour, and trauma (Bateman & Hazel, 2014; Malloch, 2013a) (for more information, see Sections 5 and 8). Cesaroni, Maycock and Vaswani (2023) advocate for the need for gender responsive approaches to trauma for young men who have been deprived of their liberty, that explores and promotes an understanding of the masculine identify and its interaction with seeking help and recovery from trauma.

The Scottish Government's Mental Health Strategy 2017-2027 is committed to increasing support for the mental health needs of children involved in offending ([Section 8](#)). In 2020, The Scottish Youth Parliament and a group of young volunteers developed a range of resources to support mental health transitions from children's to adult services (See: [Transition Care Plans: moving from CAMHS to adult mental health services](#)). In addition, many children in this population experience physical health needs. These include: speech, language and communication issues (with 75% - 90% of children in custody estimated to have speech, language and communication needs); head and brain injury; learning disabilities. Kent and Williams (2021, p. 4) describe traumatic brain injury as "a 'silent epidemic' among people in contact with the law" and for children from low socio-economic households and adolescent boys there are increased risks. Traumatic Brain Injury can result in "cognition, memory, social communication, and self-regulation of emotions and behaviours" issues which can be exacerbated by other neurodevelopmental difficulties (Moore, foreword, p.3 in Kent and Williams, 2021). Many children also have substance misuse problems; these often develop as a consequence of self-medicating in order to manage the impact of traumatic experiences in their lives (Care Inspectorate, 2020; McEwan, 2017; Nolan, 2018c). Often these issues have not been identified, assessed or addressed and therefore no support has been given to these children; instead, they are labelled as having "challenging behaviour" (Broderick & Carnie, 2018; McEwan, 2017; Moodie & Gough, 2017; Nina Vaswani, 2014) ([see Section 6](#)).

The period where a child is in secure care or custody is a unique opportunity for these needs to be addressed, providing benefits for the child, their family, the wider community and the NHS (CYCJ/IRISS, 2019; Nolan, 2017b). While improvements have been evident, concerns continue to be raised that the health needs of children in custody are not being fully met, and their right to equal access to health provision and services is not being upheld (HM Inspectorate of Prisons for Scotland, 2019a; Lightowler, 2020; Scottish Parliament Justice Committee, 2019). The trauma of returning to the community may exacerbate these difficulties, which can present additional challenges to successful reintegration and impact on other pathways such as sustaining accommodation and employment, education or training; therefore, the need for health support at times of transition is high (British Medical Association, 2014).



This support should include:

- Children having their health needs assessed on arrival at secure care or custody, with any relevant information shared by community-based staff, and needs met throughout.
- Timely access to universal, targeted and specialist assessment, services and treatment as required.
- The provision of broad, inclusive, interactive, quality health education that includes mental and emotional wellbeing; physical activity; nutrition; cooking; dental health; sexual health; relationships; consent; medication; substances; feelings; sleep; confidence and stigma which may have been missed through non-school attendance.
- Recognising health and wellbeing as part of holistic intervention for children, requiring a broader whole establishment/environment approach to health and wellbeing.
- Prior to a return to the community, making any necessary referrals/registration/appointments to community-based services, pre-empting potential issues and developing contingency plans where possible, promoting a continuity of care. This should include GP and dental registration, which is an entitlement even for those without a permanent address. If an individual is trying to register with a GP they can use a care of address, such as a friend or relative's address, or that of the GP Practice itself.
- All staff and organisations should be practicing in a trauma-informed way. This requires an understanding of the prevalence and impact of trauma for children involved in offending behaviour, and a recognition of revised policies and practice. Providing trauma-informed care in custodial settings can be challenging (SAMHSA, as cited by N Vaswani and Paul (2019), but the aim should be to prevent retraumatisation and healing from trauma by the service or systems.
- Ensuring the whole workforce has robust baseline and ongoing training on trauma, adversity and mental health, attachment and resilience, child development and the impact on children. In addition, there is a need to support the workforce in managing the often-challenging work of supporting children with a complex array of needs. For further guidance and resources see the [NHS Education for Scotland National Trauma Training Programme](#).
- Staff being alert to the potential for undiagnosed health issues with children they are working with and the impact this may have on their understanding of processes, and compliance with the expectations placed on them. Staff should tailor their approaches to most effectively support and meet the child's needs ([see Section 8](#)) (Bateman & Hazel, 2014; HM Inspectorate of Prisons for Scotland, 2019b; McClafferty, 2016; Murphy, 2018; Nolan, 2017a, 2017b; Scottish Government, 2011b; N Vaswani & Paul, 2019; Youth Justice Improvement Board, 2019).



Involvement of families

As highlighted in the literature reviewed by Weaver and Nolan (2015), the role of the family in supporting reintegration and reducing reoffending is well established and has been illustrated in a variety of policy documents, including the National Parenting Strategy:

“Family involvement can make a huge difference, both to the ease of transition and to building on any gains made while in secure care or custody.” (Scottish Government, 2012b:42)

In addition, albeit broader than family contact HM Inspectorate of Prisons for Scotland (2019b) highlighted the profoundly damaging impact of social isolation for children and young people in custody (e.g., segregation, limited time outwith a cell, or being separated from supportive peers and family). A recent report completed by HMIPS (2023, p.5) highlighted that “the inspection team saw a commendable record of success in reducing the number of young men needing to be held in the Separation and Reintegration Unit to a minimum, and in supporting their reintegration and management plans”. However, the right to one hour’s exercise outside was being breached and not in keeping with the Mandela Rules. Miller and Gillon (2023) highlight the ongoing impact of the pandemic which was known to have exacerbated exclusion and poverty increasing the vulnerabilities of many children. In addition, it has been seen to leave “children in locked settings facing conditions akin to solitary confinement and put pressures and delays on services and systems” (Miller and Gillon, 2023, p. 8). Furthermore, this will have implications for family involvement.

Family contact and relationships were identified most consistently by children as helping them cope with the distress of institutionalisation, preventing suicidal and self-harming behaviours, and promoting mental wellbeing. Recommendations for key areas for improvement included the need to minimise isolation, particularly for those on remand and, in the early weeks of custody, the need to support engagement with family and friends, and enable access to belongings (Armstrong & McGhee, 2019). Similarly, children in secure care have repeatedly identified the importance of relationships with family and friends, while recognising these relationships can be complex (Gough, 2017; Miller & Baxter, 2019). The removal of a child can impact on their family's ability to maintain contact while the child is in secure care or custody, and their ability to provide effective support to him/her following the child's return to the community (Gough, 2017; Weaver & Nolan, 2015); an increased emphasis on family support may have contributed to improvements in this area (Whitelaw & Gibson, 2023). However, children leaving secure care and custody may be estranged from family members; indeed, their arrival at secure care/custody can break relationships, or they may find that contact is not productive or beneficial to them (Gough, 2017; Hazel et al., 2016; Scottish Government, 2015). For girls this can be even more problematic with the family context, conflict, and poor family relationships often a precursor to offending; issues of sporadic and infrequent family contact, and isolation upon return to the community are common (Bateman & Hazel, 2014; Burman & Imlah, 2012). However, children have a right to family contact unless this is not in their best interests; the importance of involving families in assessment, planning and information sharing for children - and the necessity to take parents' views into account - is enshrined in legislation. Furthermore, only 9% of children responding to the 2017 Prisoner Survey (Cameron et al., 2017) reported no regular contact with family and friends. Within the sample of Smith et al. (2014, p. 5) 34% of the boys in custody reported their mothers were their main source of support, 20% had support from both parents, 6% from fathers only, and 6% from a wider network of relatives; this led the



authors to conclude that the wider needs of family members should also be taken into account.

Family support can also be important in achieving and sustaining desistance when children need to separate from previous associates, which can result in feelings of isolation and loneliness (Nugent & Schinkel, 2016). In a Youth Justice Improvement Board (2017) paper Cesaroni found that, for 61% of the children in the study in HMP&YOI Polmont, support to build relationships with their family was very important. It was also recognised that family members can have a unique position in fulfilling a number of roles associated with effective throughcare support. They: provide continuity and consistency (being a familiar support in times of uncertainty and after formal support has ended); offer individualised, wide-ranging support based on their knowledge and understanding of the child; promote engagement with plans and services; and are a vital part of partnership working (Hazel et al., 2016). A range of family support services are available to children, young people and their families who come into contact with secure care centres and custody services including (but not limited to) service specific family support, [Keeping Families Together](#) and [Families Outside](#).

In practice, working with families should involve:

- The adoption of a whole family approach that recognises each family is unique; family members' views should be considered and their needs and strengths should be assessed and supported by all of the professionals involved. The principles of intensive whole family support as identified by the Independent Care Review (2020) should be useful here.
- Preparing the child and family members for going into secure care or custody, providing as much information as possible and involving and influencing discussions about the potential restriction of liberty, as well as the reasons for this.
- Engaging and involving families, as appropriate, early on and throughout throughcare planning and support, and motivating family members to participate in this.
- Promoting familial involvement in interventions. Family work should be a feature of the Child's Plan when the child is subject to a CSO; is entitled to aftercare support; intends to reside with their family on return to the community; or will be released on licence.
- Promoting, supporting, and seeking to address barriers to family contact where appropriate. This may include the need to undertake reparative work both between the child and their family, as well as with professionals, and being ready to respond in the event of family crises or relationship breakdowns.
- Including children in decisions about contact and how this happens.
- Providing support to families, including brothers and sisters, in their own right, for example through the provision of advice, information, practical assistance and emotional support.
- Support for children in secure care or custody who are parents, understanding the range of potential experiences and impacts of parental imprisonment.
- Fulfilling corporate parenting duties where the local authority remains, or has been, the child's parent (Criminal Justice Family Support Network, 2015; Gough, 2017; Hazel et al., 2016; Malloch, 2013b; Scottish Prison Service, 2017; Weaver & Nolan, 2015).

Financial stability



McAra and McVie (2022) highlight within their research of individuals in contact with justice services that participants identified that a lack of employment, educational attainment, and financial support contributed to their capacity to desist from offending. Earlier research by the Youth Justice Board (2012) found that 54% of children reported concerns about having insufficient income to survive on release, with the provision of financial support and legitimate income amongst the most common responses as to what could be done to support children leaving custody. In Duncalf (2010) research, financial issues were cited as one of the top five issues affecting care leavers. Where children are concerned about their ability to meet their basic needs, their ability to engage with other supports will undoubtedly be limited. The Scottish Government (2015) has highlighted issues such as housing benefit rules, delays in payments following liberation, and sanctions as areas of difficulty for people leaving custody. All of these underline the importance of support in this area for children as part of throughcare support. This should include:

- Providing high quality information on benefit entitlement and arranging appointments with organisations such as DWP and Job Centre Plus to ensure financial arrangements are made prior to release. Where delays in financial payments are likely, consideration should be given to how basic needs will be met.
- Developing money management skills
- Applying to the Scottish Welfare Fund, pre-release, for example for clothing or household goods
- Arranging access to forms of identification and bank accounts pre-release
- Local authorities and other corporate parents taking positive and proactive action to ensure that children leaving secure care or custody and who qualify for aftercare support, under Part 10 of the 2014 Act, are aware of their entitlements to support, and are able to access this (Morrison, 2017; Scottish Government, 2015).

4.5 Characteristics of Throughcare Support

A number of characteristics have been identified as crucial for throughcare support to be effective, and sustain the gains made while the child has been in secure care or custody. Hazel et al. (2017) state that the likelihood of effectiveness of individual components and overall support can be judged on whether it demonstrates five characteristics, each of which will be discussed in turn:

- **Constructive** focused on identity shift, future orientated, motivating, strengths-based, and empowering
- **Co-created** inclusive of the child and their supporters
- **Customised** individual and diverse wraparound support
- **Consistent** throughout the journey, seamless, enhanced at transitions, and based on stable relationships
- **Coordinated** managed widespread partnerships across organisations

Constructive: To be constructive, throughcare support should facilitate the pathways for a child's desistance journey and identity shift (Hazel et al., 2017). Interventions should be future-focused and take a long-term perspective, with planning and preparation for return to the community commencing at the point of entry to custody or secure care (Hazel et al., 2016; Malloch, 2013a). This preparation is embedded in the Secure Care Pathway and Standards (2020). Supports should be less focused on what the child has previously done and more on them as a child, their current strengths, hopes, needs and experiences, and



how these can be built upon in the future (CYCJ, 2016; Gough, 2017). Interventions should help to develop self-esteem, which is critical in building and maintaining motivation to change (Hazel et al., 2016). It should be recognised that where support is promised but is not forthcoming, a child's confidence in their new narrative and identity can be negatively affected; they may become demotivated, hopeless and disillusioned and the risk of relapses and reoffending is increased (Hazel et al., 2016).

Co-created: Children, under Article 12 of the UNCRC, have the right to express their own views freely in all matters affecting them. Children are experts in their own lives and go on the journey of desistance and identity shift (Hazel et al., 2017). Engagement of children throughout the throughcare process is essential for meaningful and effective intervention. Have faith in the child's self-assessment in relation to risks and readiness to move on, really listen to what they and their supporters tell us, responding to this and informing decision-making (Bateman et al., 2013; Gough, 2017). Moreover, engagement brings a number of wider benefits, each of which are linked to desistance, including: cognitive and emotional change; support for the child to reflect on who they would like to be; enhanced self-confidence and self-esteem; increased sense of purpose; and fostering agency and empowerment (Bateman & Hazel, 2013; Wright, Francis, & Goodfellow, 2014). It is the responsibility of practitioners and agencies to engage with children and families and to provide the information and support needed to achieve this (Independent Care Review, 2020). Planning should start with the opportunities, challenges and barriers as identified by the child. Supports should: appeal to them and be relevant to their self-perceived needs, goals, hopes and future. be constructive and encourage the benefits of engagement; ensure persistence, patience and perseverance from staff, demonstrating a flexibility to respond to the child's needs; include sharing as much information as possible with the child about the systems and processes they are involved in, to increase their understanding (Bateman et al., 2013; Gough, 2016, 2017; Nolan et al., 2017; Wright et al., 2014; Youth Justice Improvement Board, 2019). Children should be clear about who is involved in their plans and what support they will be provided with, including upon return to the community (Gough, 2016). The child's family, friends and informal supporters should also be engaged throughout the throughcare journey.

Customised: Children entering and leaving secure care or custody will often have a complex array of needs that require to be met (Beyond Youth Custody, 2015). It is therefore important that support is bespoke and individually tailored based on an understanding of how the child makes sense of their life, strengths and goals. Diversity should be considered; support should be proportionate to need and risk, available at the point of need and appropriately paced and sequenced. Enhanced support should be provided at transitions and wraparound strategies should be built to help children tackle obstacles (Bateman et al., 2013; Hazel et al., 2017; Malloch, 2013a).

Consistent: Throughcare should be recognised as a long-term journey. Support should be seamless, starting at the point of entry to secure care and custody if not before, for example, by giving children information on their rights, and what to expect on admission. Supports should build upon plans developed prior to entering secure care or custody and progress made during this period should continue on return to the community (Bateman et al., 2013; Gough, 2017; Hazel et al., 2017). It is recognised that there can be challenges in ensuring appropriate support is available at each stage of this journey, but it is critically important to address any barriers (see for example (Scottish Parliament Justice Committee, 2019; N Vaswani & Paul, 2019). Support should include contingency planning, recognising that change is difficult, with relapse and setbacks part of the journey to desistance (Hazel et al.,



2017). Stable, consistent supportive relationships between children and those working with them are crucial and make a vital contribution to engagement, as desistance is more likely to be achieved when there is a 'working alliance' between the child and service provider (Healy, 2017; Malloch, 2013a). Moreover, for looked after children and care leavers, sincere, enduring, consistent and continuous relationships have been identified as the thing that makes the greatest difference (The Care Inquiry, 2013; Winter, 2015). Indeed, the Independent Care Review (2020, p. 19) concluded "where nurturing relationships within the family are impossible, those who care for children must know that the most important thing they do is to provide a loving, stable, safe relationship - above everything else". To achieve this, contact from staff within the community should continue during the child's period in secure care or custody, and any new service who plan to work with the child on release should make contact early (Bateman et al., 2013; Malloch, 2013a). As children transition into and out of secure care and custody, a new and challenging period of their lives, it is vitally important that they are supported to maintain positive relationships with professionals and carers (Scottish Government, 2011c). This support, evident in the WSA, has been critical. The Promise implementation plan indicates that the introduction of lifelong advocacy support for care leavers will be introduced. In addition, factors identified in research as supporting positive relationships include staff:

- Being empathic, non-judgemental, interested, genuine, committed, consistent, caring, warm, hopeful, optimistic and available to see children through their best and worst times and to "be there no matter what".
- Having time, space, patience, persistence, and perseverance (often referred to as stickability).
- Helping children to make informed choices and promoting individual responsibility but being committed to social justice and able to recognise the experiences children have been through and their stage of development. Start where the child is and focus on what they can be rather than what they have done.
- Managing expectations and exercising authority in a legitimate fashion.
- Being credible, treating children as individuals and showing them that they matter, with dignity and respect, and getting things done (Cook, 2015; Gough, 2016; Malloch, 2013a; Youth Justice Improvement Board, 2019).

Coordinated: In light of what has been said above, it is impossible for one agency to provide effective throughcare support. Instead, a range of services across secure care/custody and community settings is necessary (Bateman et al., 2013). To be effective this requires:

- Adequate co-creation of plans and the coordination of services, to prevent fragmentation and duplication; the Lead Professional has a key role to play in this coordination.
- Appropriate and ongoing contact, communication, and information sharing. This includes information moving with a child when they enter and leave secure care or custody, which is of critical importance (HM Inspectorate of Prisons for Scotland (2019b)).
- Clearly defined roles and responsibilities, which are communicated to children in ways they understand.



- Values underpinning partnership and collaborative working including respect, appreciation and understanding of each agency's roles, trust, openness, and working towards a common goal.
- The ability to manage tensions and different opinions arising in what are often very emotive situations, and shared responsibility for the management of risk.
- Third sector organisations can often be key partners, with The Robertson Trust (2012) citing the benefits that can be provided by this sector as including: flexibility; responsivity; often being rooted in the community the child is returning to; perceived as not being aligned to any statutory agency; and in gaining trust and building relationships (Hazel et al., 2017; Malloch, 2013a).

4.6 Gender

The above roles of services and characteristics of throughcare support are gender neutral (Bateman & Hazel, 2014), but as was previously outlined, research indicates that additional considerations are necessary (Cesaroni, Vaswani, & Maycock, 2023) While even less is known about the needs of vulnerable girls and young women, it has been suggested in throughcare support particular attention should be paid to (Bateman & Hazel, 2014; N Vaswani, 2019):

- **Vulnerabilities:** Girls and young women in custody tend to have greater unmet support needs. Professionals should recognise and seek to address the vulnerabilities that, for girls, are particularly linked to offending such as relationship difficulties, experiences of abuse, victimisation and trauma, mental health issues and alcohol and drug use.
- **Relationships:** Due to the perceptions of women as relational, this would suggest the loss of roles (such as parent, carer and mother) and their loss is harder to bear when deprived of their liberty. It is important that girls are supported to explore and understand how past and present relationships have impacted on their behaviours and how alternative relationships can be developed and maintained in the future.
Empowerment: Given that the lives of girls in secure care and custody will often have been marked by vulnerability and subordination, empowering interventions are important in promoting self-esteem and optimism. This can be structural, for example in support to gain employment, and activities that seek to build agency, such as participation in planning, addressing past trauma, and building positive meaningful relationships (see [Section 5](#) and [Section 7](#)).

4.7 Practical Arrangements

The following section identifies the practical arrangements needed when a child enters secure care or custody, throughout this period, and on release (see the [Child's Journey](#) for more information on the processes children experience). While these practical arrangements are likely to change in December 2024, they are set out below as they are the procedures necessary until then (further guidance will be made available via the CYCJ website on these changes and any queries please get in touch). These are key components of the WSA (Scottish Government, 2011c) and apply to all children under 18 years old who are remanded or sentenced to secure care or custody. In some LA areas reintegration and transitions support has been extended to older young people: in some this is aged under 21 and others under 26, if the young person is a care leaver or considered to be vulnerable. In addition, this section outlines what children should expect before, during and after their time



in secure care. It should be noted that at present the legislative routes to secure care are limited (Nolan, 2019b), and these will change with the commencement of the new legislation. Scottish Ministers have statutory responsibility for placing and managing the sentences of children under the age of 16 - or those aged 16 and 17 who are subject to a CSO - who have been convicted under solemn procedures and sentenced to detention under section 205(2) of the *Criminal Procedure (Scotland) Act 1995*; they have the same responsibilities for all children under 18 who have been convicted of murder under section 205(2) of the Criminal Procedure (Scotland) Act 1995. For more information on these situations see the [Child's Journey](#). All other children within secure care remain there under the responsibility of their LA.

Arriving at secure care or custody

Children entering secure care or custody should have a Child's Plan; if they do not this should be developed as soon as possible. This Plan should be based on a comprehensive assessment of strengths, need and risk, guided by GIRFEC principles and informed by appropriate structured risk assessment tool(s) and risk formulation (see the [Risk Management Authority Risk Assessment Tools Evaluation Directory \(RATED\)](#) for an overview; Murphy [2018a](#); [2018b](#)). This Plan should move with the child and be shared with the receiving secure care centre or YOI (Nolan, 2019b). The aim is to: share information, ensure the receiving service is aware of any needs, vulnerabilities, and risks; support the provision of a continuous service by enabling pre-custody plans to be built upon; and assist in the provision of comprehensive, holistic, and individualised support.

The review of mental health provision in HMP&YOI Polmont (HM Inspectorate of Prisons for Scotland, 2019a) and Justice Committee (Scottish Parliament Justice Committee, 2019) highlighted issues with the availability and consistency of information sharing, with HM Inspectorate of Prisons for Scotland (2019a) identifying "systemic interagency shortcomings" in communication and information sharing across justice agencies that are responsible for the care and management of children entering and leaving custody. The consequences of failing to do so were starkly illustrated by HM Inspectorate of Prisons for Scotland (2019a) and the accompanying review of evidence about the mental health and wellbeing of children in custody. This found that in Scotland, information about a child's risk of suicide was frequently known but consistently sharing this information at the right time, with the right people and acting upon this information was problematic (Armstrong & McGhee, 2019). They concluded "children and young people who have sadly died in custody have often had significant interaction with community agencies before entering prison". Yet information about their history or changes in risk, whilst readily available, was not consistently or routinely shared at the point of vulnerability - on entering prison (HM Inspectorate of Prisons for Scotland, 2019a, p. 56). Entering and being released from custody are vulnerability points where there is an increased risk of self-harm and suicide; HM Inspectorate of Prisons for Scotland (2019a) has recommended wherever children are vulnerable, a detailed dossier of information about the child's circumstances, care and needs should be provided. The (Scottish Government, 2020) go further in detailing the supports children should receive prior to arriving at secure care, particularly emphasising the importance of involving children in all decision-making, support to understand and uphold their rights, the provision of information about the centre they will be living in and the opportunity to visit in advance of any placement. Due to the nature of secure care, visits may be virtual (see the [Child's Journey](#)).

Where a Justice Social Work Report (JSWR) has been completed, it is the responsibility of the Scottish Court Service to share this with the receiving establishment, but the local authority should confirm this has taken place (Nolan, 2015, 2019a). Other relevant

information should be shared with the receiving service in keeping with the principle of proportionality, information sharing protocols and statutory guidance (Nolan, 2019a). These documents should be shared on the day a child is sentenced or remanded (Nolan, 2019a). In addition, for children entering secure care an Individual Placement Agreement (IPA) will be completed.

Reviews

Reviews are an essential part of the assessment, planning, and support process. In achieving each of the principles of effective throughcare practice:

"inter-agency review arrangements, streamlined for young people who are due to be released and have been released from custody, are also critical to success" (HM Inspectorate of Prisons for Scotland, 2019a, p. 32).

Reviews should begin soon after entry and be undertaken throughout a child's time in secure care or custody, although the frequency, type of, and arrangements for, reviews will vary dependent on whether the child is in secure care or custody, and their legal status and sentence length (see the [Child's Journey](#)). The updated [WSA Information Sheet for Local Authorities](#) highlights:

- For children entering custody on remand, or who have been sentenced, reviews should be held within 10 working days of being detained. Family members should be encouraged to attend reviews for all children and young people who have been sentenced or fully committed.
- For children/young people on seven-day remand, a telephone call should be undertaken with the personal officer ASAP.
- For children who are looked after by the local authority, reviews should be held within 72 hours, in line with legislation and good practice guidance.
- Subsequent review meetings should take place throughout the child/young person's detention, at a frequency determined by the length of sentence and child/young person's needs. For those in custody, a pre-release meeting should take place at least 10 days prior to liberation, and prior to the SPS pre-release case management board date.

CYCJ's [Information Sheet](#) 44 provides further information for LAs on Reviews for children and young people in custody under the WSA. To support consistency, a [template](#) for the chairing and recording of reviews for children in custody has been developed. Both documents are reviewed and updated on an ongoing basis.

During the young person's time in secure care or custody

On entering secure care or custody, an assessment of need will be completed (Scottish Parliament Justice Committee, 2019). During the child's time in secure care or custody, work should be undertaken to meet needs and reduce risks identified in the Child's Plan, via the provision of comprehensive, holistic and individualised support from a range of services (Scottish Government, 2020). Most children will already have a Lead Professional from their LA, a role which should be maintained throughout, to ensure corporate parents fulfil their



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responsibilities and promote continuity of care. The Lead Professional has a range of roles and responsibilities which include:

- Ensuring that the Child's Plan is implemented, managed, and reviewed, and to coordinate the support described in the Plan. This includes updating and sharing the Plan after each review; ensuring any reintegration and transition planning is incorporated into the Plan; and that this is reviewed in accordance with legislation.
- Maintaining ongoing contact with the child and family throughout and ensuring they understand what is happening at each point so that they can be involved in the decisions that affect them.
- Promoting partnership working between agencies and with the child and family.
- Maintaining contact with the child's keyworker in secure care or personal officer in custody, as well as with any other agency contributing to the Child's Plan.
- Sharing information and communicating with all partners.
- Ensuring the child is supported through key transition points (Scottish Government, 2011c).

The involvement of all staff who will be supporting a child on their return to the community following their time in secure care or custody (not just the Lead Professional), is important. Miller and Baxter (2019) highlight that the involvement of professionals based in the community was essential in building or maintaining a bridge to the community, with the level of connectedness with the community cited as having an important bearing on the level of hope or hopelessness children felt. This communicates important messages about commitment and supporting the child to rebuild a future life (Miller & Baxter, 2019). This is also reflected in the Secure Care Pathway and Standards (Scottish Government, 2020)

Pre and post return to the community support

While the legislative basis for post-release support varies ([see Section 1](#)), all children should be prepared for release, with their transition planned and supported throughout (HM Inspectorate of Prisons for Scotland, 2019a; Scottish Government, 2020). For children leaving custody, this is a key vulnerability point, transition, and stage of risk management, particularly associated with increased risk of suicide, self-harm, offending and other negative outcomes (HM Inspectorate of Prisons for Scotland, 2019a). Support is fundamental to improving outcomes and includes those released without statutory requirements and on Home Detention Curfews (HDCs); the risk of breaching HDCs is particularly high for children, bringing significant consequences (Nolan, 2016a).

At a minimum all children should have, and be involved in, a pre-release meeting as detailed above and leave secure care or custody with a plan to support them in the community (Scottish Government, 2020). The plan should include information on supports under each of the areas detailed above and contingency plans that can be introduced as necessary. This plan should include support from local authorities and community planning partners, who have a responsibility to ensure resources are available for children returning to the community from secure care and custody and can include third sector organisations (CYCJ/IRISS, 2019; Scottish Government, 2011c). It should also include details on how any aftercare entitlements will be met. The Scottish Parliament Justice Committee (2019) has also advised that upon their discharge, a dossier of information should be provided to relevant organisations such as the NHS, housing providers, social work etc. to ensure a smooth transition back into the local community.

It is important that post-release support begins immediately; the child should be met at the gate by a trusted and known professional if family support is not available, in keeping with the WSA. This support should be regularly reviewed, and continued for as long as the child or young person requires it (Nolan, 2015).

A number of other transitions which children may experience warrant attention:

Moving from Secure Care to YOI

The WSA ethos is that children should be placed in, and remain within, secure care rather than custody as far as possible (until the implementation of the Children's (Care and Justice) (Scotland) Act some children will have limited routes to secure care and children cannot stay beyond their 18th birthday) (Scottish Government, 2019b). However, the transition from secure care to custody can be unsettling and it is important that:

- This is planned and scheduled for the most appropriate time for the child
- The child is given information about where they are going, what will happen when they get there and changes to structures and routines
- The identified hall manager or Personal Officer from SPS attends the child's reviews prior to moving, to provide and receive information. A transition meeting should be held in advance to share information about the child's past and current circumstances, their views on the move and to give the child and their family a chance to ask questions. Issues with information sharing were highlighted by the Scottish Parliament Justice Committee (2019).
- Wherever possible and appropriate, a visit for the child and family members to the YOI should be facilitated before moving.
- The secure centre should provide the YOI with full information and documentation about the child including the Child's Plan, which should be disseminated within SPS, for example with NHS, education, and social work as necessary.
- After transition, staff from the secure centre should be invited to the child's initial custody review meeting and any other meetings as appropriate (Scottish Government, 2011c).

The above process is for planned transitions, with it noted that unplanned transitions between secure care and custody do take place (Scottish Parliament Justice Committee, 2019). It is important that such transitions are minimised and where they happen, reviews take place and lessons are learned so that they can be avoided in future. Where a child enters custody from the community but discloses that they have previously been in secure care, YOI staff should, with the child's consent, contact the relevant secure centre for information to aid assessment and planning (Scottish Government, 2011b).

Moving from YOI to SPS adult establishments

As with the move from secure care to YOI, many of the same principles will apply when a young person moves from YOI to adult prison:

- The move should be planned and scheduled for the most appropriate time for the young person (young people can, on a case-by-case basis, remain in YOI until they are 23 years old if this is assessed as appropriate by SPS staff).
- The young person should be given information as detailed above.



- The young person's future Personal Officer should make contact and attend any meetings prior to the young person's move.
- Any relevant plans should be shared in advance to support young people continuing in training, qualifications, and employment that they have started.
- Post transition meetings should be arranged for within the first month of transfer and be attended by staff from the YOI, who should withdraw when necessary and in agreement with the young person (Scottish Government, 2011b).

Child to adult services

Where necessary, child and justice services should be co-ordinated and agreements reached about who is the best person to complete JSWRs, supervise any orders made, and support the child in custody (Scottish Government, 2011b). It may be that practitioners across child and adult services work together with the young person to allow a continuity of support and resources, ensure that any assessments and approaches utilised are age-appropriate, and that there is flexibility in enabling a service to work beyond typical age limits. Any transition between services should be planned, adopt a relational perspective, and ensure that critical information, assessments and the Child's Plan are shared (Scottish Government, 2011b). At a service level, children in conflict with the law should be included in children's service plans, community planning partnerships, and child and adult protection committees to ensure partnership working, communication and coordination of policy and strategy (Scottish Government, 2011b).

Putting guidance into practice

Scottish research findings vary on the extent to which these arrangements are implemented in practice. For example, Smith et al. (2014) found in 91% of cases reports did not make it clear whether social work support was being provided while the child was in custody and there was no specific reference to throughcare support being in place in 59% of cases. The 2016 review of secure care in Scotland (Gough, 2016) found that the support and preparation received by children moving on from secure care was often inadequate and a number of the calls for action from children with experience of secure care detailed by Gough (2017) related to moving on support. The findings and subsequent information on children's experiences of secure care formed the basis of the Secure Care Pathway and Standards Scotland (Scottish Government, 2020) and their implementation continues to be monitored ([Nolan, Whitelaw, and Ross, 2023](#); [Care Inspectorate, 2023](#)). Similarly, in research by Gray (2011) in England and Wales, children reported post-release support was often irrelevant, repetitive and risk focused. Children felt let down by support that had been promised not being available, which resulted in a range of negative outcomes. This was reiterated by HM Inspectorate of Prisons and Probation (2019) who found too often outcomes were poor, children were not prepared for release, and support was not in place, particularly accommodation, education training and employment, and mental health services.

By contrast, in research by Nolan (2015) 65% of Scottish LAs surveyed advised an initial custody review was always held for children in secure care and custody; 70% of local authorities advised that community based social work staff were always involved with the child during their period in secure care or custody; and all advised that post-release support was available, with 77% reporting that children always had a three month throughcare plan. Similarly, research by Nolan et al. (2017) found 64% of the children sampled were receiving support from community-based social work, over half of whom reported this was the same worker they had engaged with prior to entering custody, although the level of contact and purpose of this involvement varied, as did reports on the quality of information sharing and provision. While these findings are more positive than those found by Smith et al. (2014),

they show Scotland has some way to go in supporting transitions for children who have been in conflict with the law.

Challenges

It is acknowledged that providing effective throughcare support is a complex task for various reasons, including:

- The high level and range of complex needs presented by many children leaving custody or secure care, who may never have previously experienced being 'settled' (HM Inspectorate of Prisons and Probation, 2011).
- Children may not have developed strategies to cope with transitions and are trying to renegotiate new identities for themselves (Bateman & Hazel, 2015)
- Challenges of partnership working, particularly in ensuring all key partners are engaged in the 'constantly changing landscape' of service provision. Challenges are also evident in funding arrangements and varying availability of services across local authorities (Gough, 2016; Malloch, 2013a). Difficulties in measuring effectiveness, broader outcomes, and the specific impact of interventions, coupled with the limitations of relying on reconviction rates, is problematic (Griffiths, Daudurand, & Murdoch, 2007; Hazel et al., 2016; Malloch, 2013a). This has led Hazel et al. (2017) to suggest that in measuring effectiveness, factors such as social inclusion, positive engagement with others, lifestyle changes to promote wellbeing, and distance travelled in the journey of change may be more effective.
- Sustaining engagement, with it recognised that this is the responsibility of the practitioner (Bateman et al., 2013)
- Where outstanding cases have not been dealt with, the ability of children to progress an identity shift can be hampered (HM Inspectorate of Prisons and Probation, 2019)
- Wider system issues - although crucial to supporting children - are outwith the criminal justice system and a lack of coordination of such supports (such as accessing employment, benefits, health services and housing) is evident (Gough, 2017; Malloch, 2013a).
- The impact of "broader structural constraints arising from poverty and socio-economic disadvantage" which can impact on children's actions and limit their choices and opportunity for change (Gray, 2011:235). Failure to recognise this results in the individualisation of social need and the problematisation of children, families and communities.
- Differential policy and legislative framework and service provision for those children who turn 18 while in custody, and increased recognition of the distinct needs of 18-25 year olds in the justice system (House of Commons Justice Committee, 2016; The Howard League, 2015).
- Desistance and identity-shift, like reintegration, is a process - the journey is not always linear or without problems and substantial support is needed to stimulate, reinforce and sustain change (Hazel et al., 2017; Youth Justice Improvement Board, 2019). It has to be stressed that the role society has in addressing social problems and empowering individuals to experience choice and agency is crucial.

It is, however, imperative that these challenges are addressed, with good practice in transitions and effective throughcare being crucial if positive outcomes are to be achieved for children (Scottish Government, 2011b). With regards to children leaving secure care, successful reintegration is essential if re-admission is to be avoided, and progress sustained (Gough, 2016; Scottish Institute for Residential Child Care (SIRCC) 2009). In the Care Inspectorate (2020) review of deaths of looked after children, they were notified of the

deaths of 14 looked after children, aged between 13 to 17, who died in tragic circumstances that were typically a culmination of life-threatening behaviours including substance misuse, self-harm and attempted suicides. Half the children had experienced placements in secure accommodation or another setting with a high level of supervision, such was the level of concern about their safety and wellbeing.

Likewise, for children leaving custody, when support is either not provided, is insufficient, or lacks coordination, factors which contributed to the child's offending are not addressed, and the risk of them returning to custody is higher (Griffiths et al., 2007; Smith et al., 2014). In addition, HM Inspectorate of Prisons for Scotland (2019a) highlighted that the mortality rate for all causes of death for those leaving custody is highest in the 30 days following release, with the rate of self-inflicted deaths disproportionately high. This underlines the critical importance of ensuring such challenges are addressed and children are fully supported.

5. References

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