



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

Section 17: Depriving Children of their Liberty and Alternative Measures

June 2024



Children and Young People's
Centre for Justice

Contents

1. Introduction	3
2. Deprivation of Liberty	4
3. How many Children are Deprived of their Liberty in Scotland?	5
4. Legislation	6
4.1 Secure Care	6
4.2 Police Custody	8
4.3 Police Undertakings	10
4.4 Place of Safety	11
5. Court	12
5.1 Bail Supervision.....	13
5.2 Bail Conditions	14
5.3 Electronic Monitoring as Part of Bail	15
5.4 Bail Review.....	15
5.4 Sentencing	16
5.5 Remittal to CHS from Court.....	17
5.6 Movement Restriction Condition (MRC).....	18
6. Why Do We Need Alternatives?	19
7. A Framework for Alternative Measures	21
8. What Could Alternative Measures Look Like?	22
9. Giving Voice to Children, Parents, Carers and Families in Alternative Measures	25
9.1 Child's Voice.....	25
9.2 Voices and Role of Parents, Caregivers, and Families	27
10. Conclusion	30
11. References	31

1. Introduction

Children are deprived of their liberty in numerous ways and for various reasons, including: police custody; detention awaiting trial and/or following sentencing; placement in a secure facility for protection, assessment or treatment; or detention as part of the immigration or asylum system (Kilkelly, 2011; Nolan, 2019b). There may be levels of overlap and conflict across these systems which is particularly true for children who come into conflict with the law in Scotland, as these children often cross both welfare and justice systems. This overlap between child-friendly responses and justice responses often raises tensions. Scotland's approach to children in conflict with the law is underpinned by Getting it Right for Every Child ([GIRFEC](#)), the United Nations Convention on the Rights of the Child ([UNCRC](#)), the Whole System Approach ([WSA](#)) and [child protection](#), yet our justice systems continue to make limited specific adaptations or accommodations for children.

The UNCRC explicitly recognises that children, by their very status, require further protections in addition to those enshrined in human rights statutes. It states that all children, as rights holders, have the same entitlement to their rights being upheld. The responsibility for upholding these rights primarily lies with parents, however states are responsible for facilitating the realisation of children's rights and, where necessary, supporting parents in their role.

[General Comment No. 24 of the Committee on the Rights of the Child](#) (2019) states that,

“the child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing.”

(United Nations Committee on the Rights of the Child, 2019)

Alternatives to depriving children of their liberty should therefore be made available for most children, and only a very small number require to have their liberty deprived. Whilst personal freedom is not an absolute right, the deprivation of liberty must only take place in accordance with Article 37b of the UNCRC, following an assessment that the individual poses a risk of serious harm to either themselves or others when aspects of their behavior cannot be managed safely in the community. Any instance should be rigorously defensible; it should never be adopted solely for reasons of procedural convenience. Balancing rights and risk of harm is never an either/or proposition; instead, it is a careful consideration of the rights of individuals alongside those of others and wider society which must be underpinned by defensible decision-making (Kemshall, 2021; Murphy, 2018) and good risk management practice (Scottish Government, 2021b) ([for more details see section 15](#)).

Both the Human Rights Act 1998 ([HRA](#)) - which incorporated the European Convention on Human Rights ([ECHR](#)) directly into UK law - and the UNCRC contain specific rights in relation to the protection of freedoms and liberty. Article 5 of the HRA clearly sets out the very specific circumstances prescribed by law in which liberty can be removed, whilst Article 37b of the UNCRC has additional safeguards in terms of children, stating that this should only be used as a measure of last resort and for the shortest possible time. In addition, the

United Nations Committee on the Rights of the Child (2019, p. 3) [General Comment No. 24](#) specifically highlights that in those few situations where deprivation of liberty is justified as a last resort, its application is for older children only, is strictly time-limited, and is subject to regular review. When children are referred to a welfare system from the criminal justice system “the principle of ‘measure of last resort’ equally applies to protect children from deprivation of liberty in all institutions” ([UN, A/74/136, 2019](#)).

Whilst children being deprived continues, there is an expectation from Scottish Government, under WSA policy launched in 2011, that [processes and practices](#) are in place at a local level to ensure that when children come into conflict with the law:

- They are actively diverted from formal systems at every opportunity
- Where diversion has not been possible, they are supported to navigate the justice systems until their journey is concluded
- Responses and support are available irrespective of whether or not a child is known to, or currently involved with, services
- If there is a risk of them being deprived of their liberty alternatives are available to:
 - Police, in terms of alternatives to police custody
 - Panel members in the Children’s Hearing System (CHS)
 - Chief Social Work Officers (CSWO); and
 - Court

2. Deprivation of Liberty

Those practicing in this area must remain mindful that “deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood” (Nowak, 2019, p. 4). This will no doubt have influenced the thinking of Scotland’s [Independent Care Review](#) which concluded that reform must take place to the manner in which Scotland’s deprives the liberty of children, with delivery of trauma informed care within secure provision and end the use of Young Offenders Institutions (YOI) for children. When liberty is removed, support must be put in place that allows the child to “live fulfilling lives in the community” (Independent Care Review, 2020, p. 80).

Children in conflict with the law in Scotland are most likely to be deprived of their liberty through either the Children’s Hearings System (CHS), contact with the justice systems or a combination of both. The severity and nature of the incident that has occurred, their age and legal status often dictate which system will respond to these children. These factors are of critical importance; Scotland currently regards all those under 16 and 16- and 17-year-olds who are subject to a Compulsory Supervision Order (CSO) - as children. Those 16- and 17-year-olds who are not subject to a CSO receive different treatment and are legally defined as adults. The legal status of a child therefore has significant implications for where they may be held if deprived of their liberty by court.

However, the [Children \(Care and Justice\) \(Scotland\) Act](#) which was passed by the Scottish Parliament on 25th April 2024, seeks to address this inconsistency; by defining a child as under 18 in children’s hearings and various pieces of criminal justice legislation as is consistent with the UNCRC; and it will end the placement of children in YOI, as called for in [The Promise](#). Until this legislation is commenced and implemented, a timetable for which is

at the time of writing is being agreed, an inconsistent and often complex range of processes relating to children in conflict with the law exist, particularly in terms of deprivation of liberty. This legislation will not end the deprivation of liberty for children but will prevent any child from being held in a YOI, instead requiring that where this is necessary that the child is normally placed within secure care. Nor will it realise the principles of the Securing Our Future Initiative ([SOFI](#)) report (Scottish Institute for Residential Child Care (SIRCC) 2009) that was strongly endorsed by the Scottish Government and COSLA, which states that they aimed “to have no child in Scotland in secure care and we must actively work to reduce the need for secure care” (Scottish Government & COSLA, 2009, p. 1). Realising this aspiration requires courage and imagination. To achieve this and support successful implementation of the Bill, there is a need for credible alternative measures, accessible to all, which reduce and manage the risk of harm, supports children to achieve their potential and enjoy their full access to rights whilst meeting the needs of children, families, and communities.

3. How many Children are Deprived of their Liberty in Scotland?

Children in Scotland are most commonly deprived of their liberty in police custody. [The Scottish Police Authority \(SPA\) annual report for 2022/23](#) notes that children were held in police custody 4,261 times over the course of that year; a slight increase on the preceding year, but almost 1,100 occasions fewer than during 2019/20.

The vast majority of children affected by this practice are aged 16 or 17, with [SPA figures](#) showing that slightly over 70% of all police detentions of children relate to someone of this age. The considerations for these “older” children under the legislation covering police detention are different ([as detailed in section 13](#)) and the need to consider an alternative place of safety until they are brought before the court does not apply. This will change once Part 2 of the Children (Care and Justice) (Scotland) Act is commenced but at present some three in ten of all police detentions relate to children.

This snapshot does not reflect the circumstances in which a child may find themselves held in police custody, nor the duration. Whilst the SPA’s report suggests that a lack of suitable alternative is often the predominant factor in children being held within police custody, the nature of the data does not fully explain why such significant numbers of children are losing their liberty, even for short periods of time. It should, however, challenge practitioners and policymakers to develop alternative approaches and resources that reflect Scotland’s aspirations in how it responds to children in need.

Some comfort can be taken from the downward trend over the recent past in numbers of children being deprived of their liberty in police custody. This pattern is also reflected across both secure care and YOI. Data from the Scottish Government (2024) highlights the continued trend of reduced use of secure care, including the following findings:

- During 2022/23, an average of 59 children were resident within secure care accommodation (down 20% from an average of 74 in 2021/22).
- 154 admissions to secure care accommodation took place during 2022/23 (a 3% increase from the previous year (149)).

- An average 37 children were placed by Scottish local authorities or court, (down 10% on 2021/22) and 22 from outside Scotland (down 33% from 2021/22) each day throughout 2022/23.

[Scottish Prison Population Statistics for 2022/23](#) indicate a significant reduction in the number of children (16/17 years), and young people (18-21 years old), held within YOI over recent years. Their data highlights that an average of 1,102 people under the age of 21 were held within YOI or prison during 2009/10, equating to some 13% of the entire prison population. By 2022/23 that average had dropped to 159, comprising just 2% of overall prison population. Of this 159, children aged 16 or 17 accounted for an average of nine people in 2022/23, whilst 18–20-year-olds accounted for an average of 150 people over the same period. This data requires further analysis to better understand why there is a significant disparity between the number of children remanded and the notably smaller number who are sentenced to detention.

Maximising alternative measures is critical to ensuring that no child is deprived of their liberty when they could be safely held in the community. In the small number of cases where alternative measures are not appropriate and deprivation of liberty is necessary and justifiable, pathways to child-focussed environments are essential. This requires a shift away from using YOI, with The Promise stating that “children must be accommodated in secure care rather than YOIs - prison like settings are deeply inappropriate for children” (Independent Care Review, 2020, p. 82). More than this, however; Scotland must explore and provide alternative measures that avoid the deprivation of liberty.

4. Legislation

The chapter focuses on three primary pathways; police custody, CHS, and court, and highlights the legislation that facilitates detention of these settings. The following information reflects current legislation (i.e. prior to commencement of the Children (Care and Justice) (Scotland) Act which will update the legislation governing routes to secure care and police custody for under 18s. The CYCJ website will be updated as the legislation commences and this guidance will be updated in due course). Understanding of the legislation, and processes that overlap between these three areas, can enable creation of alternative measures for those who require them. Alternative forms of deprivation such as hospital detention or immigration detention are not considered within this chapter.

4.1 Secure Care

As Nolan (2019b) highlights, there are a number of routes that a child may take into secure.

4.1.1 Secure care via the CHS

For a child to be deprived of their liberty in secure care they must meet the secure care criteria. The statutory framework for decision-making as follows:

Through the CHS:

- Subject to a [Compulsory Supervision Order \(CSO\), Interim Compulsory Supervision Order \(ICSO\), medical examination order or warrant to secure attendance](#) made under the CHS or by a sheriff who is satisfied that conditions set out under S.83(6), S87(4) OR S.88(3) of the [Children's Hearings \(Scotland\) Act 2011](#) are met. These are:
 - That the child has previously absconded and is likely to abscond again, and if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk
 - That the child is likely to engage in self-harming conduct
 - That the child is likely to cause injury to another person: and

Having considered the other options available (including a Movement Restriction Condition (MRC) discussed in more detail later in this chapter) the Panel may conclude that it is necessary to grant a secure accommodation authorisation within the order (Children's Hearings Scotland, 2022, p. 17).

Once a secure authorisation has been made, the CSWO of the relevant local authority has responsibility for decision making regarding the implementation of the order, as per [The Children's Hearings \(Scotland\) Act 2011 \(Implementation of Secure Care Accommodation Authorisation\) \(Scotland\) Regulations 2013](#) and accompanying [Guidance](#). They may only do so with the agreement of the head of the secure care centre.

Where a child is subject to a CSO that does not include a secure accommodation authorisation; or is being provided with accommodation by a local authority under [s.25](#) of the [Children \(Scotland\) Act 1995](#); or is subject to [a permanence order under the Secure Accommodation \(Scotland\) Regulations 2013](#), they can be placed in secure care in specific circumstances. There are associated regulatory requirements for CSWO and Principal Reporter.

Where a child is not subject to the above legislation and orders – for example, those children aged 16 or 17 that cannot currently be referred to the CHS as they are beyond the age of referral – there are still routes into secure care, but they are limited. Dyer (2024) notes that in these circumstances the child can only be placed in secure care if they are, “looked after”, thus requiring provision of accommodation via section 25 of the [Children \(Scotland\) Act 1995](#). A local authority can provide accommodation for any child within their area if they consider that doing so safeguards the child or promotes their welfare. The definition of “child” for the purposes of section 25 covers any child under 18; it therefore includes children aged 16 and 17 who are otherwise legally defined as adults and are presently beyond the age of referral to the CHS. If accommodation is provided to a child aged 16 or over under section 25 then agreement must be granted by the child (Dyer, 2022a). This would then trigger the same process and requirements as outlined above. A fuller account of this process can be found within a [recent CYCJ publication](#).

4.1.2 Secure care via court

When someone who is legally defined as a child is remanded by the court (under [S.51](#) of the [Criminal Procedure \(Scotland\) Act 1995](#)) the court may release them into the care of the

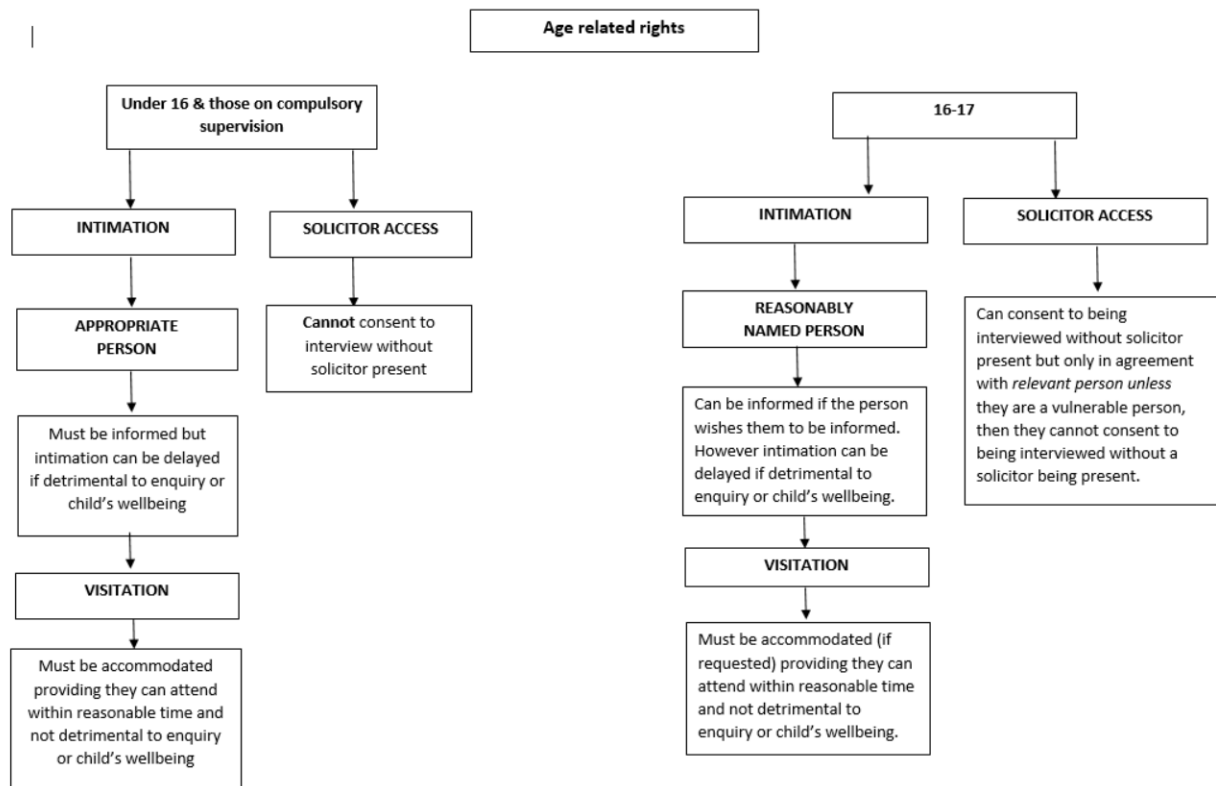
local authority, with the court requiring the child to be placed in secure care or an appropriate place of safety.

- Where a child pleads or is found guilty of an offence [s.44](#) of the Criminal Procedure (Scotland) Act 1995 allows for the child to be detained in residential accommodation deemed appropriate by their local authority. Regulation 12 of the Secure Accommodation (Scotland) Regulations 2013 allows for the child to be placed within secure accommodation of the requirement contained within regulation 11 of said regulations requirements are met, the child may be placed in secure care. Review requirements are specified within the regulations.
- Under s.205 (2) and s.208 of the Criminal Procedure (Scotland) Act 1995 children can be sentenced to detainment following conviction, with the Scottish Ministers then determining the location. Scottish Government policy is that this will usually be within secure accommodation (Nolan, 2019a).

4.2 Police Custody

The [Criminal Justice \(Scotland\) Act 2016](#) provides additional safeguards for children; [s.51](#) necessitates that the police safeguard and promote the wellbeing of a child as a primary – although not the only – consideration, when deciding whether a child should be arrested, detained, interviewed, or charged (Dyer, 2018). [S.38-41](#) of the Criminal Justice (Scotland) Act 2016 contains the specific directions as to notification of a child under 18 years in police custody and when social work should be notified. Though this Act and associated police SOPs (Standard Operating Procedures) ([Criminal Justice Act \(Scotland\) 2016 \(Arrest Process\) Standard Operating Procedures](#) and [Offending by Children](#) SOP) state that all under 18s are children, there continues at present to be a differentiation between the processes and duties in place for younger children (those legally defined as a child) compared to older children (those aged 16 or 17, who are not considered as a child within this legislation), although this will change in the near future.

The processes and protections in place under this Act for children in police custody are detailed in the chart below (Dyer, 2018), as well as in [The Child's Journey: A guide to the Scottish Justice System](#), and in a guide co-produced with children and young people to help other children know about [their rights in custody](#).



(Dyer, 2018)

Following the commencement of the [Management of Offenders \(Scotland\) Act 2019](#), two points of information sharing with Criminal Justice Services (CJS) have now been created from Police Scotland and the Crown Office and Procurator Fiscals Service (COPFS) respectively:

- Police will notify all CJS where an individual has been held in police custody for court; and
- Marking information from Prosecutor Fiscals (PF) in those cases where bail will be opposed will be made available to CJS single points of contact (Scottish Government, 2022).

These provisions are helpful, however such processes should already be in place at a local level under WSA court support ([see Section 13](#)). This remains inconsistent across the country; if not in place, then local arrangements will be required to ensure CJS link with appropriate children and family social work services when a child is being held in custody. This seeks to ensure that bail supervision assessments are appropriately informed, recognising the specific needs and responses required for children are different from those required for adults. Further information is available within Annex 1 of the [Bail Supervision National Guidance \(2022\)](#), which focuses specifically on children and young adults.

When a child is being held in police custody, the police have other options which can be considered such as undertakings and place of safety, both of which are explored further

below. Critical to the success of any alternative package or response (whether at the point of police custody, CHS or court) is an expectation of access to alternative measures that will, in most cases, require intensive support services or equivalent with practitioners who are experienced in supporting children and families through what is a traumatic and often confusing period. This support should be flexible to meet the needs of the child and their placement prior to appearing at court, should that be the outcome.

In addition, for those children meeting the legal definition of a child (unless the offence which they have allegedly committed is to be jointly reported) then the child:

- Cannot be kept by the police in a place of safety (whether or not it is a police station) in order to be brought before a court (in terms of Criminal Justice (Scotland) Act 2016 [s.21](#) and [s.22](#))
- Cannot be released on an undertaking to appear at court (in terms of Criminal Justice (Scotland) Act 2016 [s.26](#))

4.3 Police Undertakings

It is important that all potential opportunities to avoid a child being held in police custody are maximised, and thus police officers should always consider whether a child in their custody could be released on an undertaking. If this does initially appear to be possible consideration should be given as to whether any additional proportionate measures that could be put in place to provide confidence that an undertaking is appropriate, rather than holding a child or seeking a place of safety, as discussed later in this chapter.

Police [undertakings](#) ([Criminal Justice \(Scotland\) Act 2016](#), s.25-30), are often referred to as a “pink slip”. An undertaking involved a person who has been charged with an offence being released from a police station with certain paperwork which they must sign, giving an ‘undertaking’ that they will appear at court on a given date. For younger children this must be signed by parents or guardians. Undertakings will usually have conditions attached, which could include that the person should not:

- commit an offence;
- interfere with witnesses or evidence or otherwise obstruct the course of justice;
- behave in a manner which causes, or is likely to cause, alarm or distress to witnesses.

Other conditions may also be deemed necessary. Where an undertaking has been used for a younger child, the local authority should be notified as well. To maximise police undertakings the following practice is required as a minimum:

- effective communication and partnership working between partners as well as with the child and their family.
- where proportionate, clarity regarding appropriate risk management processes, such as Care and Risk Management (CARM) (Scottish Government, 2021b) or local equivalent providing immediate safety and contingency plans until fuller assessment can be completed.
- a risk management plan, specifying what will be put in place for the child and family, with contingency plans which would be implemented, should the child’s situation in

the community deteriorate. Clear roles, responsibilities and timeframes for action are required here. This should always be proportionate and appropriate to level of concern, balancing individual rights with the wider rights of others, and be credible in terms of managing the level of potential harm (Scottish Government, 2021b).

- a range of developmentally appropriate resources that can be individualised to provide proportionate and appropriate supports for the child and their family.

In supporting the use of undertakings where there may be concerns, good communication between police and relevant local authority is vital. Potential interventions and supports should be put in place to address these concerns, in addition to any specific conditions police deem necessary. The additional supports that could be offered to scaffold the use of an undertaking should be proportionate to the level of concern and potential harm; these could include, but are not limited to:

- remaining within the family home or that of another family member (as noted below additional supports must be available).
- foster or residential childcare, again with additional supports
- self-contained emergency housing placement provided by housing (this could include provision for members of the child's family, or residential staff).

When police release a child on an undertaking it is good practice to share the impact of any restrictions, through communication between the defence, police, and social work, as well as the child themselves. Applying standard conditions, or any additional conditions, without an understanding of the individual child's context can have significantly detrimental implications. Conditions which are not fully informed may inadvertently prevent the child from accessing their home, their educational placement, or the homes of family members who provide significant support. Such blanket conditions, that are not individualised in terms of the child's situation and circumstances, fail to reflect the principles of GIRFEC at the most basic level and are likely to impair the child's ability and motivation to adhere to the conditions. Subsequently, this may increase the likelihood of the child being returned to police custody due to their non-compliance, which can then have implications for remand or bail when appearing at court. In addition, these conditions could potentially be in place for an extended period leading up to the child's appearance at court; such delays can have a negative impact on the child's understanding of the importance of compliance, and their ability to comply (McEwan et al., 2020).

4.4 Place of Safety

'Place of safety' in this context is different from that which is referred to under the [Age of Criminal Responsibility \(Scotland\) Act 2019](#) s.28-32 for children under 12 years who have or may have been involved in behaviour which poses a significant risk of harm to others.

Place of safety is only an option for younger children; presently, although this will change, older children can continue to be held in police custody whilst younger children:

"... must be kept in a place of safety (as defined in the Children's Hearing (Scotland) Act 2011 s.202 (1)) until taken before the court. The place of safety must not be a police station unless an Inspector or above certifies that keeping the child in a place of safety

other than a police station would be: (a) Impracticable, (b) Unsafe, or (c) Inadvisable due to the person's state of health (physical and mental)."

(Police Scotland, 2019)

A Child Detention Certificate is required if a decision has been taken to detain a 'younger child' in a police station. This must be endorsed by someone holding the rank of Inspector or of greater seniority. When the decision is taken to hold a child in custody for court the local authority must be notified of the circumstances relating to the detention.

Whilst a place of safety should consider all options - including use of a police undertaking - it is likely that in most cases a secure care placement will be sought under s.22 of the Criminal Justice (Scotland) Act 2016. Police may have assessed that it is necessary for the child to remain in a locked environment, with secure care being unquestionably preferable to a police custody suite. However, this is only permitted under Regulation 12 of the [Secure Care Accommodation \(Scotland\) Regulations 2013](#) if the requirements under Regulation 11(3) (a) and (b) are met; the child can only be held there if the CSWO and head of centre consider this necessary (Nolan, 2019a, 2019b). If there is no appropriate alternative practitioners could consider use of measures associated with s.25 of the Children (Scotland) Act 1995 s.25 (referenced above), with this potentially creating a route into secure care. This would then trigger the relevant review procedures.

When attempts to implement alternative measures have not been successful, this work can be capitalised on in several ways, to reduce the amount of time in which a child is deprived of their liberty either through court or CHS. If a child has been deprived of their liberty in police custody, or released on an undertaking or place of safety, it would be prudent to be proactive in initiating discussion with SCRA and the PF for singly or [jointly reported cases](#), as per the [Lord Advocates Guidelines](#) (COPFS, 2021). This proactive discussion should be used as an opportunity to share what resources, supports and interventions are available should the case be held by the Children's Reporter (rather than prosecuted at court) or considered for Diversion from Prosecution ([see Section 11](#)). Where alternative routes to divert from court are not deemed appropriate, this early communication and action can enable robust alternative measures to be refined prior to being presented to court. It can also aid in the consideration of bail supervision, including electronic monitoring if necessary. This is particularly relevant when bail is opposed by the PF.

5. Court

Whilst a child *may* be prosecuted at court in Scotland from the age of 12, in practice this is exceptionally rare. Though the numbers continue to reduce, annual figures from 2016-2019 show 99% of those children who were prosecuted were aged 16/17 (Whiting, 2020). When a child first appears at court the sheriff will have to decide, often with limited information in short timescales and with limited resources, whether the child should be remanded or released to the community (which could involve bail conditions). The decision regarding bail or remand is solely for the judiciary. That being said, decision-makers need relevant and timely information to make informed and critical decisions in the limited time available to them (McEwan et al., 2020). Social work practitioners can therefore legitimately seek to provide additional background information to aid the court in considering how best to act.

Good practice under WSA ([see Section 13](#)) directs that whenever a child appears at court, information should be shared with the sheriff either directly (through court notes) or via the defence solicitor. This should contain proportionate and appropriate information regarding the child and their circumstances. The nature of this information could include comments regarding any legal orders in place, whether they are or have been known to services and what supports are being offered. It is important to illustrate that these supports are voluntary; however, where there is a risk of remand these could be incorporated into a proposed plan for the sheriff as part of bail conditions and, if required, a bail supervision plan.

5.1 Bail Supervision

Supervised bail or bail supervision involves individuals being supported to adhere and comply with their bail conditions through the support of social work services and/or 3rd sector organisations. It is intended as a credible alternative to remanding someone when they have been “accused or convicted of an offence (or offences) [and] are assessed as requiring a level of supervision, monitoring, and support to adhere to bail conditions” (Scottish Government, 2022a, p. 4). It requires individuals to meet with a bail supervisor, or relevant agency, a specified number of times per week. For someone to be considered for bail supervision an assessment of their suitability and likelihood/ability to comply is undertaken by social work services having been requested by the court or defence solicitor. Should the PF oppose bail, this is where the new points of contact can be helpful, triggering an assessment at the earliest opportunity (as referenced previously). If an individual placed on bail or supervised bail fails to adhere to the conditions this is a further offence. Thus, there must be careful consideration when advocating for bail and supervised bail with children, given the evidence and research in relation to the difficulties they can experience in adhering to such conditions. This is especially the case when conditions have been in place for a prolonged period of time.

The recently passed [Bail and Release \(Scotland\) Act 2023](#) will make significant changes to bail legislation when fully enacted. At present the [Bail Supervision National Guidance](#) (Scottish Government, 2022a) outlines the current legal framework and considerations for bail and supervised bail, as well as specific considerations for children and young adults. It is critical that any use of bail supervision with children must respond to the specific developmental, trauma-informed, and systemic needs of children - with such schemes having significant success (Naughton et al., 2019). Merely fitting children into processes and practice designed for adults does not comply with UNCRC and is likely to compound the challenges and difficulties they already face in the justice system.

The relevant legal provisions in relation to bail are contained within [Part III of the Criminal Procedure \(Scotland\) Act 1995](#); section 23C states the points that the court must consider in deciding whether to bail or remand someone. There is a presumption for bail in all cases with limited exceptions.

Section 23C lays out the grounds for refusing bail. These include any substantial risk that if the person was granted bail they may:

- abscond;
- fail to appear in court as required;
- commit further offences;
- interfere with witnesses;
- otherwise obstruct the course of justice;
- any other substantial factor which appears to the court to justify keeping the person in custody.

In assessing these grounds, the court must have regard to all material considerations. Such considerations include (but are not limited to) the following:

- nature and seriousness of the offence;
- probable disposal of the case if convicted;
- whether the person was subject to a bail order, other court order, on licence, or on a period of deferment of sentence when the alleged offences were committed;
- the circumstances of the person, including:
 - previous convictions;
 - previous breach of bail or licence;
 - whether they are currently serving a sentence or have recently served a sentence;
 - associations and community ties of the person.

Section 23D of the 1995 Act sets out in solemn proceedings that where a person is accused of a drug trafficking offence, a violent offence, sexual offence, or domestic abuse offence and has a previous conviction on indictment for such an offence, that person is to be granted bail only if there are exceptional circumstances justifying bail.

In determining a question of bail, section 23B of the 1995 Act states that the court must consider the extent to which the public interest could be safeguarded by the imposition of bail conditions, with public safety being included within this consideration.

5.2 Bail Conditions

Under the statutory provisions contained in Part III of the 1995 Act a range of standard bail conditions can be imposed in all cases at Section 24(5)5 of the Act. In addition, Section 24(4)(b) allows the court or Lord Advocate to impose 'further conditions' considered necessary to ensure that standard bail conditions are observed. The court may decide to add bail supervision as one of these further conditions of bail in order to support compliance with the standard conditions. Examples of conditions could include, but are not limited to: a curfew; a prohibition on contacting victims, witnesses or specific named individuals; a requirement to stay away from certain locations, addresses or areas; city exclusion zones; surrendering electronic devices/internet devices to police; attending a police station to prove that they have not absconded; complying with police checks to their bail address; and surrender of their passport (Scottish Government, 2022a).

As bail and special conditions can be tailored, it is important that those supporting a child at court liaise with court social work, defence solicitors, and PFs to share what supports are available, and potentially reduce the likelihood of inappropriate conditions being requested.

This should take place in addition to providing court notes. The considerations outlined in the earlier section regarding police undertakings are applicable here. These aim to secure the most effective and meaningful use of bail conditions is promoted, with appropriate wraparound supports in place. The support afforded through bail support or formal bail supervision should maximise the child's ability to engage and comply with imposed conditions. This should aim to keep them and others safe, whilst responding to the needs of the child and promoting developmental opportunities to build their skills and capacity.

5.3 Electronic Monitoring as Part of Bail

Electronic monitoring (EM) as a component of bail commenced in May 2022, under Part 1 of the [Management of Offenders \(Scotland\) Act 2019](#). This now enables the court to use EM as a condition of bail should they consider it appropriate, in line with the considerations for bail already outlined. It can be imposed without bail supervision; however, this must not be the case when used with children. Additional developmental, systemic and trauma informed supports must be put in place alongside the use of EM for bail, just as should be the case if EM is used as a disposal post-conviction, or through the CHS with an MRC. The practice outlined in the section relating to MRCs has relevance for EM bail, and the same considerations should be taken.

5.4 Bail Review

Where bail has been refused by the court, or the court has granted bail, but the individual has not accepted the conditions of bail imposed, or an individual has accepted the bail conditions imposed but is seeking to have any of the conditions removed or varied, then the court can review the decision and/or conditions imposed if the individual makes a formal request through their legal representative. This is outlined within [S.30](#) of the Criminal Procedure (Scotland) Act 1995. However, this is only possible if the person's situation has changed materially, or they can provide information to the court that was not available when the decision on bail was taken. [S.31](#) of the Criminal Procedure (Scotland) Act 1995 outlines the means by which the prosecutor can also appeal bail decisions, giving them the opportunity to provide court with information that was not available at the time the decision was taken. [S.32](#) allows any individual refused bail to appeal the decision.

Bail reviews provide further opportunities for alternative measures to be put in place and considered by court. This can lead to the release of the child or young person on bail, or seek a transfer from HMYOI to secure care if they were not remanded there in the first instance. This is where the CSA 1995 s.25 pathway could be utilised as referred to in the legislation section (secure care).

Where an accused person appears before the court on [petition matters](#), and has not been granted bail in the first instance, they will be subject to what is often colloquially referred to as a "7 day lie down." This means they will be held in custody for 7 days for further examination before coming before the court again for what is known as the full committal hearing.

Particularly for children, this period of further examination should be used to develop a robust plan presented as an alternative measure, should it be assessed that the risk of harm

can be managed in the community. All options and associated processes should be explored (as outlined in this chapter) including EM bail and CARM processes (or equivalent local risk management process for children) to support return to the community, release to Local Authority care or any other suitable options. Where it is deemed unlikely that the child will be bailed, or the risk of harm is not considered manageable in the community at that time, then the pathway to secure care through s.25 of the Children (Scotland) Act 1995 could again be explored to create a pathway to secure care for the child, rather than YOI.

5.4 Sentencing

The Scottish Sentencing Council (2022) "[Sentencing Young People](#)" guidelines highlight the need for a different approach to sentencing children and young people due to their neurodevelopment immaturity and greater scope for rehabilitation and desistance (O'Rourke et al., 2020). In order to aid sentencing, Social Work Reports for Court should be completed for all children as outlined in the [Criminal Justice Social Work Reports and Courts Based Services Practice Guide](#), [National Outcomes and Standards for Social Work Services in the Criminal Justice System](#), and the [Community Payback Order Practice Guidance](#).

GIRFEC must inform all reports for court in relation to children; an appropriate Structured Professional Judgement (SPJ) risk assessment tool should also be employed. In addition, report authors must comment on the option of advice/remittal to a children's hearing for all children up to 17yrs 6mths; restriction of liberty orders; and the responsibility of Scottish Ministers, if sentenced via section 205 or 208 of the Criminal Procedure (Scotland) Act 1995 (Standard 5 Scottish Government, 2021). All appropriate sentencing options should be considered to ensure the most appropriate recommendations are put forward for the court's deliberation. Reports should make clear which disposal social work believe would be most effective, the justification for this view, and must share any reservations regarding disposals whilst being mindful to keep open as wide a spectrum of disposals as possible for the court's consideration. This is particularly relevant where remittal is not an option.

In framing the potential disposals for the court's deliberation reports should emphasise which actions will meet the child's needs and build capacity, whilst reducing the potential for further offending behaviour and/or harm. When presenting preferred options before the court the disposal the author assesses as the most appropriate should be the first and most detailed one put forward. It should:

- Detail how the plan will address the issues identified through the risk assessment and analysis.
- Clearly outline what is in place and can be accessed, as well as any formal risk management process required, such as CARM.
- Confirm all options that require funding or specific services, making clear what still needs to be progressed/ agreed, by whom, and in what timeframe.

There should be no difference between what can be delivered through the CHS if remitted.

Whether remitted to the CHS or held by the court, any plan of intervention can include electronic monitoring (EM). Within remittal to CHS, it would currently only be available where a child meets the secure care criteria, and MRC could then be included to aid with monitoring as part of the plan. EM can provide a physical prompt for children to deflect from negative peer pressure, or those who may seek to exploit them (Simpson & Dyer, 2016). If the court does not remit the case, then EM is available now as a specific requirement of a Community Payback Order (CPO) or remains available as a standalone Restriction of Liberty Order (RLO). However, standalone use of EM with a child is not best practice, as it provides no additional supports or intervention.

This plan can then be framed within the appropriate disposal, with advice and remittal always the starting point. Under other disposals, the plan should be referenced making clear that it could also be delivered through other means, for example a CPO.

5.5 Remittal to CHS from Court

Remittal to the CHS continues to be underused in every area of Scotland (Henderson & CYCJ, 2017), with recent figures showing that on average only 5% of children whose cases could be remitted to the CHS receive such a disposal (Dyer, 2022b). Henderson and CYCJ (2017) illustrated that, of the children from their study, all had backgrounds characterised by trauma and neglect, with 98% being involved in the hearings system prior to the request for advice or remittal from court.

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. Currently all children aged 12-17.5 years old can be remitted from Court to the CHS unless the sentence is fixed by law, under s.49 (5) Criminal Procedure (Scotland) Act 1995. For all children subject to CSO/ ICSO then the High Court *may*, and the sheriff court *shall*, obtain advice from the CHS as to how the case should be disposed of. The court can then deal with the case itself or remit back to the CHS, at which point the court's involvement ceases, unless the child appeals the decision to remit to the CHS.

[National Guidance](#) (Scottish Government, 2010, p. 50) states that the individuals completing Justice Social Work Reports (JSWR): "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)... it is critical to demonstrate 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". It is important for JSWR authors to bear in mind that remittal to a children's hearing may be a suitable disposal even in cases where the offence is of a more serious nature, including where a custodial sentence is under consideration (Scottish Government, 2010). These considerations should all be emphasised within JSWRs. If the case is remitted to the CHS, the panel will decide whether to make a CSO or, if there is a CSO in place, whether to continue or vary that Order. This could lead to a period in secure care subject to the secure care criteria being met, as outlined earlier in this chapter.

5.6 Movement Restriction Condition (MRC)

Children's Hearings (Scotland) Act 2011 [S.83](#) (4) and (6) stipulate that a [MRC](#) can only be made if the child meets one or more of the criteria for secure care and a children's hearing, or a sheriff determines that an MRC is necessary and should be included in the order (CSO/ICSO). The Children (Care and Justice) Scotland Act once Part 1 Is commenced will decouple and amend the MRC and secure care criteria. MRCs are a restriction of liberty and appear to have been utilised sparingly across Scotland since their introduction in 2013. It is currently unclear why. Statistics from G4S, who hold the contract for all electronic monitoring in Scotland, highlight that there has been little shift in the volume of MRCs imposed:

- Figures from 2014 - 2019 reflect a range from 20 to a maximum of 41 MRCs implemented each year.
- From April 2021 to March 2022 there were 17 MRCs implemented (G4S, 2022, p. 7)
- From April 2022 to March 2023 30 MRCs were implemented (G4S, 2023, p. 9).
- The gender split indicates that a higher proportion of MRCs are made for males than with females.

Although an MRC is currently a direct alternative to depriving a child of their liberty (Children's Hearings Scotland, 2022, p. 35), it is always important to ensure risk practice is proportionate, and in line with the minimum intervention principle, to keep the child and others safe. MRCs must be accompanied by a comprehensive Child's Plan, with appropriate wraparound supports to support the risk management plan. When considering depriving a child of their liberty it is important to explore all potential measures, evidencing what has been included or excluded and why. This must be informed by appropriate assessments using a relevant risk assessment tool (Scottish Government, 2021a), the needs of the child and their support systems, and their ability to manage potential risk of harm. The following may be helpful to consider, though this list is not exhaustive:

- As a minimum, CARM, or local formal risk management process should be explored, and a decision taken as to whether formal risk management is required or not. Decision making should be clear and well-evidenced.
- Whatever process is deemed appropriate, there should be clear evidence of review and oversight of any risk management plan, to ensure restrictions on freedoms and interventions are proportionate and necessary. Plans should look to reduce the risk of harm occurring and impact should it occur whilst building the capacity of the child and their support system ensuring developmentally appropriate opportunities.
- The Child's Plan should be informed by a full risk assessment using appropriate risk assessment tool, with analysis of the potential risk of harm from aspects of the child's behaviour to others. It should also consider the risk of harm posed to the child by others. This should include potential indicators of an increase / decrease in the likelihood of harm occurring, clear intervention and harm reduction strategies that addresses identified needs, build strengths, and reduces the likelihood and impact of

potential harm occurring with contingency plans in place that can be triggered if required (Scottish Government, 2021a).

- Any limitations to the proposed plan should also be stated.
- Consideration through secure care screening processes to ensure appropriate resources and responses are in place or highlight areas of unmet need which may affect the success of the risk management plan.
- There should be clear evidence that the child and family have been included in the risk management process and development of the risk management plan. Any areas of disagreement should be noted within the plan.
- All alternatives to depriving a child of their liberty where they could be safely supported to remain in the community should be explored and any decisions as to why this is suitable or not should be clear and transparent. This must include MRC and other potential proportionate strategies and responses which may be more appropriate than an MRC.
- When an MRC is appropriate the child and family's views and agreement must be sought. Whilst their agreement is not required for an MRC to be made it is more likely to have the desired impact when they agree and feel included.
- When an MRC is appropriate then it is critical that there is clarity over how it will reduce the risk of harm occurring. It may be helpful to consider the following:
 - During which times will the restrictions be active, and over how many days a week? The MRC must fit around the child's situation and needs rather than being imposed for a blanket 7 days, 12 hours each day unless this is assessed as appropriate, proportionate, and necessary.
 - What contingency plans are in place to provide respite if the situation at home breaks down or becomes difficult? Is there a second address that can be used?
 - How is time for positive activities such as sports clubs, visits with family or time with positive peers incorporated into the plan?
 - What amount of flexibility will be accepted should the child struggle to precisely adhere to it? What can be tolerated by the system? What will engagement and success look like?
 - Who will respond, and what will that response look like, should the child not return in time for their curfew, or leave when they are not supposed to?
 - Is there a need to include an 'away from' element within the MRC, such as away from a specific person or place? Can the restriction be to a place other than the home address, e.g., school or placement?
- There should be a clear connection between [Secure Care Pathways and Standards](#), [Standards for those working with children in conflict with the law](#) and local processes and procedures.

6. Why Do We Need Alternatives?

“Evidence available shows that deprivation of liberty is fundamentally harmful for children, jeopardising their development and putting them at increased risk of abuse, violence, social discrimination, and impeding their right to education.”

(Care Inspectorate, 2023)

The Global Study conclusions, as referenced in [The Global Study Toolkit: Administration of Justice](#) (Sax, 2022, p. 9), make clear that children are often detained in a justice context because of dysfunctional justice systems that are over-reliant on arrest and detention, and due to a lack of dedicated child justice systems. Children consulted in the Global Study highlighted that these dysfunctional systems are characterised by a lack of child friendly procedures and inadequate access to information or contact with the outside world; meanwhile, research findings highlight that detaining children is generally ineffective and cost inefficient. Furthermore, discrimination in justice is widespread in pathways and conditions leading to detention, during detention, and in relation to post-release support, with insufficient investment in effective rehabilitation and reintegration. Several of the findings of the Global Study reinforced the importance of ensuring alternative measures are available:

- “The combination of a lack of support for caregivers and families and insufficient inter-agency cooperation to create comprehensive, integrated and rights-based child protection systems, are together key driving factors that lead to deprivation of liberty.
- Deprivation of liberty is linked to discrimination of certain groups of children, who are overrepresented in such settings, ranging from children from minorities, children of afro-descent and migrant children to boys/girls (depending on setting), children in street situations, LGBTQI children and children with disabilities.
- Detention of children can be considered a form of structural violence; it leads to children becoming ‘invisible’, with a lack of attention paid to their best interests.”

(Sax, 2022, p. 30)

International literature provides comprehensive evidence as to why children in conflict with the law require a tailored approach that is developmentally, trauma, and systemically informed (McLachlan, 2024; Mooney et al., 2024; Utting & Woodall, 2022; Willoughby et al., 2024). This is particularly important when considering depriving children of their liberty, as a significant proportion have often been victims of abuse, trauma, and neglect, with high rates of substance and alcohol misuse, child protection involvement and school exclusion (Paterson-Young, 2021; Whitelaw & Gibson, 2023). In addition, they have often experienced a higher frequency of adverse childhood experiences (ACEs) (Gibson, 2022; Vaswani, 2018a), with a higher prevalence of traumatic bereavements in children and young people held in HMYOI Polmont than children in the general population (Vaswani, 2018b, 2018c). This understanding of the level of exposure to trauma and adversity ([see Section 5](#)), as well as the intersectionality of factors such as poverty is further illustrated by data gathered through a census of children within secure care (Gibson, 2020, 2021) and snapshots from Scottish Prison Service (SPS) records (Scottish Government, 2022b):

SPS Records illustrated:

- Half of the children in custody lived in some of the most deprived communities in Scotland and around half were care experienced.

- The children in custody had needs associated with mental health, drugs and alcohol, and additional needs including speech, language and communication needs (SLCN).
- These children have often been the most marginalised and excluded, with disrupted school attendance and major - often unrecognised - gaps in, for example, literacy, communication, comprehension, numeracy, and life skills.

Secure Care Census snapshots illustrated:

- Approximately half of children in secure care were from a family living in relative poverty.
- The children from the most deprived areas of the United Kingdom are disproportionately represented within secure care.
- 74% of the children in secure care in 2019 had experienced four or more separate types of ACEs.
- Of the children in secure care who lived in relative poverty, 86% had encountered four or more ACEs, while this figure was lower (56%) for those children who did not live in relative poverty. The number of children from a background of relative poverty who had 4 or more ACEs within the secure care populations has risen from 70% of children in the 2018 census to 86% in 2019.

In light of the above information which highlights the vulnerability of those children at risk of losing their liberty, and a recognition of the corrosive impact of locked placements, alternative supports must be considered in all instances.

7. A Framework for Alternative Measures

There is no definition of alternative measures, however Article 4(2) of the [Optional Protocol to the UN Convention against Torture](#) defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. Understanding the widest context in which deprivation of liberty occur enables us to consider an expansive application of alternative measures, rather than a narrowly defined set of circumstances. This helps to ensure that the use of deprivation of liberty is genuinely a measure of last resort.

International literature examining alternatives to deprivation of liberty (Sax, 2022) recommends five areas for consideration:

- Review existing legislation, procedures and structures
- Provide non-custodial measures for children
- Ensure adequate treatment during deprivation of liberty
- Ensure a systemic approach to prevent deprivation of liberty
- Monitor implementation and ensure access to justice for children.

Key points from the recommendations that may be beneficial to consider from a Scottish perspective include:

- Development of a child friendly justice system which includes specifically trained police, prosecutors, judges, social workers, health workers; establishing interface structures for exchange and cooperation between police, the justice sector and child protection services.
- Apply child justice principles for a transition period also to young adults
- Set the minimum age of deprivation of liberty at 16 (or above)
- Limit police custody for children to 24 hours
- Limit pre-trial detention
- Ensure child specific and general legal / procedural safeguards available to children are consistently applied.
- Implement and adequately fund early and post-release programmes.
- Take a systemic approach to prevention of child detention.
- Establish formalised cooperation mechanisms for inter-agency cooperation between families, communities, schools, social services, youth work, health services, local administration, police and the justice sector, in order to create integrated, effective child protection systems- requires children at risk of deprivation of liberty to be seen through the lens of child protection, and not criminalised
- Ensure personal contact between the child and people in the outside world, including parents, siblings and persons of trust.
- Provide children deprived of their liberty with access to quality education, healthcare including mental health and access to interventions
- Establish effective feedback and complaint mechanisms that are accessible to children, in a language they can understand.

(Sax, 2022)

Whilst a number of the above recommendations may be reflected across Scottish legislation, policy and practice, there remains a significant gap in the implementation of alternative measures. Often this is attributed to resourcing, knowledge gaps, and inconsistency due to variation in how often such measures are required. This is a challenge that local authorities and other corporate parents must face in order to provide equitable provision across Scotland. This is made all the more difficult to achieve in light of financial pressures

8. What Could Alternative Measures Look Like?

Provision of supports, services and interventions that serve as alternatives to deprivation of liberty are integral to a rights-based response to children in conflict with the law, with Article 40(4) of the UNCRC calling for such provision to be made available to children. Such alternatives could include anything that does not fully restrict the liberty of a child and thus a great deal of flexibility and creativity is possible. It is also important that any alternative measures are able to meet the needs of individual children in line with GIRFEC and do not merely seek to fit children into a one-size fits all response. Responses must not merely consider the needs of the child, their circumstances and support systems, but also reflect on the needs of those delivering the support to the child or young person.

For those deciding which alternative services to utilise, Souverein et al. (2022) stress that an understanding of the risk factors experienced by the child or young person is essential. This echoes Kilkelly (2011, p. 20), who argues that alternatives should be, “based on individualised assessments and best practice in social work and youth care”, before going on to stress the importance of identifying familial, environmental and community-based factors that should be borne in mind. Underpinning this assessment is an understanding of risk that articulates the particular challenges faced by the child and what is driving the concerning behaviour, in addition to a recognition of the existing strengths and protective factors that can be drawn on. Johns et al. (2017) make this point clearly in their work, highlighting the importance of the [ecological understanding](#) of the child or young person, situating them, their behaviour and their circumstances within the interlocking systems that impact upon them on a day-to-day basis.

Examples of alternative measures within Scotland include the use of MRCs, intensive mentoring services, adoption of CARM protocols, specialist residential provisions, intensive family support and interventions from Forensic CAMHS. There is no definitive nor descriptive list of options, and those supporting the child or young person in question should create a child or care plan that best addresses the identified needs, risks, strengths and vulnerabilities of the person and their surroundings. As Souverein et al. (2022, p. 148) state: “youth justice interventions need to be tailored to the unique challenges that youth face during adolescence”. Hart (2015) makes the case that graduated, incremental levels of security is necessary in order to provide the tailored response that Souverein and colleagues refer to, noting that a binary provision of secure / not secure, or locked / not locked does not truly reflect the dynamic nature of children’s lives.

International literature points to some factors that have been shown to be effective in creating these tailored interventions, whilst addressing risk and avoiding the subsequent loss of liberty. For example, Pronk et al. (2020) and Pronk et al. (2023) describe the benefits gained from intensive educational support which focuses on the aspects of a child’s life that give greatest concern. Mental ill-health is commonly cited as a factor in admission into secure care (Gibson, 2022; Roe et al., 2022), leading Williams et al. (2024) to stress the need for mental health provision to be a focus of those supporting children, and as such alternatives to secure care ought to consider how best to meet that need. In a literature review of studies examining the prevention of harm by female survivors of abuse, Willoughby et al. (2024) point to the benefit that can be gained from psychological counselling and similar approaches, albeit that the empirical results of these are not conclusive.

Crowe (2024) provides accounts of approaches used within Hawaii, the Netherlands and Australia in addition to Scotland. These nations have adopted diverse approaches, including intensive residential support, intensive community and home-based support, multi-disciplinary intervention teams, and family-based supports. Of note is the move in some jurisdictions to end the use of secure care altogether, whilst some areas of the aforementioned nations have never adopted such an approach. Given the scale of trauma experienced by children and young people who are considered for admission into secure care (Hart & La Velle, 2016; Pates et al., 2018), it would appear apposite to consider the merits of trauma informed practice. Johnson (2016) outlines steps that residential practitioners and those supporting children and young people can take in order to incorporate such an approach into their care.

Local authorities across England and Wales – in the absence of some of the more creative approaches outlined within this passage – have instead sought legal authorisation to impose Deprivation of Liberty Orders (DOLs) which place significant restrictions and controls over a child's liberty, movement and freedoms (Roe & Ryan, 2023). Such orders have slowly been introduced on a cross-border basis into Scotland, and thus practitioners may encounter children who face such conditions at the point of them interacting with domestic, universal services. Whilst MRCs, and other forms of EM in Scotland, do offer robust interventions and sanctions, the approach taken through DOLs appear excessive and not in keeping with the ethos of Scotland's approach to children who face, make or take the highest levels of risk.

Alternative provision following a period of secure care is similarly challenging and will require the same consideration as those occasions where the child avoids entering a locked environment. Yet data regarding this passage of children and young people's lives are limited (Roe, 2022), leading Williams et al. (2019) to query the effectiveness of both secure provision and those services put in place to meet needs of this cohort.

There are several opportunities to implement alternative measures when a child or young person comes into contact and/or conflict with the law. Whilst the systems, processes, and legislation may differ across the globe, the principles underpinning effective use of alternatives to deprivation are similar. [The Global Study](#) (Nowak, 2019) suggests that best outcomes will be achieved when an approach is undertaken that is:

- Holistic, dynamic and participatory
- Based on integrated approach between stakeholders in the justice, child welfare and social services systems
- Reliant on resources allocated at national and local level that guarantee an equal provision of services throughout the country
- Inclusive in that it involves families and communities through support and/ or training as well as relationship building activities between the child and the family
- Designed to reduce stigmatisation, and
- Committed to broaden a sense of ownership and shared responsibility.

The need for alternatives will most likely occur at points of crisis and turbulence in a child's life; this may be the result of chronic exposure to trauma and adversity which precipitate harmful survival mechanisms and coping strategies. Alternatively, it may be a response to one-off events of potential or actual harm (Gibson, 2022; Whitelaw & Gibson, 2023). Irrespective of the reason or the system in which an alternative is required, flexibility is key within, and across, the systems responding to children.

There is no one-size-fits-all alternative measure that could meet the needs of every child. Issues which have influenced the availability of alternatives create layers of complexity that are not easily solved. Such difficulties could relate to geographical footprint, demographics, and a reduction in the number of children requiring to be deprived of their liberty due to the impact of policy and practice developments, such as WSA. Thus, specific services that provide alternatives may be more likely to exist in areas with larger, denser populations with easier access to services, than in more rural areas with low-density populations and less access to such services.

The frequency of need for alternative measures is likely to have an impact on both what is available, and the confidence of practitioners in such situations. This is especially true when the processes can be complex and unfamiliar, such as when supporting a child who has been accused of a particularly rare matter for that geographical location. Across Scotland some local authorities will encounter children and young people who are at risk of losing their liberty far more often than their colleagues elsewhere. This is to be expected given the nature and demographics of Scotland's local authorities and is – to a large extent – unavoidable.

Nevertheless, local authorities must be able to respond in a manner that reflects the needs of their communities; for some this will be specific services for alternatives and for others will mean a bespoke response each time, drawing on existing resources or commissioning a specific agency or combination of agencies depending on the needs of the child.

As stated earlier in this section, the pathway by which a child comes to be at risk of having their liberty deprived will have specific legislation, processes and procedures. However, the practice which underpins any alternative measure should be therapeutic in approach and based upon a firm body of evidence.

9. Giving Voice to Children, Parents, Carers and Families in Alternative Measures

9.1 Child's Voice

Privileging the voice of the child throughout this stage of their life is of utmost importance, as identified in [Article 12](#) of the UNCRC.

Article 12 of the UNCRC establishes the right of every child to freely express her or his views in all matters affecting them, and the subsequent requirement of UNCRC signatories to give due weight to these views, according to the child's age and maturity. It also requires states to ensure that the child receives all necessary information and advice to make a decision about their lives. Article 12 explicitly states that signatories "shall assure the right of the child to freely express her or his views". As Scotland seeks to incorporate UNCRC and it meet its requirements practitioners should be mindful of the need to ensure that those children who are at risk of losing their liberty are afforded all legal protections and rights.

[General Comment No.12](#), on the right to be heard notes that children are often overlooked when they are involved in legal, hostile environments and settings such as the justice systems. It calls for provision of supports which removes this barrier and ensure that children – regardless of their legal status – have the totality of their rights respected. Such procedures "should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance" (Fridriksdottir, 2015, pp. 70-71). Child-friendly information should be provided in a manner adapted to the child's age, maturity and specific circumstances. For children who do not speak the language of the

country in which they are, it is essential that information is conveyed in a language they understand. Information must also be gender and culturally sensitive.

Article 12 is interconnected with [Article 13](#), which states that “the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” (United Nations Committee on the Rights of the Child, 1989). Voice is not only being able to articulate one’s thoughts, views and opinions, but being supported to do this through a means that is relevant for you: “through the use of varying techniques, the child and young person’s view can be heard at any age or within difficult circumstances... Methods of listening are therefore imperative to ensure that it is the child’s voice, their views that are heard, understood and responded to” (Bradwell, 2019, p. 424). Both the justice system and the CHS have progress to be made in how they hear - or do not hear - children’s voices. Often insufficient support in helping the child to understand what is happening compromises the child’s ability to participate; there is also a lack of opportunity to express their views directly (Dyer, 2016; McEwan et al., 2020). When their views are sought it can feel tokenistic, with one study finding that:

“...participants perceived that, during Children’s Hearings, their views tended to be overlooked in favour of those of professionals. In this sense, they felt that the conditions necessary for their effective participation to occur were not being met. “[...] you’re expected to talk to 3 different people you barely know and ask questions that are really personal, but at the same time, you don’t get asked a lot of questions either. It’s sort of like “we’ll come to you last” as it’s a tick box exercise that we need to have spoken to the child.”

(Who Cares? Scotland, 2020, p. 4)

Jones and Welch (2018) identified that children’s voices can be seen as being silenced in three ways:

- The worth of children’s voices
- The ways that social exclusion silences children
- The dominance of adult-oriented ways of communicating and decision-making.

In order to ensure children’s voices are sought, heard and have impact upon the decisions which affect them, it is important that the professionals within these systems, processes and procedures practice in ways that actively seek to support children to realise their right to be heard and influence the decisions made about their lives. Whilst barriers remain to the realisation of Article 12, Field (2007) suggested that the actions of practitioners in how they implement legislation and policy could have a significant impact. This is critical in relation to alternative measures; ensuring children are heard and influence any decision making often falls to those directly supporting a child. Individual practitioners become responsible for adapting the language and information, explaining the potential outcomes and options, as the systems themselves either struggle or fail to do so meaningfully, thus in most cases professionals out with specific children’s services do not have the skills, knowledge, or expertise to do this (Council of Europe, 2010, p. 65).

Involving children in decisions about their lives may not lead to the decision the child wants, but by feeling included and heard the child is more engaged with the outcome and likely to comply (Bevan, 2016). It can also contribute to:

- Increased empowerment and belief in their own agency.
- Increased self-esteem and confidence.
- Increased social skills.
- Increased awareness of their rights and positive life options.

(Paterson, 2020)

For the success of any alternative measure, the child's views must be sought, heard and inform decision-making, the development of any plans, and subsequent interventions and risk management strategies. Failure to do so could have significant implications for the success of any alternative. Further insight into this area of practice can be found within [Section 4](#).

9.2 Voices and Role of Parents, Caregivers, and Families

The importance of engaging with families of children in conflict with the law is explicit within [General Comment No. 24](#) (2019, p.10) which emphasises :

“... that State parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. The Committee also recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings, if parents are unavailable.”

(United Nations Committee on the Rights of the Child, 2019)

The importance of this is evidenced in research, with suggestions that children involved in family-based interventions have recidivism rates 16% - 28% lower than comparable control groups (Trotter, 2021). There is evidence to suggest that family interventions are more effective than cognitive behavioural and group therapy interventions (Hartnett et al., 2016). The importance of family support is a core pillar of the Promise (Independent Care Review, 2020), which is clear that children should remain with their families when it is safe to do so, and one of the pillars to achieving this is through provision of family support, of which they identify 10 principles:

- Community Based
- Responsive and Timely
- Work with Family Assets
- Empowerment and Agency
- Flexible

- Holistic and Relational
- Therapeutic
- Non-Stigmatising:
- Patient and Persistent
- Underpinned by Children's Rights

The Bail Supervision Scheme (BSS) piloted in Dublin, the [Family Engaged Case Planning](#) developed by the Anne E Casey Foundation in America, and the Collaborative Family Work used in Australia and England and Wales (Trotter, 2021) are examples of how holding family engagement at the core of responding to, and engaging with, children in conflict with the law is beneficial. These approaches reflect many similar core components of meaningful engagement including valuing parents and caregiver's opinions; actively seeking their input and contribution to identifying concerns, developing plans and interventions; and agreeing boundaries, rules, and consequences. In addition, they are strengths-based approaches that would uphold the rights of children in recognising their position as outlined within the UNCRC, and the role of the state to provide support to them in carrying out their roles and responsibilities as required. The importance of including and hearing parents and engaging with families was summed up as follows by a member of the BSS: "if you don't have that [engagement] nothing else is going to work" (Naughton et al., 2019, p. 21).

Engaging with the child and their family in their community is critical. Although services may have a role to play, in most cases their involvement will eventually cease, whilst families and communities often have a stronger longer-term influence. Family engagement is described by Justice for Families (2015, p. 6) as "a meaningful partnership with families and youth at every level of the agency and system...[where] families are truly valued, and when they are appreciated as experts and critical stakeholders in the shaping of positive outcomes."

Practitioners must also recognise that there are often significant expectations placed upon parents by services to supervise and monitor their children, especially in the context of alternative measures. The parents' backgrounds and experience of services must be understood to ensure engagement is undertaken in a manner that does not compound previous traumas, and is non-judgemental and supportive. Often a parent's experience of trauma and adversity is not fully considered and thus fail to shape how services engage with them, with services' immediate focus on the best interests of the child often overshadowing consideration of parental experiences. In doing so, they fail to realise that engaging parents in a more meaningful way can better align with the best interests of the child.

However, engaging meaningfully with families entails more than providing information, explaining things, and supporting them in understanding what can often be a complex and confusing process. Although these are essential, working with families goes beyond this; practitioners should seek their opinion on what they think will be beneficial, fully including family members and the child in the development of any intervention or action plan. As one study states, "family engagement begins with a fundamental belief that all families care for their children, have strengths that can be built upon and can be engaged and empowered. Family engagement is not about one single policy or practice or program, rather it lives in the culture of an organization and its evidence is seen in how families are treated and partnered with at a systemic level" (Justice for Families, 2015, p. 6).

This approach to engagement with families can be challenging, especially where parents have their own negative experiences with services. This can present as unwillingness to engage but is more reflective of a lack of trust. This may mean that family members might feel unable to engage with service providers, rather than unwilling to. Professionals can often focus on a need for compliance that becomes the only focus. When this is pursued in an authoritarian manner this is likely to jeopardise the formation of trusting relationships with children, young people or their parents. Changing the focus of engagement to include families and parents may be particularly challenging for services at pinch points, where timeframes are limited, such as a child appearing from custody. Particularly in these situations, assessing whether the risk of harm can be managed safely, establishing what is required to do so, and engaging with the child and family must all be completed quickly. This has implications for the depth and breadth of engagement, and the type of assessment that can be completed, with fewer family members involved over a shorter period. This is a prime example of where the stark differences between children and adults are not consistently reflected in process or practice; children get pushed through processes that are not designed with their rights or needs in mind, and which are thus not fit to meet those rights and needs.

These pinch points in the justice system require collaboration between justice services and children's services. This is essential to ensure that engagement with families (especially parents) inform any discussion regarding conditions which may be attached to bail, bail supervision or other court conditions. Engaging effectively with families should be at the core of all work with children and young people across any system in which they find themselves, especially where they are at risk of having their liberty deprived. The following three steps may be helpful to support effective family engagement within the context of children in conflict with the law:

- Use a broad definition of family that includes all adults with a commitment to the child's well-being.
- Give families a meaningful voice in framing and overseeing the child's plan, irrespective of the system the plan is developed within.
- Build a family-centric culture across the justice system in relation to children.

(The Annie E. Casey Foundation, 2022)

Further research regarding parents' and caregivers' experiences of Forensic CAMHS services, (Jacob et al., 2023) noted a range of facilitators and barriers to support which may be helpful when considering how services can go beyond just including parents to empowering them to care for their children.

Facilitators of Support:

- Clear joined up communication
- Co-production of strategies and practical advice
- Facilitating understanding
- "Holding" the case, or acting on behalf of parents/carers
- Sense of being supported or protected

Barriers to Support:

- Lack of communication, awareness, or contact

In summary, engagement with families must meet a range of needs from demystifying the language and processes (thereby facilitating their participation) to practical aspects, such as supporting them to attend court or children's hearings. Supporting parents to address other issues which affect their parenting abilities and capacity should be integrated into any responses to children in conflict with the law, whether via the welfare or justice system; failure to do so can decrease the likelihood of success for any alternative measure and neglects the ecological nature of a child's life (Johns et al., 2017).

10. Conclusion

Establishing alternatives to the deprivation of liberty is a rights issue; the effective implementation of alternatives is one of the key issues facing the realisation of a rights-upholding child justice system. There is a need for a wide range of alternative measures to meet the individualised needs and contexts of children. The provision of alternative measures must uphold the rights of children, ensuring that their best interests are paramount; any decisions taken *about* them must be made *with* them and their parents/carers, whilst balancing the rights and protections of the wider community or any specific individuals who may be harmed.

There is no one-size-fits-all approach for an alternative; it needs to be flexible, not solely to meet the needs and manage potential harm for individual children but also to reflect the local authority's needs. This creates extremely wide parameters for what an alternative may look like. It could be a concrete process and service which is established, such as bail supervision or consideration of MRCs, or it could be a child's plan or package of support that is completely bespoke. Irrespective, alternative measures for children in Scotland must be grounded in GIRFEC and child protection principles where necessary. They ought to be underpinned by good risk management practice, with a shared understanding across partner agencies, the child and their parents/carers; any measures must be regularly reviewed and monitored to ensure restrictions are effective, proportionate, and appropriate. Failure to do so not only contributes to unnecessary use of locked provision and the myriad harms that this causes, but can place people at risk due to unsatisfactory support and supervision within the community.

11. References

- Bevan, M. (2016). *Investigating young people's awareness and understanding of the criminal justice system: An exploratory study*. <https://howardleague.org/wp-content/uploads/2016/06/Investigating-young-people%E2%80%99s-awareness-and-understanding-of-the-criminal-justice-system.pdf>
- Bradwell, M. (2019). Voice, views and the UNCRC Articles 12 and 13. *Journal of Early Childhood Research*, 17(4), 423-433. <https://doi.org/10.1177/1476718x19875780>
- Care Inspectorate. (2023). *Position paper -Depriving and restricting liberty for children and young people in care home, school care and secure accommodation services*. https://www.careinspectorate.com/images/documents/Depriving_and_restricting_liberty_for_children_and_young_people_in_care_home_school_care_and_secure_accommodation_services.pdf
- Children's Hearings Scotland. (2022). *Practice and Procedure Manual*. <https://www.chscotland.gov.uk/media/upyba23h/master-copy-practice-and-procedure-manual-v4-0-3-2022.pdf>
- COPFS. (2021). *Lord Advocate's Guidelines - Offences alleged to have been committed by children, version 1.2, September 2021*. https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/Lord%20Advocates%20Guidelines%20to%20the%20Chief%20Constable%20on%20the%20reporting%20to%20Procurators%20Fiscal%20of%20Offences%20alleged%20to%20have%20been%20committed%20by%20children.pdf
- Council of Europe. (2010). *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. <https://www.coe.int/en/web/children/child-friendly-justice>
- Crowe, K. (2024). *Unlocking doors: Learning from alternatives to secure care in Scotland, the Netherlands, Canada and Hawaii*. Melbourne: Winston Churchill Trust Retrieved from <https://www.churchilltrust.com.au/fellow/kate-crowe-vic-2022/>
- Dyer, F. (2016). *Young People at Court in Scotland*. <https://cycj.org.uk/wp-content/uploads/2016/02/YoungPeopleAtCourtFINAL.pdf>
- Dyer, F. (2018). *Information on the Criminal Justice (Scotland) Act 2016*. <https://cycj.org.uk/wp-content/uploads/2018/02/Info-sheet-70ab.pdf>
- Dyer, F. (2022a). *Alternatives to Young Offender Institutions for children under 18*. <https://www.cycj.org.uk/wp-content/uploads/2022/09/Alternatives-to-Young-Offender-Institutions-for-children-under-18.pdf>
- Dyer, F. (2022b). *Remittal from Court*. CYCJ. <https://www.cycj.org.uk/wp-content/uploads/2022/09/Info-Sheet-104-2.pdf>
- Dyer, F. (2024). *Alternatives to Young Offender Institutions for children aged 16 and 17 not on Compulsory Supervision*. Glasgow: Children and Young People's Centre for Justice Retrieved from <https://www.cycj.org.uk/wp-content/uploads/2024/05/Info-Sheet-114-May-24-2.pdf>

- Field, S. (2007). PRACTICE CULTURES AND THE 'NEW' YOUTH JUSTICE IN (ENGLAND AND) WALES. *The British Journal of Criminology*, 47(2), 311-330. <http://www.jstor.org/stable/23639685>
- Fridriksdottir, H. (2015). Relational Representation: The Empowerment of Children in Justice Systems. In S. Mahmoudi, P. Leviner, A. Kadal, & K. Lainpelto (Eds.), *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child* (pp. 55-72). Brill.
- G4S. (2022). *Statistical Bulletin: statistical analysis of the Scottish electronic monitoring contract from April 2021-March 2022*.
- G4S. (2023). *Statistical Bulletin: electronic monitoring to the Criminal and Youth Justice Systems in Scotland April 2022-March 2023*.
- Gibson, R. (2020). *ACEs, Places and Status: Results from the 2018 Scottish Secure Care Census*. Glasgow: Centre for Youth and Criminal Justice Retrieved from <https://www.cycj.org.uk/wp-content/uploads/2020/07/ACEs-Places-and-Status.pdf>
- Gibson, R. (2021). *ACEs, Distance and Sources of Resilience*. Glasgow: Children and Young People's Centre for Justice Retrieved from <https://strathprints.strath.ac.uk/76788/>
- Gibson, R. (2022). *What do we know about children from England and Wales in secure care in Scotland?* London: Nuffield Family Justice Observatory Retrieved from <https://www.nuffieldfjo.org.uk/resource/what-do-we-know-about-children-from-england-and-wales-in-secure-care-in-scotland>
- Hart, D. (2015). *Correction or care? The use of custody for children in trouble*. London: Winston Churchill Trust Retrieved from https://media.churchillfellowship.org/documents/Hart_D_Report_2015_Final.pdf
- Hart, D., & La Velle, I. (2016). *Local Authority Use of Secure Placements*. London: Government Social Research Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582375/Local-authority-use-of-secure-placements.pdf
- Hartnett, D., Carr, A., & Sexton, T. (2016). The effectiveness of functional family therapy in reducing adolescent mental health risk and family adjustment difficulties in an Irish context. *Family Process*, 55(2), 287-304. <https://doi.org/10.1111/famp.12195>
- Henderson, G., & CYCJ. (2017). *Criminal Advice and Remittals to the Children's Hearings System*. CYCJ. <https://www.scra.gov.uk/wp-content/uploads/2017/06/Criminal-advice-and-remittals-to-the-Childrens-Hearings-System.pdf>
- Independent Care Review. (2020). *The Promise*. I. C. Review. <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>
- Jacob, J., Lane, R., D'Souza, S., Cracknell, L., White, O., & Edbrooke-Childs, J. (2023). "If I Didn't Have Them, I'm Not Sure How I Would Have Coped with Everything Myself": Empowering and Supporting Parents/Carers of High-Risk Young People Assisted by Community Forensic CAMHS. *International Journal of Forensic Mental Health*, 22(1), 56-68. <https://doi.org/10.1080/14999013.2022.2060382>
- Johns, D. F., Williams, K., & Haines, K. (2017). Ecological Youth Justice: Understanding the Social Ecology of Young People's Prolific Offending. *Youth Justice*, 17(1), 3-21. <https://doi.org/10.1177/1473225416665611>
- Johnson, D. (2016). *A Best Fit Model of Trauma-Informed Care for Young People in Residential and Secure Services*. Paisley: Winston Churchill Trust Retrieved from https://media.churchillfellowship.org/documents/Johnson_D_Report_2016_Final.pdf

- Jones, P., & Welch, S. (2018). *Rethinking Children's Rights*. Bloomsbury Publishing.
- Justice for Families. (2015). *Focus on Youth and Families*.
https://www.justice4families.org/wp-content/uploads/2013/04/J4F_Report_FINAL_082815.pdf
- Kemshall, H. (2021). *Bias and Error in Risk Assessment and Management*.
<https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/12/Academic-Insights-Kemshall-1.pdf>
- Kilkelly, U. (2011). *Measures of Deprivation of Liberty for young offenders: how to enrich International Standards in Juvenile Justice and promote alternatives to detention in Europe?* https://archive.crin.org/en/docs/documental_9674_en.pdf
- McEwan, D., Maclean, H., Dyer, F., Vaswani, N., & Moodie, K. (2020). *Use and impact of bail and remand with children in Scotland*. CYCJ. <http://www.cycj.org.uk/wp-content/uploads/2020/12/Bail-and-Remand-in-Scotland-final-report-1.pdf>
- McLachlan, K. J. (2024). *Trauma-informed Criminal Justice: Towards a More Compassionate Criminal Justice System*. Springer Nature.
- Mooney, S., Coulter, S., Bunting, L., & Montgomery, L. (2024). *The 'Sequential Intercept Model'—a trauma-informed diversionary framework*. London: HM Inspectorate of Probation Retrieved from <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2024/01/Academic-Insights-The-%E2%80%98Sequential-Intercept-Model.pdf>
- Murphy, C. (2018). *Balancing rights and risk: How can we get it right for children involved in violent behaviour?* CYCJ. <https://www.cycj.org.uk/wp-content/uploads/2018/10/Balancing-Rights-and-Risk.pdf>
- Naughton, C. M., Redmond, S., & Coonan, B. (2019). *Evaluation of the Bail Supervision Scheme for Children (Pilot Scheme)*. D. o. C. a. Y. Affairs.
<https://www.ul.ie/artsoc/ccjvs/research/youth-justice/bail-supervision-scheme-bss>
- Nolan, D. (2019a). *Reviews for young people in custody under the Whole System Approach - Information for local authorities*. Glasgow: Centre for Youth & Criminal Justice
- Nolan, D. (2019b). *Routes into secure care*. Glasgow: Centre for Youth and Criminal Justice Retrieved from <https://cycj.org.uk/wp-content/uploads/2019/11/Info-sheet-85.pdf>
- Nowak, M. (2019). *Global Study on Children Deprived of Liberty*.
<https://digitallibrary.un.org/record/3813850?ln=en>
- O'Rourke, S., Whalley, H., Janes, S., MacSweeney, N., Skrenes, A., Crowson, S., MacLean, L., & Schwannauer, M. (2020). *The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts - Literature Review*.
<https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>
- Paterson-Young, C. (2021). Exploring how children subjected to violence in the home cope with experiences in Secure Training Centres. *Child Abuse & Neglect*, 117, 105076.
<https://doi.org/https://doi.org/10.1016/j.chiabu.2021.105076>
- Paterson, N. (2020). *Emerging Minds*. N. W. C. f. C. M. Health.
<https://d2p3kdr0nr4o3z.cloudfront.net/content/uploads/2020/08/28140744/CHILDR1.pdf>
- Pates, R., Davies, A., & Tiddy, D. (2018). A Secure Children's Home in Wales. In D. Gallard, K. Evans, & J. Millington (Eds.), *Children and Their Education in Secure*

- Accommodation: Interdisciplinary Perspectives of Education, Health and Youth Justice*. Routledge.
- Police Scotland. (2019). *Offending by Children - Standard Operating Procedure*.
<https://www.scotland.police.uk/assets/pdf/151934/184779/offending-by-children-sop>
- Pronk, S., Kuiper, C., Smit, D., Stams, G. J., Popma, A., Mulder, E., & Berg, v. d., Germie. (2020). A meta-analysis on the outcomes of adolescents at risk for school drop-out attending nonresidential alternative educational facilities. *Preventing School Failure: Alternative Education for Children and Youth*, 64(2), 162-171.
- Pronk, S., van den Berg, G., Mulder, E. A., Kuiper, C., Stams, G. J. J. M., & Popma, A. (2023). The development of adolescents in a non-residential alternative educational facility, including the prevention of secure residential placement. *Children and Youth Services Review*, 145, 106809.
<https://doi.org/https://doi.org/10.1016/j.chilyouth.2023.106809>
- Roe, A. (2022). *What do we know about children deprived of their liberty? An evidence review*. London: Nuffield Family Justice Observatory Retrieved from
<https://www.nuffieldfjo.org.uk/resource/children-and-young-people-deprived-of-their-liberty-england-and-wales>
- Roe, A., Cusworth, L., & Alrouh, B. (2022). *Children subject to secure accommodation orders: A data review*. London: Nuffield Family Justice Observatory Retrieved from
https://www.nuffieldfjo.org.uk/wp-content/uploads/2022/01/nfjo_s.25applications_report_FINAL_20220203_English-3.pdf
- Roe, A., & Ryan, M. (2023). *Children deprived of their liberty: An analysis of the first two months of applications to the national deprivation of liberty court*. London: Nuffield Family Justice Observatory Retrieved from https://www.nuffieldfjo.org.uk/wp-content/uploads/2023/02/nfjo_report_yp_deprivation_of_liberty-1.pdf
- Sax, H. (2022). *Ending Deprivation of Liberty of Children: Administration of Justice*.
<https://omnibook.com/view/5c527ceb-ab16-410c-b863-a97fb9949fcb/page/1>
- Scottish Government. (2010). *Criminal Justice Social Work Reports And Court- Based Services Practice Guidance*. Edinburgh Retrieved from
<https://www.gov.scot/resource/doc/925/0110144.pdf>
- Scottish Government. (2021a). *Framework for Risk Assessment Management and Evaluation (FRAME) for Local Authorities and partners: For Children and Young People under 18*. Retrieved from <https://www2.gov.scot/Resource/0046/00466882.pdf>
- Scottish Government. (2021b). *Framework for Risk Assessment Management and Evaluation (FRAME) with children aged 12-17 Standards, Guidance and Operational Requirements for risk practice*.
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/06/framework-risk-assessment-management-evaluation-guidance/documents/framework-risk-assessment-management-evaluation-frame-children-aged-12-17-standards-guidance-operational-requirements-risk-practice/framework-risk-assessment-management-evaluation-frame-children-aged-12-17-standards-guidance-operational-requirements-risk-practice/govscot%3Adocument/framework-risk-assessment-management-evaluation-frame-children-aged-12-17-standards-guidance-operational-requirements-risk-practice.pdf>

- Scottish Government. (2022a). *Bail Supervision: National Guidance*.
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/05/bail-supervision-national-guidance/documents/bail-supervision-national-guidance-updated-05-01-2023/bail-supervision-national-guidance-updated-05-01-2023/govscot%3Adocument/bail-supervision-national-guidance-updated-05-01-2023.pdf>
- Scottish Government. (2022b). *Covid-19 Children and Families Collective Leadership Group: Short-Life Group on Under-18s in custody Recommendations and Report from Short-Life Group on Under-18s in Custody*.
<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/07/covid-19-children-families-collective-leadership-group-short-life-group-under-18s-custody-recommendations-report-short-life-group-under-18s-custody/documents/covid-19-children-families-collective-leadership-group-short-life-group-under-18s-custody-recommendations-report-short-life-group-under-18s-custody/covid-19-children-families-collective-leadership-group-short-life-group-under-18s-custody-recommendations-report-short-life-group-under-18s-custody/govscot%3Adocument/covid-19-children-families-collective-leadership-group-short-life-group-under-18s-custody-recommendations-report-short-life-group-under-18s-custody.pdf>
- Scottish Government. (2024). *Children's Social Work Statistics 2022-23 - Secure Care*
Edinburgh: Scottish Government Retrieved from
<https://www.gov.scot/publications/childrens-social-work-statistics-2022-23-secure-care/documents/>
- Scottish Government, & COSLA. (2009). *Securing our Future: A Way Forward for Scotland's Secure Care Estate - A response from the Scottish Government and COSLA*. <https://lx.iriss.org.uk/sites/default/files/resources/0080508.pdf>
- Scottish Institute for Residential Child Care (SIRCC) (2009). *Securing Our Future A Way Forward for Scotland's Secure Care Estate*. SIRCC.
<https://lx.iriss.org.uk/content/securing-our-future-way-forward-scotlands-secure-care-estate-response-scottish-government-an>
- Scottish Sentencing Council. (2022). *Sentencing Young People: Sentencing Guideline*.
<https://www.scottishsentencingcouncil.org.uk/media/2171/sentencing-young-people-guideline-for-publication.pdf>
- Simpson, S., & Dyer, F. (2016). Movement Restriction Conditions (MRCs) and Youth Justice in Scotland: Are we there yet? <https://www.cycj.org.uk/resource/movement-restriction-conditions-mrcs-and-youth-justice-in-scotland-are-we-there-yet/>
- Souverein, F., Mulder, E., van Domburg, L., Adriaanse, M., & Popma, A. (2022). Toward a Tailored Model of Youth Justice: A Qualitative Analysis of the Factors Associated with Successful Placement in a Community-Integrated Facility. *International Journal of Offender Therapy and Comparative Criminology*, 66(2-3), 147-167.
<https://doi.org/10.1177/0306624x20944689>
- The Annie E. Casey Foundation. (2022). *Family-Engaged Case Planning: a practice guide for transforming juvenile probation*. <https://assets.aecf.org/m/resourcedoc/aecf-familyengagedcaseplanning-2022.pdf>
- Trotter, C. (2021). *Collaborative Family Work In Youth Justice*. H. I. o. Probation.
<https://www.justiceinspectors.gov.uk/hmiprobation/wp->

- [content/uploads/sites/5/2021/02/Collaborative-Family-Work-in-Youth-Justice-KM2.pdf](#)
- United Nations Committee on the Rights of the Child. (1989). *United Nations Convention on the Rights of the Child*. <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>
- United Nations Committee on the Rights of the Child. (2019). General comment No. 24 on children's rights in the child justice system. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAq hKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpO wHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4>
- Utting, E., & Woodall, T. (2022). From Care to Custody? In P. Willmot & L. Jones (Eds.), *Trauma-informed forensic practice* (pp. 93-110). Routledge.
- Vaswani, N. (2018a). Adverse Childhood Experiences in Children at High Risk of Harm to Others: A Gendered Perspective. https://doi.org/https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk_CYCJ-Final-Version-proofed.pdf
- Vaswani, N. (2018b). Beyond loss of liberty: how loss, bereavement and grief can affect young men's prison journeys.
- Vaswani, N. (2018c). How loss, bereavement and grief can affect young men's prison journeys. *Loss, Dying and Bereavement in the Criminal Justice System*, 17.
- Whitelaw, R., & Gibson, R. (2023). *Preparing to Keep The Promise: A Comparative Study of Secure Care and Young Offender Institutions in Scotland*. Glasgow: Children and Young People's Centre for Justice Retrieved from <https://www.cycj.org.uk/wp-content/uploads/2023/03/Preparing-to-Keep-The-Promise-Comparitive-Study.pdf>
- Whiting, K. (2020). *Older children in conflict with the law in Scotland: A legal analysis of Scots law compliance with the United Nations Convention on the Rights of the Child for children aged 16 and 17 years* <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/10/Older-children-in-conflict-with-the-law.pdf>
- Who Cares? Scotland. (2020). *Young People and Parents' views on privacy and how this affects their participation in the Children's Hearings System*. <https://www.scra.gov.uk/wp-content/uploads/2020/11/Who-Cares-Scotland-privacy-research-policy-briefing.pdf>
- Williams, A., Bayfield, H., Elliot, M., Lyttleton-Smith, J., Evans, R., Young, H., & Long, S. (2019). *The Experiences and Outcomes of Children and Young People from Wales receiving Secure Accommodation Orders*. Cardiff: Social Care Wales Retrieved from <https://socialcare.wales/news-stories/new-report-recommends-improvements-to-system-of-secure-accommodation-for-children-from-wales>
- Williams, A., Bayfield, H., Elliott, M., Lyttleton-Smith, J., Young, H., Evans, R., & Long, S. (2024). Secure futures? A mixed methods study on opportunities for helping young people referred to secure children's homes for welfare reasons. *Journal of Children's Services*, 19(1), 38-53. <https://doi.org/10.1108/JCS-06-2022-0019>
- Willoughby, M., Janca, E., Kwon, S., Johnston, B., Collins, T., Kinner, S. A., Johns, D., Gallant, D., Glover-Wright, C., & Borschmann, R. (2024). Interventions to Prevent and Respond to Violence Against Justice-Involved Young Women: A Scoping Review. *Trauma, Violence, & Abuse*, 25(2), 1036-1052. <https://doi.org/10.1177/15248380231171183>



Children and Young People's
Centre for Justice

www.cycj.org.uk