

**Scottish Parliament Criminal Justice Committee Roundtable
Evidence session on youth offending and community justice
– Community Justice Scotland Written Submission**



6 September 2021

Community Justice Scotland (CJS) is the national leadership body for community justice in Scotland. We advocate for the use of high quality evidence-based interventions for people involved in offending, delivered in partnerships involving statutory and non-statutory bodies including the third sector, communities and people with lived experience, because the evidence tells us that is the best route to reducing offending and making Scotland a safer, healthier nation. We support the use of resources to target prevention of offending, to help address needs and risks before offending happens, prevent victimisation, and to help people have better lives in happier, healthier communities.

CJS sit on the Youth Justice Board, supporting delivery of the [Youth Justice Vision](#). We supported the move to increase the minimum [age of criminal responsibility](#), and [reform of the disclosure system](#) to help people with convictions move on from offending and gain employment and access to education, enabling them to participate fully as citizens. Alongside Social Work Scotland, we contributed to Scottish Government's guidance for [Structured deferred sentences \(SDS\)](#), which provide an opportunity upon conviction and prior to sentencing for the convicted person to work with services to address multiple identified issues.

We hold the view that the most effective responses to youth offending are not in the justice system – rather they can be found in supports and services that respect children's rights and recognise their strengths, identify and address needs, and support wellbeing and recovery for children, young people, their families and communities. Agencies must collaborate to create every opportunity to take children and young people in conflict with the law out of the justice system, reduce harm and retraumatisation, lessen stigma and criminalisation, and prevent future offending.

Community Justice measures

Discussions about youth offending often centre around offences of the greatest severity, those which elicit greatest involvement with criminal justice agencies and processes. This skews discussion toward risk assessment and mitigation, punishment and the adult criminal justice system. This does not reflect the fact that much of the behaviour by children and young people in conflict with the law is at the lower end of severity and harm, in many cases associated with transitional stages of development characterised by immaturity and impulsivity. It also does not recognise the high levels of repeat victimisation and trauma experienced by children and young people in conflict with the law.

Research conducted to inform the Scottish Sentencing Council's development of a guideline for sentencing young people relates the finding that emotional and cognitive maturity is not achieved until age 25, and that this is further complicated where one considers the likely impact of trauma from abuse, neglect, or other adverse experiences¹ on brain development and cognition. It is vital to bear this context in mind when reflecting on policy and practice related to children and young people, at every point of contact throughout the justice system.

¹ [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk)

The evidence indicates that for children and young people, formal justice interventions can contribute to criminalisation, in practice hindering their ability to move on from offending while also creating a potentially indelible record of mistakes they have made, and an associated stigma that may follow them long into their future. As they move through life seeking to participate as full citizens in education, employment and more, they will regularly be reminded of their lowest moments and often retraumatised². For much offending, the services and supports most vital in responding to harm and reducing recidivism are likely lie outwith the justice system, and seek to support emotional, mental and physical health, relationships and family, security and stability. In some cases, the justice system should seek take a step back and facilitate these service responses.

Diversion

Given the criminalising effect of the criminal justice system on children, and the need to target court processes where they are most needed and will give greatest public benefit, the justice system has to be able to consider where alternative routes are more appropriate. Diversion from prosecution provides one such alternative. The aims of diversion from prosecution are:

- To provide a disposal which, due to the circumstances of the individual and the circumstances of the alleged offence, provides an appropriate person-centred response;
- To enable a swift intervention, which can interrupt a cycle of offending and/or prevent further offending.

Working with a range of justice partners, CJS co-produced guidance³ on where it is most appropriate and effective to use diversion. If the circumstances and nature of the offence are such that it is possible and appropriate to divert children from criminal justice proceedings, a resolution to the crime should be sought outwith court.

A successful diversion from prosecution can have significant benefits. The young person may access support to deal with the issues personal to them in the context of the alleged offence, avoid unnecessary contact with the criminal justice system, and it will not result in a conviction that would potentially hinder their future opportunities.

Structured Deferred Sentences

Community Justice Scotland's Community Justice Outcome Activity [annual report](#) for 2019 highlighted good practice in SDS. We recommended that Community Justice Partnerships should ensure that early opportunities to address needs within the justice system are maximised through the increased use of SDS, amongst other related measures such as Bail Supervision and Diversion from Prosecution.

Independent evaluation of SDS work in North and South Lanarkshire found that more intensive, bespoke support for young people, with a centre on relationships and an understanding of poverty and environment as contributing factors, can work well in enabling young people at risk of further offending to find stability, recovery and move away from chaos⁴. For convicted young people, SDS can provide an opportunity to show progress in

² [To the people who don't see me, but see my convictions - Kim McGuigan | Community Justice Scotland](#)

³ [Diversion-from-Prosecution-Guidance-Version-4.0-FINAL-VERSION-April-2020.pdf \(communityjustice.scot\)](#)

⁴ Miller et al (2019) [Evaluation of South Lanarkshire structured deferred sentencing for young people: end of project report September 2019 — The UWS Academic Portal](#)

working with services to address multiple needs and vulnerabilities, and if the requirements are fulfilled and progress shown, this can be taken into account at the final sentencing.

Community not Custody should be the default option

Custody should be used only where an imminent risk of serious harm is evidenced and therefore necessary in the interest of public protection, where no other option is appropriate. Where custody is required for children under 18, it should be in the form of secure care, not prison⁵.

For any citizen, the deprivation of liberty in the form of incarceration is the ultimate punishment. Being placed in custody either at remand or sentencing exposes children and young people, already vulnerable by virtue of their age and stage of development, at risk of significant harm. Children who become involved in offending have often experienced significant adversity in their lives prior to coming to the attention of the criminal justice system. Many will have needs relating to mental and physical health, the impact of previous trauma, and the retraumatising experience of navigating the complex and intimidating criminal justice system as an 'offender'. Prison custody is not an environment conducive to the treatment of these needs, and may foster significant further harm. For these reasons, prison custody should not be used for children, and should be used for young people only where absolutely required for public protection.

Electronic Monitoring

Electronic monitoring, in its various forms, can be of use as a means to monitor young people as part of a community sentence or supervised bail.

Though narratives sometimes minimise such interventions as being 'soft justice', electronic monitoring is punitive, with obvious implications for personal liberty, and it is experienced as punishment. Wearers report feeling stigmatised, scrutinised, and anxious about potentially breaking the conditions of their monitoring requirements and incurring further consequences⁶. Families of a young person being monitored also experience this stress. This means that electronic monitoring should not be treated as a benign intervention, but should only be used with children and young people where absolutely necessary and appropriate, and not without other support in place.

The use of electronic monitoring for a child or young person should take into account likely adverse consequences, and efforts should be made to mitigate them. Assessment of need should take into account the young person and their environment and family needs, and wraparound support should be provided where required.

Restorative Justice

CJS coordinate and support activities in the delivery of the Scottish Government's Restorative Justice Action Plan. The opportunities afforded by a restorative justice process and the associated outcomes for wellbeing and recovery of the person harmed, the person who caused the harm and a community experiencing the wider impact are not routinely available within the criminal justice system. For victims, restorative justice can provide an opportunity to aid recovery from harm, improve wellbeing and recovery from trauma. For a child or young person responsible for a harmful act, participating can provide a chance to directly address the impact of the harm that they caused, and can be transformative in their

⁵ [Scotland needs to live up to the 'Promise' to stop locking up children – Karyn McCluskey | The Scotsman](#)

⁶McIvor & Graham (2016), [Electronic-Monitoring-in-Scotland-Report.pdf \(sccjr.ac.uk\)](#)

moving away from offending. RJ should be delivered by experts, attuned to the needs of the participants, principles of informed consent, trauma, risk, and support throughout and following the process⁷.

RJ is not and must not be seen as a 'soft' option. It is often intensely challenging for someone to take personal responsibility for harm they have caused, and to choose to engage directly with the person who suffered in a restorative justice process. CJS, along with the Children & Young People's Centre for Justice (CYCJ) have produced a short film about restorative justice in Scotland, how it can help and how it can work, to raise awareness of this important service: [Restorative Justice: repairing harm in Scotland](#).

Victims

Support for victims must be available regardless of what measures are taken to address the behaviour of the child or young person involved. Where this involves taking proceedings out of the criminal justice system, for example through diversion or referral to the Children's Reporter, careful consideration must be given to what victim support is required. This should include asking what the victim wants and needs, the provision of timely information about proceedings and decisions that will affect them and their journey to recovery, and access to expert victim-centred services to address trauma, and access restorative justice if they so choose.

Life journeys and lived experience

When considering youth justice, it is important to reflect on those involved not only as children and young people in conflict with the law, but as members of families and communities, and people who have a lifetime of potential ahead of them. It is vital that language used, policies and interventions take this into account. We need to understand that for this group, the offending itself is in part the product of the process of growing up, often in reaction to challenging circumstances.

Our research '[Rules for Them, Rules for Us](#)' highlights how traumatic, confusing, inaccessible and hostile the justice system can appear to those whose lives it touches. This is how it is experienced by children and young people.

Our [Second Chancers](#) campaign showcases the stories of some people whose lives have been influenced by contact with offending and the justice system, as victims, people who have come into conflict with the law, and workers supporting people through their journeys. These audio-visual exhibits capture some of the lived experience of people who became involved in the justice system, experienced community justice measures, and want to share what they've learned. All stories are available at [secondchancers.tv](#)

[Second Chancers - Jenny's Story](#)

Jenny spent much of her youth in and out of the justice system. She now has a degree in Criminal Justice, and is training to become a support worker.

[Second Chancers - Jordan's Story](#)

Jordan experienced significant adversity from an early age, and found himself homeless at 13. He now works with young people who have also experienced trauma, who are in acute distress and have behaviour which puts them at risk of being drawn into the criminal justice system, and helps them to use music to explore and enable their own recovery.

⁷ [A Guide to Youth Justice in Scotland: policy, practice and legislation \(cycj.org.uk\)](#)

[Second Chancers - Ross's Story](#)

Ross is a social worker, supporting young people involved in offending. He talks about how understanding the lives of young people, their communities, and working with them through justice processes like Structured Deferred Sentences, can help them move away from offending.

