

**SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE
DATA PROTECTION FORM**

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| Date: | 6.07.18 |
| Organisation: (if required) | Scottish Youth Parliament |
| Topic of submission: | Age of Criminal Responsibility (Scotland) Bill |

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EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

SUBMISSION FROM

Please do not add any organisation logos

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Introduction

The Scottish Youth Parliament (SYP) represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

We are a fundamentally rights-based organisation, and our mission, vision and values are grounded in the United Nations Convention on the Rights of the Child (UNCRC). In particular, our purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have a profound importance for our work.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's values are:

Democracy – We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

Rights – We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

Inclusion – We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard.

Political Impartiality – We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

Summary of SYP's recommendations

When the police are called to an incident where a child under 12 has done something harmful, they should do the following things. The Age of Criminal Responsibility (Scotland) Bill must ensure that these steps take place, and the Committee should recommend that any gaps identified are filled accordingly:

- Keep the child safe.
- Keep other people safe.
- Call the child's parents/carers.
- Call social workers/independent advocates if needed.
- Find out from parents/carers if the child has any difficulties which require additional emotional, behavioural or learning support (e.g. learning difficulties).
- Use a way to communicate with the child that suits their age and ability to understand.
- Ensure an adult trusted by the child, who demonstrates an understanding of children's rights, is there to help them.
- Tell the child about their rights (e.g. their rights when being questioned, their rights to a lawyer, privacy), and ask them to repeat these in their own words to show they understand.
- Ask the child and their parents/carers if they want to have a lawyer present before any questioning.
- Take statements and look for evidence.
- Ask the child questions about their behaviour, using short and simple sentences.

Advocacy services should be well-funded, accessible, and suitably tailored to young people, especially for those with experience of care.

Most young people we asked (see more information on who and how we asked below) believe that the more serious the harmful behaviour, the longer it should be disclosed for.

Young people called for a proportionate, non-intimidating and child-friendly approach to response and investigation by the police, informed by child psychologists, and with evidence only being sought where deemed to be in the best interests of the child's wellbeing based on such an assessment.

The list above identifies key adults young people believe should be present at interviews, and legal and psychological expertise and a comfortable environment are essential.

For accountability and consequences, young people believe that the answer lies in child-friendly, interactive education as a form of early prevention of harmful behaviour, that accountability is directly proportional to age, and some considered that an independent body or specialist may be best-placed to review children's accountability. The children's hearings system should have a greater focus on rehabilitation through education. The idea of having a 'clean slate' at the age of 18 also resonated with the workshop group, as well as

using visits, engaging images, social media and apps to educate children about the concepts of harmful behaviour.

Young people believe that decision-makers and public bodies implementing this legislation, and duty-bearers of children's rights, must take a human rights-based approach to all policy-making and service provision around criminal responsibility, ensuring that:

- All children and young people's legal rights, especially those in vulnerable situations and with 'protected characteristics' are upheld according to international law.
- They are participating meaningfully in decisions affecting their lives.
- They are empowered to do so in an accessible, non-discriminatory way.
- They are able to hold duty-bearers to account through processes of review and appeal.

Last but not least, SYP would like to reiterate its call to the Committee, the Scottish Parliament and the Scottish Government, for a statement of intent during the Year of Young People 2018 around incorporation of the United Nations Convention on the Rights of the Child, as supported by our *Right Here, Right Now* campaign and *Lead the Way* Manifesto Commitment passed on 12th March 2016 with 79% agreement.

This would make children and young people's rights binding and not guiding, which would ensure that children's rights are protected early on in policy-making, to prevent rights abuses (and the need to go to court) in the first place.

Contact us:

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Visit us:

On our website: www.syp.org.uk

On Twitter: @OfficialSYP

Our approach

SYP welcomes the opportunity to respond to the Scottish Parliament's Equalities and Human Rights Committee's (hereinafter referred to as the 'Committee') call for evidence on the Age of Criminal Responsibility (Scotland) Bill. SYP wishes to respond as part of its *Right Here, Right Now* national campaign on young people's rights, which launched in October 2017 after MSYPs voted to focus on this topic at the 63rd National Sitting in West Dunbartonshire in June 2017. This was following consultation with over 5,000 young people across Scotland.

Right Here, Right Now will work to ensure that Scotland's young people are aware of and understand their own rights, and are empowered to take action to defend their own rights and those of others. Furthermore, *Right Here, Right Now* calls for Scotland's decision-makers to take a human rights-based approach to all policy-making, service provision, and planning, ensuring young people's voices are at the heart of decisions affecting them.

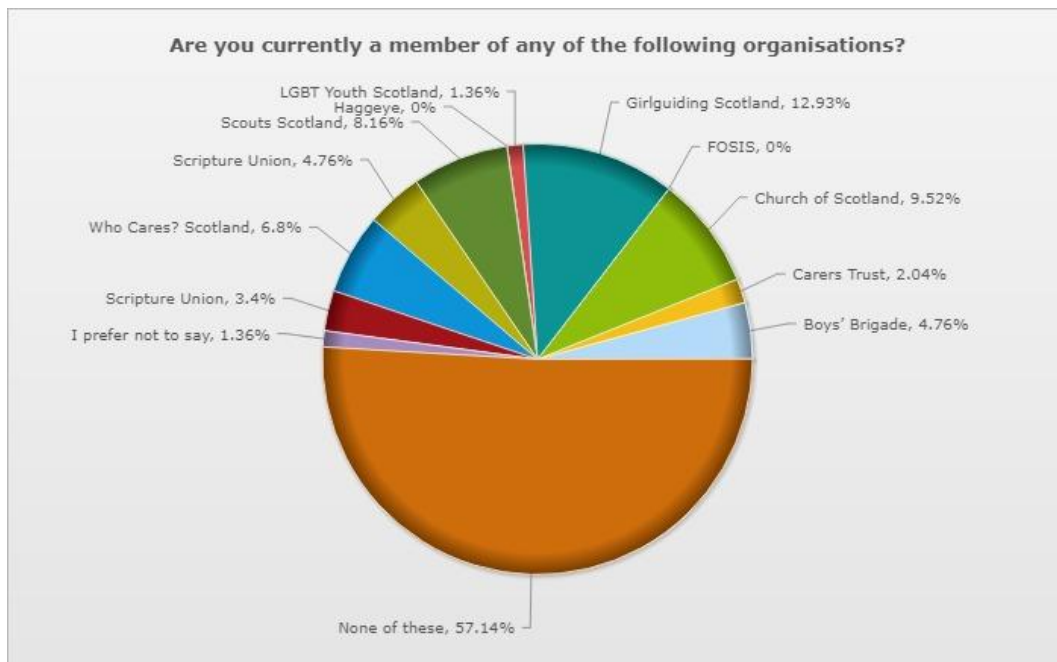
One of the objectives of this campaign is to influence law, policy, and practice in order to strengthen the protection of young people's rights. SYP strongly believes that the United Nations Convention on the Rights of the Child (UNCRC) should be incorporated into Scots law to make children's rights binding and not guiding to Scottish decision-makers; that authorities should tackle crime by working with young people to address its root causes; and that there should be compulsory education and training to help young offenders reintegrate into society, as per the *Lead the Way* Manifesto Commitments passed on 12th March 2016 with 79%, 73% and 71% respectively.

These commitments form the basis of this response, as well as findings from a Consultation Workshop SYP undertook with the Scottish Government's Minimum Age of Criminal Responsibility Bill Team at our 66th National Sitting in Stranraer, Dumfries and Galloway. These findings comprise of 189 responses from young people aged 12-25 to an online survey called #WhatsYourTake, and recommendations from the workshop attended by a group of 25 MSYPs from across Scotland (for more information on the demographic of SYP's current membership, please see [here](#)).

The survey questions were co-designed and the session was co-facilitated by Peter Rigg MSYP for Dunfermline and Convener of SYP's Justice Committee, and the Scottish Government's Bill Team. The table facilitators were: Conor McNamara MSYP for Kilmarnock and Irvine Valley, Chloe Carmichael MSYP for East Kilbride, Euan McFadzean MSYP for Scouts Scotland and Rebecca Craig MSYP for Church of Scotland.

The #WhatsYourTake Survey was open from 11th May 2018 until 12th June 2018. It received 189 responses, from 28 of all 32 Local Authorities across Scotland. Responses came mostly from young people currently in school and full-time or part-time work, for example, 54.49% of responses came from young people in school.

Our National Voluntary Organisation (NVO) MSYPs also gathered responses from their communities, as depicted in the diagram below:



SYP's Conveners Group, a group of ten democratically elected young people who lead on policy and campaigning at SYP and their respective ten Subject Committees, decided to respond to this public consultation through a youth-led process at their last meeting in April 2018. The newly elected Conveners Group following the 66th National Sitting and AGM have approved this response.

MSYPs consulted widely with the young people they represent in their constituencies and NVOs before the workshop, using their unique democratic mandate to ensure they represented the views of as wide a cross-section of young people in Scotland as possible. Therefore, our comments are fundamentally shaped by the genuine views of young people. However, as our membership represents young people aged 12-25, SYP's response is not representative of children below the age of 12, or of adults over 26, and its scope was limited to issues raised by the questions asked. It therefore did not extend to discussing the appropriate age of criminal responsibility in Scotland or the full extent of police powers.

Some of these issues were discussed during a focus group discussion SYP held with a group of young people at Polmont Young Offenders Institute, with young people taking part with direct experience of the criminal justice system, and a Criminal Justice Discussion Day at Dovecot Studios in August 2016. Furthermore, SYP discussed some of these issues at another Discussion Day, on behalf of the Scottish Government, on the 9th of December 2017, where some of the young people who took part had experience of the criminal justice system and/or experience of being stopped by the police. Should the Committee wish to receive copies of the reports on these projects, please do request these from SYP (see contact details at the end of this submission).

Lastly, more young people could have been asked with a longer lead-in time, and therefore, some views expressed in this response are not necessarily reflective of the views of the entire membership, or all young people in Scotland.

Our response is structured around the online consultation questions as follows:

- When the police are called to an incident where a child under 12 has done something harmful, how important do you think it is for them to do the following things?
(Young people were asked to show their preference for the following options on a scale of importance.)
 - Keep the child safe.
 - Keep other people safe.
 - Call the child's parents/carers.
 - Call social workers/independent advocates if needed.
 - Find out from parents/carers if the child has any difficulties which require additional emotional, behavioural or learning support (e.g. learning difficulties).
 - Use a way to communicate with the child that suits their age and ability to understand.
 - Ensure an adult trusted by the child, who demonstrates an understanding of children's rights, is there to help them.
 - Tell the child about their rights (e.g. their rights when being questioned, their rights to a lawyer, privacy), and ask them to repeat these in their own words to show they understand.
 - Ask the child and their parents/carers if they want to have a lawyer present before any questioning.
 - Take statements and look for evidence.
 - Ask the child questions about their behaviour, using short and simple sentences.

- To what extent do you agree or disagree with the following statements?
(Young people were asked to show their preference for the following options on a scale of agreement.)
 - Should harmful behaviour like shoplifting or vandalism be shared with employers/colleges/universities?
 - Should harmful behaviour like sexual or physical assault be shared with employers/colleges/universities?

Our response is also structured around specific consultation questions which were asked at the workshop, grouped into four themes (see below) and discussed by four sub-groups of young people who took part. They then made recommendations on each theme agreed upon by the plenary.

- 1) Response and Investigation.
- 2) Interviews.
- 3) Accountability and Consequences.
- 4) Disclosure.

#WhatsYourTake responses

There was a consistently high level of support, among the young people asked, for the police to undertake the actions listed above when called to an incident where a child under 12 has done something harmful. Notably, 76% of respondents strongly agreed that the police should use a way to communicate with the child that suits their age and ability to understand. Most young people surveyed also wanted the police to ensure that they child, and others, are kept safe (82.6% and 83.2% of strong agreement from respondents, respectively). On the question of advocacy, 90% of respondents agreed that social workers or independent advocates should be called if needed.

SYP believes that some of these recommended steps for police go further than the Bill at present, and that there is scope for developing updated guidance for police officers to assist with child interviews, perhaps through Article 46. For example, while Article 42 (3) (c) indicates that the child will be informed of their rights in relation to the interview, including their right not to answer questions, young people want children to be asked to repeat these in their own words to show they understand, given the high levels of misunderstanding of the police caution in society. Furthermore, child interview order procedures should commence by asking parents/carers if the child has any difficulties that require additional emotional, behavioural or learning support, and the child and their parents/carers should be asked if they want to have a lawyer present before any police questioning. Article 39 (10) could be supplemented with guidance that children should be asked questions about their behaviour, using short and simple sentences, and leading questions must be avoided.

On disclosure, the lack of consensus in responses to the first question on harmful behaviour such as shoplifting and vandalism exemplifies either that the young people asked were divided in opinion, or that there was a level of confusion in the wording of this question, and perhaps a simpler scale, for example 'Yes', 'No' and 'Don't Know' should have been used.

However, for the similarly structured second question on harmful behaviour such as sexual or physical assault, 91.3% of young people asked agreed that behaviour of this level of gravity should be shared with employers, colleges and universities.

1) Response and Investigation

Summary recommendations:

- 'The police should adopt a non-intimidating approach toward children involved in criminal behaviour. This should be implemented through training in non-violent responses to threats... as well as child psychology. This approach would protect the child from themselves, and others involved.'
- 'Authorities should use an appropriate child-friendly level of language in order to ensure that young people understand the questions they are being asked. There should also be someone present who has the best interests so that they are not coerced by the police – a child psychologist should also be present'.

Notes on the questions:

- **The police are called to a serious incident, and are faced with a child under 12 who may have been involved. What are the most important things for the police to do immediately?**
 - Consider the child's situation and safety, make sure they are not hurt and keep them safe from themselves.
 - 'React appropriately. Try to be as lenient as possible'.
 - 'Call in psychologists/negotiators'.

- **What makes their response different if the child is too young to be a criminal suspect?**
 - The Children's Reporter might have to be involved.
 - You should consider the child's capacity to understand, and have police training on this.
 - The child cannot be questioned if they don't have representation.
 - They should be brought to a comfortable place – 'not a prison cell!'
 - You should ascertain their motive.
 - In circumstances where a child is taken to a place of safety, the Bill at present is missing reference to the child's rights to legal advice and contact with their parents/carers, as per Article 37 of the United Nations Convention on the Rights of the Child (b) – (d).

- **Why might the police consider interviewing the child, or take forensic samples from them?**
 - To establish the child's innocence.
 - 'To see if they're OK'.
 - To understand why they did what they did.
 - The previous Discussion Days outlined young people's support for samples being taken and kept if a child has carried out seriously harmful behaviour, and if they are at risk of reoffending – but that there should be a cap on how many times the retention period can be extended and concern was expressed that samples could later be used to 'pin a crime onto an innocent previous offender'.

2) Interviews**Summary recommendations:**

- 'Ensure that a child specialist is present at all stages of the interview process to provide both a legal representative and to provide a quality level of support to the child'.
- 'These specialists should have both legal qualifications and should have knowledge in child psychology to ensure appropriate support.'

Notes on the questions:

- **If a child under the age of criminal responsibility is to be interviewed about their harmful behaviour -**
 - **Who should be involved?**
Parents, guardians, the police, advocacy workers, youth workers, lawyers. At SYP's Scottish Government funded #RightsReview on 18th April 2018, Ryan McShane MSYP recommended that the Government's proposed advocacy service is well-funded, accessible, and suitably tailored to care experienced young people. Similar recommendations were made by Who Cares? Scotland to the Minister for Children and Young People Maree Todd MSP during the #RightsRoadTrip last December 2017, where both activities influenced the Scottish Ministers' 2018 report on the Children and Young People (Scotland) Act 2014 Part 1 Section 1 (4) – the '[Progressing Children's Rights in Scotland - An Action Plan 2018-21](#)'. SYP therefore welcomes the right to have an advocacy worker present during a child interview as in Article 40 of the Bill.
 - **Who should support the child?**
Parents/carers (they could be present for support, but not during interviews), child psychologists, child specialists who are qualified to be providing a quality level of support to the child.
 - **What skills and experience should they have?**
They should be able to provide therapy for the child, make them comfortable and they should have legal experience.

3) Accountability and Consequences

Summary recommendations:

- Creating child-friendly solutions are key.
- 'Education, education, and education' – children should be taught about laws and the police in an interactive way.
- Perhaps the police should 'take a backseat' and an 'independent body' or 'specialist police' should look into these.
- Level of depth of accountability and consequences should increase with age.

Notes on the questions:

- **How should Scotland deal with harmful behaviour by children and young people?**
Continue with children's hearings, reform the system to focus on rehabilitation and focus on the early prevention of child offenders through education.
- **How should we hold people to age-appropriate responsibility for harmful behaviour?**
Avoid juvenile detention, seek rehabilitation if possible, children's hearings, prevention and education, and ensure lasting effects are minimal.
- **How long should the consequences of harmful behaviour last for children and young people?**

The group suggested that you should have a 'clean slate' at the age of 18. The Discussion Days SYP held gathered views that this age should be higher in serious cases.

- **How do you effectively communicate these concepts to children of all ages?**
Education and awareness, fun images, visits to organisations, social media and apps or games

4) Disclosure

Summary of recommendations:

- Voluntary community payback for non-violent crimes.
 - If someone who has committed a non-violent crime, they could complete a voluntary community payback of some sort (volunteering, working for the community).
- Disclosure is a question for courts to decide, the more serious the behaviour, the longer it should be able to be disclosed for.

Notes on the questions:

- **Who should decide whether information on harmful behaviour involving young people should be provided to employers?**
Should ultimately be up to the court – not the police. A social worker or child support officer should be involved in the process.
- **How important is the seriousness of the behaviour?**
'Depending on the situation, if it is violent or non-violent behaviour', this can affect how important it is.
- **How important is the length of time since the behaviour?**
It is important that the behaviour 'is there for a short period of time after', and that the information be disclosed 'depending on the seriousness' of the behaviour.
- **How important are the person's efforts toward rehabilitation?**
Very important - if they are trying to integrate with the community, then that should be taken into consideration.