



CONSULTATION

Children (Care and Justice) Bill

(2023)



**RAPE
CRISIS
SCOTLAND**

Children (Care and Justice) (Scotland) Bill
Consultation Response from Rape Crisis Scotland

8. The Bill widens access to the Children's Hearings system to all 16 and 17 year olds. What are your views on this?

At Rape Crisis Scotland we recognise the bill's intention to uphold the rights of children and strengthen access to rights conferred by the UNCRC as well as the important role the Children's Hearing System plays in this. We recognise the delicate balance between protecting children and young people and delivering justice to victims of crime, we do feel that the particular needs of survivors of serious sexual offences are somewhat overlooked by this legislation. Overall, we feel that much better understanding and focus on the impact this will have on victim/survivors of sexual violence needs to be given along with guidance from the law makers about how these provisions should be conferred into policy. We wish to stress that there need not be a hierarchy of rights, this is not a zero-sum game where a referred child's rights and victim/survivor rights need compete but that both can have their rightful focus and attention given. The legislation must both address the needs of victims and uphold a child's rights.

The majority of circumstances where a 16/ 17-year-old is a perpetrator of an offence of rape or serious sexual violence the victim will also be a young person. They will be themselves vulnerable and the legislation needs to uphold and protect their UNCRC rights including their right to recovery from traumatic events.

9. The Bill suggests that the law should be changed so that most offences committed by 16 and 17 year olds will be dealt with through the Children's Hearings system in future. What are your views on this?

We understand that for the majority of offences committed by young people this will be an appropriate and measured response. The situations we wish to draw focus to is where the offences involve serious sexual offending and the impact this will have on victim/ survivors.

As things stand, we are aware that serious sexual offences are jointly reported to the Procurator Fiscal and the Children's Reporter. Thereafter, the decision would be made as to whether the referred child would be prosecuted in the adult system or dealt with in the hearing system, this decision ultimately lies with Crown Counsel but the Children's Reporter can make representations. Young people over the age of 15 are generally dealt with in the criminal justice system for cases like this. What is not clear to us is whether the new legislation will

decision of COPFS and at present we aren't aware of their marking guidance and the protocol for joint reporting has not been updated. Until we know more about the effect on these guidelines, survivors are in an uncertain position of not knowing how their case will likely be dealt with where the perpetrator is aged 16/17. We would note that if a 17 year old perpetrator of rape was dealt with in the children's hearing system and not the adult system there would be very little intervention that could be achieved by the compulsory supervision order which would have to expire when that child turned 18.

We have experience of supporting survivors who are victims of serious sexual violence and rape, where those cases have been dealt with by the Children's Hearing System. At present, we would be concerned about an increase in the number of cases for serious sexual offending being dealt with in this forum because of the difficulties that survivors have experienced and would urge that a focus is given to improving this, especially if there may be an increase in the number of these cases being heard by a hearing.

Survivors of sexual violence where the perpetrator is dealt with in the Children's Hearing System report very particular difficulties with this, these are inherently traumatising. Generally speaking, we have heard of very low victim satisfaction from involvement in Children's Hearings, including when these matters go to proof and they have to give evidence as a witness. We have concerns that the bill, policy memorandum and explanatory notes does not acknowledge this victim dissatisfaction or the issues they, and we have previously raised.

Survivor/ victims in these circumstances are far more likely to be called as witnesses in a proof, if the Reporter decides to bring referral proceedings in such a serious case, then this will still carry serious consequences for the referred child should the grounds be held established. This includes a criminal record and sexual offending registration requirements, alongside the onerous CSO/ MRC or the potential to be detained in secure accommodation. As a result, the grounds are often challenged leaving the reporter to be required to establish the grounds at proof to the same standard in a criminal trial – beyond all reasonable doubt. The impact of this on a survivor/victim is thus that they are involved in the equivalent of a criminal trial that would take place in the High Court but without the structures and protections offered in those proceedings (which are themselves under reform to improve them). The same rules of procedure in criminal trials exist, s275 applications can be raised, the victim will be cross examined by the child's defence solicitor, their medical and other personal records can be accessed. The victim relies on the Children's Reporter to liaise with them but they are not entitled to the same level of information. There are mixed

reports from survivors about the level of care and of information provision they are given and it is largely dependent on the Reporter's experience and capacity. Some are offered court visits, others are not. The victim services available are not as well established as those in COPFS. A referred child can be represented by a solicitor, there is no requirement that Crown Counsel be instructed so the specialist training and involvement in those cases. They will also be presided over by a Sheriff who will not routinely be involved in these cases as High Court Judges will.

Another important consideration is that there will not be bail conditions for such a victim/ survivor. We recognise that provision is made in the new conditions which are available in a CSO or ICSO but we are concerned about the enforceability of them being that they carry to power of arrest if breached. This leaves victims/ survivors in a more vulnerable situation.

The levels of traumatisation are incredibly high and many young people report feeling lost in an even more complex system. What is very important to note is that although the protections and processes are seen as better in the Criminal Justice System for survivors compared to the Children's Hearing System, they are by no means satisfactory in themselves which is why there are extensive reforms underway to improve them following on from Lady Dorriens recommendations and the 'Improving Victims Experiences Consultation.' This includes the introduction of a specialist sexual offences court and trauma informed practice. The risk is that for survivors in the Children's hearing system they will be left even further behind if this victim focus is not given. There will be even more protections available in this system and the contrast will likely increase. By highlighting the stark reality of the negative experiences of survivors in the hearing system it is intended, not to overly criticise the SCRA but to encourage a future focus on better victim care.

10. The Bill makes several changes to Compulsory Supervision Orders. What are your views on these proposed changes?

The changes that are proposed to be made to Compulsory supervision orders (CSOs) and the inclusion of protective conditions that can be imposed, including movement restriction conditions (MRCs), are important features which could be used to improve a victim/ survivors safety. These could be used to prevent a child

who has perpetrated sexual violence from entering a specific place or contacting the survivor or other third parties to prevent harassment and intimidation.

These reforms are greatly welcomed but right now it is not clear how they will be enforced, these are likely to be decisions made by panel members in Children's Hearings so clear guidance about the importance of them to survivors and why they are necessary needs to be given.

There also has to be an effective strategy for enforcement of these conditions, and guidance for the victim/ survivor if there is a breach. These will not carry a power of arrest, as bail conditions or a non-harassment order would do, so the victim is in a more vulnerable position if they are breached. We would welcome further information about the use and monitoring of CSOs and how this is focused on protecting victims of sexual violence as the onus should not be put on them to police their own safety.

It is important to note that with the provisions on information sharing it is unclear as to whether a victim/ survivor would even be made aware of the presence of such conditions or if a breach (if it was them that had not reported it). Whether the perpetrator has breached the conditions is an important safety consideration. Victim/survivors of sexual crimes must be pro-actively informed of bail conditions and what they can or should do if their perpetrator attempts to make contact with them. This is the most basic of protections that must be offered to victim/survivors of sexual when the case is being dealt with by the Children's Hearings system, and is a clear gap in the current system which causes significant unnecessary fear and distress for victim/survivors, many of whom are young people themselves.

11. What impact (if any) do you think the Bill could have on young people who have been harmed by another young person?

This bill will have a huge impact on the young people who have been harmed by another young person – in particular of young people who have been victims of sexual violence and rape. In many of the cases we deal with where a young person has perpetrated an offence of rape, it will be another young person, usually a peer, who is the victim. This often means they are closely linked; at the same school or social clubs or in the same village/ town and in close geographical proximity.

Where the victim and perpetrator are both young people at school together, we often hear that the victim is the one who has to take protective measures to avoid the perpetrator which can have an effect on their education and mean they miss out on school or drop out entirely. Impact of how the change in procedure would affect young victims of sexual violence needs to be given real consideration.

12. The Bill makes changes to the current law around when information should be offered to a person who has been affected by a child's offence or behaviour. What are your views on what is being suggested?

We understand that there is a delicate balance to be struck between the protection of the privacy rights of the referred child and the level of information that can be given to victims of crime committed by them. In cases of rape and sexual violence this information sharing is essential for the victim/ survivor, for their safety and for protection against further traumatisation.

We understand that the bill makes provision for information to be given to victims of a child's offence or behaviour. In cases of sexual offending it is particularly important that the victim is given the required information to allow them control and safety planning. We are very concerned that under the current proposals that victim/ survivor will not be made aware that there are any special conditions preventing contact – this seems unworkable as the victim would not know to report these.

Information about the whereabouts of the perpetrator is an important consideration for the victim/ survivor and their sense of safety. How can they take protective measures to avoid their perpetrator if they have no idea where they are? We have heard of situations where a young victim was not informed that her perpetrator had in fact left the area completely – the constant vigilance they were under upon themselves which might have been mitigated with this information.

We ask that there is an increased awareness, understanding and care given to the effect information has for victims and their sense of safety. Turning more of a focus to this, rather than just concentrating on what is best for the referred child can ultimately lead to more decisions being made for the victim's consideration.

We also ask that consideration is given to allowing the Children's Reporter to give some context or reasons as to why a decision has been made. The decision might be made not to pursue the matter in the hearing system – this could be because the matter has been dealt with without the need for compulsory supervision. The

victim would be told of the decision but not the reasons why. We cannot stress enough the importance of some information to give understanding to the victim and assist in their recovery.

13. Do you wish to say anything else about the proposals to increase the age at which young people can be referred to a Children's Hearing?

We have been aware of some instances where survivors have reported historic crimes of sexual violence and rape, primarily where they were abused as young children and are now older. The perpetrator was under 16 at the time of the offence but is now an adult but there has been no action taken by the COPFS on the basis that had it been reported at the time the offence could have been dealt with in the Children's Hearing System. We would be concerned if historic reports against adult men who were 16/17 at the time of the crime were treated in such a way as this led to feelings of dismissal in the survivors and the perpetrator was in no way held to account.

14. The Bill makes several changes to existing Criminal Justice and Procedure. These are related to raising the age at which young people can be referred to the Children's Hearings System. Do you have any comments on these proposals?

These considerations have been addressed in the above answers.

15. The Bill changes the law so that young people aged 16 and 17 who are accused of or found guilty of an offence can no longer be sent to a Young Offenders' Institution or a prison. What are your views on these proposals?

While we understand the wider justice concerns behind this decision we would like to stress that where an accused 16 or 17 person has been found guilty in the criminal justice system this will relate to the most serious offences which were ultimately not dealt with by the children's hearing system, the victim/survivor involved in these offences will likely be incredibly vulnerable and at risk from the perpetrator. If this person is in custody for a period of time this has benefits to a victim-survivor in terms of their recovery as they will have a clear and safe period of time to rebuild their life without fear of further offending or seeing the

perpetrator. The safety plan for this survivor needs to be robust and alternative protections put in place.

16. The Bill changes the way in which secure accommodation is regulated. It would also introduce regulation for cross-border placements (for example, a child placed in Scotland as a result of an order made in England). What are your views on the proposed changes?

No answer

17. What are your views on the proposals set out in Part 4 of the Bill?

No answer