

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Families Outside

1. Introduction

1.1 Families Outside is a national independent charity that works on behalf of families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, training, and face-to-face support. As such, specific sections of this Bill are of considerable interest to our work, and we are grateful for the opportunity to comment. We are happy to elaborate on any of these should the Committee require additional information.

2. Part 1, Chapter 5: Rights of suspects in police custody

2.1 Families Outside welcomes Chapter 5, section 30 on the “Right to have intimation sent to other person” when someone is in police custody. Both the fact of custody and the location is likely to be pertinent to people other than the suspect. Good practice would be to ensure that this “other person” also receives relevant information such as contact details for support and queries, and we would like to see this incorporated into the Bill.

2.2 We also welcome section 32, the “Right of under 18s to have access to other person” while in police custody. First, we welcome the recognition that the definition of young people should extend to at least age 18, commensurate with the provisions in the UN Convention on the Rights of the Child. Second, their age makes these young people potentially vulnerable, and older family members or carers may well have concerns for their welfare. Engagement with a responsible adult from the earliest possible stage, where this is in the best interest of the young person, is likely to be of benefit throughout the Children’s Hearing or Criminal Justice process and for resettlement afterwards.

2.3 Families Outside also welcomes provisions for support for vulnerable persons (section 33) while in police custody. Again, we would want to ensure that the suitable person to provide support also receives information about the welfare of the person throughout the Criminal Justice process and has information such as contact details for queries and provision of information.

3. Part 1, Chapter 6: Police powers and duties

3.1 Of particular interest to us in the Bill was section 42, “Duty to consider child’s best interests”. To subsection (1), we would add the following:

(e) detain a person with caretaking responsibilities.

3.2 We agree that “...the need to safeguard and promote the well-being of the child [must be] a primary consideration”, but these needs are not routinely assessed when an

adult is detained in police or prison custody. Research in Scotland and internationally reflects both short- and long-term impacts on children and families when a family member is imprisoned.¹ About a third of prisoners' children are present during the arrest, and the trauma they experience from this can be considerable.² Families Outside is currently working alongside a number of interested organisations to promote a Child & Family Impact Assessment at key stages in the criminal justice process. However, police already have the power to request a 'Child in Need' assessment from the Local Authority and, when a carer is arrested and detained, should be required to do so.

4. Part 4: Sentencing

4.1 The short sections on sentencing would benefit from expansion to include a section to make it commensurate with the terms of the Children & Young People's Bill. Specifically this section could usefully include reference to the importance of child wellbeing (or indeed 'welfare' or 'best interest' as defined under existing legislation and case law). It should also reflect a need to take the child's best interest into account as a primary consideration in all actions that affect them (also Article 3.1 of the UNCRC). Section 278 of Part 18 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13 (Scottish Act) also sets a precedent in which the child's interests have to be considered and addressed in state actions concerning the child's parent(s) ("Duty to mitigate adverse effect of compulsory measures on parental relations").

4.2 As noted above, such considerations could be assessed through a 'Child in Need' assessment with the Local Authority or through a specifically designed Child & Family Impact Assessment. Such an assessment should also question the impact of decisions on a child's Right to Family Life under the Human Rights Act 1998. In *Slovakia v Denise Srponova*,³ this consideration prevented the extradition and imprisonment of a lady that would have resulted in her son's placement in an orphanage following her breach of a probation order.

5. Part 6, Chapter 1: Procedural matters

5.1 Finally, we welcome the provision in section 86 for the use of live television links in court. However, this section could usefully be extended to include the use of such technology to maintain family ties; encourage family participation in prison case conferences; and promote positive parenting such as through participation in parent-teacher conferences, commensurate with recommendations in the National Parenting Strategy for additional support for imprisoned parents.

¹ See review in Loucks, N. (2012) "Prisons: Where DOESN'T the community come in?" *Prison Service Journal* 204, 42-50.

² Ortega, B. (2009) "The impact of arrest on children and families." Paper presented at the Families Outside conference, *Step by step: Key stages for families affected by imprisonment*. Stirling Management Centre, 18 November 2009.

³ Sheriff Court, January 2013, unpublished. Case presented to the Cross-Party Group on Children and Families Affected by Imprisonment by Maggie Mellon, 30 January 2013.

5.2 About half of prisoners (43% of sentenced prisoners and 48% of remand prisoners)⁴ lose contact with their families when they enter prison. Only about half of prisoners use their minimum entitlement to visits.⁵ Loss of contact between prisoners and families may well be due to practical reasons as well as emotional ones. Andrew Coyle notes, for example:

Given that many prisoners come from marginalised and impoverished backgrounds, the cost of travelling long distances may mean it will not be possible for families to visit if the prison is a long distance from the area where the family lives.⁶

Ten years later this is still the case, if not more so:

... the poorest households with a car were spending at least 17% of their income on transport.⁷

5.3 Travel to prisons for visits continue to be a barrier for families to maintain contact. Families Outside would recommend the use of video technology in prisons to lessen the burden for the families imprisonment separates.

6. Conclusions

6.1 As an organisation with a very specific remit in relation to children and families affected by imprisonment, we recognise that our evidence is similarly specific. In saying this, the broader implications when a family member is caught up in the criminal justice system means that elements of this Bill are key to ensuring that the rights of children and families are acknowledged and supported. In an address to the Early Years Collaborative in May 2013, Sir Harry Burns emphasised the fact that outcomes for children are inextricably linked to those of their parents and carers; this Bill is an essential opportunity to recognise this.

6.2 In conclusion, Families Outside broadly welcomes the Criminal Justice Bill but want to make sure that it does not miss the opportunity to address the broader implications for children and families. We appreciate the opportunity to comment and are happy to engage in further discussion where this would be helpful.

Prof Nancy Loucks
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⁴ Social Exclusion Unit (2002) *Reducing Reoffending by Ex-Prisoners*. London: Home Office, and NACRO (2000) *The forgotten majority: The resettlement of short term prisoners*. London: NACRO.

⁵ HM Inspectorates of Prisons and Probation for England and Wales (2001) *Through the Prison Gate: A Joint Thematic Review by HM Inspectorates of Prisons and Probation*. London: Home Office.

⁶ Coyle, A. (2002) "A Human Rights Approach to Prison Management." London: International Centre for Prison Studies.

⁷ Dalton, A. "Families plunged into 'transport poverty'." *The Scotsman*, 29 Feb. 2012.