

## Justice Committee

### Criminal Justice (Scotland) Bill

#### Written submission from Barnardo's Scotland

Barnardo's Scotland welcomes the opportunity to provide written evidence for the Committee's Stage 1 scrutiny of the Criminal Justice (Scotland) Bill.

#### Links to children's rights issues

Section 42 of the bill represents an important step towards bringing the criminal justice system in Scotland fully into line with the UN Convention on the Rights of the Child (UNCRC). By ensuring that the police treat the need to safeguard and promote the well-being of the child (defined as a person under 18) as a primary consideration when making decisions to arrest a child, hold a child in custody, interview a child about an offence or charge a child with an offence, police practice will be brought into line with Article 3 of the UNCRC "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"<sup>1</sup> However, we would welcome further explanation of why 'well-being' has been used rather than 'welfare', given the fact that welfare is used in other justice legislation such as the Children's Hearings (Scotland) Act.

The bill as currently drafted represents a missed opportunity to bring greater alignment between the criminal justice system in Scotland and children's rights.

Barnardo's Scotland, along with other leading children's charities, recently wrote to the Minister for Children and Young People to highlight the omission in the Bill of measures to raise the minimum age of criminal responsibility from eight to 12 years old in line with the commitment in the Scottish Government's *Do the Right Thing Progress Report 2012* to give this fresh consideration "with a view to bringing forward any legislative change in the lifetime of this Parliament."<sup>2</sup>

We recognise that in practice most offending activity committed by children under the age of 16 is dealt with through the children's hearings system, and welcomed the raising of the age of criminal prosecution to 12. However, it is still possible for a child as young as eight to acquire a criminal record through the hearings system, which we believe is incompatible with the Scottish Government's commitment to children's rights.

We therefore urge the committee to consider using this bill as an opportunity for acting on the Scottish Government's commitment to the UN Committee on the Rights of the Child by increasing the age of criminal responsibility to match the age of criminal prosecution.

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<sup>1</sup> (1989) UN Convention on the Rights of the Child  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>2</sup> (2012) Scottish Government: <http://www.scotland.gov.uk/Publications/2012/05/3593/23>

## **Children in the justice system**

We welcome the provisions in sections 30-33 of the bill, which seek to ensure that the highest standards of protection are offered to children in the formal justice system. We believe that ensuring children have access to the support of a parent, carer or other responsible person will help implement Article 37 of the UNCRC in Scotland. As such we would like to see a more explicit reference to Article 37 of the UNCRC in this part of the bill.

As the bill sets out in section 32, where it is inappropriate for the parent or carer to support the child in custody or they cannot be located, it will be up to the local authority to appoint a 'responsible person' to support that child.

We feel that more explanation is required about the role and responsibilities of this 'responsible person', and would like to see an explicit reference to the right to independent advocacy. This would be consistent with section 122 of the Children's Hearings (Scotland) Act which gives the right to the service of a trained advocate for children appearing before the panel. Any such advocacy provision should be modelled on that available under the Mental Health (Care and Treatment) (Scotland) Act 2003, and be in line with the recently published draft guidelines for the commissioning of independent advocacy.

A trained advocate would complement the role of a solicitor. An advocate would help ensure that the child understood the process, and could communicate effectively. If we recognise the needs of children to have access to the service of a trained advocate in the legally sanctioned proceedings of a children's panel, to cut through technical language and processes on their behalf, then we should make similar provision in the formal criminal justice system.

## **Children affected by parental imprisonment**

As well as the commitment to safeguard and promote the well-being of children in the justice system, the well-being of dependent children should be considered when an adult is detained in police or prison custody. There is a wealth of Scottish and international research which has highlighted the short- and long-term impacts on children and families when a family member is imprisoned.<sup>3</sup> It has been estimated that around a third of prisoners' children were present during the arrest of their parent, and this can have a traumatic impact on the well-being of the child.<sup>4</sup>

We would therefore like to see a greater recognition in the bill that the well-being of children in the justice system should also include the well-being of children affected by parental imprisonment.

Barnardo's Scotland is currently working with Families Outside and other children's and criminal justice organisations to promote the use of a Child and Family Impact

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<sup>3</sup> (2012) Loucks, N. "Prisons: Where DOESN'T the community come in?" *Prison Service Journal* 204, 42-50.

<sup>4</sup> (2009) Ortega, B. "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.

Assessment at key stages in the criminal justice process. An important first step in this would be to ensure that the use of the 'Child in Need' assessment, which the police currently have the option to request from the local authority when a carer is arrested and detained, should become mandatory.

### **Conclusion**

We look forward to working with the Committee and Parliament to deal with the issues highlighted above, in the context of our work to strengthen the links between the Scottish Government's policy agenda for children and young people, centred on GIRFEC and children's rights, and justice policy.

Barnardo's Scotland  
2 September 2013