

SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

DATA PROTECTION FORM

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Date:	
Organisation: (if required)	Who Cares? Scotland
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.

Please insert your response below.

Who Cares? Scotland (WC?S) is an independent advocacy and membership organisation. We are celebrating our 40th anniversary in 2018 and our vision, which was created with care experienced people, is to secure a lifetime of equality, respect and love for care experienced people in Scotland.

To find out more about how we will do this, please:

- Find information about our strategic plan for 2018 – 2022 by visiting this link - <https://www.whocaresscotland.org/what-we-do/strategic-plan-2018-2022/>
- Read more about our 40 years of representing the care experienced community by visiting this link - <https://www.whocaresscotland.org/40th-birthday-year-2018/>

To understand why this vision matters to care experienced people, please:

- Read the blogs they have created, which are available via this link - <https://www.whocaresscotland.org/who-we-are/blog/>
- Take 5 minutes to watch this video which was created with our members - <https://vimeo.com/239422128>

1. The UN Committee on the Rights of the Child recommends that the age of criminal responsibility is a minimum of 12 years old, which the Bill adheres to. What are your views on the appropriate age of criminal responsibility in Scotland?

The Scottish Government's vision is to make Scotland the best place in the world for children to grow up and for this ambition to be made a reality, every aspect of a child's life must be considered. By recognising the lowest internationally acceptable age of 12 years old, we believe this does not demonstrate a real commitment to this ambition. WCS support the UN committee's suggestion of a higher MACR for Scotland, 'for instance 14 or 16 years of age'.¹ We want to see the upper age recommended, of 16 years old, to be the threshold at which someone is held criminally responsible in Scotland. This will ensure that the Bill is utilised as an opportunity to ensure Scotland fully adheres to the UNCRC and therefore is world-leading in transforming the lives of Scotland's children.

For care experienced people, we are campaigning for a lifetime of equality, respect and love and we know that currently those who experience care have a higher chance of becoming criminalised and entering the justice system in Scotland. Statistics show that care

¹ UN Committee on the Rights of the Child (CRC), 2007, *General comment No. 10 (2007): Children's Rights in Juvenile Justice*. Accessible online: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

leavers are overrepresented in the criminal justice system in Scotland and although those who have been in care only make up an estimated 0.5% of the general population, they make up 33% of Scotland's youth offender population and 31% Scottish adult prisons.² In 2014, 50% of prisoners in Scotland identified as having been in care at some point in their life.³ This is rooted in the lived experiences of being in care and includes: over-involvement with, and sometimes stigmatisation by the Police; the increased scrutiny by professionals of the behaviour of young people in care placements; and participation in difficult formal processes. Therefore, raising the Age of Criminal Responsibility is crucial in helping to eradicate the inequality that care experienced people face and combating unnecessary criminalisation of their childhood behaviours.

Care experienced young people consistently tell us they do not fully agree that at aged 12 a person is old enough to be arrested and charged with a crime. We know this is how our members feel, because WCS has conducted research with care experienced young people on the differing age limits and issues with the current proposals to raise the age of criminal responsibility to 12 years old.⁴ Considering the continuing evidence of these views, we would recommend alongside the Centre for Youth and Criminal Justice, that whatever age and approach is taken in the Bill towards criminal responsibility is then kept under review. These issues must be able to be explored again as our attitudes towards children changes over time. This will ensure we understand all the effects, the intended and unintended consequences of a change to the age of criminal responsibility.⁵

- ***“No, I think at 12 you’re maybe still not old enough, you’re just discovering right from wrong. At 12 you’re just getting your freedom to be yourself. You’ve never been out yourself, to know you’re breaking the law.”***
- ***“At 12 you don’t know it’s going to stick with you for the rest of your life.”***⁶

The reason the age must be higher for criminal responsibility is because a needs-focused response is required to deal with harmful behaviour of young people. The state has a legal and moral responsibility to be a good parent (corporate parent to those with care experience) and to reflect this the justice system must be child-centred, needs-focused and non-criminalising, all of which are found in rights-based policy making. In order for this to happen, there must be alternative methods given to professionals working with children who display harmful behaviours. Multi-agency training must be developed to ensure practice and culture changes in the frontline workforce, who may be the first point of contact for any harmful or concerning behaviours of children and young people. This training should

² Scottish Prison Service (2016), *Prisoner’s Survey 2015 – Young People in Custody*; Scottish Prison Service (2013), *14th Survey Bulletin*.

³ Broderick, R, McCoard, S & Carnie, J (2014), *Prisoners who have been in care as ‘looked after children’*.

⁴ Please see our attached report in the WCS submission to the Equalities and Human Rights Committee: [WCS, April 2018, Consultation on MACR](#).

⁵ Lightowler, C. Centre for Youth and Criminal Justice, July 2018, *Evidence Submission to the Equalities and Human Rights Committee on the Age of Criminal Responsibility*.

⁶ All quotes bolded and italicised throughout this response are directly from care experienced people who have spoken to us about the age of criminal responsibility.

aim to contextualise the behaviours that some children may display and lead to a reduction in the use of criminal justice mechanisms:

“They should take into consideration how jailing you and charging you makes you lose your income and before you know it you’re homeless. Young people don’t have to be criminalised and have a record, can make sure they get some punishment but not a criminal record – maybe something like a behavioural course.”

Our care experienced members have told us they think convicting children and young people with criminal acts is not the best method to stop re-offending. This is backed up by evidence presented by the Centre for Youth and Criminal Justice in their response to the ACR Bill.⁷ They have highlighted the Edinburgh Study, which ‘revealed that where children commit the same level of frequency of offence, those who are formally responded to through the criminal justice system are more likely to continue offending than those who are not, in short the justice lens makes offending more likely’.⁸ Our members stress the need for emotional support and trauma-informed practice by professionals dealing with a young person’s harmful actions. We have spoken extensively to our care experienced members on the issues surrounding contact with the police and the criminal justice system and recommend the committee take time to read this pre-existing material.⁹

We must work together to ensure that the Bill is able to stop the unnecessary criminalisation of Scotland’s young people and that it is utilised as an opportunity to make real, progressive steps to realise a needs-based response to criminal behaviour. If we get this right, this legislation will have potential to change care experienced people’s lives across Scotland for the better and ensure it is the best place in the world to grow up.

“Remember that they are weans! Some people might be slower at learning than others.”

2. The Bill makes a number of changes relating to the disclosure of offences and provides that any conduct by a child below the age of 12 (should the ACR be increased) that would previously have been recorded as a conviction will no longer be recorded as such. The Bill does however, allow for disclosure of ‘other relevant information’ held by the police about pre-12 behaviour. The Committee would welcome views on whether the Bill strikes the right balance in terms of addressing offending behaviour by young children under 12 and the disclosure of such information.

Our members tell us that there should be a presumption against disclosing any harmful behaviour conducted by care experienced young people under the age of 18. Disclosing information about previous misconduct goes against the aim to support young people to

⁷ Lightowler, C. Centre for Youth and Criminal Justice, July 2018, *Evidence Submission to the Equalities and Human Rights Committee on the Age of Criminal Responsibility*.

⁸ McAra, L., and McVie, S., 2010, *Youth crime and justice: Key messages from the Edinburgh study of youth transitions and crime*. Criminology and Criminal Justice, pp. 211-230.

⁹ [WCS, 2018, Report on the Criminalisation of Care Experienced People.](#)

reach their potential and continues to create barriers to move on from difficult or traumatic periods of their lives.

One young person shared their story of receiving a conviction whilst in residential care, which shows up on their PVG. They are now worried how this will affect them in future:

“I was charged for smashing a plate...that’s fucking ridiculous.”

They explained they had been angry and upset at the time of the incident and hadn’t meant to damage any property. Staff at their residential placement called the police to gain control of the situation, which the young person saw as unnecessary and feels angry about:

“I had no support, and now something as stupid as that comes up on a PVG. The way I looked at things changed, I just needed the right support.”

Care experienced young people feel that crimes committed under 12 should not be shown on a disclosure check. Although the new ACR bill will help bring this into effect, any criminal activity recorded under 12 was mostly seen as unfair to share with employers:

- ***“At that age, you’re just learning about life.”***
- ***“Over time, someone can change. You’re still growing...”***
- ***“At age 8 I was a completely different person.”***

Young people we spoke to also raised the issue of privacy with sharing information with employers about events which occurred at such a young age, as this could expose family backgrounds or more personal information.

We would like to see the reform of any disclosure processes as linked with the ongoing PVG review.¹⁰ As discussed at the ‘Debating Disclosure’ event held by CYCJ, WCS understand that the current system of disclosure disadvantages care experienced people and we urge the committee to emphasise the need to reduce the barriers which disclosure processes can create.

Young people have told us that the disclosure process must allow for the context and background of a criminal conviction to be considered, if information has to be passed on for a particular reason. Information about minor and petty crimes should not be displayed on a disclosure, especially if received under the age of 16. Our members also want care experience to be acknowledged in the disclosure process. This especially important when information about an individual is reviewed as either relevant or irrelevant to disclose. There must be a process put in place to help those scrutinising the information on criminal histories, to identify if a criminal conviction was received whilst in care.

We also support CYCJ’s statement that: ‘it is important to ensure an individual’s right to make representation before any disclosure of information to third party takes place and right to appeal the independent reviewer’s determination is clearly communicated and

¹⁰ <https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable/>

appropriate support is provided to make such representations, recognising that this may take place some years after the event and could apply in childhood and adulthood.¹¹

Our overall argument for disclosing any information about criminal behaviour under 18 is that it must only be done so in the most serious cases and must be judged in the full context of mental health, disability and whether the individual has experienced trauma.¹² We are concerned that Other Relevant Information will be unable to provide this context and will hold and then share information about young people, which may hinder their ability to achieve their dreams and ambitions throughout the rest of their lives.

3. The Bill provides that children under 12 who are subject to a police interview will have the right to have an advocacy worker present during the interview. What will the impact be on your organisation or on the children you work with who might access the advocacy service?

Care experienced young people want to ensure that in any contact with police, their rights are upheld and communicated to them:

- ***“Ensure our rights are understood.”***
- ***“If I am asked by the police if I understand my rights, I will just say yes, as I don’t really understand. More should be done to ensure young people understand and know their rights.”***
- ***“Police need to take caution in how they speak to young people, can’t assume young person knows rights...”***
- ***“Don’t talk down – condescending manner.”***

One young person suggested the creation of materials to give to young people to help them understand what was happening to them:

“Maybe they could hand you a ‘your rights’ card with what is being said on it, to ensure the police are telling you your rights and you have something to take away with you.”

This could also be utilised in the case of an emergency interview, although it is acknowledged that when a young person is in crisis – a single point of communication may not be enough to ensure they understand their rights. We cannot emphasise enough how consistent communication is vital in situations where police intervention, for whatever reason, is deemed necessary.

In terms of providing an advocacy worker for interview processes with police, it is important that the professional definition of an advocacy worker is understood by the committee when reviewing this part of the Bill. WCS currently provides professional, independent advocacy to children and young people across Scotland, who are currently navigating the formal processes of the care system. We are concerned that the advocacy worker referenced in

¹¹ Lightowler, C. Centre for Youth and Criminal Justice, July 2018, *Evidence Submission to the Equalities and Human Rights Committee on the Age of Criminal Responsibility*.

¹² [WCS, Response to Consultation on the Proposed Draft Police Act 1997 and Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial Order 2018, November 2017.](#)

the bill is currently undefined in terms of skill-set required and whether they would be provided by an organisation that is independent to legal bodies and other public service providers. This is an area the committee must work to clarify, to avoid confusion for those implementing the legislation in practice.

We would also recommend that the committee engage with WCS to better understand the role of an advocacy worker, to determine how this service could be applied to police interview processes. To understand the effects of independent advocacy on children who access to service, the committee should hear directly from children and young people who have direct experience of engaging with advocacy services.

WCS has an extensive knowledge-base of how an advocacy service, which is based around creating trusted, positive relationships, is beneficial in supporting children and young people to understand their rights and to express their views in formal processes. A wealth of practice and experience has been built up through the 40 years of creating advocacy relationships with care experienced children and young people across Scotland. As a result, we know that it is vital any advocacy worker introduced into the interview process is able to build a trusting relationship with the child or they should engage with the child alongside someone who the child already has a good relationship with. This is especially important in cases where the types of investigative interviews set-out in the Bill may take place, in which it is highly likely the child will be at a point of crisis and dealing with potentially traumatic experiences.

4. Raising the age of criminal responsibility would necessitate a number of changes in relation to information which can be provided to victims. The Bill seeks to balance the best interests of victims (including child victims) and the best interests of the child responsible for any harm caused. Again, the Committee would welcome views on whether an appropriate balance in this area has been achieved.

Criminal behaviour under 18 must be judged in the full context of mental health, disability and whether the individual has experienced trauma. However, the information provided to victims should not include personal details about the child or young person who is responsible for the harm caused. When information is provided to victims, there must be a clear explanation of the alternative service intervention being taken to help the child which has been used instead of engaging them in criminal justice processes.

5. Part 4 of the Bill relates to police powers and provides a package of powers designed to ensure that serious behaviour by any child under the age of 12 can be investigated but that such investigations are carried out in a child-centred way. Those powers include, amongst other things, the taking of forensic samples, removing a child to a place of safety and the power to search children. The Bill restricts the application of most of these powers so that they are only available to the police in the most serious of cases. The Committee would welcome views on the approach taken to police powers in the Bill.

The investigative powers of police included in the Bill are of particular concern for care experienced people, due to the increased criminalisation they face in Scotland. As

explained previously, care experienced children are more likely to come into contact with police for a multitude of reasons. We would like any powers included in the Bill to ensure they do not create adverse effects for children and young people in care settings and it must be acknowledged that any involvement with the police is immediately going to have a traumatic effect on the child no matter how many safeguards are in place.

In terms of removing a child to a place of safety, young people tell us that a police station must not be used:

“Not fair for an 8-year-old to go to a police station.”

We would encourage the committee to stress this in the implementation of this power, as if the process is to be child-centred, the place of safety must feel safe and appropriate for the child involved in the incident. There must be collaboration across local services to identify specific areas which are deemed safe and appropriate for children, including those which would be available out of hours. Using a police station as a first reaction response when called to an incident must not be an option when moving children and young people to safety. An important part of this process is effective communication with children and young people, which frontline police utilising this package of powers must be equipped to carry out. There is good practice of this already being implemented in Scotland, which shows that it is possible that a police station does not need to be an option for police, when taking a child to a place of safety:

In West Dunbartonshire, they are planning on having a safe room for Police to conduct interviews with children and young people - this space will *not* be in a Police Station. A room has been secured within a council building that is used for services that work with young people and the West Dunbartonshire Champions Board for care experienced young people. The plan for the safe room is that it will be child friendly, have cameras within the room to record any interviews with a young person. It will also be sound-proofed to ensure the privacy of the Police and young person that is using the room. Providing this room will ensure the young person involved feels more comfortable and is treated as a young person and not an adult. It has been emphasised that when taking a young person to this space, this must be done on an individual basis to ensure that this is what is right for each young person the Police come in to contact with. This room has been created to stop young people in West Dunbartonshire being taken to the Police Station to be interviewed. As previously stated, current practice of taking children to a police station has potential to add to the possible trauma they will have experienced before a crime has been committed, and during a crime, when a child can be traumatised by their actions and/or being witness to crime. No young person should feel like a criminal in these situations and the team at West Dunbartonshire are working to ensure that young people who end up in contact with the Police, have positive experiences.

Also, with the power to remove children to a place of safety, we would like to emphasise that the use of force by police to do so must be considered as a potential risk – especially if intervening in an incident where the young person is showing harmful behaviour. We have

worked extensively with young people to understand how police should improve the way they use force. The Police, especially frontline officers who may be the first point of contact for any incidents, should be trained to understand trauma-informed responses to harmful behaviour and criminal activity. This training must include an understanding of how using force can affect those with care experience:

- ***“If force must be used on a child or young person, Police must inform them of their rights and ensure they understand why they are using or have used force on them.”***
- ***“The care experienced background of an individual must be considered when deciding to use force, as this can be triggering of traumatic experiences. It must not be used by staff in care placements as a method to deal with harmful behaviours of children.”***
- ***“What happens if you have mental health issues and they don’t know? You might react in a different way to your peers and be criminalised for this even though it is not your fault.”***

In regard to the power to search those under the age of criminal responsibility, young people tell us that not only should police make sure stop and search happens at appropriate times in appropriate places but also that they must have ***“reasonable belief you’re doing something, not target you in the street because they know you.”***

We have consulted young people about stop and search many times¹³ and consistently receive core messages from them. We encourage the committee to use this opportunity to link in with wider action being taken to improve stop and search processes for all young people:

- They would like to be able to choose the location they are searched, especially to avoid public searches which are often embarrassing and uncomfortable.
- They would like police to more proactively enforce rights in this practice by ensuring those who are searched under 18 are informed when searched.
- Young people think under 12s should always have a trusted adult present if searched and that an option to have one present should be available for 12-16-year olds.
- Police must also improve stop and search practices to explain the grounds they are using to search a child or young person to stop stereotyping and build trust in police.

We would also like to make the committee aware that there is ongoing work on the link between young people being placed in residential care and their over-involvement with

¹³ [WCS, Response to the Consultation on Stop and Search, May 2015;](#)
[WCS, Response to the Consultation on the Minimum Age of Criminal Responsibility, June 2016;](#)
[WCS, Response to the Consultation on Police Powers to Search Children and Young People for Alcohol, July 2016.](#)

police. If these powers are to be utilised by police, there must be an understanding of who has made the call to police and why they are asking for intervention to be taken.¹⁴

It is also important to acknowledge that care experienced people can sometimes feel stigmatised by police and that the implementation of these powers must come alongside an awareness of the challenges that exist in practice. Again, in relation to stop and search there is a continuing perception that if a young person is in care, they will automatically be targeted with stop and search procedures and this is perceived as the only reason the person is stopped.

- ***“People are searched because of where they stay – as soon as you say ‘unit’ – with no reason.”***
- ***“They know you’re in care – this means you’re always pulled over.”***
- ***“Police are automatically stopping and searching because young people are in care, with no reason.”***
- ***“Police should not be influenced to stereotype and stigmatise care experienced young people because of the public and others stereotyping them, like neighbours to a unit phoning the police on a care experienced young person smoking outside the unit. Police are then treating care experienced young people as bad kids and troubled.”***

We also have opinions from young people on how the Police should approach a search for an under 12. When police are stopping and searching this age group, young people emphasised the need to use age appropriate language. It was felt they were too young to be searched without a parent or guardian present. They also told us that police must be especially supportive of young people under 12, as they may not understand what ‘rights’ are:

- ***“Be very considerate, talk to them, don’t be blunt with questioning.***
- ***“Use child friendly wording, not jargon.”***
- ***“Get down to their level – tall police officers can be intimidating.”***

6. Please tell us about any other comments you feel are relevant to the Bill.

We would encourage the committee to utilise this opportunity to review similar processes for those aged 12-18 years old and ultimately to consider whether 12 years old is a high enough age of criminal responsibility. We think the Bill can create much wider positive changes in reducing the contact children and young people have with the criminal justice system, especially for those with care experience.

We also would like to highlight that Part 9 of the Children and Young People (Scotland) Act 2014 places statutory corporate parenting obligations on 24 public sector bodies in Scotland. Corporate parents must ensure that their practice does not impede on the

¹⁴ Howard League, *Programme to end the criminalisation of children in residential care*: <https://howardleague.org/what-you-can-do/children-and-policing/programme-to-end-the-criminalisation-of-children-in-residential-care/>

wellbeing of care experienced young people. Each corporate parent must also promote the interests of young people and provide opportunities for them to participate in wider society. Police Scotland and Disclosure Scotland are the two key corporate parents who we have worked closely with to encourage change and end the criminalisation of care experienced people. However, this is a responsibility of all of Scotland's corporate parents and they must be informed of their duties and offered guidance in how they, within their varying roles, can support the strategy.

Furthermore, within the equalities impact assessment of the Bill, it is important to understand which children and young people are currently more likely to come into contact with police and why. As explained, there are many reasons why care experienced people face higher rates of criminal convictions in comparison to their non-care experienced peers. This must be acknowledged throughout the development and scrutiny of the Bill.

In addition to this response and the accompanying research report we have submitted to the committee, we are determined to connect care experienced voices directly with those who have the power to influence change. Therefore, we request that the committee hear from care experienced people in the oral evidence sessions relating to the Bill. It is by listening to the lived experience of those who have been subject to criminalisation that we can understand what needs to change and why. The Bill must help Scotland ensure that going into care does not mean you have a higher chance of becoming criminalised and therefore, have poorer outcomes. This is part of our vision to achieve a lifetime of equality, respect and love for all care experienced people.