

## Supporting all Under 18s in the Court System

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An under 18 who appeared in court said “I was in court the day after my 16th birthday and didn’t know what was happening...I just didn’t have a clue” (Nolan, D., Dyer, F., & Vaswani, N. (2017)).

The Whole System Approach states that all under 18s should be supported through the court process from as earliest an opportunity as possible until its completion. This should be holistic, proportionate and appropriate to the individual’s needs and provide both emotional and practical support, which extends beyond court appearances.

This is in accordance with UNCRC (1989), Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice (Council of Europe, 2010) and Getting It Right for Every Child (GIRFEC) which recognises all under 18 years as children. There are some local authorities who provide or are developing the provision of such support for all under 21s.

The Council of Europe (COE) Guidelines clearly outlines child friendly justice as:

- accessible;
- age appropriate;
- speedy;
- diligent;
- adapted to and focused on the needs of the child;
- respecting the right to due process;
- respecting the right to participate in and to understand the proceedings;
- respecting the right to private and family life;
- respecting the right to integrity and dignity.

Whilst the Scottish Government’s WSA policy prioritises diverting children from formal systems as far as possible, 1,776 children under 18 were prosecuted in 2017/18.

In upholding the above rights Court support should also:

- Identify all under 18s, irrespective of their legal status or the manner in which they come to court, and offer assistance and support at the earliest opportunity
- Actively consider diversion at all points of the process
- Have in place agreements to share information appropriately and proportionately across all agencies involved
- [Maximise the use of advice hearings and remittal through Children’s Hearing System for all children up to 17 years and six months](#)
- Have in place alternatives to remand within the community
- Promote the importance of understanding and identifying speech, language and communication needs (SLCN) and providing necessary measures to mitigate these
- Actively consider the use of special measures for child accused ([CYCJ, S12 p14,2019](#))
- Have in place agreed multi-agency protocols and processes to deliver consistent and effective support
- Provide proportionate practical and emotional support throughout the [child’s court journey](#)



Under 18s may appear in court from custody, a police undertaking or by citation and whilst the latter routes are more difficult to identify children in advance, processes should be developed to facilitate their identification and promote the availability of support throughout the court process. When a child appears in a court out with their home area, the home area social work should contact the court social work team where the child is appearing to provide information. This should include if they are being accompanied by workers, any vulnerabilities and supports available/in place or respond to any court social work team enquiry for information and advice. Robust processes should be in place to ensure notification of any under 18 held to appear at court to social work from [Police Scotland](#) and/or court social work, triggering parallel actions.

These include welfare check with the child; ensuring they are aware of their rights; providing emotional and practical support and identify any issues regarding SLCN and other ASNs as quickly as possible; explanation regarding what is happening, what will happen and possible outcomes using child friendly language. Workers should also check they have had access to legal representation and offer to liaise with family or those who the child identifies as important to them and offer them support to attend court if required, explain the processes, what will and may happen as well as liaising between them and the child as appropriate.

Staff providing court support should also liaise with Procurator Fiscals to maximise opportunity for diverting the child from court and their solicitor, to remind them of the option to remit the case to the CHS where appropriate. Information should be shared regarding current or available supports for the child and their family; this is particularly important where bail may be opposed. For all under 16s and those 16/17 yrs subject to CSO in circumstances where bail may be opposed or the seriousness of the charge suggests [remand](#) is a possibility, a [secure care placement](#) should be sought in accordance with WSA rather than a Young Offenders Institution. Availability of secure placements can be checked on the [SANS](#) website; early direct contact with the secure care establishments is advised. Where the charge is of a serious nature and on solemn proceedings, the Scottish Government [placement manager](#) should be contacted to highlight the case at the earliest opportunity, as they are responsible for those children sentenced to custodial sentences under Criminal Procedure (Scotland) Act [s.205](#) or [s208](#). When assessed that any risk posed by the child's behaviour could be managed in the community, a robust action plan should be initiated which may include formal risk management processes such as Care and Risk Management ([CARM](#)). Additional options which may protect both the child and the wider public should also be utilised and could include residential accommodation, robust wraparound supports, where appropriate referral to Children's Reporter, links with education and community resources to respond and support the child within their community.

A court note may be submitted through the court social work team to assist the Sheriff or Judge in their deliberations regarding bail or remand. These should provide succinct synopsis of the child's situation which may include legal status, support systems in place and proposed action plan including measures to manage risk where this can be managed in the community. Workers providing court support should attend court with the child as their presence allows immediate response to any questions by the Sheriff or Judge. Accommodation issues should be flagged early to enable communication with housing colleagues and appropriate services to prevent any child being remanded due to lack of accommodation. Processes must be in place to ensure meaningful multi-agency working that can respond quickly and effectively such that whenever an under 18 is appearing in court, they receive the same response delivered in a way which is flexible to meet their needs and utilises the appropriate agencies for those needs. As long as under 18s are telling us: "No-one tells you anything, you just need to find out yourself really" it is clear court support is a strand of WSA that still requires to be fully embedded consistently across Scotland.

CYJ's [Practice Guide to Youth Justice: Section 12 - Supporting all under 18 years in the Court System](#), which is updated annually, provides further detail.