

Public Petitions Committee
Consideration of PE1171: Mandatory Sentencing for Knife Crime
Scottish Children's Reporter Administration submission

Introduction:

SCRA acknowledges the very real public concern over knife crime which has prompted this petition. We have no specific comment to make on sentencing policy, as this falls outwith the remit of the Children's Hearings System. However, we note the Committee's questions about the way in which knife crime committed by under-16s is addressed. This submission and the data below therefore is presented in order to help inform the Public Petitions Committee in its deliberations.

SCRA background:

Established in 1996, the Scottish Children's Reporter Administration (SCRA) assumed responsibility for the Children's Reporter service across Scotland and operates as a Non-Departmental Public Body (NDPB), funded by the Scottish Executive. While the Principal Reporter is independent in terms of his/her decision-making powers in relation to children referred, the organisation and Board of SCRA is responsible and accountable to Scottish Ministers.

In 2007/08, 50,314 children were referred to the Children's Reporter. This figure represents 5.5% of all the children in Scotland. 40,204 of these children were referred because they were considered to require care and protection, while 14,506 had allegedly committed an offence (some children were referred on both types of grounds).¹

In Scotland, no child under the age of 16 years may be prosecuted for any offence unless under the instructions of the Lord Advocate². The Lord Advocate will only prosecute a child where there are compelling reasons in the public interest for doing so. This means that the majority of under-16s are dealt with via the Children's Hearings System, rather than the criminal courts.

The Lord Advocate's Guidelines to Chief Constables Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children

The Lord Advocate has issued Guidelines³ to direct the police when cases involving children need to be reported both to the Procurator Fiscal and to the Reporter (Where a case is jointly reported, the Procurator Fiscal and the Reporter will discuss the case and the Procurator Fiscal will decide whether to

¹ Children referred on both care & protection and offence grounds are counted once in each set of figures. This is the reason that the sum is greater than 50,314.

² Section 42 of the Criminal Procedure (Scotland) Act 1995

³ The Lord Advocate's Guidelines to Chief Constables Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children

prosecute the child or whether the child should be referred to the Children's Reporter. Often the Procurator Fiscal will consult with the Crown Office in making this decision.

Various factors will be taken into account in reaching this decision - the seriousness of the offence, the child's current situation and an assessment of the evidence required to support the alleged offence. It is not unusual for a case to be passed to the Reporter where there is insufficient evidence for the Procurator Fiscal to prosecute a more serious offence in the criminal justice system. For example where a child is charged with attempted murder, the Procurator Fiscal may decide that there is insufficient evidence to prosecute the child for the attempted murder, but there is sufficient evidence of an assault. As a result the Procurator Fiscal refers the child to the Children's Reporter in relation to the assault.

Decision Making by Reporters

If a child is not jointly reported to the Procurator Fiscal and Children's Reporter, the police may refer the child only to the Children's Reporter.

All referrals on offence grounds are subject to a decision by the Reporter on whether the child requires compulsory measures of supervision, and therefore should be referred to a children's hearing. Some of the factors taken into consideration by the Reporter include the evidence supporting the ground for referral, the extent of concerns over the child's welfare (taking into account the nature of the child's offending behaviour) and the level of co-operation with agencies that are working with the child to address his or her offending behaviour.,.

Even where the Reporter has concluded that evidence is sufficient, there may not be a requirement for compulsory intervention, for example, because the incident is entirely out of character, there are no other significant concerns about the child and the parental response has been both appropriate and proportionate to the incident. In other circumstances, compulsion may not be needed because the child and family are accepting of the problem and are engaged in work with agencies such as restorative justice or social work. In short, in cases in which the Reporter decides not to arrange a Children's Hearing as there is no indication of a need for compulsory intervention, other measures will often be in place to address the child's offending.

Disposals

A Children's Hearing has wide powers to attach conditions to a Supervision Requirement, including requiring a child to be subject to a Movement Restriction Condition (electronic tag) or authorising a secure accommodation placement should it consider such a disposal to be warranted. This allows each Supervision Requirement to be tailored to the individual child's circumstances. In addition, the Supervision Requirement will be reviewed at minimum on an annual basis, allowing the child's behaviour to be monitored over a period of time.

Victims

It is important to remember that the majority of victims of youth crime are other children and young people, with more than 35% of victims of youth crime aged between 11-20 years old⁴ and more than half aged under 30.

SCRA Data

This report relates to children referred to the Reporter on offence grounds [Section 52(2)(i) of the Children (Scotland) Act 1995].

SCRA currently records two specific offences relating to children referred to the Reporter for offences which may involve knives.

1. Section one of the Knives (Scotland) Act 1993 - which prohibits possession of a knife or bladed implement (unless it is a folding pocketknife with a blade of less than 3 inches in length).
2. Carrying an offensive weapon under s.47 of the Criminal Law (Consolidation) (Scotland) Act 1995. It should be noted that this offence type does not just relate to knives, but refers to “...*any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him*⁵”.

It is important to note that not all children who commit offences are referred to the Reporter. Some less severe offences will be dealt with by the Police by means of a Police Restorative Warning, or through the involvement of other services (such as a restorative justice service) without referring the child to the Reporter for the consideration of the need for compulsory measures of supervision. These children are not included within this report.

Similarly, very serious offences will be jointly referred to the Reporter and the Procurator Fiscal in line with the Lord Advocate’s Guidelines as explained above. The PF will decide whether the child should be dealt with via the Children’s Hearings System or prosecuted via the criminal justice system. Those children whose cases are retained by the PF are not included within this report.

⁴ Data is taken from a sample of offences recorded in the SCRA Referrals Administration Database February 2006 – October 2006

⁵ Section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995

Table 1: Number of children by offence type

Offence type	Number of children
	2007/08
Carrying an offensive weapon	1,225
Knives (Scotland) Act s.1	71
Total Children	1,283

Notes:

1. "Number of children" refers to the number of children for whom the Reporter made a decision in that year. The child's referral may have been received in the previous year.
2. Please note that children may be counted against both offence types. Therefore the totals for the year do not equal the sum of the two offence types.
3. As explained above, "carrying an offensive weapon" includes weapons other than knives.

Tables 2 and 3: Breakdown by gender and age

These tables show the age and gender of children for each offence type in 2006/07 and 2007/08.

Table 2

2007/08	Carrying offensive weapon (number of children)		
	Female	Male	Combined
Age at receipt of referral			
8	<5	6	8
9	0	18	18
10	0	23	23
11	<5	40	42
12	7	82	89
13	10	191	201
14	15	350	365
15	34	439	473
16	<5	38	40
17	0	<5	<5
TOTAL	72	1,189	1,225

Table 3

2007/08	Knives (Scotland) Act s.1 (number of children)		
	Female	Male	Total
8	0	0	0
9	0	<5	<5
10	0	<5	<5
11	0	<5	<5
12	<5	8	9
13	0	11	11
14	<5	14	17
15	<5	27	29
16	0	0	0
17	0	<5	<5
TOTAL	6	65	71

Notes:

1. *“Number of children” refers to the number of children for whom the Reporter made a decision in that year. The child’s referral may have been received by the reporter in the previous year.*
2. *Young people aged 16 or 17 years can be referred to the Reporter (on offence or non-offence grounds) if they are subject to Supervision Requirements or are remitted from the criminal court.*
3. *Some children may have been referred more than once in the year, at different ages. Therefore the numbers for each age group cannot be added to produce a national total.*
4. *Numbers under 5 have been anonymised.*

Table 4: Reporter decision

	Number of children	
	2007/08	
Final Reporter decision	Carrying offensive weapon	Knives (Scotland) Act s.1
Arrange Children’s Hearing	301	32
No Hearing – measures already in place	220	11

No Hearing – diversion to other measures	198	<5
No Hearing – family action	52	5
No Hearing – insufficient evidence	56	0
No indication of a need for compulsory measures	341	15
No Hearing – refer to local authority	114	7
TOTAL	1,225	71

Totals

Notes:

1. *“Number of children” refers to the number of children for whom the Reporter made a decision in that year. The child’s referral may have been received in the previous year.*
2. *Children’s Hearings may be arranged for a variety of reasons, not necessarily directly linked to the offence. For example, a child may have been referred on both offence and care and protection grounds and it is the concerns about the child’s care and protection that prompt the Reporter’s decision to arrange a Hearing. Alternatively, the Reporter’s investigation into the child’s background may uncover additional concerns that justify consideration of compulsory measures of supervision. It would be a mistake to equate the Children’s Hearings System with a court system, where there is always a direct causal link between offence and disposal.*
3. *Some children may have been subject to more than one Reporter decision in a year, therefore the numbers cannot be added to reach a national total.*
4. *Numbers under 5 have been anonymised.*

24 November 2008