



## Management of Offenders (Scotland) Bill (2018)

### Response to Justice Committee Questions on Management of Offenders Bill

April 2018.

#### Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- the needs of children or young people in trouble should be met through a single holistic and integrated system, whether concerns relate to their welfare or behaviour
- a preventative approach is essential, involving early identification and diagnosis of problems
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system. SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

**SCRA welcomes the opportunity to respond to the Justice Committee's questions.**



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## Questions

**1. Overall, do you support Part 1 of the Bill concerning the electronic monitoring of offenders?**

## Response

SCRA supports community based disposal options for offending behaviour. Community based disposals allow adults to continue to have an active, ongoing and physical presence in the life of their children in a way which is prevented by any custodial sentence.

We agree with the provisions in Part 1 as they relate to criminal proceedings; we understand that the provisions will not have an impact on the powers available to children's hearings but think that an explicit statement indicating that the new types of electronic monitoring (EM) can only be made under this act would be helpful, and would clarify the situation for the children's hearing.

In the children's hearings system (CHS) the current use of electronic monitoring in the form of a Movement Restriction Condition (MRC) will remain a disposal for a children's hearing if the criteria set out in statute are met (s83; s84 & s86 of the Children's Hearings (Scotland) Act 2011). SCRA continues to support the availability of a Movement Restriction Condition and values the opportunity it can give for a young person to be safely maintained within a familiar environment, rather than within a secured residential environment.

At the time the MRC was introduced to the CHS it was accompanied by intensive support of the child, to be provided by the local authority. This intensive support requirement is no longer a feature of an MRC, and concluding comments in s10.7 of the 2008 *Evaluation of Intensive Support and Monitoring Services (ISMS) within the Children's Hearings System* remain pertinent:

**Providing young people with intensive support while electronically monitoring them in this way is a unique intervention, and therefore was not set-up with a clear evidence basis. There is some evidence that suggests that elements of the package do work in terms of tackling offending behaviour, especially the intensive support element. The previous literature on the effectiveness of electronic monitoring alone is more mixed, but leans towards limited or no impact on key criteria, such as reduced recidivism.<sup>1</sup>**

We think that the focus on EM in this Bill gives an opportunity for wider system reform, which has been missed. The new EM provisions as proposed by the Bill could have a future application in respect of young people, which is not reflected in the current Bill – or in extant legislation. For example, the use of GPS technology and the potential for 'exclusion zones' and the use of devices for monitoring alcohol or substance use could have a relevant application in the CHS.

<sup>1</sup> <http://www.gov.scot/Publications/2008/08/05131241/11>





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There are also implications for child protection from the increased use of electronic monitoring disposals, and the Bill is silent on this. SCRA feels strongly that there needs to be a clear and unequivocal explanation of the information sharing which would emanate from a positive transdermal test result (for example) or from the failure to comply with an exclusion order. These circumstances could have live implications for the safety of individuals and their children and there may need to be additional action as a result of this, which should be clear from the outset. There should be a duty or power on the EM provider to share information about any breach of the terms of the order with the social work department.

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**2. The Scottish Government wishes electronic monitoring to play a greater role within the criminal justice system. Will the reforms in Part 1 of the Bill help enable this? If not, what further changes (legislative or non-legislative) are required?**

The direction of the Government intention is clear from the Bill, and is very much focused on adult service delivery.

SCRA sees that the Bill will enable the greater role of electronic monitoring – but that with this increased role comes an increased need for the information sharing powers / duties between agencies to be clearly stated.

The Bill will not impact on children’s hearings service delivery – and for there to be an impact in the children’s hearing, further legislation may be required.

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**3. Do you have any views on any specific aspects of Part 1? – for instance, revisions to the list of circumstances in which electronic monitoring may be imposed or the creation of a power to enable future monitoring devices to contain GPS technology or technology that can measure alcohol or drug ingestion.**

SCRA supports the developments as outlined in the Bill in relying on tested and trusted new technologies to advance community disposal options. However, as stated earlier these advances, once in operation and once success is evidenced, could become viable options for the children’s hearings system as well.

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**4. Overall, do you support Part 2 of the Bill? The Scottish Government's view is that it will provide a more appropriate balance between the public's right to protection and a former offender's right to "move on" with their life, by, overall, reducing the legal need for disclosure. Do you agree?**

SCRA unequivocally supports the principle that changes to the current provisions in relation to disclosure are necessary and overdue, in order for Scotland to have the appropriate balance between protecting the public and an individual being able to prosper even though they may have a conviction history.

SCRA also understands that this area is complex and complicated.

However, in order for changes to disclosure provisions to be meaningful they also need to be understood – by everyone, but particularly by people with an offending history. SCRA's view is that part 2 of the Bill does not simplify the situation and that an approach which repealed the relevant aspects of the 1974 Act and replaced them in their entirety with new would be clearer.

SCRA supports s29 of the Bill, which specifies the sentences to which no disclosure period applies, and we support the principle that no disclosure period should apply to a discharge from a children's hearing, a supervision requirement, or a compulsory supervision order. We are disappointed that the legislation as proposed continues to refer to these disposals as 'sentences' and would, once again, state that offence grounds to a children's hearing should be viewed as just that – grounds for referral to a children's hearing. If this is not agreed, then s187 of the Children's Hearings (Scotland) Act 2011 - where a children's hearings disposal is defined as an 'alternative to prosecution' – is a more accurate description of children's hearings disposals than a sentence. The language of sentencing and prosecution is the language of punishment, which is never a reason for a decision about a child in the children's hearings system.

SCRA recognises that this Bill is in relation to the timescales in relation to a conviction becoming spent, it does not impact on basic disclosure or a PVG check. However, SCRA finds it confusing that there is no specific reference to a PVG check and the requirement for public bodies to disclose information in relation to the PVG check in this Bill. A single approach to offending behaviour by young people, which takes into account all of the repercussions of this behaviour, in a single place, would be more straightforward.

SCRA recognises that the subsequent Age Of Criminal Responsibility Bill (ACR) and its provisions in relation to Disclosure adds to this already complicated legislative position, and that further review (of the PVG scheme for example) would be another layer of complexity.

We support the general approach of the ACR Bill that information will only



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be included in a disclosure once it has been approved by an independent reviewer. This approach could also be applied to the requirements of a PVG check. However, it would be simpler, clearer and more accessible if all of the relevant legislation in relation to disclosure was captured in a single legislative proposal.

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**5. Do you agree with the Scottish Government that other reforms in Part 2 will make the law on disclosure of convictions more intelligible, clear and coherent?**

No.

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**6. Do you have any further views on law and policy around disclosure of convictions?**

SCRA's view is that the landscape around Disclosure is already muddled, unclear and almost impossible for professionals and members of the public to navigate.

SCRA think that the criminal records of young people who are involved in offending behaviour as children, and the subsequent requirement to disclose offending, should be addressed independently of adult criminal behaviour. Simply put, the notion of 'rehabilitation' when applied to a young person who has had statutory service involvement throughout their life as a result of adverse experiences or parenting deficiencies, is a misnomer. Arguably, these young people do not have a baseline for 'rehabilitation'.

For young people it would be much clearer if the Government were to take a 'clean slate' approach and draft full legislation in relation to moving on from offending and the requirements on individuals to disclose aspects of their history in certain circumstances.

SCRA's view is that in relation to the offending behaviour of young people the state should take responsibility for determining the when, where and for how long information should continue to be disclosed. The state should also have the duty to review those circumstances. The burden of disclosure should not lie with an individual who was a child when they were involved in offending.

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**7. Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of its membership and appointment system; its functions and requirements in relation to prisoners, its independence, and its administration?**

SCRA has no comments to make on the Parole Board and the proposed changes.





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8. Do you have any further views on the role, purpose and functions of the Parole Board? No.

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**General comments in relation to the Bill:**

The Bill appears to move away from some of the principles of Scottish Justice as set down in the Community Justice (Scotland) Act 2016, particularly in respect of the language used. At the same time, the Bill moves to drive forward other principles in relation to community based monitoring disposals, the importance of the transition from offending behaviour and the importance of adult work and the links to the disclosure of previous offending, for example; and this is positive.

The Children's Hearings System (CHS) does not deal with 'offenders', rather it deals with the offending behaviour of young people in need of an intervention. The CHS is a community based model of support and intervention that is longstanding in Scotland and continues to operate successfully. Scotland's **National Strategy on Community Justice** is focussed on a smart, collaborative response to offending which recognises that:

***"Every interaction with the justice system should be seen as an opportunity to reduce and prevent further offending."*** Michael Mathieson –Foreword.

Neither the Scottish Children's Reporter Administration (SCRA) or the Children's Hearings System (CHS) appear in the National Strategy for Community Justice as a Partner or Stakeholder. SCRA and CHS should be recognised as partners within the wider system(s) working towards the same outcome for every young person who needs the protection, guidance, treatment or control<sup>2</sup> of a compulsory supervision order.

Although the strategy is focussed primarily on adult criminal behaviour and societal responses to that, it does encompass young people aged 16 – 17 who can be subject to a Compulsory Supervision order through the CHS whilst at the same time be experiencing the adult criminal justice system. Mr Mathieson's statement about the opportunity inherent within every justice system interaction applies to Scotland's youth justice strategy and the work of the CHS and SCRA, as well as to the wider adult criminal justice system. Developments in community based adult justice should also benefit young people involved in or at risk from offending behaviour (and vice versa).

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<sup>2</sup> Children's Hearings (Scotland) Act 2011.

## SCRA Consultation Response or Committee Submission FULL VERSION



Finally, preventing re-offending for young people does not easily fit into any 'rehabilitation' or 're-integration' model – particularly when the background of a young person has been troubled, chaotic, unsettled or affected by adverse childhood experience, – and there is no solid basis for rehabilitation or reintegration. The model and the language in relation to young people require to be developed in line with our knowledge of ACE's and their effects on young people as they develop.

**SCRA Practice & Policy Team 2018**



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