



SCRA Consultation Response FULL VERSION 2021

BAIL AND RELEASE FROM CUSTODY ARRANGEMENTS IN SCOTLAND CONSULTATION

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.

The Children's Hearing is Scotland's distinct statutory approach, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.

In the Children's Hearings System:

- the needs of children or young people are addressed through one holistic and integrated approach which considers all the circumstances of the child and the child's welfare
- 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
- the rights of children and families are respected

The role and purpose of SCRA is:

1. Receiving referrals for children/young people who may be at risk.
2. Ensuring that other public agencies carry out enquiries and assessments into children/ young people's circumstances so we can make informed decisions about children/young people referred to us.
3. Making decisions on whether to refer a child/young person to a Children's Hearing if they need compulsory measures of supervision.
4. Drafting the grounds for the Hearing.
5. Arranging for Children's Hearings to take place when we decide that compulsory measures of supervision are warranted and where there is sufficient evidence to prove the grounds.
6. Ensuring fair process takes place within the Hearing, including the rights of those in attendance being met.
7. Having a key role in establishing grounds of referral in court, where these are contested, and in defending decisions of Children's Hearings which are subject to appeal.

Our Vision: Children and young people will be listened to, protected and supported to realise a positive future where they are safe, valued and respected.

Our Mission: We protect and support Scotland's children and young people, by making high quality decisions, upholding their rights and working collaboratively as compassionate, inclusive corporate parents to enable the most positive and personalised experience of the Children's Hearing.

Our Values: Our values are the shared motivations, beliefs and behaviours that underpin all that we do.



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Supportive	We work with kindness to support children, young people and families, our Partners and each other.
Child Centred	Children and young people are at the heart of everything we do.
Respectful	Everyone is respected and treated fairly, inclusively and lawfully.
Accountable	We are responsible for our decisions, our ethics and our learning.

Question 1

Which of the following best reflects your view on the changes proposed above regarding when judges can refuse bail:

- A) I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so
- B) I disagree with the proposal, and think the system should stay the same as it is now, so judges can refuse bail even if public safety is not one of their reasons for doing so
- C) I am unsure

Please give reasons for your answer.

The rationale behind this proposed change is well laid out and clearly explained. We agree the approach but are unclear as to where the extra resourcing for community bail supervision will come from or the extra support that may be required for victims. There is no discussion of the potential financial / reputational impact on people of a bail decision, particularly in relation to current employment and we think a clear framework for this should be developed by Disclosure Scotland. We also think that additional supports may be required for families during and after any trial – particularly if a trial results in conviction and a custodial sentence.

The safety of a perpetrator on bail in the community is not discussed and we think this is also a live consideration. For an alleged perpetrator who has no strong community ties, or who is transient or homeless, bail in the community may not provide any effective incentive or support to address the root cause of any potential repeat offending behaviours. We think that bail in the community may need to also provide a support framework in some circumstances.



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Question 2

Which of the following best reflects your view on the changes proposed above regarding how judges consider victim protection when making decisions about bail:

A) I agree with the proposed change, so judges should have to have particular regard to

the aim of protecting the victim(s) when making bail decisions.

B) I disagree with the proposal, and think the system should stay the same as it is now, where judges consider victim protection as part of the overall decision-making

C) I am unsure

Please give reasons for your answer.

We are pleased that this change would shine a spotlight on victims at the beginning of any criminal justice journey. We think this is important.

Question 3

To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We think that a simplified framework as outlined would still provide the Court with the necessary power in relation to bail / remand decision making and may also be easier for victims and perpetrators to understand. We do, however, think that the wider culture across Scotland still links custody and certain types of crime (regardless of where the case is in the criminal justice system). Wider awareness raising and public information work would be required for people in Scotland to understand and support these changes.



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Question 4

Judges must give the reasons when they decide to refuse bail to an accused person.

Which of the following best reflects your view on how those reasons should be communicated:

- A) I agree with the proposed change, so judges must give reasons both orally and in writing
- B) I disagree with the proposal, and think judges should continue to give reasons orally only
- C) I am unsure

Please give reasons for your answer.

We are satisfied that there are mitigations the Court can make to ensure that there is no prejudice to an alleged perpetrator as a result of written reasons for bail decisions being recorded. On that basis we support this approach.

Question 5a

Based on the information above, when a court is considering bail decisions, which of the following options do you consider preferable.....in cases where the prosecution opposes bail:

- The court may ask for information from social work, but is not obligated to. Social work may decide whether to provide it
- The court must ask for information from social work. Social work may decide whether to provide it
- The court must ask for information from social work. Social work must provide it

Please give reasons for your answer.

We think that if the information is determined by the Court to be necessary for their decision making then the information should be provided. Any other permutation could lead to unnecessary delay which would not benefit any victim or any alleged perpetrator. We have some questions about the resourcing of this work though – and about how quickly Scotland could respond in this way in every case. There may need to be a staged introduction of the approach.



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Question 5b

Based on the information above, when a court is considering bail decisions, which of the following options do you consider preferable.....in cases where the prosecution is not opposing bail:

- The court may ask for information from social work, but is not obligated to. Social work may decide whether to provide it
- The court must ask for information from social work. Social work may decide whether to provide it
- The court must ask for information from social work. Social work must provide it

Please give reasons for your answer.

If there is not opposition to bail from prosecution or defence then we see no need to alter the status quo. Whilst it may be helpful to involve Criminal Justice Social Work with an alleged offender earlier rather than later we think that any other approach could be seen to undermine in some way the presumption of innocence. We think that prosecution and defence agents are well able to assess and argue for risk and that this should continue.

Question 6

To what extent do you agree or disagree that courts should be required to consider Electronic Monitoring before deciding to refuse bail

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We think this would be a positive step forward. We do think that there would need to be clear guidance / guidelines for employers in relation to staff members subject to electronic monitoring as a temporary bail condition.



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Question 7

When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We do not think this requirement would be overly burdensome and we think it would add to clear and transparent decision making for victims and alleged perpetrators and in turn would increase confidence in the criminal justice response.

Question 8

To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We are unclear what the perception / impact on victims of an offence would be in these circumstances and think that there would need to be some way of ensuring they understand the sentencing decisions. We also think that the framework we suggested in Q1 could be helpful here – in making very clear any repercussions within employment of any electronic monitoring. We think that such repercussions should possibly be considered in the sentencing decision as well. This approach will only work as intended if there is no delay in the time taken between the introduction of the electronic monitoring bail condition / trial / sentence. If



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there is a long delay then the sentencing may be something a victim would be unable to understand – if the time spent on electronic monitor equated to the full sentence that could be applied, for example.

Question 9

If time on electronic monitoring is to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently:

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

This makes complete sense and is simple to explain.

Question 10

Based on the information above, please use this space if you would like to make any comments about the idea of a law in Scotland that would prevent courts from remanding someone if there is no real prospect that they will go on to receive a custodial sentence in the proceedings.

Whilst this is difficult to predict, there are offences where the mandatory sentence would not be custodial.

This approach would therefore seem to be proportionate and in line with the wider policy intention. It could also reduce the remand prison population and could prevent some of the unintended consequences of remand for families and children. We would therefore support this.



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Question 11

To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agreed, how do you think age should be taken into account when deciding whether to grant someone bail?

Scotland's new sentencing guideline – [Sentencing young people](#) – came into force on 26th January 2022. It sets out the approach to be taken to the age of a person on a plea or finding of guilt. The approach is one which would easily transfer to decisions about bail and we would argue should be transferred on a legislative basis.

This may be more complicated than the approach in the guideline – as there is currently no interface between the Children's Hearing and cases awaiting a decision in the criminal court. But there could be – if it was determined early on that a child (u18) would benefit from the protection, guidance, treatment or control offered by the involvement of the Children's Hearing then this could be an option which could potentially operate as part of the bail arrangements. It might also be possible for the approach to work the other way as well – and for the Children's Hearing to recognise that there will be a need for criminal proof and for that to occur in the criminal court a 'bail type' interim intervention may be essential. The Care and Justice Bill and the increase in the age of referral to Principal Reporter may make such a development necessary as well.



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Question 12

In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?

As discussed in Q1 we think that bail in the community may require the development of a new support framework for families. We think that the unintended impact on children and families of the custody or one or other parent is huge and we therefore think that yes, family circumstances and responsibilities should be considered for temporary remand decision and should also be the basis for advance planning for the event of any custodial sentence being handed down. The circumstances of an individual could be assessed through the criminal justice social work report – and the proposals in relation to that at Q5a and 5b could be developed so that this was a required element of that report.

Question 13

To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.



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We agree with this. To be integrated within a community you require to be part of that community.

Question 14

What mechanisms do you think should be in place to support a prisoner's successful reintegration in their community?

We think that an approach to risk assessment and release planning, which included identifying and mobilising appropriate supports as well as dialogue with any victims would be a good start to this work.

Question 15

Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...

a)...early release?

Yes / no / unsure

b)...the ability to complete their sentence in the community?

Yes / no / unsure

Please give reasons for your answers.

There should be incentives within the prison estate which can encourage the skills / behaviours / values and attitudes which individuals will require in order to fully reintegrate into communities and to avoid any future offending behaviour. Any such approach within SPS would need to have an equal and equivalent support package on release in order for any gains made to be maintained / developed.



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Question 16

Do you have any comments on how you envisage such a process operating in the Scottish justice system?

Who should be eligible to earn opportunities in this way?

What risks do you see with this approach, or what safeguards do you feel would need to be in place?

Arguably across the media 'punishment' would still be the primary criminal justice response. Whilst 'punishment' remains one of the five primary responses of the criminal justice system there are inherent barriers to such an approach – particularly from those whose lives may have been devastated by an offence. A strong public campaign would be required to start to change the conversation and the voice of victim survivors would need to be heard loud and clear. Victims could easily be re-traumatised by an early release and could question their involvement in what is still a difficult adversarial criminal justice process. We think the risk assessment and planning would be crucial.

We think there should be clear criteria for eligibility and once those criteria are met there should be a planning framework to ensure that decisions are made and communicated sensitively and appropriately and that the right supports are in place - for the prisoner on release but also for any victim survivor.

Question 17

Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

- Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point
- Automatic early release changes to earlier in the sentence, nothing else changes
- No change: automatic early release remains half way through the sentence

Please give reasons for your answer.



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We think that the monitoring and support which can be given on release can be crucial to the success of release and should be a priority.

Question 18

Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you say you most prefer?

- Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk
- Change to automatic consideration by Parole Board once one third of the sentence is served for all long-term prisoners
- No change: automatic consideration by Parole Board once half of sentence is served for all long-term prisoners

Please give reasons for your answer.

We are more challenged by this – as the sentence handed down by the Court is delivered after all of the evidence / reports etc. have been considered and is a direct response to the harm caused by the offending behaviour.

We wonder whether such 'red lines' are helpful – or whether an approach whereby the sentencing court indicates what would be an appropriate term to serve prior to parole consideration in every case would make more sense?



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Question 19

Do you agree that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support?

Yes / No / Unsure

Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?

If release on a Friday means a weekend with no support or monitoring then we would agree this should be prevented. However, we are unsure that this should automatically be the case – and if there is a focus on release planning and risk assessment then the 'plan' should be operational regardless of the day of the week an individual is released. We have some concerns about people spending additional unnecessary days in custody when effective professional planning and resourcing could enable their release from custody.

Question 20

Below is a list of some of the features of the current HDC system, and potential changes that could help to increase usage of HDC (or similar). Please indicate your view on each of these potential changes.

a) - Prisoners must actively apply for HDC. Should HDC be considered automatically for some categories of prisoners instead?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on which categories of prisoner you think might be automatically considered.

We think individuals with families / dependent children should automatically be eligible for this approach. We also think individuals under 25 should also be automatically eligible. We think consideration should also be given to individuals who may find themselves in custody with another family member (grandparent / parent / sibling).



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b) - *The maximum length of time allowed on HDC is 6 months (or 1 quarter of the sentence). Do you think that this should:*

- Be made longer
- Not change

Please give reasons for your answer, or share any comments you would like to make on how long you think is appropriate.

We think the primary consideration should be the applicability of home detention – rather than the length of time that should be in place for.

c) - *The minimum sentence for which HDC can be considered is 3 months. Should this limitation be removed?*

-Yes /no / unsure

Please give reasons for your answer, or share any comments you would like to make on what sentence length you think is appropriate:

Please see comments in relation to Q20b above.

d) - *There is currently a list of exclusions that make someone ineligible for HDC. Should this list be reviewed with the intention of expanding eligibility for HDC?*

-Yes /no / unsure

Please give reasons for your answer, or share any comments you would like to make on what criteria are relevant to whether someone should be eligible for HDC:

- Stability of their 'home' / where they will reside.
- Whether there are any victims of their offending within the home.
- Views of any victim survivors.
- Strength of links to the community – family members / employment.



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e) - Currently, SPS make decisions to release prisoners on HDC following a risk assessment and engagement with community partners. Do you think this responsibility should remain with SPS?

-Yes / no / **unsure**

Please give reasons for your answer, or share any comments you would like to make on the role of SPS in determining release on HDC:

We think a recommendation should be made by SPS but that a local authority risk assessment and planning approach should be required to ratify that recommendation and to put appropriate and agreed supports in place.

f) - Do you think decisions on whether to release prisoners on HDC (or similar) should be taken by the Parole Board for Scotland in future – even for those prisoners serving less than 4 years?

-Yes / no / **unsure**

Please give reasons for your answer.

We think there should be a recommendation from SPS that is then ratified / or not by the Parole Board.

g) - Do you think decisions about the length of time an individual would serve in the community at the end of their custodial sentence should instead be set by the court at the time of sentencing?

-Yes /no / **unsure**

Please give reasons for your answer, or share any comments you would like to make on what role the courts could have in determining the proportion of sentence an individual could serve in the community.

We think that this approach would give clarity and structure to the criminal justice response at the earliest opportunity – and for both victim survivor and perpetrator this could be beneficial.



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Question 21

To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We think that making as many decisions at the point of sentencing as possible will make things clearer for victims. We have also said throughout this consultation response that we think risk assessment and planning for release should always involve consideration of victims and in order to keep them safe from harm and potential re-trauma there then needs to be a solid framework around release.

Question 22

In addition to information on individuals being released, to what extent do you agree or disagree that victims and victims support organisations should be able to access further information?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please state what information should be provided and for what purpose.

We are not sure what additional information should be provided or how this would be beneficial. Dialogue with individual victims is crucial through the risk assessment and planning for release – but there should be firm and consistent parameters around the information which is disclosed. Perhaps an appeal route for



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further disclosure could be helpful for victim survivors – victim organisations would be better placed to express a view on that.

Question 23

Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

- Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs
- Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning

Please give reasons for your answer.

We think additional duties will make pre-release planning more successful more of the time.

Question 24

If public services had an additional duty to engage in pre-release planning for prisoners, which services should that duty cover?

Please list each service and what each should be required to do.

- Housing.
- Employment.
- Health services including GP and mental health services.
- Local authority social work including criminal justice and children and families social work.
- Drug and alcohol partnerships.

Question 25

To what extent do you agree or disagree that support should be available to enable prisoners released direct from court to access local support services in their community?



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Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please explain how you envisage that support would look and which bodies you feel should be involved.

There should probably be a team within the SCTS to provide assistance when this happens.

Question 26

To what extent do you agree or disagree that revised minimum standards for throughcare should incorporate a wider range of services?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please list the services you think these standards should cover and what you think their role should be

We think the evidence base for this is clear. Each Local Authority (of if it transpires the National Care Service) should be required to develop a Throughcare Plan and to illustrate the relevant local supports within that plan.

Question 27

To what extent do you agree or disagree that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners?

Strongly agree

Somewhat agree

Somewhat disagree



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Strongly disagree

Please give reasons for your answer. If you agree, please state how you think these standards should differ for each cohort.

We are not convinced the standards should differ based on the nature of custody. Instead we think that a Throughcare Plan should focus on individual need and tailored responsive support.

Question 28

To what extent do you agree or disagree that revised minimum standards for throughcare should be statutory?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly agree

Please give reasons for your answer.

There should be a consistent approach to this and statutory standards make the national expectations very clear. A local Throughcare Plan and statutory standards would also require mandatory reporting – so that learning can be shared and areas where progress is slow can be targeted for additional assistance.

Question 29

Do you think other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences?

Yes / no / unsure

Please give reasons for your answer. If you think other changes should be made, can you provide details of what these changes could be?

We think this should all be part of a local Throughcare plan.



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Question 30

Should other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody?

Yes / no / **unsure**

Please give reasons for your answer. If you think other mechanisms should be introduced, can you provide detail of what these could be?

Probably – these would need to be identified locally as part of the Throughcare planning process.

Question 31

To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

We can see there is some merit in this executive power.

Question 32

If an executive power of prisoner release was introduced for use in exceptional circumstances, what circumstances do you consider that would cover?

Please provide details

We think that this would be for the Government to determine and ask for views. This is a very open question and is very difficult to respond to.

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