

**WHAT IS  
YOUTH  
JUSTICE?**

**REFLECTIONS  
ON THE  
1968  
ACT**

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# Abstract

The Kilbrandon committee was established in 1961 in response to concerns about rising levels of youth crime. Reporting in 1964, the committee observed that the needs of children in conflict with the law did not differ from the needs of children who required welfare and protection and proposed that these needs should be met through a single system. In a radical shake up of the youth justice system, this proposal was enacted in the Social Work (Scotland) Act 1968, and the first Children's Hearing took place in 1971. This paper draws upon archival records, literature, data, media reports and testimony from policymakers and practitioners in order to chart the development of youth justice since that time. It describes policy and practice change since then that has been slow and incremental, rather than radical. And while the legacy of Kilbrandon has been a clear and strong set of principles acting as a beacon to guide both policy and practice, an unintended legacy is the often erroneous assumption that, because of Kilbrandon, Scotland is getting it right for children in conflict with the law. The paper documents the fact that, even with the best of intentions, policy and practice do not always adhere to such admirable principles when things get challenging. Inspired by Kilbrandon, the authors propose that the time is right for a big step change in how Scotland responds to children who are in conflict with the law, by genuinely and completely rooting the youth justice response in children's rights.

# What is youth justice? Changing priorities, roles and perceptions since Kilbrandon

It is 50 years since the inception of the Social Work (Scotland) 1968 Act, but it has been even longer since the wheels were set in motion for one of the most radical changes in Scotland's treatment of children and young people in conflict with the law. The Kilbrandon committee was established in 1961, reported in 1964 and, with its recommendations enshrined in the Social Work (Scotland) Act, was the driving force behind the establishment of Scotland's oft lauded Children's Hearings System.

In this paper we set out to document the path of youth justice in the half-century that has followed, by mapping the key changes in youth crime; policy and legislation; perceptions and attitudes, and to also consider the implications for practice and workforce development. Our paper is entitled 'Changing priorities, roles and perceptions since Kilbrandon', yet what struck us in doing this research is that while so much has changed (and in many ways the landscape is unrecognisable), at the same time so very little has changed. In many ways this is testament to the strength of the Kilbrandon values, vision and ethos that we still hold dear today. But we risk complacency if we simply assume that,

because of Kilbrandon, we are getting it right for children in conflict with the law. These children and young people still have specific needs. Recently we have witnessed the disbandment of many specialised youth justice teams and services, and important skills have been lost with them, due to a decade of reductions in offending. As offending levels start to increase (SCRA, 2018b), and without specialist interventions, we are concerned that these needs will not be addressed and these recent increases will become a sustained trend.

We present the findings from our trawl through dusty archives, our interviews with key policymakers and practitioners from then and now, from the voice of lived experience, and from our observations that we have made as a national centre for youth and criminal justice. In 2014, our reflections on the state of youth justice suggested that we needed to build incremental change on our strong foundations, to undertake some youth justice 'home improvements' (Lightowler et al., 2014). Now, inspired by Kilbrandon, our research suggests the need for renewed bravery and for real transformative change if we are truly to get it right for children who are in conflict with the law.

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5 December 2018

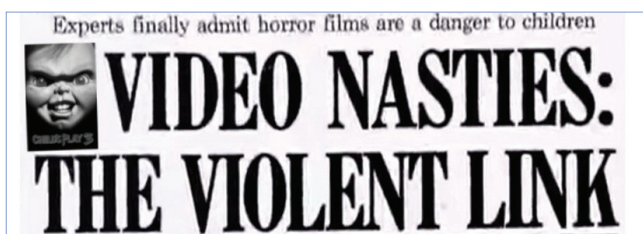
## Method

Ethical approval for this study was given by the University of Strathclyde's School of Social Work and Social Policy Ethics Committee. Historical records, both offline and online, were identified and examined for youth justice and related statistics. These included the Scottish Abstract of Statistics (Government Statistical Service, 1971-1997); the Scottish Crime and Justice Survey (Scottish Government, 2018b) and Scottish Children's Reporter Administration records (SCRA, 2018a). A purposive sample of key practitioners and policymakers was identified from known contacts and snowball sampling for their role in youth justice, and semi-structured interviews were undertaken, face-to-face and by telephone. Interview transcripts were analysed thematically.

The research team collectively generated a chronological list of key events and policies since 1961, utilising existing knowledge, interview data and research literature. This list provided the basis for an exploration of the newspaper archives at the Mitchell Library in Glasgow and LexisNexis, with a search focusing deliberately on key points in youth justice history, for example: the publication of the Kilbrandon report; the establishment of the Children's Hearings System and the current proposals to increase the age of criminal responsibility. Events, data, media reporting, and themes from the interviews were mapped to identify an emerging narrative, with reported findings drawn from those with the greatest intersection between sources of data.

# Youth crime: media and public perceptions

The Kilbrandon committee was established in response to concerns about rising crime in the late 1950s and early 1960s. In 1961, The Herald reported on the high proportion of violent and sexual crimes that were committed by young people aged under 21, and quoted politicians that were anxious about "... a steadily rising volume of crime, lawlessness and thuggery" and the "cissy treatment of thugs and hooligans" (The Glasgow Herald, 1961). The papers in 1961 also reported fears over the negative influence of the press and the cinema on the young people in Scotland.



The Express. 1 April 1994

The anxiety caused by youth crime, and the moral panic over what might be behind youth crime trends is not some relic confined to the distant past. The parallels with the widespread public and political concerns over 'video nasties' around the time of the murder of toddler Jamie Bulger in 1993 are clear (The Daily Express, 1994). Even today, although the concerns about technology and cyber crime reflect very real dangers for Scotland's young people that arise from these issues, in some small way this is also a continuation of the way that youth technology, behaviour and culture outpaces the understanding and ability of adult practitioners and policymakers to respond to emerging crimes. But the media do not always reflect the true state of crime in Scotland. Back in the 1980s, Ditton & Duffy found that violent and sexual crimes made up almost half (46%) of all crime reporting in the then Strathclyde region of Scotland, but only 2% of crimes. An unpublished analysis of UK media reporting of crime and criminal justice policy following the 2010 general election found that crime was still overrepresented in reporting, with a tendency towards sensationalist reporting (Vaswani, 2015). For example, murders made up nearly a quarter of all crime coverage, yet comprised 0.02% of all crimes in the same time period (thus occurring in the media 1,140 times more frequently than the murder rate).

Media reporting is important, because the way that media frames youth crime can evoke strong emotions, increase fear of crime (Boda and Szabó, 2011) and encourage moral panics (Roberts et al., 2002). Yet

although newspapers reported an increase in public anxiety following the murder of James Bulger (Webster, 1993), data available from the Scottish Crime and Justice Survey over the same time period suggests that there was little long-term impact on public views of safety. In 1992, 92% of adults felt that crime was either a 'very' or 'quite' serious issue, and more than 41% felt unsafe walking after dark in their area. The survey that reported in 1995 (reflecting on the previous year) found that 90% of adults felt that crime was 'very' or 'quite' serious, and 38% felt unsafe walking in their area at night.



The Daily Record. 25 November 1993

Today, public perceptions indicate that most people believe that crime is not increasing, and the proportion of people feeling unsafe after dark (26%) is at its lowest ever level in the Scottish Crime and Justice Survey. While media reporting will always be geared around attracting attention, the headlines often belie a more measured approach to crime reporting. Despite recent headlines such as 'Kids criminal from age 12' (Daily Record, 2018) in response to the Scottish Government's proposal to raise the age of criminal responsibility, the articles themselves tend to be neutral and factual. Indeed the Daily Record earlier this year published an unexpected reflection on the 25 years since the murder of Jamie Bulger and how the approach taken then was wrong (Hughes, 2018). A far cry from the language of 'pure evil' and 'monsters' (Daily Record, 1993).

# Youth crime: the facts and figures

We hear much made of Scotland's youth justice success story nowadays, with the reductions in crime, particularly violent crime, held up as a model of good practice in other jurisdictions (Marshall, 2018). There certainly is much to be proud of over the past 50 years. What has not changed is that it remains difficult to paint an accurate picture of the state of youth offending in Scotland to inform these public and media perceptions.

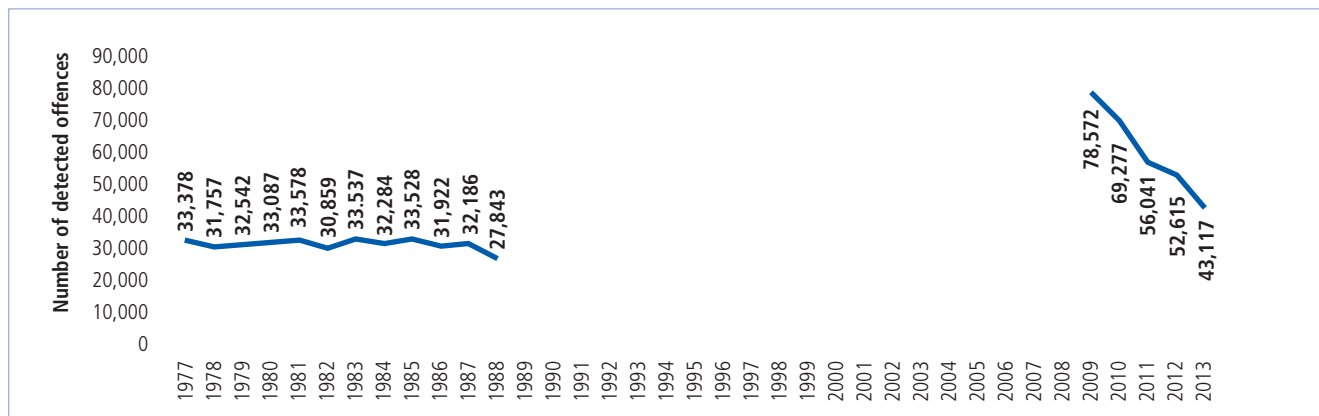
*"There was not a lot of data influencing practice...data was reduced. This is still a challenge now."*

No data was available to us prior to 1977 for this research on offending by children and what exists since then has been patchy. In recent years there has been no obtainable Police data about offending by children and young people following the merger of the eight Scottish police forces into Police Scotland in 2013. Figure 1 shows the data that is available, and it is clear that there are significant pieces missing from the jigsaw.

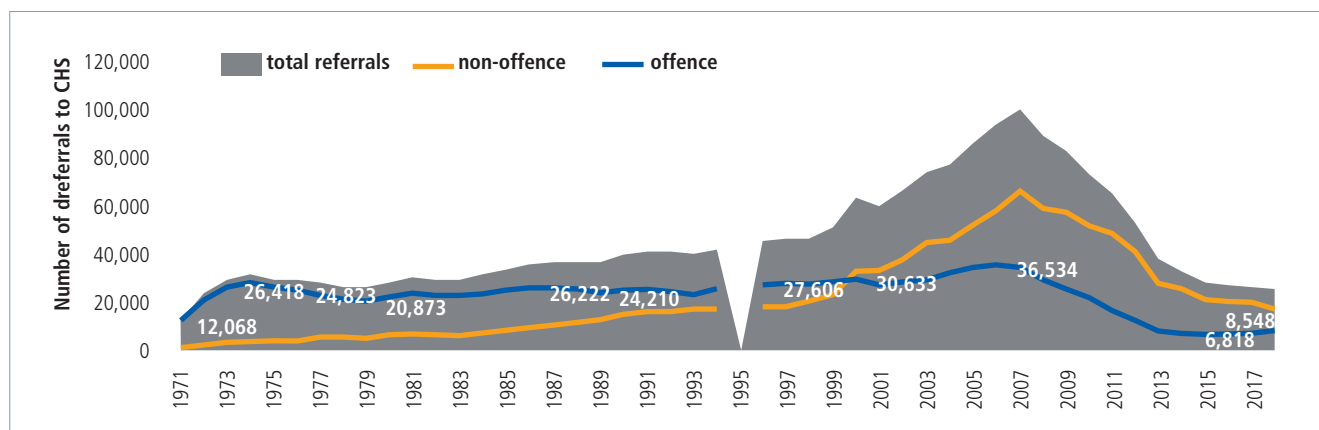
Youth crime remained fairly steady in the decade between 1977 and 1988, but from then it is evident that there was a sharp rise in youth crime somewhere in the subsequent years, despite the missing data (Figure 1). In comparison, all recorded crime (by adults and children) remained fairly stable over the same period, even falling for a period in the 1990s, and offence referrals to the Children's Hearings System increased at a much slower rate (Figure 2). However, since 2008/2009 detected crimes and offences by children aged 8 to 17 have fallen by almost half (45%) up until records ceased to be published in 2012/2013 (Scottish Government, 2013).

In the past decade there has been a marked decline in offending by children and young people. Referrals to the Children's Reporter on offence grounds have fallen by more than 76% since their peak in 2006. These are not insubstantial achievements. However, what the official data does tell us more about is the impact of policy or operational decisions on statistics

**FIGURE 1 Detected offences by children aged 8 to 17, 1977-2013**



**FIGURE 2 Number of referrals to CHS 1971-2018**



and the headline numbers often mask a number of points worthy of note. For example, the introduction of Early and Effective Intervention through the Whole System Approach means that many young people are, quite rightly, not referred to formal systems and are not included in official statistics. Yet inconsistent and disjointed data collection practices across local areas (Gillon, 2018), coupled with the dearth of national police data means that we simply do not know how many children are currently involved in offending behaviour today. There is no room for complacency either, as there are signs that times are beginning to change. Offence referrals to the Children's Reporter have fluctuated in recent years, with a pronounced increase of 19% in the most recently reported year (SCRA, 2018b). Furthermore, over and above process performance we still know too little about how effective our Children's Hearings System is for children today.

*"There was not sufficient evidence regarding how the children's hearing system deals with offending. This is still not changed today."*



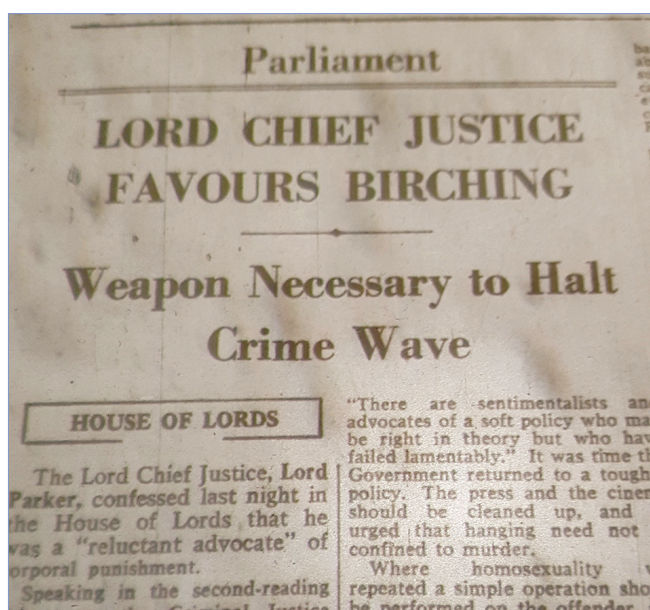
# Our developing response to children in conflict with the law

## The Kilbrandon Report

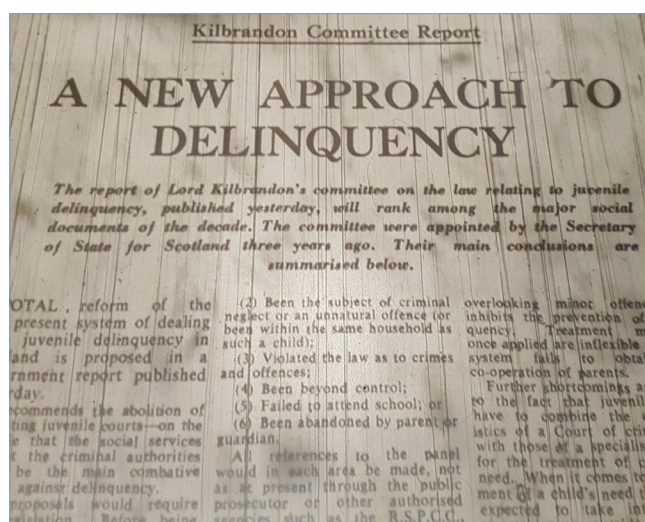
Policymakers often use the media to gauge public views on criminal and youth justice policy (Roberts et al., 2002, Green, 2007) yet this firstly overlooks the power that the media have to shape and form public opinion, and also where public opinion may diverge from the mainstream media, as outlined above. As Beale states *"the news media are not mirrors, simply reflecting events in society"* (2006:401). Nonetheless, a look at the papers in 1961, reveals that among the policy suggestions emerging during the debate on a new Criminal Justice Bill in the UK Parliament was the Lord Chief Justice's assertions that the public, media and magistrates were in favour of corporal punishment and his 'reluctant' advocating for the return of the birch. Given that this headline occurred at the same time that the Kilbrandon committee was established, the radical turn that the committee took becomes more apparent when we consider what youth justice might look like today, had they concluded the same.

Instead, the Kilbrandon committee observed that the needs of children in conflict with the law did not differ from the needs of children who required welfare and protection and proposed that these needs should be met through a single system. Ultimately the committee considered that the existing juvenile courts were not suitable for dealing with these problems because they had to combine the fact-finding characteristics of a criminal court with an agency making decisions on welfare and, as such, separation of these functions was recommended. The committee was instrumental in promoting the belief that change was needed in the way in which society responded to children who were in conflict with the law, and based on the Scandinavian model, the Kilbrandon Report recommended a national, co-ordinated system to deal with all children in need of compulsory measures of care and stressed the importance of early intervention. This led to the development of the Children's Hearing System.

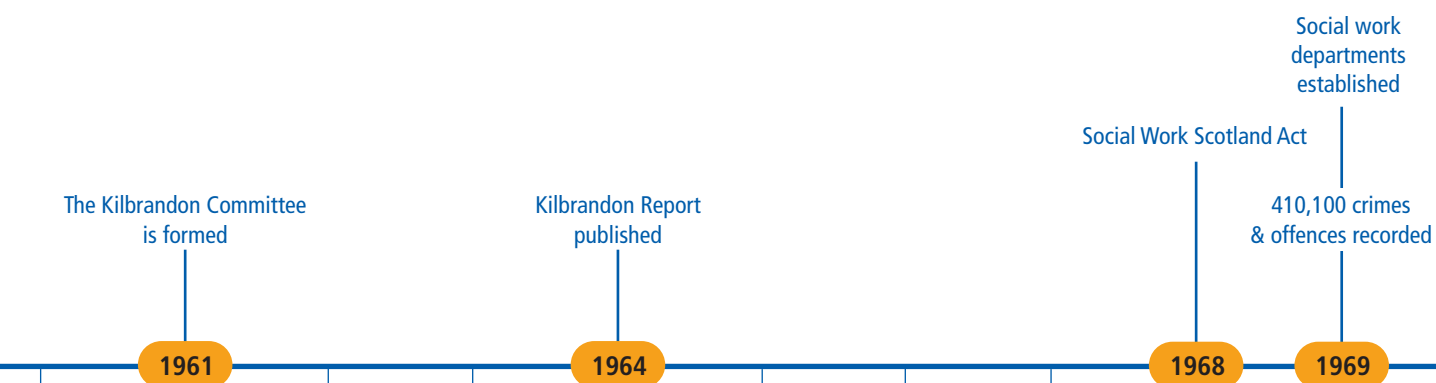
*"The ambition was to find a way to keep children in communities without criminalising them or focusing on offending."*



The Herald. 2 May 1961



The Herald. 23 April 1964



While the Kilbrandon ethos and principles have stood the test of time, the report received a fairly mixed reception upon its publication in 1964, with the Herald acknowledging that *“before being committed to it, both Government and society as a whole are likely to need time to adjust established attitudes”*. The Daily Record at the time preferred to term it a ‘rumpus over crime report’. Sheriff Aikman Smith’s response that scrapping the court for juveniles was ‘throwing the baby out with the bath water’ reflected some of the unsettled feelings resulting from such a wholesale change in approach, while a letter from Margaret Morgan to the Editor of the Herald, dated April 25th, 1964, welcomed the report as a ‘progressive attempt to deal with the problem of delinquency’ but stressed the role of structural factors in youth crime and the need for more preventative approaches including housing, poverty, play spaces for children, family stress and inadequate childcare.

### Social Work (Scotland) Act 1968

Following the introduction of the Social Work (Scotland) Act 1968 (‘the 1968 Act’), social work departments opened their doors for the first time in 1969 and created the role of the social worker as we understand it today.

*“There were huge hopes at the time and excitement that this would be different. A genuine way to tackle social issues.”*

*“Genuinely believed it was a radical way of thinking about social welfare. Completely new way of thinking on how to provide social work services....real excitement and ambition.”*

The 1968 Act brought a focus to children in need and there were other benefits for service users too, with families receiving help and support from one professional instead of many.



*The Herald. 18 November 1969*

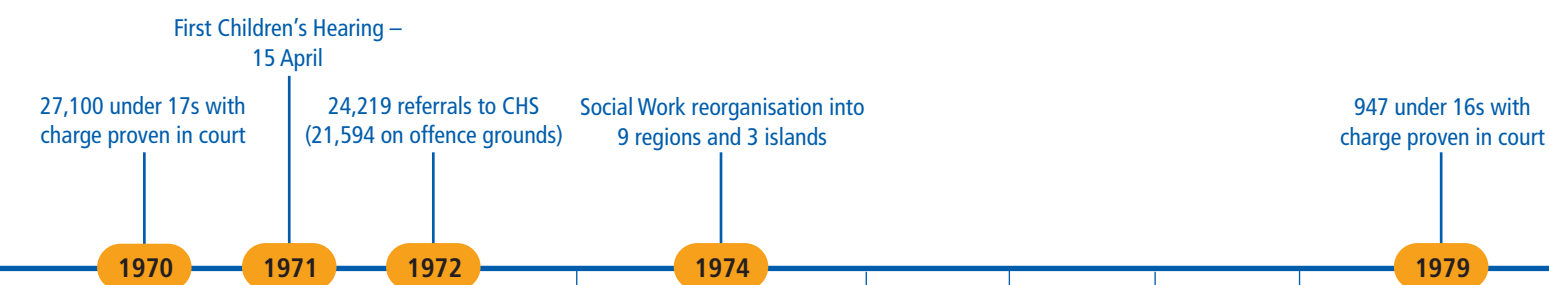
*“An achievement of the Act was creating a department and powerful voice for vulnerable people. A one door approach to get help.”*

*“The 1968 Act brought a whole different way of dealing with children in care by maintaining them in families... There was a big focus on re-assessment; especially where people were living.”*

Yet tensions soon emerged within social work departments as well as politically due to the powers that all 52 directors of social work possessed.

*“[They] were seen as having a real social standing and influence on social policy at the time.”*

This led to a reorganisation of the social work departments in 1974, only five years after they first opened their doors, when 52 local authorities were reduced to nine regions and three islands. As well as political tensions, frictions also arose with agencies outwith social work. Antagonism between social work and the police existed due to the belief that social workers were being too soft; and issues between social work and education regarding roles and responsibilities once a case was referred. These tensions could be linked to the one recommendation from the Kilbrandon report



that was never implemented, namely, the creation of a social education department and the key role of teachers and schools in addressing offending behaviour.

*“Among the Kilbrandon principles was a social education concept where there were roles for schools and teachers, guiding young people in trouble.”*

The 1968 Act also affected youth justice in ways other than was intended. Over time, having generic departments saw a focus on child protection and protecting the elderly, and probation and children in conflict with the law were not a focus for social workers with busy caseloads. Media reporting at this time was that social workers were overworked, with too much paperwork and spent their time only dealing with crisis and emergencies and not on long term preventative work.

*“There were tensions between departments as it brought together probation, childcare officers, welfare officers and mental health officers...these generic departments were a mixed bag as not all professionals had a qualification.”*

*“By 1975 the focus on child protection was so great that probation was seen as the Cinderella. Child Protection took a lot of energy and probation issues were being lost.”*

Of course, the biggest impact that the 1968 Act had for young people who were in conflict with the law was the enactment of Kilbrandon’s vision and the creation of the Children’s Hearing System.

## The Children’s Hearings System

Not everyone agreed with the recommendations of the Kilbrandon report and the creation of the Children’s Hearing System. The Legal establishment for one was very angry with its creation, and what were seen as

‘Mickey Mouse’ panel members and there was much deliberation and discussion about the practicalities and logistics of the system:

*“Due to legal challenges it was felt by many that the Children’s Hearing System would not have a long life.”*

*“There were many debates at the time - like should panel rooms have a table. It was meant to be an informal process – how could this be achieved and how do we engage children to make it work?”*

There were also some concerns about the pressure that the Children’s Hearings System would place on these already overworked social workers.

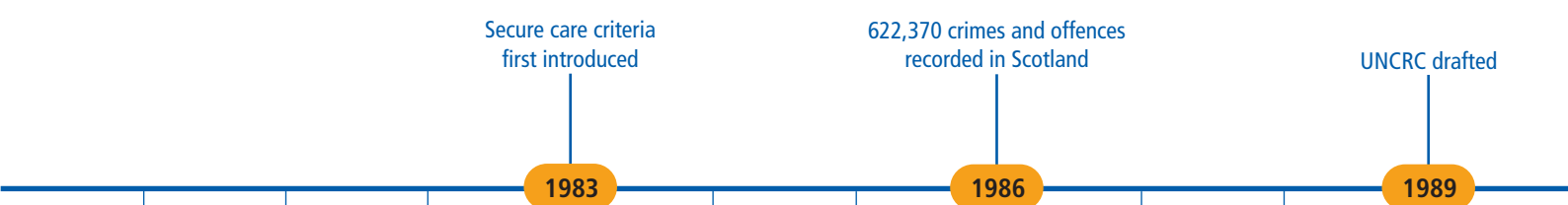


*The Herald. 13 April 1971*

Despite some misgivings the first Children’s Hearing was held on April 15th, 1971, and many held high expectations of this new system. Prior to this date, all young people who were involved in offending were prosecuted in adult courts.

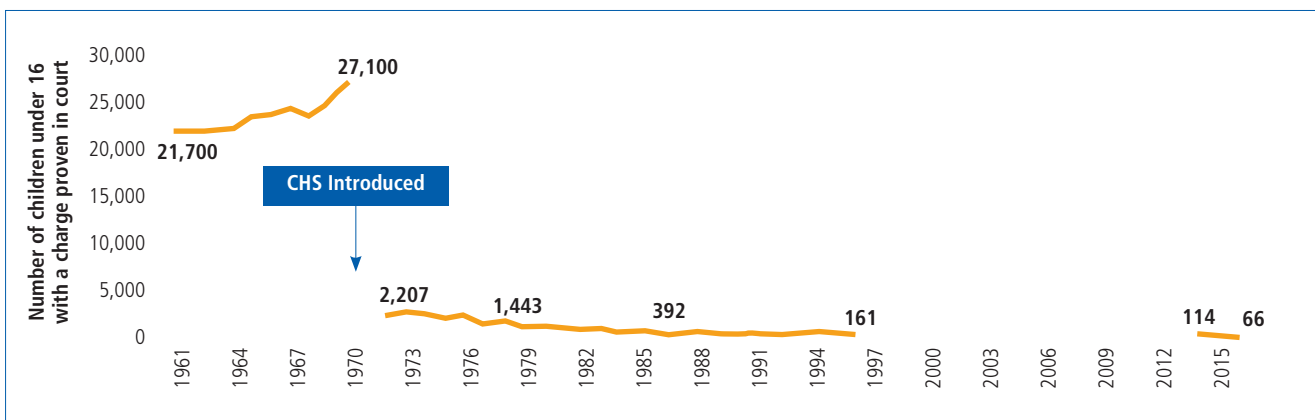
*“Children weren’t dealt with differently in Court compared to adults. It was a pretty horrible experience. The hope was that the Children’s Hearing System would change this.”*

The seismic shift in youth justice at this crucial point in our youth justice history is clear from Figure 3 which highlights the fall in children aged under 17 who were prosecuted in court, from 27,100 in 1970 to 2,200 in 1972. This shift related not just to how and where offences were investigated and dealt with but in how and where children in conflict with the law were then supported, with a move away from correctional institutions towards community-based services. But this did not happen overnight. Prior to the 1968 Act, there





**FIGURE 3** Number of children under 16 (aged under 17 pre 1971) with a charge proven in court



had been an explosion in Approved and correctional schools and residential institutions, where children (overwhelmingly boys) were sent for education and training, often with a punitive element. Post-Kilbrandon, it was not until the 1970s and 1980s that secure accommodation developed, and secure care criteria did not first emerge until 1983.

Yet some politicians were still not happy with the Children’s Hearing System and despite a supposed shift in attitudes and values arising from Kilbrandon, the threat of the birch still loomed on the justice horizon.

*“In 1974, Teddy Taylor the Shadow Secretary of State opposed the Children’s Hearing System. He believed in the power of birching. In 1979 and the election of Margaret Thatcher, he lost his seat in Cathcart. I always wondered if he hadn’t if there would have been a Children’s Hearing today. My view is that it would be radically different.”*

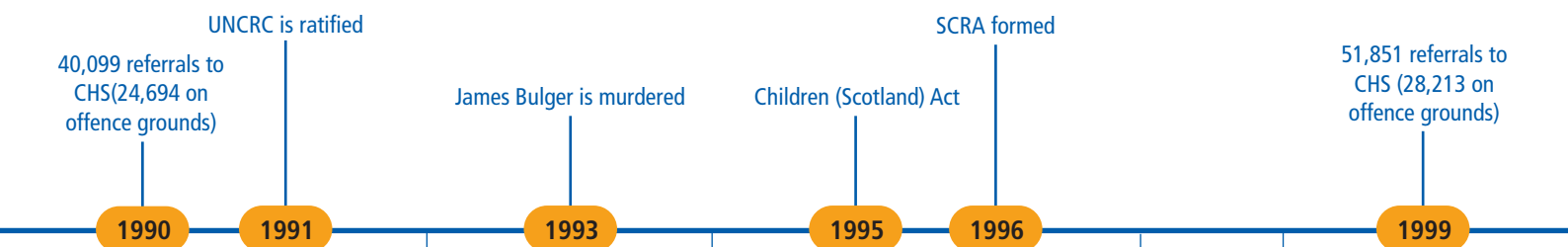
**Post-devolution**

In the intervening years we may have prided ourselves on more enlightened policy solutions but the pace of change has been slow, and there have been many unintended consequences of policy, as well as many

successes. Post-devolution the Scottish Executive established the Advisory Group on Youth Crime, which published its report ‘It’s a criminal waste’ in 2000, and concluded with a 10-point action plan that recommended not only a rise in the age of criminal responsibility, but increased use of community-based interventions, and the expansion of diversion and supervision schemes for 16 and 17 year olds. Yet this was the era of New Labour, the rhetoric of their ‘tough on crime’ stance and the creation of 3,000 new offences (Morris, 2008). In Scotland the policymakers soon followed with the Antisocial Behaviour etc (Scotland) Act 2004:

*“New Labour Government and Jack McConnell lost focus on the needs of children and the best way of addressing children effectively and over focused on addressing anti-social behaviour.”*

While a long way from advocating the birch, the tone in youth justice at the time was reminiscent of an earlier era, with jobs, neds and ASBOs in common parlance, for example: ‘Tough ASBOs ban teenage gang from town centre for five years’ (The Scotsman, 2006). John Swinney, Deputy First Minister, recently described a despairing discourse and a political bidding war regarding how tough parties could be on young people around the time of the 2003 Scottish parliamentary



election (Swinney, 2018). There was a move to do more and have more powers. At the time, these new powers were introduced without a sense of their potential impact:

*“There were lots of symptoms leading to this Act. Politicians post-devolution were anxious to demonstrate they were listening to community concerns. The way this was done was to respond to quality of life by addressing anti-social behaviour.”*

While it is not possible to be certain of all of the factors behind the rise in youth crime in the 1990s and early 2000s, in this punitive environment crime was almost destined to rise. Yet while there were many negative consequences with the Antisocial Behaviour etc (Scotland) Act, the opposition to the legislation and its associated performance measures galvanised the need for change.

*“If it hadn’t been for this nutty act, which was not something that could work...well we needed to have an alternative strategy, which led to the Whole System Approach.”*

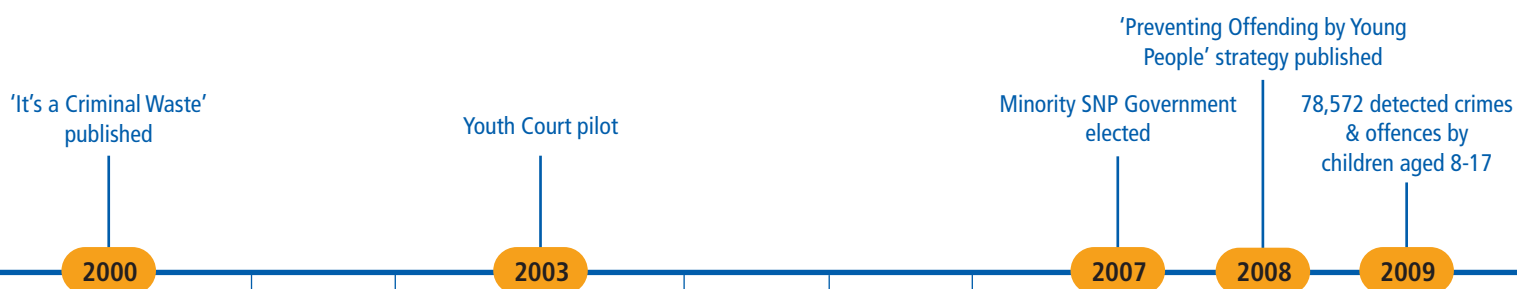
A change in government in 2007 led to a noticeable shift in tone and emphasis in national youth justice policy, with efforts and resources directed towards early intervention, prevention and diversion, and the removal of national targets and outcomes. The enduring influence of Kilbrandon was that it may have helped the Scottish Government resist the worst excesses of media, public and political pressure at the time and, as one of our interviewees put it *“to return Ministers to the unique beauty of Kilbrandon and the Scottish approach”*. It is telling that in the four years following the Antisocial Behaviour etc (Scotland) Act, only 14 ‘junior’ ASBOs were issued in Scotland (BBC News, 2008), despite considerable use in England and Wales where, at its 2005 peak, almost 1,600 ASBOs were imposed on children and young people (The Guardian, 2010). Around the same time an influential longitudinal

study, the Edinburgh Study of Youth Transitions and Crime (McAra and McVie, 2010), evidenced that bringing young people into formal justice systems had a stigmatising and labelling effect which could be more detrimental to them than simply taking no action. McAra and McVie found that contact with the youth justice system was the main predictor of later involvement with the justice system, all other factors being equal.

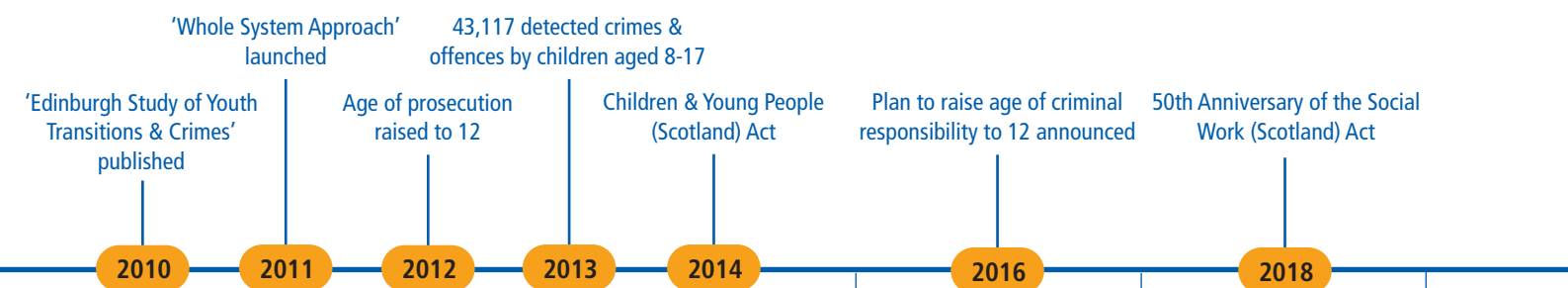
The synergy created by shifting political values, the emerging evidence base and changing attitudes towards policy solutions permitted Scotland to adopt an approach to youth justice that had minimum intervention and maximum diversion at its heart. In 2011 the Whole System Approach (WSA) was launched (Scottish Government, 2011). The ethos of the WSA, which is based on the principles of the Scottish Government’s strategy, ‘Getting It Right For Every Child’, is that many children in conflict with the law could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives. WSA works across all systems and agencies, bringing the Scottish Government’s key policy frameworks into a single, holistic approach to working with children in conflict with the law. The WSA has widely been credited with the reduction in numbers of young people referred to the Children’s Hearings System, and the reduction of children in custody, though it also needs to be recognised that many of the downward trends in Scotland have also been experienced in many other countries, suggesting there may be broader cultural, economic and societal changes at work.

*“The WSA had more impact in reducing the number of young people in adult systems.”*

As we put the finishing touches to this paper, late into 2018, policy and practice ambitions centre on extending WSA beyond 18 into young adulthood and in raising the age of criminal responsibility to 12



years old (the minimum acceptable standard by the UNCRC). These developments stem, in part, from a broadening understanding about how and when children and young people's brains develop, and the lifetime consequences of a criminal record gained while still going through the maturation process. Indeed, a consultation of professionals revealed almost unanimous support for an increase in the minimum age of criminal responsibility (Scottish Government, 2016) and a rise to 12 appears imminent. Encouragingly, from discussions held at a recent parliamentary evidence gathering session (Equalities and Human Rights Committee, 2016) there appears to be cross-party political support for the Bill and hints at the potential for a review and further raise of this age at a date in the not too distant future.



# Reflecting back and looking forward

As we reflect back, what emerges is how over time youth justice policy and practice is influenced by a complex mix of factors rooted in society's perceptions and expectations of children and young people. Different and often contrasting ways of thinking about children and ideas about how best to support, educate and guide them collide, merge and become dominant or fade into the background at different points of time. Nonetheless, what we have seen since Kilbrandon has been a clear and strong set of principles acting as a beacon to guide us when we are uncertain of our direction and as a reference point to compare progress against. That the youth justice community in Scotland regularly refers to a policy document published more than half a century ago, and that a significant minority actually read it, speaks volumes to the significance and importance of this important work, and the direction and tone it set.

However, since Kilbrandon change has been slow and incremental rather than radical. If Kilbrandon was the 'big idea' there's not been anything to equal it since the 1960s. Meanwhile there are children we failed then and continue to fail now, perhaps because we have not changed the culture required to truly change the system or we are yet to implement the Kilbrandon vision in full; or because new issues have emerged which Kilbrandon did not predict and perhaps Kilbrandon's vision can no longer provide the clarity of direction required. Of course, we have seen significant changes and improvements in the system which become obvious when reflecting on the harsh regimes and approaches which were the norm in the 1970s.

*"1970s was a brutal time for weans. Priests, teachers, police, neighbours, parents would all hit you. The panel was all part of this brutal system. I viewed the panel as a mini court. I never felt the panel was a welfare system. Just part of the system that brutalised us on a daily basis. You would be threatened; 'if we see you again... this will happen'. At one point I went and I got put into care."*

Yet we must not assume that, because progress has been made, we are getting it right for children in conflict with the law. Today Scotland still detains an average of 50 children in a Young Offender's Institution on any one day (Centre for Youth and Criminal Justice, 2018), despite recognising this should only be done when there are no other alternatives. Such alternatives, be that intensive community support or secure care

provision are not always explored, attempted first or resourced appropriately. Children above the age of 12 can still be prosecuted in an adult court, and although numbers proceeded against are at their lowest ever, 22 children under age 16 and 2,065 under age 18 were still prosecuted in court in 2016/2017 (Scottish Government, 2018a). This is extremely concerning given the lack of amendments to the process to take account of the fact they are children, both from a trauma and a comprehension perspective. Just under 800 children were strip searched in police custody in the past year, and in 96% of cases nothing was found (Police Scotland, 2018). We hear that many of our schools continue to treat trauma responses in a classroom setting as deliberate bad behaviour, requiring a punishment rather than a care and support response. Children tell us their voice is often not heard, they are misunderstood and judged without listening or understanding (Space Unlimited, 2015). Similarly, families are stigmatised and blamed whilst we ignore the circumstances of poverty, social exclusion and disadvantage we put them in.

We may have some well-intentioned policies, but our research suggests that these policies are not always experienced by children and young people in the way that we had anticipated (Nolan et al., 2017). We fail to learn the lessons of the past, introducing processes such as 'Early and Effective Intervention' which, with the best of intentions, prevents children from coming into contact with the 'formal' youth justice system but in doing so has created an additional layer of 'informal' system that can net-widen and stigmatise at an even earlier stage (Gillon, 2018). We are also seeing the significant decimation of youth work, youth services, community resources, issues with mental health provision, and specifically youth justice teams. These are the people trained specifically to work with children and their families in a holistic way including supporting them to address behavioural issues and manage the risks their behaviour may pose to others.

*"Young people have diverse needs and need a range of resources to meet these needs; services currently don't meet these needs due to the loss of money... when money stopped being ring-fenced there was more fragmentation."*

So, it is clear that we are still not getting this right. We continue to criminalise children due to their circumstances be that poverty, being in residential

childcare, or the behaviour of others. There continues to be a failure to acknowledge that the responsibility for children's behaviour is shared between the child, depending on their age and ability, their family, society, professionals and the services and systems around them.

*"Why didn't panel members make more enquiries regarding why I was in front of them again and again? They never asked me as far as I can remember. No one wanted to know the environment I was going home to. There was some stuff briefly mentioned in the social work report but it was more about my behaviour. There was no evidence then regarding experiences, research and outcomes."*

Today the research evidence and public awareness about adversity is much stronger (Bellis et al., 2015, Vaswani, 2018) but this is yet to fully change attitudes, influence relationships at all levels and truly inform our thinking. It is striking to us that developments focused on improving the experience of giving evidence for children who come into contact with the justice system have focused almost exclusively on children who are victims and witnesses, without attention to children who are accused. We still encounter a mindset about deserving and undeserving children, when we should be bringing the needs of children who harm to the fore (Lightowler, 2018). Our experience suggests there remains a fear of a public or political backlash to thinking about these children's needs, assumptions that their needs are fundamentally different to other children and a default position that children who are accused of an offence pose too great a risk for them to experience the same support and environments as other children.

We also need to get prevention right as, thinking back to Margaret Morgan's letter to the Editor of the Herald which was penned as far back as 1964, if we are honest with ourselves we could write that very same letter today. Yet there is also an inherent challenge built into our aspiration to focus on prevention in a youth justice setting, which remains to this day. How do we intervene to prevent offending in ways that do not assume a child who has not committed an offence will go on to do so? The prevention focus in this context then can encourage labelling, stigmatisation and at the practice level can then direct attention to the individual child's behaviour as the sole problem. This is the opposite of the intentions of the prevention agenda, and can potentially cause us to lose focus on the wider social and economic factors. At CYCJ we have been reflecting on how an

emphasis on inclusion rather than preventing offending per se (so on a child's right to be included), may be a better focus for our attention (Lightowler, 2017). So many of the issues that we know affect a child's likelihood of offending are rooted in their exclusion (from wealth, from opportunities, from relationships, from school). By intervening based on inclusion we can potentially avoid any negative labelling or stigmatising affects of our intervention and focus those of us around the child on our responsibility to support the inclusion of the child rather than making the issue of prevention about the child's behaviour that has not yet happened. This also encourages us to think about inclusion for all children, making this the default position and looking to maximise children's inclusion even where their behaviour is challenging and harmful to others.



## Implications for policy and practice

Our reflection is that if we are to truly make the next big step change in how we respond to children who are in conflict with the law, we need to genuinely and completely root our response in children's rights. Kilbrandon was radical in the sense that it promoted children's rights long before the existence of the United Nations Convention on the Rights of the Child (UNCRC).

*"Kilbrandon was way ahead of UNCRC, it was about dealing with children first and related to their upbringing and social pedagogy.... Kilbrandon can be seen as the initial embodiment of the UNCRC."*

As a result, Scotland was seen as being ahead of its time in initiating a rights-based approach to youth justice. Soon after the UNCRC had first been drafted, and before it had been ratified by the UK Government, Professor Sanford Fox of Boston College Law School gave the first ever Kilbrandon lecture on the 20th Anniversary of the Children's Hearings System in Scotland. He reflected that:

*"The idea that children should be active participants in decisions affecting them...has only recently been enshrined in the new [UNCRC] ...although these values have been the foundation stones of Scottish juvenile justice for 20 years now." (Fox, 1991:6)*

However, whilst a 'welfare' system can theoretically be held up as a rights-based system, this masks the fact that policy and practice continue not to adhere to such principles when things get challenging, when children behave in certain ways and when children fall through the gaps. It also hides the fact that children and their families continue to be excluded from conversations and from playing an active role in decision-making across the youth justice system. The recent commitment to full incorporation of UNCRC by the Scottish Government confirms that the next challenge for youth justice in Scotland is to design a truly rights-based model which responds to children (meaning everyone under the age of 18) as children first and foremost and provides additional support for young people up until their mid 20s. Improving the protection we offer and ensuring our responses are age and stage appropriate, raises questions for us about the Children's Hearing System, the appropriateness of a punishment based model for sentencing, the design and ethos of a Young Offender's Institution for children and so on. It also challenges us to improve the opportunities and support we provide to ensure genuinely participative decision-making, whether

as an individual child influencing issues around their own life; as a group of children collectively influencing the setting, system or services they are supported by; or by ensuring all children (including those in conflict with the law) have opportunities to be heard and influence wider issues as members of our communities and society.

Despite these challenges we believe that there is much that Kilbrandon would be proud of in youth justice today. But we also imagine that he would be disappointed that the pace of change has been too slow. At the turn of the millennium It's a Criminal Waste recommended a rise in the age of criminal responsibility. With the Bill only progressing through parliament as we write today, our interviewees made the poignant reflections that:

*"It's taken an entire childhood to come into being, that's how difficult it's been for politicians."*

*"Protecting rights, fighting the system, takes a lifetime. This shouldn't be the case."*

The achievements that have been made over the past 50 years in reducing youth crime, in lower levels of public anxiety, and in a tabloid media that can be neutral (or even reflective) on the topic of youth crime, come together to support a more positive and progressive policy environment. In this way it should be possible (even straightforward) to take the radical steps needed to truly create change for children in conflict with the law, and by extension for their families, communities and society as a whole. There should be no excuses. We cannot take another generation to get it right.

# Acknowledgments

We would like to thank the following people and organisations that have contributed to this paper:

Beth Smith, Independent Social Work Consultant; Professor Bill Whyte, Professor Emeritus, University of Edinburgh; Malcolm Schaffer, Head of Practice and Policy, SCRA; Professor Sandy Cameron, Chair of the CYCJ Executive Governance Group; Tom McNamara, Unit Head of Youth Justice and Children's Hearings, Scottish Government; Allan Weaver, Social Work Justice Team Manager, North Ayrshire Council; Boyd McAdam, Chief Executive, Children's Hearings Scotland; Justice Analytical Services, Scottish Government; Scottish Children's Reporter's Administration; and archivists at the Mitchell Library in Glasgow.

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