

Youth Justice and Children's Rights

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To support young people through the Children's Hearing and Justice System in Scotland, practitioners require a sound understanding of children's rights in the different systems, and the skills to enable young people to exercise those rights.

Police Custody

Where a young person is alleged to have been involved in a crime and is detained by the police for questioning, they will receive a "[Letter of Rights](#)" which highlights the young person's rights while they are in custody. These rights include:

- Knowing why the police have them in custody and what they are accused of.
- Access to a solicitor, and right to speak to them in private, before and during police questioning.
- If the young person is under 16 years old, or 16 or 17 years old and subject to a compulsory supervision order (CSO), they can have a parent or guardian told where they are and the parent/guardian can attend and offer support.
- Right to silence although they must provide name, address, date of birth, birth place and nationality.
- If the young person does not speak or understand English an interpreter will be arranged.

Young people should be reassured that consulting with a solicitor will not be perceived as an admission of guilt either at a children's hearing, court proceeding or in police custody. Solicitors can assist with understanding evidence against the young person, prevent self-incrimination and ensure the young person's rights are respected.

Children's Hearing

In a [Children's Hearing setting](#), young people must attend their hearing unless a decision has been made by a previous panel or prehearing panel that attendance is not required.

- Young people can bring a solicitor, friend or advocate to the hearing.
- Young people should know and understand the social work and other professional recommendations to the panel, in line with their age and stage of development.
- Young people over 12 years old should receive a copy of their hearing report; therefore, where there is information within the report that may be harmful or upsetting for the young person, practitioners should consider whether it is essential to include such information.
- Young people have the right to express their views and have their opinions taken into account ([article 12 UNCRC](#)). However, they should be helped to understand that the decision of the panel must focus on their best interests, by taking account of often complex wellbeing assessments, and the resulting decision may be at odds with the young person's view.

- Young people can ask to speak to the panel on their own, ask for a break and ask for the hearing to be continued to another date for further information or time.
- In a ‘grounds hearing’ young people will be asked whether they accept or deny the statements of fact according to their age and stage of development. With regard to offence grounds, acceptance at the hearing, or where established at court, is recorded as a criminal conviction ([Rehabilitation of Offenders Act 1974](#)).
- Young people can appeal the decision of the hearing within 21 days and can ask for a review hearing three months after the last substantive hearing decision.
- Young people subject to CSO are considered to have additional support needs and are therefore entitled to an additional support for learning assessment. Only the young person or their parent/guardian can request this assessment through the “named person” or guidance teacher ([Additional Support for Learning \(Scotland\) Act 2004](#)). This assessment should reduce situations where vulnerable young people are out of main stream school with no educational support. Therefore, they are essential for those struggling with attendance, challenging behaviour at school, peer relationships, learning needs, and during transition (such as between primary and secondary school).

Court

When a young person has to attend court it is important that they understand the layout of the court, the different professionals and their roles, and the possible decisions that the sheriff can make (including the possible implication of any decision). Young people should be assisted to access a solicitor and social work should share proportionate and relevant information about the young person’s circumstances, including the child’s plan, to enable the solicitor to represent the young person most effectively.

If a young person is subject to a CSO the Criminal Justice Social Work Report (CJSWR) should highlight within the options analysis that the court must ask the Children’s Hearing for advice. Following the provision of advice, the case can be remitted back to the hearing for disposal. For young people who are not subject to a CSO and are under 17 years and 6 months of age, the sheriff can still remit these cases to the Children’s Hearing system for disposal where appropriate ([Criminal Procedure \(Scotland\) Act 1995 section 49\(1,3\)](#)). Where remittal to the Children’s Hearing is unlikely, the recommendation within the CJSWR should promote community alternatives to secure care and/or custody, such as the use of Movement Restriction Conditions and robust Care and Risk management planning. Such supports need to be creative and flexible where possible, yet cognisant of risk and risk management measures.

About Us

CY CJ (Centre for Youth & Criminal Justice) works towards a Scotland where all individuals and communities are safe and flourish; and where Scottish youth justice practice, policy and research is internationally renowned and respected.

Our work focuses on three key areas: practice development, research and knowledge exchange.

CY CJ produces a range of monthly factsheets on youth justice and related topics. You can find these by visiting www.cycj.org.uk

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