

Alternatives to Custody

United Nations Convention on the Rights of the Child (for all young people under age 18) article 37 states that:

- Children and young people who are deprived of their liberty should be able to challenge this quickly in court.
- Children and young people must only be arrested, detained or imprisoned as a last resort and for the shortest possible time.
- Every child or young person who is deprived of their liberty must be treated with respect.
- Every child or young person who is deprived of their liberty must be separated from adults, unless it is better for him or her to be with adults.

Many young people in Scotland are in custody for short sentences or on remand for crimes that may not result in a custodial sentence. The risk the majority of these young people present could be managed within the community and alternatives to custody, where appropriate, should always be sought.

If a young person is subject to a supervision requirement and appears at court, the defence agent and court should be advised of this to ensure that the young person is treated as a child (under Children (Scotland) Act 1995). If at risk of custody, the court report author or court social worker should highlight to the court that section 44 or 208 (205 if they have committed murder) of the Criminal Proceedings (Scotland) Act 1995 could be used:

Section 44 states: "Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential accommodation provided ... by the appropriate local authority for such period not exceeding one year as may be specified in the order ..."

Section 208 states: "where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct".

Acting on behalf of the Secretary of State, the Justice Department at the Scottish Government would seek a placement within a secure unit as opposed to custody. **Court report authors should state this option for ALL young people under age 18 who are subject to a supervision requirement where custody is being considered.** Being in a secure unit would better meet the needs of young people by age and stage appropriate interventions being used by qualified care staff, full-time education/ training and in a more appropriate environment. For young people sentenced under section 205/208, contact Parole Division: 0131 244 8524.

Where a young person is not subject to a supervision requirement or does not present a significant risk, alternatives to custody should always be explored and presented to decision makers. These include:

- Supervised bail and remand schemes
- Individualised intensive support packages as part of a Community Payback Order or structured deferred sentence
- Intensive foster carers/Multisystemic Therapy (MST)
- Intensive Support and Monitoring (ISMS) through the Children's Hearing System

For further information please refer to the National Practice Guidance at www.cjsw.ac.uk and the Criminal Procedures (Scotland) Act 1995 chapter 16 regulations:

<http://www.crownoffice.gov.uk/sites/default/files/Publications/Resource/Doc/13547/0000422.pdf>

Or Contact the Youth Justice National Development Team on : 0141 444 8700

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