

## **Consultation response to the Scottish Government's *Sentencing Guidelines and a Scottish Sentencing Council***

- 1.1 Children in Scotland welcomes the opportunity to respond to this consultation on *Sentencing Guidelines and a Scottish Sentencing Council*. Our particular concern is the important issue of the impact of sentencing policy on the children of offenders in Scotland.
- 1.2 A Scottish Prison Service survey from 2007 found that 51% of prisoners are parents,<sup>1</sup> and in 2002 it was estimated that at least 13,500 children in Scotland are affected every year by the imprisonment of a parent.<sup>2</sup> These children were aptly described in a recent Scottish Commissioner for Children and Young People report as "the invisible victims of crime and of our penal system".<sup>3</sup>

### 2. The impact of sentencing on the children of offenders

- 2.2 The impact of sentencing on the children of offenders is both complex and highly dependent on individual cases, but its alleviation should nonetheless be a priority for the Scottish Government. There may be cases (for example, when domestic violence or child abuse are part of a child's home life) when separating the parent and child will be the best option. There will also be cases when a custodial sentence for mothers, fathers or other primary carers will be far more detrimental to the lives and life chances of children and young people than non-custodial punishments. **Our basic suggestion is that recognition of this impact, and a commitment to the well-being of the children of offenders, should be embedded as a priority within sentencing policy in Scotland.** The afore-mentioned report from the Scottish Commissioner for Children and Young People is an important and thoughtful document, and we commend it to the Scottish Government.
- 2.3 With specific regard to the proposal to create statutory sentencing principles for the judiciary, we are broadly in agreement with those listed, particularly the inclusion of "the particular circumstances of the offender, including their family situation, level of risk and willingness to

---

<sup>1</sup> Scottish Prison Survey (2007) *Prisoner Survey*. Available at [www.sps.gov.uk](http://www.sps.gov.uk).

<sup>2</sup> Families Outside. Available at [www.familiesoutside.org.uk](http://www.familiesoutside.org.uk)

<sup>3</sup> Scottish Commissioner for Children and Young People (2008) *Not seen. Not heard. Not guilty. The rights and status of the children of prisoners in Scotland*. CCYP/2008/1.

reform". Clearly, detailed case-by-case analysis of the impact of sentencing on the children of offenders is required, and the Scottish Government's your proposals create scope for this individual review. We would, however, suggest that **specific consideration of the impact of sentencing on the well-being of any children for whom the offender has primary responsibility is a more appropriate inclusion than a brief mention of 'family responsibilities'**. Social Enquiry Reports are the main mechanism by which these particular circumstances are communicated to the court, and we would suggest that formal consideration of child well-being may be a sensible requirement of such reports.

- 2.4 Additionally, it should be made clear in statute that this **consideration of the impact of parental sentencing upon children and young people should apply equally to mothers and fathers**. This is in keeping with the spirit of the new UK-wide Gender Equality Duty. Similarly, if the children and young people potentially affected already live with (or are primarily cared for) by an adult other than the biological parents (for example, a grandparent or other kinship carer) then this consideration should be extended to these adults too, if they are convicted of a crime.

### 3. Alleviating harm to children left behind

- 3.1 Finally, when a custodial sentence is deemed necessary, then we believe that **the government should commit itself to provide extra governmental resources and support to the children left behind, as well as to the primary kinship carers or other adults who will be entrusted with parental responsibility whilst the sentence is being served**. This is in accord with the spirit of the Scottish Government's encouragement of the *Getting it right for every child* approach to promoting and safeguarding child well-being.
- 3.2 This process would be aided by the collection of proper data about the family circumstances of imprisoned offenders, to be included in Scottish Government Prison Statistics. Concerted action, consistent monitoring and careful record-keeping are needed to ensure that the children of offenders – children who have done no wrong themselves – are left as unharmed and appropriately supported as these unfortunate circumstances permit.

November 2008

For further information please contact Ellen Stewart, Policy Officer at Children in Scotland, at [estewart@childreninscotland.org.uk](mailto:estewart@childreninscotland.org.uk).

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 470 members, including 90% of Scottish Local Authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland) and the National Voluntary Children's Forum. Children in Scotland also hosts Enquire - the national advice service for additional support for learning, and Resolve:ASL, Scotland's largest independent education mediation service.