

Criminal Justice and Licensing Bill 2009: Stage 1 Debate

**Children in Scotland Parliamentary Briefing
November 2009**

Key messages for MSPs:

1. The Scottish Parliament should amend Section 38 of this Bill (“Criminal Prosecution of Children”). The Scottish Government’s proposal to raise the age of criminal *prosecution* from 8 to 12 is a welcome step in the right direction. However, it is both too small a step and one that is undermined by its companion proposal to retain the age of criminal *responsibility* at 8-years-old. The age of criminal prosecution should be raised beyond the age of 12 in light of the overwhelming international evidence that criminalising children does not result in better individual behaviour, does not reduce recidivism, does not make communities safer – but does increase both the costs to, and intrusiveness of, government.

Raising the age of criminal prosecution to 16 is preferable in the view of the UN Committee on the Rights of the Child -- and practical because it conforms to the age range of Scotland’s internationally-respected Children’s Hearings system and the age of admittance to Polmont Young Offenders Institution. It also would eliminate the age-related contradictions between this Bill and the recent Sexual Offences (Scotland) Act.

2. The Scottish Parliament should completely eliminate the concept of an 'age of criminal responsibility' by amending this Bill to repeal Section 41 of the Criminal Procedure (Scotland) Act 1995.

That legislation established the minimum age of criminal responsibility at 8-years-old (one of lowest in the world). Keeping this category alongside an established age of criminal *prosecution* not only muddies the waters, but also may serve to discourage the earliest possible intervention activities with children who are troubled and in trouble.

This is absolutely not (and should not be regarded as) a 'soft option' for children who behave in very harmful or dangerous ways. Accordingly, the repeal of Section 41 must be accompanied by new grounds for referral to Children's Hearings and new ways of ensuring that such children are: prevented from being a danger to themselves or others; provided with interventions that will positively change their behaviour; and able to earn their freedom from life-long 'criminal' status and consequences.

One major strength of Scotland's Children's Hearings system is its recognition that children are not adults -- and should not be treated as adults. Criminal status should be reserved exclusively for adults. The forthcoming Children's Hearings Bill is a better vehicle than this Criminal Justice Bill for resolving how best to simultaneously and genuinely serve the interests of both children and society.

.....

MSPs and parliamentary staff members with questions or requests for additional information/evidence are welcome to contact: Dr Jonathan Sher, Director of Research, Policy and Programmes at 0131 222 2418 or jsher@childreninscotland.org.uk

Children in Scotland is the national organisation for the children's sector, with over 450 statutory, voluntary sector, community and professional members. Learn more at: <http://www.childreninscotland.org.uk>