ABSTRACT

In February 2008 the Scottish Government announced plans to abolish the legislation that allows children appearing on a charge in the Criminal Justice system to be remanded to a young offenders’ institution. Instead it is anticipated that secure accommodation or other place of safety, or a community alternative to remand may be appropriate.

During June and July the Scottish Government sought views on what this legislative change would mean both for the local authority, and for the wider services and systems working with young people in these circumstances. The consultation had to be submitted by Monday 28th July 2008. A copy of the response and the consultation paper are appended to this report.

1 RECOMMENDATION

It is recommended that the Social Work and Health Committee and the Education Committee note the content of the report and homologate the response submitted by the Director of Social Work and Health and the Director of Education.

2 INTRODUCTION

On 21 February 2008, the Scottish Government announced its intention to abolish unruly certificates under Section 51(1)(bb) and 51(3) of the Criminal Procedure (Scotland) Act 1995. (See Appendix B: Definition of Section under the Criminal Procedure (Scotland) Act 1995). Section 43 of the Criminal Procedure (Scotland) Act 1995 refers to the issuing of unruly certificates by the Police and remains unchanged.

This consultation sought views on the best way to implement that change, including ensuring appropriate arrangements were made for the small number of under 16s whose movements need to be restricted because of the risks they pose to themselves or others.

In general, young people aged under 16 who are required to be detained, by either the local authority (on recommendation of the children’s panel) or the court, will be placed in a secure unit, designed to meet their needs as vulnerable children. However, unruly certificates allow for children aged 14 years and 15 years appearing on a charge before a criminal court to be remanded in prison custody where the court considers their character or behaviour to be ‘unruly’.

Ministers have decided to act to remove this provision in light of concerns about the detention of children in prison facilities. The Scottish Government considers this change to be consistent with its commitment to the principles of the United Nations Convention on the Rights of the Child.
If the ‘unruly certificate’, which is the term given to the authorisation by the Sheriff in terms of Section 51(b) for a 14 or 15 year old to be committed to a Young Offenders Institute, is abolished the only current option remaining to the court is to revert to section 51(a) and place responsibility on the local authority to provide either secure accommodation or a suitable place of safety.

3 ISSUES ARISING FROM PROPOSAL

Overall Angus Council supports the principle of this change in legislation. Research has long demonstrated that young people under 16 who commit an offence are much less likely to offend in the future if we adopt an approach that promotes their welfare rather than one focussed on punishing them for their offence. However the following issues were raised through the consultation:

i) Because of the risks they present some young people will require secure placements;
ii) Secure providers should have a statutory responsibility to provide placements to young people requiring placement;
iii) The cost of remand placements where proceedings collapse should be met by the responsible agency;
iv) There should be a national approach to agreeing the number and use of secure placements;
v) Risk Assessments should always take place for young people at risk of secure care or remand;
vi) If Intensive Support and Monitoring (ISMS) or Intensive Support Services (ISS) are to be used then these should be funded by national government;
vii) There is a need for a national protocol between local authorities and Police with regard to transporting young people subject to secure placement and assessed as high risk of further offending or absconding; and
viii) Consideration should be given to continuing the spot purchase funding of ISMS or ISS for young people as an alternative to remand from Central government.

4 FINANCIAL IMPLICATIONS

There are unlikely to be significant financial implications arising from this report. In recent years Angus has had no placements that would have met these criteria. However if local authorities were in future to meet these costs, and such a placement was made, then it would be funded from within the budget for Residential School and Secure Accommodation. This budget cost is subject to regular review by both Education and Social Work and Health Committees.

5 HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising as a result of the recommendation contained in this report.

6 EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

7 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.
8 CONCLUSION

Angus Council supports the principle of placing children in secure accommodation as opposed to young offenders’ institutions or prison.

These proposals mirror Angus Council’s own approach to maintaining young people’s placement in the community when possible, while recognising that secure accommodation will always be required for a very small group of children and young people who are persistently absconding and presenting significant risk to themselves or others.

R Peat
director of Social Work and Health

J Anderson
Director of Education

NOTE: The undernoted background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

Abolition of Unruly Certificates: Section 51(1)(bb) and 51(3) Criminal Procedure (Scotland) Act 1995
Dear Mr Morrison

ABOLITION OF UNRULY CERTIFICATES: SECTION 51(1)(bb) AND 51(3) CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

Thank you for your letter of the 2 June 2008 seeking views on what this legislative change will mean for Angus Council and for the services and systems we support these children within. Please find below a response to your specific queries.

What in your view are the implications of this change in legislation?

Angus Council supports the principle of this change in legislation. Research has long demonstrated that young people under 16 who commit an offence are much less likely to offend in the future if we adopt an approach that promotes their welfare rather than one focussed on punishing them for their offence.

Unfortunately sometimes the nature of the offence and the risk presented by the young person to others in their community, including other young people, or staff within either foster or residential care, does mean the young person needs to be subject to appropriate secure conditions.

A number of authorities, including Angus, are too small to justify the commissioning of their own secure facility. In these cases they spot purchase placements from independent providers as and when required. While the statutory responsibility for these placements remains with local authorities there is a danger that if there are no secure placements available high risk placements are managed by staff with inadequate training and resources in non secure community placements.

In addition a Secure Unit may currently refuse to accommodate a placement if they think that the young person is unlikely to have their needs met in that accommodation or if they may struggle to manage the risks. Given any change in legislation consideration should therefore be made to secure providers having a statutory responsibility to accommodate such placements as a priority to minimise the risk to young people or staff from young people who present as high risk.

Currently if a young person is remanded to a secure placement then the cost is borne by local authorities. Unfortunately if for some reason the court proceedings fall through, at no fault of the local authority, the full cost of the remand placement falls to the local authority. This appears unfair and should be revised with the introduction of suitable legislation.
What in your view are the implications for criminal procedure matters?

There should be few implications for criminal procedure matters as long as there are adequate numbers of secure placements available and that secure providers are obligated to accept such placements as a priority. We should ensure that all young people under 16 years old in court are treated as young people subject to a welfare model rather than a criminal justice model. It should also be noted that outcomes for young people in secure accommodation are not good and that a decision to remand a young person should be an option of last resort.

What, if any, are the implications for your organisation’s current procedures and practice?

Angus Council has had very little experience of these circumstances in recent years. Current procedures and practice stress the need to act in the best interests of the child and there is widespread agreement that remand to the prison establishment would not meet these needs.

However Angus Council has had experience of there being no suitable secure placements available for young people, and having to make temporary arrangements in non secure accommodation. It is therefore imperative that there are an adequate number of secure placements and that these providers are obligated to accept remand referrals as a priority.

What, if any, are the issues relating to the availability of secure places or an alternative place of safety?

The Scottish Government is currently working with stakeholders to provide better information for accessing and allocating secure accommodation. What, if any, concerns does your organisation have about the availability of suitable accommodation and how would you like to see this improved?

As mentioned above secure placements are not always available at short notice and in some cases secure units will refuse to accept young people if they do not believe they can manage the risk e.g. risk of suicide, by pregnancy etc. All young people should be subject to risk assessment if there is consideration being given to removing their liberty. This risk assessment should consider the suitability of community placements as an alternative place of safety.

What, if any, are the issues relating to the availability of alternative community services?

Could Intensive Support and Monitoring be used as an effective alternative to custody for young people on remand? Legislation already exists for electronic monitoring through the court as part of a Bail condition.

Intensive Support and Monitoring Services (ISMS) or Intensive Support Services (ISS) could be used effectively however this would require a change in legislation as at present ISMS/ISS assessments can only be requested by the children’s panel if the young person meets secure criteria as set out in the Children’s Scotland Act 1995. ISMS are also likely to present at some cost compared to the more mainstream support available to young people in need of intensive support.

While intensive support services available to young people earlier in their offending behaviour presents the most positive outcomes for young people, the significance of their role appears to be missing at a national level.
What, if any, are the issues you wish to highlight relating to transportation of young people to a secure place or a place of safety?
Where a young person is remanded under section 51 (bb), the Scottish Prison Service has responsibility for transportation to and from the court. Where a young person is remanded under section 51(a), transportation is the responsibility of the local authority.

Even when the transport of a young person is the responsibility of the local authority there are frequently difficulties with this if the young person presents significant risks to staff or is at a significant risk of absconding. There is a need for a national protocol between local authorities and Police with regard to transporting young people subject to secure placement and assessed as high risk of further offending or absconding. Young people who are effectively being remanded in custody should always be subject to police transportation as they have already been assessed as high risk and requiring to be subject to secure provision.

What, if any, are the implications for risk assessment and risk management that you wish to highlight?
The Scottish Government plans to publish good practice for agencies on meeting the needs and managing risks of children and young people who pose a risk of serious harm to themselves and others. It is expected that agencies will work together to identify and manage risks.

Risk assessment and risk management are at the heart of any successful strategy dealing with both the young person and their community’s needs. Local protocols between agencies should be agreed in advance of such placements being made to ensure each agency is clear of the roles and duties placed upon it. While the responsibility to join up working is local there is a national requirement to ensure adequate levels of cost effective secure accommodation is available.

Are there any alternative proposals that you wish to be considered?
Do you already use, or are you considering, community based alternatives to manage the risks posed by young people?

Research indicates that young people who are supported and managed within their own community stand a greater chance of progressing to good quality adult lives. As long as credible community alternatives exist these should be explored. While these community options also have the advantage of providing better value than expensive residential accommodation, it should be noted that long term intensive support in the community will be significantly more expensive than current funding allows. Consideration should therefore be given to continuing the spot purchase funding of ISMS or ISS for young people as an alternative to remand from Central government.

Please provide any additional information here.

Section 43 of the Criminal Procedure (Scotland) Act 1995 refers to the issuing of unruly certificates by the Police. The outcome report following this consultation and any future legislation should be clear there are no proposed changes to this part of the legislation.

I hope you find this information both relevant and informative. If you require any further information regarding our response please do not hesitate to contact Steve Urquhart, Planning Officer (Children’s Services) on Tel 01307 474871 or Email: UrquhartS@angus.gov.uk

Yours sincerely

R PEAT  J ANDERSON
Director of Social Work and Health  Director of Education
Appendix B: Definition of Section under the Criminal Procedure (Scotland) Act 1995

Section 51 Criminal Procedure (Scotland) Act 1995, states that where a court remands or commits for trial or for sentence a person under 21 years of age who is charged with or convicted of an offence and is not released on bail or ordained to appear, then under:

51(1)(a) if under 16 years of age the court shall, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained either in secure accommodation or in a suitable place of safety chosen by the authority; under

*51(1)(bb) if he is a child under 16 years of age but over 14 years of age who is certified by the court to be unruly or depraved, he shall be committed to a remand centre or to prison or to a young offenders institution; and under

*51(3) Where any person has been committed to a local authority the court by which he was committed, if the person so committed is not less than 14 years of age and it appears to the court that he is unruly or depraved, may revoke the committal and commit the said person to a remand centre, a prison or a young offenders institution.

* Sections to be changed.