

**SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE
DATA PROTECTION FORM**

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Date:	05/07/2018
Organisation: (if required)	Scottish Independent Advocacy Alliance
Topic of submission:	Age of Criminal Responsibility (Scotland) Bill – Call for Evidence

- I have read and understood the privacy notice about submitting evidence to a Committee.
- I am happy for my name, or that of my organisation, to be on the submission, for it to be published on the Scottish Parliament website, mentioned in any Committee report and form part of the public record.
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Non-standard submissions

Occasionally, the Committee may agree to accept submissions in a non-standard format. Tick the box below if you would like someone from the clerking team to get in touch with you about submitting anonymously or confidentially (not for publication). It is for the Committee to take the final decision on whether you can submit in this way.

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EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH INDEPENDENT ADVOCACY ALLIANCE

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation that has the overall aim of ensuring that Independent Advocacy is available to any vulnerable person in Scotland. Independent Advocacy safeguards people who are vulnerable and discriminated against or whom services find difficult to serve, empowering people who need a stronger voice by enabling them to express their own needs and make their own decisions.

- 1) The UN Committee on the Rights of the Child recommends that the age of criminal responsibility is a minimum of 12 years old, which the Bill adheres to. What are your views on the appropriate age of criminal responsibility in Scotland?**

SIAA supports raising the age of criminal responsibility from 8 to 12. We believe that raising the age is important to uphold the rights of children. However we would like the Parliament to consider raising the age further to bring it in line with other European countries e.g. 14 or 16. It cannot be presumed that all children have the same level of maturity or understanding. It is essential that capacity is taken into account, regardless of age.

- 2) The Bill makes a number of changes relating to the disclosure of offences and provides that any conduct by a child below the age of 12 (should the ACR be increase) that would previously have been recorded as a conviction will no longer be recorded as such. The Bill does however, allow for disclosure of 'other relevant information' held by the police about pre-12 behaviour. The Committee would welcome views on whether the Bill strikes the right balance in terms of addressing offending behaviour by young children under 12 and the disclosure of such information**

The disclosure process must allow for the context and background of a criminal conviction to be considered and that criminal behaviour under 18 must be judged in the full context of mental health, disability and whether the individual has experienced trauma. We believe that these recommendations should apply to all children, not solely those who are care experienced.

- 3) The Bill provides that children under 12 who are subject to a police interview will have the right to have an advocacy worker present during the interview. What will be the impact on your organisation or on the children you work with who might access the advocacy service?**

We welcome the proposal to allow for the provision of independent advocacy support to children under the age of 12 being interviewed by police; inevitably this will have resource implications for children's independent advocacy services across Scotland.

Due to funding arrangements, referral criteria to access children's independent advocacy services is fairly rigid, i.e. children must have a mental health issue or an additional support need. This means that services can only be offered to certain categories of children in funded areas, and many more vulnerable children cannot access advocacy support if they do not meet the referral criteria. Partners in Advocacy (Glasgow) identified a gap in the provision of advocacy for children and young people involved in the youth justice system, which led them to seek funding to provide such a

service; they now have a small project in Glasgow that is at capacity with a waiting list, demonstrating that there is a need for this type of advocacy. Advocacy projects often operate waiting lists as they are in very high demand, so such provision as suggested in the Bill would exacerbate this situation without sufficient financial investment to deliver a fully accessible and responsive advocacy service.

It is essential that the Parliament consults with independent advocacy organisations in the planning, development and delivery of this service as a duty system for an advocacy worker to be called upon as and when required would not be appropriate in practice. An advocacy partnership is unlike a solicitor-client relationship; an advocacy worker would normally meet with the child in the first instance to establish that they wanted advocacy support and ensure that they fully understood what was happening, and also to help them to formulate their thoughts and views before the police interview took place. It may take more than one meeting to allow the child to engage with an advocacy worker and start to build trust with them. Advocacy does not want to be seen as simply 'another professional' that the child has to meet with, without fully understanding their role and remit.

It is vital that independent advocacy is not seen, or used as a substitute for legal representation or the Appropriate Adult scheme.

We believe there will be significant training implications for any advocacy organisation delivering this service as it is vital that workers are fully conversant with the legislation and the onward legal processes.

We believe that independent advocacy provision should also be provided for young people aged 12-16 affected by the youth justice system. It is essential that capacity is taken into account when interviewing children as no two children will be the same.

Partners in Advocacy (Glasgow) have provided feedback on their attendance at Early and Effective Intervention meetings, stating that it is evident that a variety of circumstances lie behind a child's reasons for offending, such as poverty, poor housing, familial separation and addiction problems, issues at school including bullying, and other adverse childhood experiences. Providing independent advocacy support to children and young people to help them access appropriate services and engage in these formal processes has the potential to prevent offending.

- 4) Raising the age of criminal responsibility would necessitate a number of changes in relation to information which can be provided to victims. The Bill seeks to balance the best interests of victims (including child victims) and the best interests of the child responsible for any harm caused. Again, the Committee would welcome views on whether an appropriate balance in this area has been achieved.**

We believe it is important that child victims and witnesses are assured that the harm caused to them is recognised and that they are believed and taken seriously when another child is no longer regarded as criminally responsible.

- 5) Part 4 of the Bill relates to police powers and provides a package of powers designed to ensure that serious behaviour by any child under the age of 12 can be investigated but that such investigations are carried out in a child-centred way. Those powers include, amongst other things, the taking of forensic samples, removing a child to a place of safety and the power to search children. The Bill restricts the application of most of these powers so that they are only available**

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to the police in the most serious of cases. The Committee would welcome views on the approach taken to police powers in the Bill.

6) Please tell us about any other comments you feel are relevant to the Bill