Introduction

We welcome the opportunity to provide input to this consultation and trust that our response will be of use and interest. The views expressed here have been developed through discussions with our members, drawing on their experience of working closely with children and families affected by the justice system.

About CJVSF

The Criminal Justice Voluntary Sector Forum (CJVSF) is a collaboration of voluntary sector organisations working in the field of criminal justice\(^1\). CJVSF provides support to members through a member-led programme of activity and aims to:

- Support voluntary sector providers to continuously improve their own criminal justice services through collaboration and sharing of good practice
- Assist voluntary sector providers to understand, navigate and influence the complex and changing environment in which they operate
- Promote broader awareness of the activities, value and impact of third sector services within criminal justice.

CJVSF is hosted by the Coalition of Care and Support Providers in Scotland (CCPS) and receives financial support from The Robertson Trust and The Monument Trust. Further information about the Forum can be found at: [http://www.ccpscotland.org/cjvsf/](http://www.ccpscotland.org/cjvsf/).

Responses to the consultation questions

Q1. Do you support the general aims of the proposed bill? Please indicate yes/no/undecided and explain the reasons for the response.

Yes, CJVSF supports the general aims of the proposed Bill to:


\(^1\) A list of our current members can be found at: [http://www.ccpscotland.org/cjvsf/cjvsf-members/](http://www.ccpscotland.org/cjvsf/cjvsf-members/)
“No child should be discriminated against because of the situation or status of their parents” (Article 2)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (Article 3)

- Improve identification of children affected by parental imprisonment
- Ensure the needs of children affected by parental imprisonment are adequately assessed
- Improve support for children affected by parental imprisonment.

Our reasons for supporting the general aims of the proposed Bill are as follows:

- Parental imprisonment is known to have a harmful effect on children and young people - As discussed in the consultation paper (p10), the international research evidence demonstrates the harmful effect that that imprisonment of family members can have on children and families. This includes issues relating to separation anxiety, depression, grief and having to cope with bullying and stigma.

- The needs of this vulnerable group are not currently adequately assessed - The revised 2010 guidance states that Criminal Justice Social Work (CJSW) reports "must consider also the impact of a custodial sentence on the individual and his family". The needs of children affected by parental imprisonment are not adequately being captured through this route however, largely because:
  - CJSW reports are not required in the majority of cases
  - Where they are used, the focus of these reports is on the person who has committed the offence, rather than on the needs of the children and family.

- Children affected by parental imprisonment are not consistently provided with appropriate support and protection – At present, no agency has a statutory responsibility to provide support for children affected by parental imprisonment. If a child does not meet child protection thresholds, this can therefore often mean that their needs are overlooked.

Q2. Would you make any changes to the proposed Support for Children (Impact of Parental Imprisonment) Bill and if so, why?

Yes, we would propose the following changes to the proposed Bill:

1. **Broaden the Bill from ‘Support for Children’ to ‘Support for Children and Families’**

We believe a more holistic approach should be taken to the Bill, recognising the importance of the wider family and the impact that imprisonment can have on other family members as well.

2. **Broaden the Bill from ‘Impact of Parental Imprisonment’ to ‘Impact of Family Member Imprisonment’**

---

Research by Meek (2008) suggests that the imprisonment of siblings can also have a detrimental impact on children. We suggest the Bill should be broadened to include imprisonment of other family members (e.g. siblings or grandparents).

3. **Introduce a requirement for an impact assessment to be undertaken at all relevant points in the criminal justice system, starting at the point of arrest**

We would be like to see a more preventative approach being taken to providing support to children and families. Introducing a requirement for an impact assessment to be undertaken at all relevant points in the criminal justice system could help to ensure that appropriate support is put in place at an earlier stage as appropriate (e.g. if the person arrested is kept in police custody overnight or their care responsibilities are otherwise affected).

At present, the Bill proposes that the impact assessment should only be undertaken after a sentence has been given. CJVSF members raised concerns, however, that remand is likely to also have a major impact on children. Whether their parent is in custody as part of a sentence or on remand, it is still likely to have an impact of the child. As such, it is important that any risks to their well-being are identified and addressed at both points of custody. This would be in-line with the recommendation emerging from the UN Committee on the Rights of the Child Day of General Discussion 2011 (Robertson, 2012, p17) that: *Child impact assessments should be available whenever considering placing or releasing parents from custody, including decisions about pre-trial detention or early release, as well as when transferring prisoners between prisons*.

4. **Broaden the Bill to also include support for children affected by family members undertaking other forms of sentences (e.g. Community Payback Orders, restriction of liberty sentences).**

Another recommendation emerging from the UN Committee on the Rights of the Child Day of General Discussion 2011 (Robertson, 2012, p17) was: *When a sentence causes parents to be separated from children for whom they are caring, they should be given sufficient time to make arrangements for those children prior to the commencement of the sentence, taking into account the best interests of the child*.

We would suggest extending the Bill so that it can also include support for children affected by family members undertaking other forms of sentences (e.g. Community Payback Orders, restriction of liberty sentences).

**Q3. Do you see any potential problems (including implementation) with the proposed Child and Family Impact**

---


**Assessments? And who do you think is best placed to deliver them?**

**Potential problems with the proposed Child and Family Impact Assessments**

CJVSF members identified the following potential problems:

- Increase in legislation and/or reporting, without an associated change in practice or improved support for the child
- If poorly designed, the legislation may not add value to existing policy and legislation for children and families.

The extent to which potential problems occur is likely to depend, at least in part, on:

- **Who carries out the assessments** – CJVSF members have suggested that the courts should have a duty to inform the Named Person when a parent/carer is sent to custody. The Named Person service provider (i.e. the health board or local authority) would then be responsible for ensuring the completion of the impact assessment from whoever is best placed to carry this out from those services that are already known to the Child. There are a range of professionals that may be well placed to undertake the assessments, e.g. social workers, lead professionals or staff from independent organisations. Factors that will need to be considered in identifying the most appropriate person to carry out the assessment are likely to include:
  - The extent to which a person’s role is child focused - e.g. The focus of Criminal Justice Social Work is on the person who has committed the offence (the parent) rather than the child
  - Likelihood of engagement – Some families may have a fear of engaging with statutory services if they have had poor experiences in the past
  - Costs associated with the provision of an Impact Assessment.

- **Where the assessments are undertaken** - CJVSF members were keen to understand where the assessments will be undertaken, and suggested that the location of the assessment may have implications for how it is conducted. It was thought that the assessment should be child-focused and involve a more in-depth process than could be conducted in a court.

- **Who is involved in contributing to the assessment** - In addition to people working with the children and families, CJVSF members would like to see children and families themselves actively involved in the assessment, to ensure that they have a strong voice in the process. CJVSF members also flagged up a potential conflict between the rights of the child and the rights of the family to privacy.

- **What information is included in the assessment**
- **How the information is collected**
- **How the information is used** - Who will have responsibility for implementing the recommendations of the assessment?
- **How often the assessment is reviewed**
- **The extent to which there are clear responsibilities for who will cover the costs associated with assessments** - There will need to be clarity over who is responsible for covering any costs associated with the assessments. If it is to be funded on a geographical basis (e.g. by Local Authority), who would be responsible
for covering the costs if the parent going in to custody is usually resident in a different geographical area to the child?

- **The extent to which the legislation links with and builds on existing legislation and policy** - CJVSF members were keen to see the legislation linking with and adding value to existing legislation and policy, including:
  
  o  *The Children and Young People’s (Scotland) Act 2014* and GIRFEC (Getting It Right For Every Child) – In particular, it will be important for the Impact Assessment and support for children affected by imprisonment to link in with the wider child’s plan. If issues were flagged up through the assessment they would then become part of the Child’s Plan through existing GIRFEC provisions and legislation. This would mean that there would be a statutory duty on Local Authorities to implement the recommendations. Information sharing provisions are also already contained within the Children and Young People (Scotland) Act 2014.
  
  o  *Social Work (Scotland) Act (1968)*
  
  o  *Education (Additional Support for Learning) (Scotland) Act 2004.*

**Q4. Do you think there are any alternatives to Child and Family Impact Assessments?**

Whilst not alternatives to Child and Family Impact Assessments, there are currently processes in place which could support (and be supported by) the introduction of a Child and Family Impact Assessment. These are discussed further below.

**GIRFEC (Getting It Right for Every Child)**

Although legislation is currently in place to support the development of a child’s plan, addressing the specific needs associated with the impact of parental imprisonment will not currently always be included, since the issue is not always apparent. At present, there is a reliance on families self-reporting that a parent/carer is in prison. CJVSF members report that this does not always happen in practice, due to concerns about stigma and concerns about the children being taken in to care.

As such, there is a need to introduce legislation, such as the proposed bill, to act as a trigger, so that relevant issues are identified and appropriate links to support and the child’s plan can be made.

**Child in Need Assessment**

The Children (Scotland) Act 1995 contains a requirement for local authorities to "safeguard and promote the welfare of children in their area who are in need" by providing a range and level of services appropriate to the child’s needs. In this situation, a ‘child in need’ refers to:

- (a) a child being in need of care and attention because—
  
  (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;
  
  (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;
  
  (iii) he is disabled; or
  
  (iv) he is affected adversely by the disability of any other person in his family;
• (b) a child who is “looked after” by a local authority.

**Criminal Justice Social Work (CJSW) Reports**

As highlighted above, Criminal Justice Social Work reports do not often capture the needs of children affected by imprisonment, since the focus of the reports is on the person who committed the offence (See, for example, Gorrie v Procurator Fiscal Haddington 2014⁶).

**Referral to Children’s Reporter**

Children can be referred to the Children’s Reporter on care and protection grounds, however this will not always be the most appropriate option.

**Q5. Do you think the proposed amendment to the Education (Additional Support for Learning) (Scotland) Act 2004 is sufficient to provide the necessary support for children experiencing parental imprisonment? If not, please explain why.**

The consultation suggests an amendment to the Education (Additional Support for Learning) (Scotland) Act 2004 to specifically recognise children affected by parental imprisonment as one of two groups of children (the other being looked after children) where it is presumed that a child will have additional support needs.

CJVSF agrees that it would be helpful to name this group specifically, given the issues raised above about their vulnerability and the often hidden nature of their support needs.

Whilst an important part of the jigsaw, legislation alone is unlikely to be sufficient to ensure the necessary support for children experiencing parental imprisonment. It will also require a change to practice. We would encourage the Scottish Parliament to draw on any relevant learning relating to the 2009 amendment relating to looked after children and would be interested to see any evidence which considers the impact that the 2009 amendment made in terms of improving support for looked after children. In addition to legislation, we anticipate that there will also be a need to:

- **Ensure professionals are adequately trained and supported** – At the heart of this proposed legislative change is a desire to improve practice, so that children and families are better supported. It will therefore be important to ensure that relevant professionals (e.g. police, Named Person, Criminal Justice Social Work, Children and Families Social Work, prison staff) are adequately trained and supported to understand the purpose, process and content of the Impact Assessment so that they are able to use the information gathered from it to provide appropriate support.

- **Make prisons more family friendly** – The Scottish Prison Service is currently exploring ways to make prisons more family friendly and most prisons now have additional visiting hours after school hours. We would encourage them to build on this work to support strong family relationships during a family member’s time in custody.

- **Improve information sharing between those working with children and families.**

**Q6. What are the likely financial implications of the proposed Bill? If possible please provide evidence to support your view. What (if any) other significant financial implications are likely to arise?**

As highlighted in the consultation paper (page 28), the main cost associated with the proposed Bill is likely to be the staffing costs associated with paying the staff responsible for carrying out Child and Family Impact Assessments.

At present, the number of children affected by parental imprisonment is unknown. Therefore, cost calculations will need to be based on assumptions. Indeed, one of the benefits of this proposed legislation is that it would help to improve the data collection around number of children affected by imprisonment to enhance future decision making around investment to support this group of vulnerable individuals.

Whilst there will be costs associated with the Bill, we would also anticipate cost savings in the future since the Impact Assessments would have a preventative role, ensuring that adequate support is put in place before a child’s situation deteriorates. This may lead to savings for a range of departments, including justice, health, education and social work. Evidence suggests that the likelihood of intergenerational offending is also likely to be reduced if appropriate support is provided. Reductions in offending behaviour would also have a cost saving attached.

We are supportive of the preventative approach to public services, promoted by the Christie Commission, and would encourage the Scottish Parliament to also consider future cost savings in any financial analysis of the proposed Bill.

**Q7. Is the proposed Bill likely to have any substantial implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

We would anticipate that the proposed Bill will have a positive impact on equalities, since it would help to identify children and families at an earlier stage that are likely to be at a higher risk of negative outcomes. This would enable appropriate actions to be taken to prevent issues escalating and improve access to non-judgemental support.