**Victim Support Scotland**

**Children (Care and Justice) (Scotland) Bill**

**Stage 3 Debate**

**Briefing Summary**

Victim Support Scotland, alongside our victim support organisation partners, ASSIST and Scottish Women’s Aid, have campaigned to ensure victims’ rights are not eroded.

Significant progress has been made around information which can be shared with victims, and we are highly supportive of the government’s commitment to establishing a Single Point of Contact service, alongside amendments regarding information sharing.

**However, VSS remains concerned that while some parts will maintain victims' rights, other parts will actively remove rights that victims are currently entitled to.**

Specifically, the Bill will erode the rights of victims who are harmed by 16- and 17-year-olds, as they will no longer have rights under Scotland’s Victims’ Code if their case is disposed to the Children’s Hearing System.

[**Independent legal advice**](https://victimsupport.scot/about-us/news-list/victims-charity-seeks-support-to-uphold-victims-rights/) backs up the view that in its current form this Bill will create a two-tiered system for victims, which could have a disproportionately negative impact on victims who are often children themselves.

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**About Us**

[**Victim Support Scotland**](https://victimsupport.scot)**,** is the leading national charity dedicated to supporting people affected by crime throughout Scotland, regardless of when the crime took place or whether it has been reported to the police. We offer free independent and confidential support for victims, witnesses, and their families. We provide support regardless of your background or circumstances, and our personalised services are tailored to meet the unique needs of everyone we assist.

**1. Victims’ Rights**

Throughout the progression of the Bill through Parliament, we have consistently raised concerns that widening access to the Children’s Hearing System will erode the rights of victims in Scotland.

Victims who have their cases disposed to the criminal justice system have rights under the [**Victims Code for Scotland**](https://victimsupport.scot/information-support/your-rights/) which entitles them to information, support, participation and protection.

**Victims harmed by 16- to 17-year-olds would lose these rights when their case is disposed to the Children’s Hearing System.**

Whilst we understand these cases may still go through the criminal justice system under the Lord Advocate’s Guidelines, we remain concerned that this Bill will essentially create a two-tiered system for victims depending on the disposal of their case.

We note **Russell Findlay MSP’s amendments** to retain the age of referral to 16 due to remaining concerns that the lack of support for victims must be addressed before access is given to an additional cohort of offending young people.

**We urge MSPs to consider this argument and the importance of the timeline of implementation for victims.**

We also ask members to support **Russell Findlay MSP’s amendment 68** which would allow victims to make a personal statement relating to the impact the offending behaviour has had on them. We believe this amendment is vital to ensuring the gravity of the offence is understood and would ensure victims have a voice in decisions which will significantly impact them. This would be in line with availability of victim impact statements available in the criminal justice system.

**Legal Opinion**

VSS sought legal advice on this matter which supported the view that the Bill presents an erosion of victims’ rights. The legal analysis of the Bill can be accessed on the VSS website [**here.**](https://victimsupport.scot/about-us/news-list/victims-charity-seeks-support-to-uphold-victims-rights/)

We are supportive of Ruth Maguire’s **amendment 48** which seeks to establish an obligation of the Scottish Government to review and report on support for victims in the children’s hearing system. Whilst we believe much more is required to uphold victims’ rights in the Children’s Hearing System, we are hopeful this will allow the Scottish Government to respond to victims' experiences and improve on the support provided.

**2. Gender-Based Violence**

We are particularly concerned about the consequences for people who have experienced domestic abuse. As the age of referral to the Children’s Hearing System increases, it is anticipated that the number of cases involving domestic abuse being heard by the panel will increase due to the number of offences currently committed by this [**age group.**](https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2021-22/pages/4/)

In the criminal justice system, domestic abuse complainers have access to:

* court advocacy support
* multi-agency working to support safety planning and risk management
* certain legal protections such as non-harassment orders and bail conditions.

**This support will no longer be available under the current Bill.**

Whilst we support government amendments to extend access to Non-Harassment Orders to domestic abuse complainers who have their case disposed to the CHS, this does not go far enough.

**As such, we remain highly concerned that this Bill will disproportionately affect victims of gender-based violence, many of whom are also under the age of 18.**

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**3. UNCRC Compatibility**

VSS are concerned by the government’s amendment relating to UNCRC compatibility issues in relation to decisions to prosecute a child. This amendment could have potentially significant consequences for a victim. It provides the court and COPFS the power to acquit the defendant or adjourn cases for an indefinite period of time if it is believed that the prosecution of this case is not compatible with UNCRC legislation. It provides the court and COPFS with the power to acquit the defendant or adjourn cases for an indefinite period of time if it is believed that the prosecution of this case is not compatible with UNCRC legislation.

We believe this amendment contradicts assurance victim support organisations have been given regarding the Lord Advocate’s guidelines and the retention of the power to dispose cases to the criminal justice system.

We do not believe this is in line with trauma-informed practice and are deeply concerned that an amendment with such a potentially significant impact has been brought forward at Stage 3 without adequate time for scrutiny.

**As such, we strongly urge MSPs to vote against the government amendment 34.**

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**4. Information Sharing and Safety Planning**

Information sharing provisions have been significantly expanded and improved through amendments at Stage 2.

VSS is supportive of **Willie Rennie MSP’s amendments 3, 4, 5, 6 and 7** to information sharing provision at Stage 3. However, we are concerned by the removal of the risk assessment approach which was introduced at Stage 2 and, if amendments pass, will be removed at Stage 3. Whilst we understand the rationale behind this decision, understanding the totality of risk is vital to understanding the need for information to be shared with a victim.

We also remain concerned that there are too many caveats to allow the Principal Reporter to not provide information to a victim or victim support organisation. Victims have continuously given feedback that they have not received any information from the Principal Reporter, despite provisions in place to provide this currently. We also understand there is a significant disparity between the support the CHS *can* provide to victims, and what they do receive.

**As such, we strongly urge the Scottish Government to accompany information sharing provisions with robust guidance surrounding implementation and to ensure victims voices are heard throughout regulation and implementation of the Bill.**

The implementation of these changes will require a significant cultural reform of how the CHS and SCRA uphold victims’ rights and needs.

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**5. Single Point of Contact**

Victim Support Scotland are supportive of provisions within the Bill which obligate the Scottish Government to establish a Single Point of Contact service to support victims through their journey with the CHS.

We are supportive of **Willie Rennie MSP’s amendments 8 – 22** which seek to further amend the provisions introduced at Stage 2.

However, we would like to emphasise that any future Single Point of Contact service must:

* Provide support to all those appeared to have been harmed by the subject child (all victims), regardless of their own age.
* Must uphold the rights and best interests of the person who appears to have been harmed.

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**6. Movement Restriction Conditions**

VSS have consistently raised concerns throughout the progression of the Bill through parliament regarding the ineffectiveness of MRCs as a safeguard for victims. As the policy memorandum of the Bill states “there is no such thing as a ‘breach’ of an MRC” we fail to identify how failure to adhere to an MRC can be effectively managed to protect a victim.

Our concerns are further compounded by the lack of MRCs which have been used, resulting in a lack of information and evidence of how these can effectively restrict the movement of an offending child to protect a victim.

As such, we ask members to **support Roz McCall MSP’s amendment 2** which seeks to ensure there are consequences for any breach of an MRC. We believe this will create a deterrent to breaching MRCs, creating more confidence for victims of the effectiveness of these conditions.

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**7. System Readiness**

Throughout the progression of the Bill through parliament, concerns have consistently been raised regarding system readiness. Speaking to victims with lived experience of the Bill and other victim support organisations, there are existing issues regarding how victims are treated when their case is disposed to the CHS and the lack of information they are provided.

**As such, we are concerned that this Bill will see an extension of access to the CHS for all 16- and 17-year-olds, before these issues have been addressed.**

We believe it is vital that changes to information provisions and the establishment of a Single Point of Contact service are put in place *prior* to the commencement of changes to age of referral. The CHS must be equipped to suitably understand victims’ rights and changes to information sharing provisions before more victims see their cases disposed to the Reporter.

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**8. Resources**

The success of this Bill is dependent on ensuring there are adequate recourses to support the increase of referrals to SCRA and diversion from prosecution.

In the current economic climate, where cuts are being made to health and social care and education across local authorities, we remain concerned that the resources required for the successful implementation of the Bill will not be available.

As such, we ask members to **support Pam Duncan-Glancy MSP’s amendments 88 and 89** relating to the review of resources prior to regulation.

We also ask members to **support Roz McCall MSP’s amendment 35.**

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**9. Training**

As previously noted, the proposed increase in the age of referral to the Children’s Hearing, will likely see an increase in cases involving gender-based violence being disposed to the system. We believe it is vital that Reporters and Children’s Panel members are equipped with robust domestic abuse training to ensure preparedness to manage these cases.

Domestic abuse in relationships involving young people can present in complex ways and understanding the totality of risk is vital to ensuring a victim is adequately supported with information and safeguarding.

As such, we ask members to **support Pam Duncan-Glancy MSP’s amendment 57.**

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**10. Anonymity**

VSS are significantly concerned by the Scottish Government’s amendments to remove sections 12 and 13 of the Bill relating to reporting restrictions. We believe the decision to remove these sections at Stage 3 has prevented adequate scrutiny of a significant change to the Bill as proposed at Stage 1 and passed at Stage 2.

The removal of reporting restrictions appears to be in contradiction with the Government’s commitment to UNCRC legislation and protecting a child’s right to privacy under Article 16 of the Convention.

VSS continues to campaign for anonymity in perpetuity for children who have died as a result of crime. This is to uphold the rights to privacy and recovery; particularly where surviving siblings are also children. Families supported by our Support for Families Bereaved by Crime Service have signed an [open letter calling for this change](https://victimsupport.scot/about-us/news-list/over-60-families-bereaved-by-crime-in-scotland-sign-open-letter-calling-for-change-in-law-to-protect-child-victims-of-murder/) and a further 16 of Scotland’ major charities have also [declared their support.](https://victimsupport.scot/about-us/news-list/victim-support-organisations-sign-open-letter-calling-for-anonymity-for-children-who-die-as-a-result-of-crime/)

As such, we urge the Scottish Government to retain section 12 and 13 of the Bill and to work with victim support organisations and families bereaved by crime to extend anonymity in perpetuity for children who have died as a result of crime.

We ask members to consider **voting against government amendments 26 and 27.**

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**11. Review and Reporting Requirements**

Throughout the progression of the Bill through parliament, we have identified a significant lack of information and data relating to victims’ experiences of the CHS and case outcomes for victims. To better understand the system’s ability to successfully manage cases involving offending behaviour and victims’ experiences, it is vital that this information is collated, reported and reviewed by government. This will ensure that the government are able to appropriately respond to any gaps identified and issues surrounding victims’ rights.

We believe it is vital the victims’ experiences of the system are understood and responded to and that any impact on the fulfilment of victims’ rights is clearly identified.

**As such, we ask that members support the following amendments:**

* **Amendment 24** - Roz McCall MSP
* **Amendment 48** - Ruth Maguire MSP
* **Amendment 84** - Ruth Maguire MSP
* **Amendment 85** - Martin Whitfield MSP
* **Amendment 86** - Martin Whitfield MSP