

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

ANONYMOUS SUBMISSION 5

1. Voice of the child

The Scottish Government has an obligation under Article 12 of the UHCRC to ensure that a child's views are heard in any proceedings affecting them (1). One of the main concerns about the proposed change in the law is that without appropriate safeguards it will not be the voice of the child that is being heard but the voice of the parent with the most influence over the child.

The Power Up Power Down research project, referenced in the policy memorandum for the Bill, vividly demonstrates how children's views can be influenced by those of adults around them (2). The project showed the 27 children involved, some of them as young as 6, a distressing story of a father behaving in a cruel and controlling fashion, and ignoring the views and feelings of his 2 children. Anyone watching the story would want the children's views to be taken into account in the portrayed court proceedings. The findings of the project reflect the entirely predictable responses of the 27 children. Of course if they had been shown a different story, one in which a mother was coaching the children and manipulating them into expressing her own negative views about a kind and loving father, then they would certainly have expressed different views about how much weight should be given to 'their voice'.

The Scottish Government has an obligation under Article 14 of the UHCRC to respect the right of the child to freedom of thought, and under Article 19 to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse (1). Manipulation of children to express negative views about a loving parent is mental violence and abuse. The proposed change in the legislation will encourage parents to manipulate the views of young children and expose them to emotional harm unless appropriate safeguards are put in place. The courts should of course take the views of children into account, but they should also be obliged to consider if those views are truly theirs, or if they are being unduly influenced.

2. Child's best interests

The Scottish Government has failed to include a rebuttable presumption of equally shared care of children after parental separation in the Bill. This is despite overwhelming evidence that equally shared care post-separation is in the best interests of the majority of children (3). Population-wide studies (the most robust type of epidemiological study) from Sweden show that children in all age groups with equally shared parental care have outcomes similar to those in intact families (4, 5, 6). By contrast those who reside with mostly one parent have worse outcomes, and those in single parent care have much worse outcomes, particularly for their mental health (6). The proposed legislation seems to completely ignore the public health implications for young people, professional advice and advice commissioned by the Scottish Government itself.

Mental Health Policy Commission:

By systematically deploying evidence-informed practices and programmes that maximise resilience and minimise risk factors, it is within our grasp to halve the number of people living with life-long mental health problems in a generation. What is required is transformational change that embeds prevention in all policies and practices that affect young people.'

Children and young People's Task Force:

Recommendation 4 - The Task Force endorses a whole system approach to addressing children's mental health needs, ensuring preventative action to reduce need, and a prompt and proportionate response which improves outcomes for all children who need support or treatment.

Recommendation 5 - Scottish Government and COSLA should support future investments in children and young people's mental health that prioritise early intervention and prevention approaches.

From a public health perspective the case is clear; it is imperative that the Scottish Government does everything it can to promote equally shared care of children after parental separation. Inclusion of a rebuttable presumption of equally shared care would help families to achieve this. Failure to do so will mean losing an historic opportunity to prevent tens of thousands of Scottish children experiencing unnecessary distress and mental ill-health.

12. Practical, financial or other impacts of the Bill

Equality impacts

A duty of equality is a core feature of the UNCRC –

Article 2

1.States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2.States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.(1)

The Bill should therefore ensure that wherever possible parents have an equal opportunity to exercise their rights and responsibilities towards their children set out in the Articles of the UNCRC.. It should also ensure that wherever possible children should not be discriminated against because their parents are separated.

A rebuttable presumption of equally shared care will promote equality with regard to the rights and responsibilities set out in Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 19, 24, 27 and 29, both for parents and children. A failure to include this in the Bill will act as a barrier to equality with regard to these Articles.

References

1. https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf
2. <https://womensaid.scot/project/power-up-power-down/>
3. Linda Nielsen (2018): Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent–Child Relationships, Income, and Conflict in 60 Studies, *Journal of Divorce & Remarriage*
4. Bergstrom et al. Mental health in Swedish children living in joint physical custody and their parents' life satisfaction: A cross-sectional study. *Scandinavian Journal of Psychology*, 2014, 55, 433–439
5. Malin Bergstrom et al. Preschool children living in joint physical custody arrangements show less psychological symptoms than those living mostly or only with one parent. *Acta Pædiatrica* 2018 107, pp. 294–300
6. Bergström M et al. Fifty moves a year: is there an association between joint physical custody and psychosomatic problems in children? *J Epidemiol Community Health* 2015;0:1–6.
7. <https://www.gov.scot/publications/children-young-peoples-mental-health-task-force-recommendations/pages/13/>