

Scottish Government  
Children's Care and Justice Bill  
Consultation on Policy Proposals  
St Andrew's House  
Edinburgh  
EH1 3DG  
[CC&JBill@gov.scot](mailto:CC&JBill@gov.scot)

19 May 2022

## **CHILDREN'S CARE AND JUSTICE BILL: CONSULTATION ON POLICY**

I refer to the above consultation published by Scottish Government in March 2022 and wish to lend my support to the specific proposal of raising the maximum age of referral to the Principal Reporter by the police on offence grounds. As Scottish Biometrics Commissioner, I support the UN Convention on the Rights of the Child (UNCRC) including Article 1 which extends all the rights in the Convention to everyone under the age of 18 years. This includes Article 40 which advocates that, wherever possible, children in conflict with the law should not be dealt with in formal judicial proceedings.

The issues at the heart of this debate are often emotive and improved legislation alone is only part of the solution. As highlighted in a recent article by Tom Wood, the futility of putting young people behind bars needs to be understood against the nature and extent of the factors leading to their offending behaviour, the impact of such behaviour on victims, and the lack of suitable alternatives such as secure care places.<sup>1</sup>

Section 2 (6) of the Scottish Biometrics Commissioner Act requires me to have regard to the interests of children and young persons. My 4-year Strategic Plan laid before the Scottish Parliament in November 2021 therefore sets out my intention to conduct a thematic review of biometric data relating to children and young people in late 2022. Arrangements for this work, including potential collaboration with other bodies is currently being developed.

In advance of our review, a cursory look at DNA data volumes by age within the Scottish DNA database shows that from around 349,000 profiles held in the system, more than 90,000 profiles relate to samples taken from persons following arrest who were under 18 years of age at the time the sample was taken. These figures, some of which are historic, exclude children referred to the Children's Reporter as in such cases biometric data is not retained unless the subject already has a criminal record.

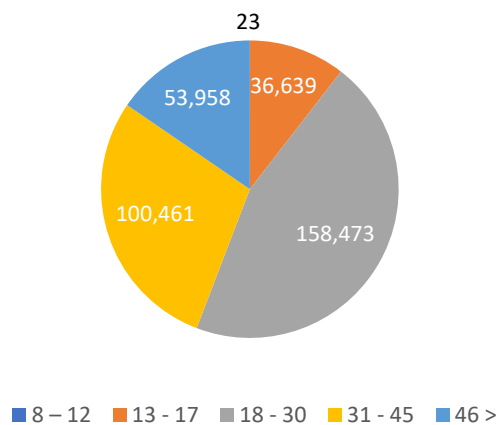
Although, the overall match rate in Scotland from DNA recovered at a crime scene to an existing criminal justice profile is 60%, this match rate does not of course translate to corresponding levels of crime solvency as there are various reasons why DNA or indeed other forms of evidence may be recovered from a crime scene that are completely

---

<sup>1</sup> Scottish justice: Keeping under 18s out of prison is a good idea but legislation alone is now the answer, Tom Wood, published in The Scotsman, 14 March 2022:  
<https://www.scotsman.com/news/opinion/columnists/how-do-we-stop-teenagers-embarking-on-a-life-of-crime-tom-wood-3607284>

unconnected with the perpetrator. Correspondingly it follows that metrics on volumes of biometric data held relating to children and young people tell us little about the outcome of doing so, other than as a means of verifying and fixing identity.

The following pie chart shows that almost 26% of DNA profiles currently held on the Scottish DNA database relate to people who were under 18 years of age at the time that the sample was taken. A proportion of this is a direct legacy of the former draconian approach in Scotland whereby children aged 8 to 12 years of age fell within the age of criminal responsibility. In that regard, my own view is that the age of criminal responsibility in Scotland is still too low by comparison with other European countries where the average age is 14 years.



**Chart 1: Scottish DNA Database statistics by age: Source Scottish Police Authority**

Following our review, I shall report to the Scottish Parliament on any other issues pertinent to biometric data and children as it relates to policing and criminal justice. However, I fully support the proposal to raise the maximum age of referral to the Principal Reporter by the police on offence grounds.

This would ensure that the best interests of the child are given primacy, and additionally would provide a convenient opportunity for Police Scotland to consider the utility of capturing biometrics from children aged 16 and 17 years where they are likely to be the subject of a report to the Children's Reporter. In turn, this will reduce the stigmatisation of children through having their extremely sensitive biometric data captured and stored on national policing systems.

Yours sincerely

*Brian Plastow*

**Dr Brian Plastow**

**Scottish Biometrics Commissioner**

Visit our website: <https://www.biometricscommissioner.scot/>