

# **PE2064/D: Ensure that under 16s charged with rape are treated as adults in the criminal justice system**

## **Police Scotland submission, 16 July 2024**

The Committee have requested how many cases have been reported to Police Scotland but did not result in further action where the incident involved –

- suspected rape by a person under 16
- suspected serious sexual assault by a person under 16

It should be highlighted that there are no reports of rape or sexual assault made to Police Scotland which result in no further action. In all cases there is some form of 'further action' taken. 'No further action' is not a disposal used by Police Scotland and it is unclear whether this question looks to focus on the outcomes of reports made to COPFS. If this is the case, Police Scotland do not hold this information and would be unable to provide this information.

As per the Lord Advocate's Guidelines for the reporting of offences alleged to have been committed by children, a Police report is submitted jointly to the Procurator Fiscal (COPFS) and the Scottish Childrens Reporter Administration (SCRA) where there is a sufficiency of evidence and the crime is 'so serious in its nature as to merit being prosecuted on indictment' (as stipulated by the guidelines).

All detected cases of rape for the age group highlighted are reported to COPFS and SCRA.

There is no crime of 'serious sexual assault' within the Sexual Offences (Scotland) Act 2009. In addition to Section 1 (Rape), the following crimes are also specifically covered by the Lord Advocate's Guidelines:

- Section 2 – sexual assault by penetration
- Section 18 – abuse of position of trust: sexual activity in the presence of a child
- Section 19 – sexual assault on young child by penetration

It should be noted that dependent on the circumstances, this does not preclude other offences under the Sexual Offences (Scotland) Act being reported if deemed relevant. The circumstances and severity of each sexual offence must be considered before deciding on the most suitable and proportionate outcome of a Police investigation. Where the offence is deemed relevant to the Lord Advocate's Guidelines, the report will be submitted to COPFS/SCRA.

As with other offences committed by children under 16, where a sexual offence is not deemed to have met the criteria for the Lord Advocate's Guidelines, there are a number of other pathways available, to avoid children being introduced to the

criminal justice system, but also to ensure appropriate and proportionate supports and/or interventions in line with GIRFEC. This could include Early and Effective Intervention (EEI) or measures such as a single/joint agency intervention from partners such as Social Work/Health/Education or Third Sector partners. No offences of rape or of the sections of the Sexual Offences (Scotland) Act which are highlighted under the Lord Advocate's Guidelines would result in such measures.

Only where an investigation resulted in an 'undetected' crime being recorded would there be 'no further action', simply due to there being a lack of sufficient evidence to support any harmful behaviour or provide a sufficiency of evidence to charge an individual. However, even in this case, once an investigation has been completed, it is likely that the young person will have been subject to a multi-agency discussion which may result in Social Work/Health/Education intervention or support. This would be decided on a case-by-case basis.

Police Scotland continue to work with Scottish Government and partners under the remit of Children (Care and Justice) (Scotland) Act 2024 and Age Criminal Responsibility (Scotland) Act 2019 (ACRA). ACRA legislates Police Scotland's response to children in conflict with the law who are under the Age of Criminal Responsibility.

Police Scotland actively participates in the Scottish Government's ACRA Advisory Group and associated Sub-Groups. A review of the legislation to date and considerations regarding future age rise implications currently form the focus of this work.

The Children (Care and Justice) (Scotland) Act 2024 safeguards the rights, safety and welfare of children who conflict with the law throughout criminal justice proceedings from police custody to court processes. Notably, this advocates that children under the age of 18 years should not be brought into police custody but should be taken to a place of safety if appropriate. However, it appears the Act is still non-prescriptive in terms of serious criminal offences and the protocol which should be applied.