

Citizen Participation and Public Petitions Committee  
Wednesday 11 December 2024  
19th Meeting, 2024 (Session 6)

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

### Introduction

**Petitioner** Julie Mitchell

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to ensure that under 16s charged with rape are treated as adults in the criminal justice system.

**Webpage** <https://petitions.parliament.scot/petitions/PE2064>

1. [The Committee last considered this petition at its meeting on 6 March 2024](#). At that meeting, the Committee agreed to write to the Lord Advocate and to make reference to the issues raised in the petition as part of its letter to the Minister for Community Safety on petition PE1947.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the Lord Advocate, Police Scotland, and the Petitioner, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 7 December 2023](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 402 signatures have been received on this petition.

### Action

8. The Committee is invited to consider what action it wishes to take.

**Clerks to the Committee**  
**December 2024**

## **Annexe A: Summary of petition**

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

### **Petitioner**

Julie Mitchell

### **Date Lodged**

9 November 2023

### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to ensure that under 16s charged with rape are treated as adults in the criminal justice system.

### **Previous action**

I've reached out to the Scottish Crown Office and Procurator Fiscal Service and the Lord Advocate.

I've bombarded the Ministry of Defence for 3 years.

### **Background information**

Under 16s charged with rape or sexual assault are protected and treated as children. Where are the human rights of child victims? Rape is an adult crime and should be treated as such. I believe that such individuals should be added to the sex offenders register.

## **Annexe B: Extract from Official Report of last consideration of PE2064 on 6 March 2024**

**The Convener:** The second of our new petitions, on which colleagues will note that they have a late submission on the table before them, is PE2064, which has been lodged by Julie Mitchell. The petition calls on the Scottish Parliament to urge the Scottish Government to ensure that under-16s who are charged with rape are treated as adults in the criminal justice system. The SPICe briefing explains that certain offences for children over the age of 12 and under the age of 16 must be jointly reported by the police to the children's reporter and the procurator fiscal. Rape is considered to be an offence that requires joint reporting, and the procurator fiscal decides whether prosecution will proceed in the adult justice system.

Regarding the sex offenders register, where a case proceeds in the adult criminal justice system and results in a conviction for rape, the notification requirements apply regardless of age. However, the length of the notification period is reduced for those under the age of 18. The Lord Advocate is reviewing diversion from prosecution as it relates to sexual offences, to consider whether it is being used appropriately. The Scottish Government's response to the petition notes that its policy position is to keep children out of the criminal justice system wherever possible and appropriate. However, it recognises

“the need to strike a balance between supporting children who come into conflict with the law and ensuring that our communities are safe and that victims are supported.”

Do members have any comments or suggestions for action?

**David Torrance:** Perhaps the committee would like to write to the Lord Advocate seeking an update on the review of diversion from prosecution for sexual offences and make reference to issues raised in this petition as part of any letter to the Minister for Community Safety on PE1947.

**The Convener:** Are we content to take forward Mr Torrance's recommendation and to combine that with the issues that are raised in PE1947?

**Fergus Ewing:** Although I support Mr Torrance's recommendation, I note that we might, in addition, when writing to the Lord Advocate, seek from her such data evidence as is available, without going into names, of cases that have arisen over the past few years. Legislation was passed in this area fairly recently, I think.

There is no doubt whatever that it is an area of huge public concern, for the reasons that the petitioner sets out in their supplementary submission.

As well as the review of diversion, which I think was instructed last July so might not yet have been completed, it would be useful to find out how many cases there have been of rape by under-16s, how serious the situation is, how many instances there have been each year and any further information about that. That would help to provide a bit more background. It is plain that any case can have tragic consequences for the victim, which is what the petitioner has emphasised in the supplementary submission.

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**The Convener:** That is reasonable. I will try to find wording that would allow us to establish that. We will keep the petition open and pursue as recommended the issues that are raised.

## Annexe C: Written submissions

### Lord Advocate written submission, 2 April 2024

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

I refer to your letter dated 11 March 2024 seeking an update on the review of diversion from prosecution for sexual offences and data on how many cases there are for suspected offences of rape and serious sexual offences by under 16's which are jointly reported to the Children's Reporter and the Crown Office and Procurator Fiscal Service (COPFS).

I have previously corresponded with the petitioner, and I am aware of the content of the petition the Committee is considering. I would like to reiterate that sexual offences, including rape, are among the most difficult cases prosecutors deal with. I am acutely aware of the trauma experienced by victims and their loved ones because of these abhorrent crimes. These cases are particularly difficult when the victim and accused person are both children. As public prosecutors, we are trusted to make appropriate decisions considering the rights of all children involved.

For context, Police Scotland jointly report allegations of rape and serious sexual offending involving a child accused to both the Procurator Fiscal and the Children's Reporter for consideration, in line with the **Lord Advocate's guidelines: Offences committed by children** [<https://www.copfs.gov.uk/publications/lord-advocate-s-guidelines-offences-committed-by-children/>]. Where a child accused is under the age of 16, there is a presumption that the case will be dealt with by the Children's Reporter. The presumption may be overridden in exceptional circumstances. The prosecutor will discuss the case with the Children's Reporter in advance of any decision. The agreement '**Decision making in cases of children jointly reported to the Procurator Fiscal and the Children's Reporter**' [<https://www.copfs.gov.uk/publications/decision-making-in-cases-of-child-accused/html/>] sets out how prosecutors and the Children's Reporter deal with cases referred to them. The final decision in a jointly reported case rests with prosecutors, taken in line with the **Prosecution Code** [<https://www.copfs.gov.uk/publications/prosecution-code/html/>].

#### Review of Diversion for sexual offences

Last year I instructed a review of how prosecutors deal with diversion from prosecution in cases of serious sexual offences, including rape. The scope of the review has been extended to include how prosecutors deal with referrals, in these cases, to the Children's Reporter. We recognise the profound impact of such crimes upon victims. I am determined to improve the experience for victims of the criminal justice system. The review includes the development of revised prosecution policies, following consultation with key stakeholders. The revised policy will be published externally.

The review is making good progress and places victims as its heart. To date, there has been a review of the existing COPFS prosecution policies and roundtable discussion events have been held with key stakeholders. Those stakeholders have provided input from the perspective of victims and witnesses of rape and other serious sexual offences, including views from those with lived experience. We have also had input from stakeholders who represent children in conflict with the law and heard their views on how prosecutors should deal with diversion from prosecution and referral to the Reporter in rape cases.

As part of the review, I appointed a Senior Advocate Depute to conduct an examination of all cases of rape which were diverted or referred to the Reporter in the last five years. The review will identify factors relevant to decisions in these cases and any other issues considered to be important to the operation of diversion and referral to the Reporter. The feedback and information gathered will inform the revised prosecution policies.

Due to the sensitivity of the work, and to encourage a full and frank exchange of views, the review is proceeding on a confidential basis.

As independent head of the criminal prosecution system, I will consider the outcome and recommendations of the review and approve the revised prosecution policies prior to their publication. I expect that the review will conclude, and the revised prosecution policies will be published, by mid-summer.

As additional information in December 2021, I commissioned Susanne Tanner KC to carry out a review of how prosecutors in Scotland deal with reports of sexual offences (the Sexual Offences Review). The Sexual Offences Review recognises the profound impact that sexual crimes have on victims and on society and the fact that, in recent years, sexual offences have become about 70 per cent of the casework of Scotland's High Court prosecutors and the number of cases has further increased in 2022. The outcome of this review will identify best practice, make recommendations for improvement in this important area and inform our approach to sexual offences. We anticipate publication of the review in the coming months.

Data requested from 1 January 2018 to 31 December 2023.

In relation to the data requested on how many cases of suspected rape by a person under 16 have been reported to the Children's Reporter and the Procurator Fiscal, I can advise the following:

There were 266 cases reported for children aged between 12 and 15 years old (inclusive) which were reported jointly to the Children's Reporter and Procurator Fiscal for rape (or attempted rape) between 1 January 2018 to 31 December 2023.

The table below shows the number of cases reported for each year.

<b>Cases of Rape or attempted Rape reported for 12–15-year-olds inclusive.</b>							<b>Grand Total</b>
	2018	2019	2020	2021	2022	2023	
<b>Total</b>	<b>45</b>	<b>34</b>	<b>34</b>	<b>49</b>	<b>49</b>	<b>55</b>	266

The Committee also requested data on how many cases of suspected serious sexual assault by a person under 16 had been reported to the Children’s Reporter and the Procurator Fiscal, I can advise the following:

- There were 462 cases reported for children aged between 12 and 15 years old (inclusive) which were reported jointly to the Children’s Reporter and Procurator Fiscal accused of ‘serious sexual assault’ between 1 January 2018 to 31 December 2023. For clarity ‘serious sexual assault’ has been interpreted as cases which would be usually prosecuted on indictment. The cases which have been reported in this time frame relate to contraventions of sections 2, 3, 4, 19, 20, and 21 of the Sexual Offences (Scotland) Act 2009. The table below shows the number of cases reported for each year.

<b>Cases of Sexual Assault reported for 12–15-year-olds inclusive.</b>								<b>Grand total</b>
		2018	2019	2020	2021	2022	2023	
<b>Total</b>		<b>62</b>	<b>67</b>	<b>55</b>	<b>87</b>	<b>99</b>	<b>92</b>	<b>462</b>

All cases reported are reviewed by legal members of staff to confirm there is a sufficiency of evidence before making a prosecutorial decision, in the public interest.

In relation to the third set of data requested, COPFS is not in possession of such data, and I understand you will request this directly from Police Scotland who hold the information.

I trust that this information is of assistance.

Yours sincerely

**THE RIGHT HONOURABLE DOROTHY BAIN KC  
LORD ADVOCATE**

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

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

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.

## **Petitioner written submission, 27 November 2024**

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

I thank you for the opportunity to send in a written submission.

Getting it Right for Every Child is failing our innocent children.

Education starts in the home. Young boys and girls should be taught to respect their peers and to know their worth. That should be incorporated in an educational environment also.

The statistics provided by The Lord Advocate make for horrific reading.

Cases of rape are rising every year and they are becoming more violent.

Since this petition started, I have had parents reach out to me from all over the country regarding their sons and daughters.

Does a child not only need to be raped or sexually assaulted but murdered too before you take action?

You have no idea of the devastating impact this crime has on the children and their families.

The justice system is wrong.

It's 2024, nearly 2025.

How many more victims have been added to the statistics?

Predators are walking free with behaviour therapy and a green card to pass go. No criminal record or registry on the sex offender's register. They are free to do it again and again because there's no deterrent in place.

This is of huge public concern, and the LAW is a creature of politics. It shouldn't be like this for our children. We are supposed to protect them the best we can as parents.

You are supposed to protect them with the powers you can and should use.

The current policy of the Scottish Government is keeping young criminals out of the Justice System!

These aren't shoplifters, vandals, or kids getting up to no good.

They are rapists & sexual predators. Social work don't have the expertise to "treat a rapist with therapy"

You can't cure a rapist. They need to be on a sex offender's list and punished for their crimes against girls or boys.

They ruin lives, shatter dreams, destroy souls and it never goes away.

It affects the rest of your life.

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Please, I beg you to change the law for future generations of children.

We would like something good to come out of our and every other victims' horrendous journey.

We need some justice for the victims.