

**PRACTICE GUIDE**  
*for support workers*

**People With Learning  
Disabilities in the  
Scottish Criminal  
Justice System**

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*October 2017*



Compiled on behalf  
of the SOLD Network  
by ARC Scotland

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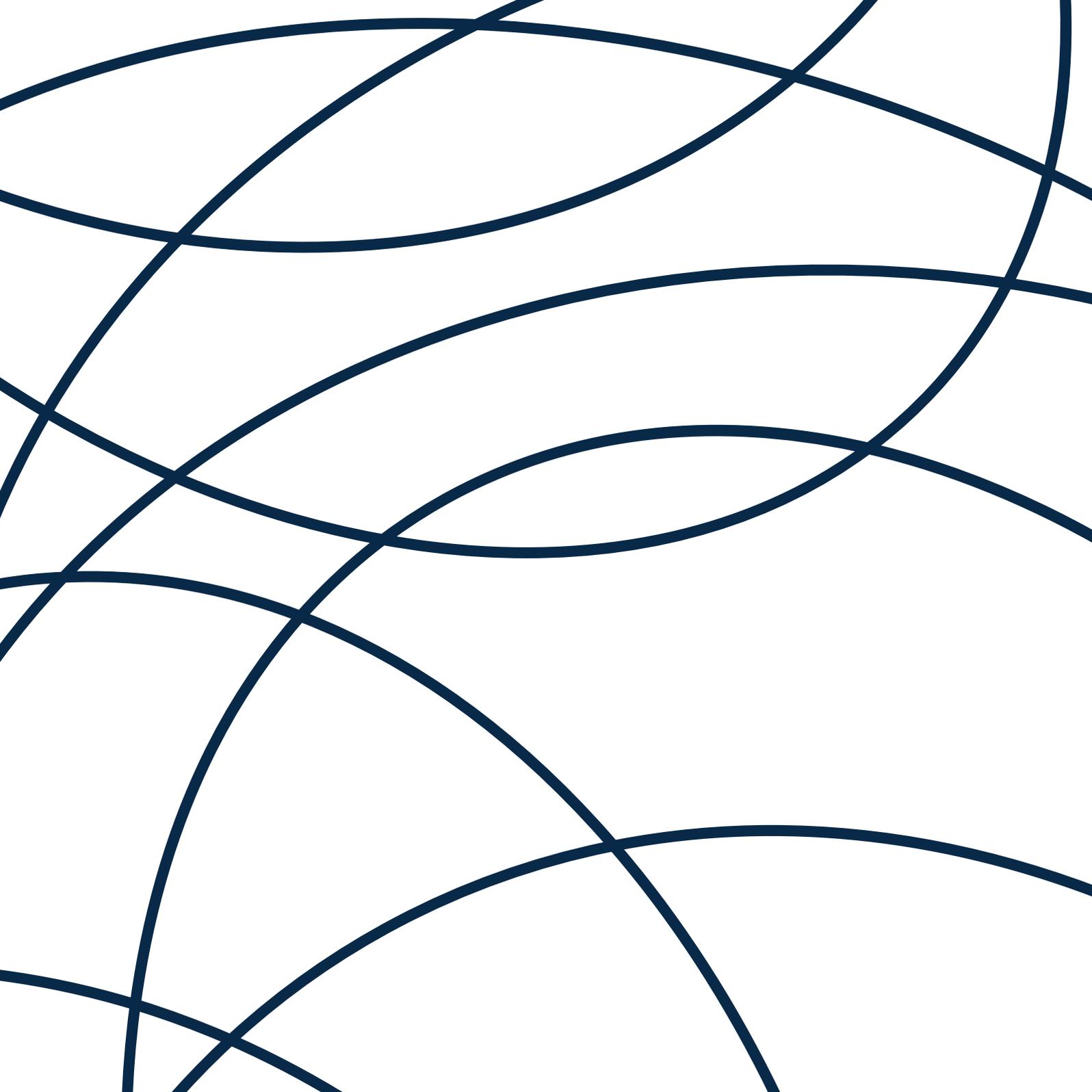
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# Foreword

Supporting a person with a learning disability, or communication difficulties, through the justice system can be challenging. We know this is an area which many support workers find particularly complex as they often do not have in-depth knowledge of the criminal justice processes in Scotland.

I am delighted to see that the 'Practice Guide for Support Workers - People with Learning Disabilities in the Scottish Criminal Justice System' provides essential information for front-line health and social care agencies and workers who find the person they support involved in the criminal justice system. This guide supports staff to make well-informed and constructive contributions to criminal justice processes that will be valued by both the person they support, and partner professionals in the criminal justice system.

There are practical ways in which support workers can help to ensure that a person with communication difficulties is not disadvantaged by Scotland's criminal justice system as a result of their disability. This guide specifically sets out the different criminal justice processes involved and the points at which support staff can make a positive contribution to each of them.

The Scottish Government is committed to reducing offending and improving support for people with learning disabilities and I am grateful for the continued work that SOLD do to identify the needs of people with communication difficulties in the justice system. I am confident that this guide will provide invaluable support to front-line health and social care agencies and workers, and will help to continuously improve the support given to those on Scotland's criminal justice pathway.

**Foreword by Michael Matheson MSP**  
Cabinet Secretary for Justice

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# Introduction

This guide aims to help support workers who find the person with learning disabilities they support in the criminal justice system. It provides information about how they can make a well-informed, constructive contribution, which is valued, not just by the person they support, but also by partner professionals in the criminal justice system.

It has been produced by the Supporting Offenders with Learning Disabilities (SOLD) network in consultation with our partners in Police Scotland, Scottish Courts and Tribunals Service, Crown Office and Procurator Fiscal Service, Scottish Prison Service, NHS, Law Society of Scotland, Scottish Legal Aid Board, Social Work, Independent Advocacy and the voluntary sector.

It is aimed at those who provide front-line support for people who have a learning disability in social care agencies in the voluntary, statutory and independent sectors. It will also be useful to those responsible for developing organisational policies concerning their role in supporting people who are accused or convicted of an offence.

The guide will also be relevant for those who support people who have other significant communication difficulties, such as acquired brain injury, autism and foetal alcohol syndrome.

The principal aim is to help ensure that nobody in the criminal justice system is at a disadvantage because they have a learning disability or other significant communication difficulty. It is concerned with helping to:

- ensure that people with learning disabilities are supported to understand and exercise their rights to fair and equal access to justice
- ensure people with learning disabilities are able to participate fully in the criminal justice system's processes
- inform support providers of their role in these processes

The intention is not to help people with learning disabilities to avoid the consequences of offending behaviour, or be treated more lightly in the criminal justice system.

This is a difficult and challenging area. Social care staff are unlikely to have an in depth knowledge of the criminal justice system. They may also find that the person's offending behaviour challenges their personal values or beliefs. Whatever the circumstances, professionals have a responsibility to support individuals to the best of their ability, and not to allow personal feelings to influence the quality of professional practice.

The guide is concerned only with the processes of the criminal justice system and with mainstream criminal justice sentences. It does not contain information regarding diversion from prosecution or other stages of the criminal justice system.

If the person becomes involved with the criminal justice system, you should always report this to your line manager. Do not act without your line manager's knowledge and agreement.

**The intention is to help support workers provide the most effective and constructive support to people with learning disabilities involved in the criminal justice system, and for that support to be of value to both the person being supported and to criminal justice professionals. The intention is not to be specific about what is required in individual circumstances. Agencies working with people with learning disabilities must ensure that they comply with legal requirements across several pieces of legislation, and strive towards best practice. This is not a guide to the law and should not be used as a substitute for taking appropriate advice on the legal implications of specific situations. Nor should it be used as an alternative to established organisational policies and procedures.**

Where references to legislation are made, we have done our best to accurately state the legal position as at the present time. Updated information is available on the SOLD website: [www.soldnetwork.org.uk](http://www.soldnetwork.org.uk)



About SOLD

The Supporting Offenders with Learning Disabilities (SOLD) network was established in response to the Keys to Life, the Scottish Government strategy on improving the quality of life for people with learning disabilities 2013, recommendation 46:



*That a national criminal action group is to be established in 2013, consisting of professionals in this field and working in partnership with people with learning disabilities, to identify challenges and promote opportunities and influence change and to provide support for people with learning disabilities in the criminal justice system.*

The work of SOLD is funded by the Scottish Government Community Justice Division.

SOLD is led by a partnership between People First Scotland and the Association for Real Change (ARC) Scotland. Support and guidance for our work comes from a User group of people with learning disabilities who have experience of the criminal justice system, and an Advisory group of professionals and a representative from the User group.

ARC Scotland is a national charity that advances knowledge, practice and policy in health and social care for the benefit of people with learning disabilities or other additional needs. The organisation is committed to people with learning disabilities or other support need being at the heart of their services and communities.

People First Scotland is a collective self-advocacy organisation that seeks to change the way people with learning disabilities see themselves and are thought of by society, and to influence law and social policy that affects people with learning disabilities.

There are over 330 members of the SOLD network from a broad range of backgrounds including: voluntary sector providers, Police Scotland, NHS, Social Work, academic institutions,

Scottish Courts and Tribunals Service, Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS).

## SOLD aims to reduce offending and improve support for offenders with learning disabilities in Scotland.

The beneficiaries of our work also include people who have other significant communication difficulties, such as acquired brain injury, autism and foetal alcohol syndrome.

If you have a learning disability and experience of the criminal justice system, and you would like to join our user group, please email: [Kenny.mckay@peoplefirstscotland.org](mailto:Kenny.mckay@peoplefirstscotland.org)

## Become a member of the SOLD Network

Membership of SOLD is free and open to anyone who shares our aims, including people with learning disabilities, professionals in the criminal justice system or those providing support for people with learning disabilities. To join, visit our website: [www.soldnetwork.org.uk](http://www.soldnetwork.org.uk)

In 2015, SOLD published The Criminal Justice Pathway for People with Learning Disabilities: [www.soldnetwork.org.uk](http://www.soldnetwork.org.uk)

Alternatively, you may wish to keep up to date with us via twitter: [@SOLDarcscot](https://twitter.com/SOLDarcscot)

For more information, contact Tony Bowman:

[tony.bowman@arcuk.org.uk](mailto:tony.bowman@arcuk.org.uk)

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How might  
the person  
be feeling?

It is important to consider the emotions the person you support might be experiencing if they become involved with the criminal justice system. The statements below represent the things people with learning disabilities have said. Some of these have been documented by research, others are from what members of the SOLD user group have told us:

- I felt scared, frightened and confused
- I did not understand my rights
- I did not feel confident enough to insist on my rights
- I did not understand what was going on
- I would have liked someone to explain what was happening in a way I could understand
- I felt there was too much information to take in at the time and wished someone could have explained it to me again afterwards

### **In police custody:**

- I did not understand why it was important to speak to a lawyer
- I did not understand I could answer 'no comment' or remain silent
- I felt worried I would look guilty if I answered 'no comment'
- I confessed to an offence I did not commit because I was intimidated and did not understand the consequences.

**In court:**

- I could not understand the process or the language
- I felt pressure to answer yes to questions I did not understand because I did not want to look stupid
- I did not understand who all the different people were and what their roles were
- I did not understand the rules of the court such as when to stand up and not to chew gum.

**In prison:**

I did not understand the forms and rules, so I missed out on things:

- Missed visits for filling in the form wrong
- Did not get what I wanted to eat for filling in the form wrong
- Missed a film showing for not being able to read the poster
- I did not get help when I asked for it.

Throughout, the most important role you are likely to have is in helping the person to understand what is happening, or going to happen, and in offering emotional support.

What skills and  
knowledge do I have  
that can help me to  
support the person?

If the person you are supporting becomes involved with the criminal justice system you may feel overwhelmed by the challenge in front of you. However, it is important to remember that you have skills and knowledge that will allow you to provide the person with effective and critical support. Simply knowing the person will provide insight into:

- the person's level of understanding for example the way they are likely to react if they become frustrated at not being able to understand
- the way they communicate for example the way they react if they become frustrated at not being able to make themselves understood
- the most effective way to support the person with communication.

This is important because people with learning disabilities and other support needs can easily be labelled as having 'challenging behaviour'. All behaviour is a form of communication. The person is trying to communicate something by behaving in a way that some people would call 'challenging'.

The Equality and Human Rights Commission conducted research in 2016 into the experiences of people with learning disabilities in the Scottish criminal justice system. One of their findings was that

there were often positive outcomes for people who had a support package in place when they became involved with the system. Having access to emotional support and someone to explain what was happening helped to improve their experience and participation:



*Individuals already receiving support from either local authority or third sector organisations before they were accused or convicted of crime are more likely to say that had a positive experience in relation to both their treatment within the criminal justice system, and the support they were provided with to understand and participate in the process.*

Use the link below to view the full briefing paper:

[www.equalityhumanrights.com/en/publication-download/experiences-people-learning-disability-scottish-criminal-justice-system](http://www.equalityhumanrights.com/en/publication-download/experiences-people-learning-disability-scottish-criminal-justice-system)

It is important not to underestimate the significant role you can have in supporting the person you work with to understand and participate in the criminal justice system.



Independent advocacy

Some advocacy organisations have experience and expertise in supporting people with learning disabilities throughout the criminal justice system. It may be that the most effective support you can provide is to refer the person to such an organisation. However, provision of independent advocacy differs from one local authority area to another. You should check what services are available in the area in which the person lives. Guidance is given below.

If the right advocacy support is available, you should refer the person to that service. If it is not available however, the information in this guide will help you to support the person yourself.

## Purpose

Independent advocacy is a support service available to people with learning disabilities and other communication difficulties. It is independent from statutory and other services, such as the police or social work. Independent advocacy will;

- support people to express their own needs and make their own informed decisions
- support people to gain access to information and explore and understand their options
- speak on behalf of people who are unable to speak for themselves, or choose not to do so
- safeguard people who are vulnerable or at risk of discrimination.

## What are the person's rights?

People with learning disabilities are legally entitled to independent advocacy

## Mental Health (Care and Treatment) (Scotland) Act 2003

**section 259 (1) Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of —**

- a** Each local authority, in collaboration with the (or each) relevant Health Board; and
- b** Each Health Board, in collaboration with the (or each) relevant local authority, to secure availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.

## What can I do to support the person?

- If there is an advocacy organisation that can provide the right support for the person, make the referral
- Contact the Scottish Independent Advocacy Alliance (SIAA) to check what services are available in the person's local authority area:  
➤ [www.siaa.org.uk/find-advocate/](http://www.siaa.org.uk/find-advocate/)
- Ask the person if they would like you to go with them to the first meeting with the advocate
- If the right support is not available in the person's area, the information set out in this guide will help you to support the person yourself.

Remember:

Do not act without your line manager's knowledge and agreement.

Police

## Purpose

The role of the police is to maintain law and order, protect members of the public and their property, and prevent, detect and investigate crime. The police have a legal duty to investigate any report of a crime being committed.

This chapter deals only with the procedure of a police investigation. Some offences are investigated by organisations other than the police for example the Department for Work and Pensions (DWP), and the Scottish Society for the Protection of Animals (SSPCA).



There are important differences between detention and arrest:

If the police have sufficient evidence that the person has committed a crime they will arrest the person.

If they suspect the person committed a crime or offence but they need more time to conduct further investigations they can detain the person.

## Detention: what are the person's rights?

The person must on request provide their name, address, date of birth, place of birth and nationality. They do not have to answer any other questions.

The police have to decide if the person is fit to be questioned.

The person has the right to speak to a lawyer in private. When learning disability is not involved the person can initially refuse a lawyer. If they do this, they can still ask to consult a lawyer at any point when the police are interviewing them.

But, if the person has a learning disability, they cannot refuse an initial consultation with a lawyer. They must be given a consultation with a lawyer prior to being questioned.

If the police think a person has a learning disability they must ask for an appropriate adult.

If the police suspect the person will find it difficult to understand and answer police questions, they can request an appropriate adult.

The person can request to have a lawyer with them during the interview and must have an appropriate adult because they have a learning disability

- the lawyer will give the person legal advice and protect their rights
- the appropriate adult will make sure the person understands the questions, and monitor if they are becoming distressed
- it is good practice for the appropriate adult to sit in a position where they can see the person's face. This is so they can monitor the person's level of distress. If you are present in the interview, be sure you do not impede the appropriate adult's ability to do this

The person also has the right

- To be held in custody for up to 12 hours without charge. This can be extended to 24 hours
- To know why they have been detained, and why they are being held in custody
- To receive urgent medical attention
- To receive a drink of water at any time
- To receive food, if they are in custody for more than four hours
- To have a reasonably named person told they are at the police station (this must be someone who is not involved in the offence)

- To be given a 'Letter of Rights'. This sets out the person's legal rights whilst they are in police custody. For a copy use the link  [www.gov.scot/Resource/0046/00468531.pdf](http://www.gov.scot/Resource/0046/00468531.pdf)
- If the police suspect the person is physically or mentally unwell, they must request a medical examination
- If they are under 16, to be visited by their parent or guardian (if the circumstances are appropriate: for example the parent is not involved in the offence)

The person might also have their finger prints, DNA and photograph taken.

When all enquiries are finished the police will decide if there is sufficient evidence to charge the person.

### **At the end of the interview**

The person could be;

- released without charge and enquiries are complete
- released without charge but the police intend to conduct further enquiries which might identify sufficient evidence to charge the person at a later date
- charged with an offence. They may be held in custody to appear at court or released to appear at court on a later date.



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*The role of the appropriate adult is to facilitate communication between the person and the police. If the police suspect the person will find it difficult to understand and / or they have a learning disability, they must have an appropriate adult.*

*More detailed information about appropriate adults follows in chapter 8*

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## **Detention: what can I do to support the person?**

There are two scenarios that will determine what support you are able to offer.

### **One**

Following their release from custody you find out that the person has been detained / arrested by the police. In this case the first stage at which you will likely be able to provide any support will be with the Procurator Fiscal Service (see Chapter 9)

### **Two**

You know in advance that the police want to speak to the person for example, if the person has been asked to attend a pre-planned interview, or you happen to be present by chance. In this case you can arrange to be with them.

- You should inform the police the person has a learning disability and needs support
  - The person *must* have an appropriate adult in the interview with them if they have a learning disability
  - The person *must* have a consultation with a lawyer before they are questioned if they have a learning disability
- You should help the person understand why it is important to speak to a lawyer before answering any questions. The lawyer will advise the person what to say and protect their rights
  - You *are not allowed* to be with the person when they *speak* to the lawyer in police custody
  - You *are allowed* to support the person in meetings with the lawyer outside of police custody, if the lawyer agrees
- You can advise the person that they can request to have a lawyer with them during the interview. This will help the person keep to the lawyer's advice. But the person has to make that decision for themselves. You *must not* influence the person's decision to make that request
- The person might want you to support them also, because you have an established working relationship and you understand their communication needs. The person can ask for you to be present in the interview. Again, this request *must* be made by the person. You *must not* influence the person's decision to request that support. It is at the discretion of the interviewing officer (the police officer who will be conducting the interview. See more information on the police interview below)
- You should ask the lawyer to agree that you provide support for the person where it is allowed

- You can ask the lawyer if the interview could be put back to allow the person more time to prepare
  - Everyone has the right to a fair trial, and this should include adequate time to prepare a defence European Convention on Human Rights (ECHR) (article 6). It is reasonable to suggest that as a reasonable adjustment a person with learning disabilities could be given more time to prepare.

*Further information on the role of the defence lawyer follows in Chapter 7*

## **Police interview: what can I do to support the person?**

The person can request to have you present in the room when they are interviewed by the police. So you could be allowed to sit in during the interview if the person you support requests it and at the discretion of the interviewing officer.

However, be aware the police have no knowledge of your relationship with the person or what influence your presence might have. Therefore the interviewing officer must be satisfied that your presence will not have any coercive influence on the person.

In the police interview, you *are allowed to sit* in the room. This is to help the person feel more at ease. You cannot take an active part, intervene or influence the person.

## Arrest: what are the person's rights?

The person must on request provide their name, address, date of birth, place of birth and nationality. They do not have to answer any other questions.

If the police think a person has a learning disability they must ask for an appropriate adult.

The person also has the right

- To know why they have been arrested, and why they are being held in custody
- To have a reasonably named person told they are at the police station (this must be someone who is not involved in the offence)
- To have a lawyer contacted
- To receive urgent medical attention
- To receive a drink of water at any time
- To receive food, if they are in custody for more than four hours
- To be given a 'Letter of Rights'. This sets out the person's legal rights whilst they are in police custody. For a copy use the link [www.gov.scot/Resource/0046/00468531.pdf](http://www.gov.scot/Resource/0046/00468531.pdf)



- If the police suspect the person is physically or mentally unwell, they must request a medical examination
- If the person is under 16 they can be visited by their parent or guardian (if the circumstances are appropriate: for example the parent is not involved in the offence).

The person might also have their fingerprints, DNA and photograph taken.

The police will decide if the person should be held in custody to attend court on the next lawful day (the next day on which the court is open) or if they should be released to appear at court at a later date. This court appearance is known as the 'Pleading Diet'.

The police will report the crime to the procurator fiscal who decide whether to go to trial or deal with the person in another way.

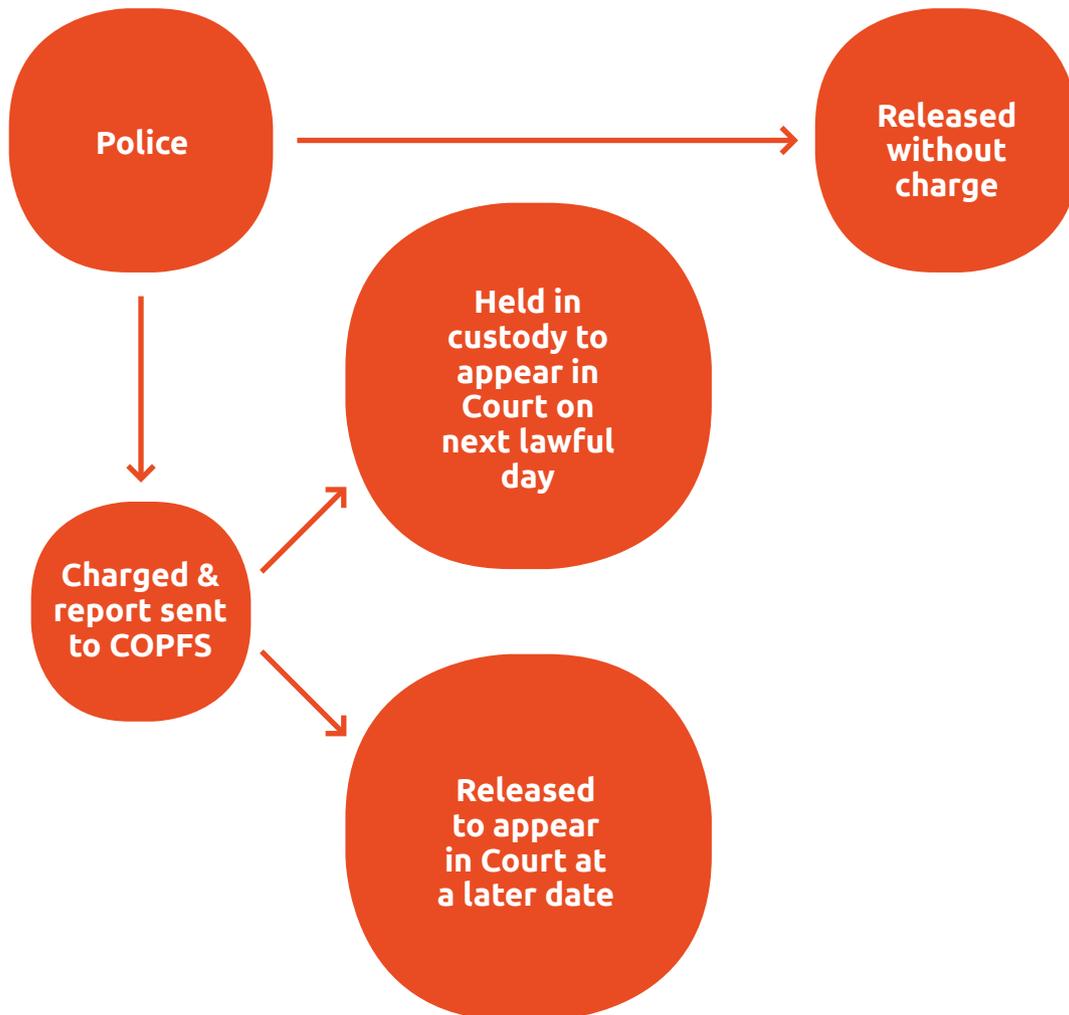
## **Arrest: what can I do to support the person?**

You should inform the police the person has a learning disability and needs support.

Ask the lawyer or custody officer to make sure the procurator fiscal is informed the person has a learning disability.

## What happens next?

If the person is arrested and charged, the police send a report to the Crown Office and Procurator Fiscal Service (COPFS). The diagram below shows the possible outcomes.



Defence lawyer

## Purpose

The role of the defence lawyer is to advise and represent the person suspected or accused of committing a criminal offence. They will give legal advice and protect the person's rights.

## What are the person's rights?

Because the person has a learning disability they *must* speak to a defence lawyer prior to being questioned by the police

Everyone has the right to a fair trial (ECHR, article 6). This should include adequate time to prepare a defence and the right to legal representation (including the right to legal aid if you cannot afford a lawyer).

Law firms have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010).

## What can I do to support the person?

You are not allowed to be present during the defence lawyer's consultation with the person in police custody.

You are allowed to support the person in meetings with the defence lawyer outside of police custody, if the lawyer agrees to this.

### **In general**

You can support the person's involvement with the defence lawyer by

- supporting the person to tell the defence lawyer they have a learning disability, or get their consent to do it yourself
- asking the defence lawyer to agree that you support the person in their meetings, where this is allowed. This is so you can assist with communication, help the person understand the lawyer's advice and help the defence lawyer to understand the person's support needs.

### **In police custody** You can

- help the person to understand that because they have a learning disability, they must speak to a defence lawyer before answering any police questions. The lawyer will advise the person what to say and protect their rights
- advise the person that they can request to have a lawyer with them during the police interview. This will help the person keep to the lawyer's advice. But the person has to make that decision for themselves. You must not influence the person's decision to make that request
- Ask the defence lawyer if the police interview could be put back to allow the person more time to prepare.

### **In court** You can

- Say to the defence lawyer you think the person would benefit from 'special measures' in court. These include having a named supporter who is allowed to sit with the person in court to make them feel more at ease. They must not communicate with the person in any way whilst the court is in session. This will be regarded as leading or influencing the person
- Tell the defence lawyer if both you *and* the person are happy for you to act as the named supporter. The request to the Crown Office and Procurator Fiscal Service (COPFS) for a named supporter has to be made by the defence lawyer.



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*More information on special measures follows in Chapter 9 which details the role of the Crown Office and Procurator Fiscal Service (COPFS)*

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Appropriate adult

## Purpose

The role of the appropriate adult is mainly to facilitate communication between the person and the police, although they can have a role at other stages of the criminal justice pathway. They are independent of the police and other criminal justice agencies. It is the responsibility of the police to request the attendance of an appropriate adult in custody.

## What are the person's rights?

Having a learning disability means the person must have an appropriate adult with them in police custody.

## What rules apply to the appropriate adult?

The appropriate adult must make sure the person understands that their conversations are not confidential. Anything the person says that could be used as evidence, the appropriate adult must pass on to the Police

The appropriate adult must not be alone with the person

## Criminal Justice (Scotland) Act 2016

### section 42 Support for vulnerable persons

- (1) subsection (2) applies where –
- (c) owing to mental disorder, the person appears to the constable to be unable to –
  - (i) understand sufficiently what is happening, or
  - (ii) communicate effectively with the police
- (2) with a view to facilitating the provision of support...
- (3) That is, support to –
  - (a) help the person in custody to understand what is happening, and
  - (b) facilitate effective communication between the person and the police

## What can the appropriate adult do?

The main responsibility of an appropriate adult is to assist with communication in police interviews. They should be present from the beginning of the detention process to help the person understand

- why they are being interviewed and the questions being asked
- their rights
- the Solicitor Access Recording Form
- police procedures and if needed to give informed consent for example for a physical examination

They can also help the person to feel more at ease.

The appropriate adult can be asked by the police to be present during other investigative procedures. These can include

- detention processes
- caution and charge
- medical examination
- house or body search
- identification parade

The appropriate adult might also be asked to facilitate the person's communication:

- in court. This is not a legal duty, but can be requested by the judge or sheriff
- during an interview with a social worker for the preparation of a criminal justice social work report.

## What can I do to support the person?

- You can help the person to understand the appropriate adult's role.

If you are present during the interview or any other police procedure you can support the person to understand the outcome and the reasons for it and help to make the person feel more at ease.

See the Scottish Appropriate Adults Network website:

[www.scottishappropriateadultnetwork.co.uk/](http://www.scottishappropriateadultnetwork.co.uk/)

Crown Office  
and Procurator  
Fiscal Service  
(COPFS)

## Purpose

The Crown Office and Procurator Fiscal Service (COPFS) is the public prosecutor in Scotland. COPFS will decide whether to prosecute the person in court or deal with them in another way.

## What are the person's rights?

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010).

## What is the process?

- A report on the person's case is received by COPFS from the police
- COPFS decide whether a crime has been committed, whether there is enough evidence to prove that the person committed the crime and whether it is in the public interest to prosecute the person
  - In determining whether there is public interest in prosecuting the person, the prosecutor (on behalf of COPFS) will take account of a variety of factors: for example, the age, background and personal circumstances of the accused (including any learning disabilities they may have). These are outlined in the COPFS prosecution code: [www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Prosecution20Code20\\_Final20180412\\_\\_1.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412__1.pdf)



- If the prosecutor decides there is enough evidence to take action then they may, for less serious offences, issue a direct measure such as a warning letter, a fiscal fine, or compensation
  - Direct measures issued to accused also include information on the consequences of accepting the direct measure (including information on how it will be recorded in terms of disclosure) or the consequences if the direct measure is challenged
  - Independent advice from Citizens Advice Scotland or a solicitor should be obtained by an accused if it is unclear what the consequences are of accepting/rejecting a direct measure
- The more serious the offence the more likely that the case will be prosecuted in court
- Diversion from prosecution is another action open to the prosecutor as an alternative to prosecution. The process for this is different across Scotland. The person could be referred to social work or to other specialist services for support and treatment with a view to addressing the underlying causes of their offending behaviour: for example substance misuse.

*Diversion from prosecution* is not covered in this guide.

## What can I do to support the person?

- Help the person to understand that this process can take time and not to become anxious because they have not heard anything
- Support the person to understand what special measures they may be entitled to (see the information box below)
- Support the person to tell the defence lawyer if they think they would benefit from special measures to assist them in court, or get their consent to tell the lawyer yourself
- With your understanding of the person's support needs, advise the defence lawyer which special measures you think would be most helpful. One available measure is to have a named supporter sit with the person during the trial. The defence lawyer will need to make the request for a named supporter to be with the person in court, or any other special measure
- If a request for special measures is made, you might not hear a decision until close to the trial. This could add to the person's anxiety
- If the person insists they did not commit the offence, they might be better advised to refuse diversion, and plead their case in court. Support the person to understand this option, and to make an informed decision
- Support the person to tell the defence lawyer of their decision.

See more information on the role of a named supporter in Chapter 10

# Special measures

Special measures are intended to reduce the anxiety of vulnerable people when giving evidence in court. For the accused person, these can include:

- Evidence taken by a commissioner prior to trial: a commissioner is appointed by the court to take the person's evidence. This is recorded on video
- A statement made prior to trial: a document or recording which contains the person's evidence. This could be an extract from a police interview
- Having a supporter with the person when they give evidence: the supporter, by their physical presence in the courtroom, can assist the witness to give their evidence
- Using a TV link from another room: the person sits in front of a TV set with cameras and a microphone and can normally only see the person speaking to them from the courtroom

There are two further special measures that are available only to victims and witnesses, not to the accused person. These are:

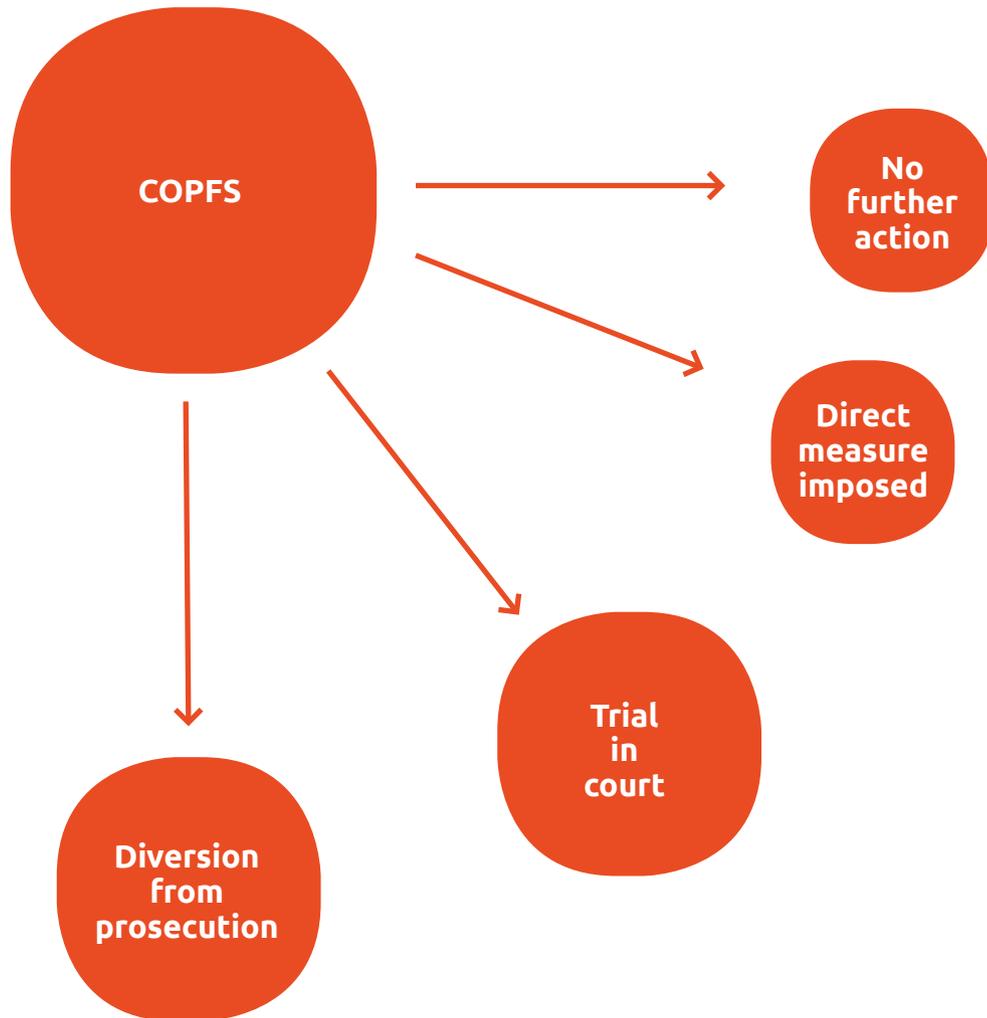
- Giving evidence behind a screen
- The court being closed to the public

Be aware that in practice the accused person is less often given special measures, in spite of having the same entitlement as the vulnerable victim and witness

Ref: Vulnerable Witnesses (Scotland) Act 2004  
Victims & Witnesses (Scotland) Act 2014

## What happens next?

The diagram below shows the possible outcomes.



Court

## Purpose

The purpose of a criminal Court is to establish whether the accused person is guilty of actually having committed an offence.

## What are the person's rights?

Everyone has the right to a fair trial (ECHR, article 6). This should include a fair and public hearing, adequate time to prepare a defence, and support to understand the language used in court.

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010):



*'There is a general recognition in law that defendants must be able to understand and participate effectively in the criminal proceedings of which they are a part'*

## Who will be present in court and what is their role?

- Judge (High Court) – This is for very serious crimes
- Sheriff (Sheriff Court) – This is for crimes that are not as serious. The judge or sheriff is an expert in the law, and is in charge of the court. He or she will sit behind a high counter at the front of the courtroom. This is known as the bench. He or she will normally wear a wig and gown. He is addressed as 'My Lord'. She is addressed as 'My Lady'
- Justice of the Peace – This is for crimes that are not very serious. They do not wear a wig or gown, and there is not a jury in the court. He or she is addressed as 'Your Honour'



- Procurator Fiscal or Advocate Depute – This person is the lawyer who makes the case for the prosecution
- Defence Lawyer – This is the lawyer who acts on behalf of the accused person. He or she will test the evidence presented against the accused
- Court Clerk – This person looks after the court paperwork. He or she will sit in front of the judge or sheriff.
- Court Officer – This person assists the court. They will let witnesses know when it is their time to give evidence
- Witness – A person who has been asked to answer questions about the case. He or she can be called to give evidence by either the procurator fiscal or the defence lawyer. He or she will give evidence by being asked questions by the procurator fiscal and the defence lawyer
- Jury - The jury is made up of members of the public. They listen to the evidence and help decide if the person is guilty. There is not always a jury.

The Scottish Courts and Tribunals Service have produced a video for jurors which explains the different roles of people in court:

[www.scotcourts.gov.uk/coming-to-court/jurors](http://www.scotcourts.gov.uk/coming-to-court/jurors)



## What is the process?

- The person will attend court to make a plea of 'guilty' or 'not guilty'. This is known as the 'pleading diet'
- Legal aid can be applied for to help with the cost of legal advice and representation if the person can show that they cannot pay for this themselves
- If the person's first court appearance is from custody and they do not have a solicitor, a duty solicitor will be available in court to provide advice and representation

- If they plead guilty the judge or sheriff will decide what sentence to impose
- In some cases the court might defer sentencing to obtain court reports. A new court date will be set which the person must attend
- If they plead not guilty the judge or sheriff will set a date for a trial
- All the evidence will be presented at the trial and tested by the lawyers for the prosecution and defence
- Once the evidence has been heard, the judge or sheriff (or jury in more serious cases) will consider their verdict
- If the verdict is not guilty the person will be free to leave
- If the verdict is not proven the person will be free to leave
- If the verdict is guilty the judge or sheriff will decide what sentence to impose. This might not be done straight away. The judge or sheriff might wait for reports before making a decision. During this time, the person could be
  - placed on bail and told to come back to court at a future date
  - held on remand until sentenced. This could be stressful, especially if the person did not expect it.

## What can I do to support the person?

### Before the trial

- Help the person to understand what is going to happen, and that the purpose of the trial is to decide if there is enough evidence to prove they are guilty of committing the offence
- You could try to arrange a court familiarisation visit. This would allow the person to visit the court in advance of the trial to help them to feel more at ease, and is normally organised by contacting Victim Support's Witness Service:

[www.victimsupportsco.org.uk/help-for-witnesses-of-crime/](http://www.victimsupportsco.org.uk/help-for-witnesses-of-crime/)

However the service is normally available to victims and witnesses only. Victim Support may decide it is not appropriate for an accused person. It is also unlikely to be possible if the person is being held on remand

- Help the person to understand how they should behave in court, for example:
  - They must not wear a hat, eat, drink or chew gum
  - They should address the judge or sheriff correctly: for example 'My Lord' or 'My Lady'
  - It is in their best interest to appear respectful



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*See the information on special measures in Chapter 9*

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- Either support the person to tell the defence lawyer they have a learning disability, or get their consent to do it yourself. The defence lawyer can then ask for extra time to prepare the person's defence
- Help the person to understand the lawyer's advice
- Help the person to understand they can ask for a named supporter. This is someone who is allowed to sit with the person during the trial. Help the person to understand that they can ask for you to be their named supporter and encourage them to ask for this support
- Support the person to tell the defence lawyer they would like a named supporter
  - The request for a named supporter has to be made by the defence lawyer
  - Tell the defence lawyer if both yourself and the person are happy for you to act as the named supporter

### **During the trial**

- Help the person to understand what is happening. You can only do this outside of the courtroom
- If you are acting as the person's named supporter in court you are allowed to sit with the person to help them feel more at ease
- If you are acting as the person's named supporter you are not allowed to do anything else. You must not communicate with the person in any way whilst the Court is in session. This will be regarded as leading or influencing the person.

**Note:** In some parts of Scotland, appropriate adults are given jurisdiction by the judge or sheriff to actively assist in aiding the person's communication in court.

This support is not available throughout most of Scotland.

See Chapter 8 on appropriate adults

## What sentence could the person receive?

Below is a list of the main sentences the person could receive. It is not exhaustive. To see the full list, with definitions, use the link:

[www.scotland-judiciary.org.uk/29/0/Glossary](http://www.scotland-judiciary.org.uk/29/0/Glossary)

- Absolute discharge – no penalty imposed
- Admonition – a warning
- Community payback order – unpaid work in the community, or a programme to help change offending behaviour
- Restriction of liberty order – required to wear an electronic tag and free movement is restricted. This requires the consent of the householder: for example a parent if the person lives at home
- Drug treatment and testing order – support with addiction if this is a reason for offending behaviour
- Compensation – money paid to victim
- Fine – money paid to the Court
- Prison – detention for a length of time
- Structured deferred sentence - this option is not available in all parts of Scotland, but can be imposed on the person in advance of a final sentence decision.



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*Further information on structured deferred sentences is provided in Chapter 12*

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Social Work –  
Criminal Justice  
Social Work Report

## Purpose

A criminal justice social work report (CJSWR) assists the judge or sheriff to decide on the most suitable sentence for the person. This includes advising on whether a community payback order would be appropriate rather than a prison sentence. The report will include information on the person's home life, health including whether they have a learning disability, drug or alcohol use, history of offending and attitude to the current offence: for example whether the person appears to be sorry for what they have done. It will also include a recommendation of the most suitable sentence. The report is important because it could persuade the judge or sheriff not to send the person to prison.

## What are the person's rights?

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010)

## What is the process?

- The judge or sheriff can ask social work to prepare a report on the person to help them decide on the most suitable sentence: for example community payback order, rather than prison
- A social worker writes to the person inviting them to attend an appointment
- A social worker interviews the person. Questions might include where the person lives and who with, and how the person feels about the offence they have committed
- The social worker submits a criminal justice social work report (CJSWR) to the judge or sheriff

## What can I do to support the person?

- Support the person to understand the purpose of the CJSWR and that it is important because it could influence what sentence they are given
- Often the social worker will not want you to support the person in the interview. This is because your presence might influence the person's answers. The court can appoint an appropriate adult to support the person during the interview, but this is not a legal requirement
- *The social worker will normally want to speak to you separately to get your knowledge of the person.* You should
  - say that the person has a learning disability and advise the social worker about what support the person might need
  - advise them if you think the person will find it more difficult to cope with some sentence options: for example if an electronic tag might cause the person distress
  - advise them to put information about the person's learning disability in the report.

Social Work –  
Structured Deferred  
Sentence and  
Community Payback Order

## Structured deferred sentence

### Purpose

Structured deferred sentences are designed to assist the judge or sheriff in making a decision about the sentence to impose on the person. The way they are administered is very similar to that of a community payback order, and is effectively a trial run. It gives the person an opportunity to demonstrate that they are willing to, and capable of, complying with a community payback order (CPO), and of benefitting from any learning programmes. Such programmes help the person to address the underlying reasons for their offending behaviour, understand why they committed their offence and develop skills that will reduce the risk of them offending again.

If the person co-operates with the social worker supervising their structured deferred sentence, complies with what they are instructed to do and engages with the work, they will be more likely to be given a CPO as their final sentence and avoid going to prison.

### Note:

Structured deferred sentences are not available in every part of Scotland.

## What are the person's rights?

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010).

## What is the process?

- The court defers sentencing the person and refers them to criminal justice social work
- The deferment will normally be for three to six months
- The person is allocated a social worker who will supervise their progress during the deferment. The person will have regular appointments to meet with them. This involves supervision, advice and education targeted at underlying reasons for offending
- The person will also likely be referred to partner voluntary organisations that will provide offending awareness programmes. These could relate to drug and alcohol misuse, employability or domestic violence
- At the end of the deferment, social work will submit a report on the person's progress to the court
- If the person has co-operated with the structured deferred sentence, the court can decide to impose a community-based sentence at the end of the deferment period, and not send the person to prison
- The court will take this into account when deciding the person's final sentence

## What can I do to support the person?

- Help the person to understand why it is important to co-operate with the social worker, engage with the supervision and education programmes
- Help the person to understand that talking about why they committed the offence is important to help them understand why they did it and to develop skills to help them reduce the risk of offending again
- Help the person understand how important it is that they do not miss appointments with their social worker or anybody else working with them as part of the deferred sentence
  - Perhaps support the person to get to appointments on time
  - Perhaps agree with the person how you should notify the social worker if they cannot make an appointment
  - It is imperative that the social worker is notified as soon as possible if the person is not able to make an appointment

- Introduce yourself to the social worker. Make it clear that you can have a role in helping the person to understand the advice and guidance they are given about their offending behaviour, and that you are keen to assist and work together. Your support to help the person comply with their deferred sentence will be welcomed
- Use your experience of working with the person to help the social worker understand the person's support needs and to create a deferred sentence that meets the person's needs and is delivered in a way they can benefit from
- Help the person to understand the advice and guidance they are receiving from the social worker and others, and reinforce it.

## Community payback order

### Purpose

A CPO is a community-based sentence and is imposed as an alternative to prison, meaning it is imposed on offenders who would otherwise be sent to prison. It is intended to be a constructive form of justice where offenders can pay back their debt to society by improving the communities they have harmed through doing unpaid work. Criminal justice social work will supervise the person's compliance and progress with the CPO, although they may be required to attend learning programmes with other agencies. Such programmes help the person to address the underlying reasons for

their offending behaviour. These may focus on anger management or alcohol misuse. A CPO is intended to punish the person for the crime they have committed, but also to help them make changes in their life, understand why they committed their offence and develop skills that will reduce the risk of them offending again.

## What are the person's rights?

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010).

## What is the process?

The court can impose a CPO for between six months and three years. It can be made up of one or more of

- unpaid work or other activity. This can be for between 30 and 300 hours. Unpaid work is not flexible: the person must turn up on time
- supervision with a social worker
- compensation to the victim
- a learning programme
- mental health treatment
- drug treatment
- alcohol treatment
- a Residence Requirement
- a Conduct Requirement

The person will be contacted by their appointed case manager. This is the social worker who will supervise the CPO. The case manager will set the amount of contact the person is required to have with them. This could include

a case management plan, which will be reviewed at regular intervals  
a learning programme such as a course on anger management. This could involve group work.

Contact will be through appointments at the case manager's office and home visits. If the person fails to keep appointments, it could be reported to the court that they have breached their order. This could lead to them being sent to prison instead.

A CPO can be discharged earlier than planned if the person makes very positive progress.

The main risk is that the person breaches the CPO by missing appointments. They are then at risk of going to prison. Please note that unpaid work is not flexible: the person must turn up on time or they will breach the CPO.

## What can I do to support the person?

- Help the person to understand why it is important to co-operate with the case manager and engage with the supervision and education programmes
- Help the person to understand that talking about why they committed the offence is important to help them understand why they did it and to develop skills to help them reduce the risk of offending again
- Help the person understand how important it is that they do not miss appointments with their case manager or anybody else working with them as part of the CPO:
  - Perhaps support the person to get to appointments on time
  - Perhaps agree with the person how you should notify the case manager if they cannot make an appointment
  - It is imperative that the case manager is notified as soon as possible if the person is not able to make an appointment
- Introduce yourself to the case manager. Make it clear that you can have a role in helping the person to understand the advice and guidance they are given about their offending behaviour, and that you are keen to assist and work together. Your support to help the person comply with their CPO will be welcomed
- Use your experience of working with the person to help the case manager understand the person's support needs and to create a CPO that meets the person's needs and is delivered in a way they can benefit from
- Help the person to understand the advice and guidance they are receiving from the case manager and others, and reinforce it.

Prison

Unless the person is given a very short sentence (a few weeks or less), it is likely that their support package will end when they enter prison. Therefore, you should expect that your responsibility for supporting the person will end at this point and the help you can offer is limited. However, if it seems likely the person could be going to prison, you might be able to help them prepare.

This section provides a brief introduction to prison procedures that might be useful for the person to know prior to them entering prison.

## Purpose

The purpose of prison is to provide custodial and rehabilitation services for those people sent to it by the courts.

## What are the person's rights?

All public bodies have a legal duty to ensure a person is not disadvantaged due to having a learning disability (Equality Act 2010).

Prisons have a duty to make reasonable adjustments to ensure offenders with learning disabilities receive the same standard of service as other prisoners:

- Given written information in a format which is easy to understand
- Maintain contact with family and friends
- Receive medical treatment.

## What is the process?

### Reception

- Escorted from court to prison
- Possessions put into storage
- Given a prison number and a health check
- The person is entitled to make one phone call
- The person has to notify the Department for Work and Pensions, landlord, etc. that they are in prison.

### Induction

Informed about rules of prison: for example

- Rules on possession of mobile phones, illegal drugs, alcohol and weapons
- Consequences of breaking the rules.

Informed about routines of prison: for example

- Meals, exercise, work, sports centre/gym, education, library, canteen/shop, time out of cell, visiting and privileges
- Complaints system
- Role of independent prison monitors
- Programmes to address offending behaviour.

## Preparation for release

The link centre is a dedicated area in the prison that serves as a one-stop facility to assist planning for release. The person should get help and advice to prepare for leaving prison and moving back into the community. This could include:

- Finding somewhere to live
- Applying for benefits
- Registering with a GP.

Through-care support officers (TSOs) are specially selected prison officers trained to proactively support the person in the run-up to, and after, release. The support is for practical issues such as housing and benefits.

Public sector partnerships (PSPs) vary from prison to prison but are designed to offer targeted help on release: for example SHINE which is for female offenders. Use this link for more information: [www.shinementoring.org/](http://www.shinementoring.org/)



## What can I do to support the person?

As already stated, your responsibility for supporting the person ends when they enter prison. Prior to the person entering prison, you might be able to:

- Take any opportunity to inform the prison that the person has a learning disability and needs support
- Offer to inform the DWP, etc. that the person is going to be in prison
- Find out about initiatives and supports that are available in the prison
- Encourage the person to let you contact any support that might benefit them in prison, or to make contact themselves
- Encourage the person to ask for help if there is something they do not understand.

Below is a selection of supports and services that might be available to the person in prison. All of these can be contacted either by the person in prison, or by someone else on the outside.

### For the person's family:

- Families Outside can help to maintain contact between the person and family members. For information on prison visiting rules and procedures, use the link:  
[www.familiesoutside.org.uk/faqs-jargon/faqs/](http://www.familiesoutside.org.uk/faqs-jargon/faqs/)
- Every prison has family contact officers (FCOs) who can be contacted directly. Some prisons will have a prison visitor centre where the family can get help and support during the person's sentence.

**For the person:**

- Personal officer: every prisoner is allocated a personal officer on arrival
- Chaplain: Church of Scotland, Roman Catholic and Muslim are available on request
- Various health-care professionals: health care is provided by the local NHS Board
- Social worker: service provided by the local authority



# Afterword

The aim of this guide is to help support workers who find the person with learning disabilities they support in the criminal justice system. It provides information about how they can make a well-informed, constructive contribution, which is valued, not just by the person they support, but also by partner professionals in the criminal justice system.

SOLD recognises that this guide is not comprehensive in its scope. There is more work to be done: in terms of diversion from prosecution or mainstream sentencing for people with learning disabilities and other communication difficulties; in terms of early intervention and preventive work to support people not to commit offences in the first place; and in terms of supporting people to avoid re-offending in the future.

The principal aim is to help ensure that nobody in the criminal justice system is at a disadvantage because they have a learning disability or other significant communication difficulty. It is concerned with helping to:

- ensure that people with learning disabilities are supported to understand and exercise their rights to fair and equal access to justice
- ensure people with learning disabilities are able to participate fully in the criminal justice system's processes
- inform support providers of their role in these processes

The intention is not to help people with learning disabilities to avoid the consequences of offending behaviour, or be treated more lightly in the criminal justice system.

If the person becomes involved with the criminal justice system, you should always report this to your line manager. Do not act without your line manager's knowledge and agreement.

# Acknowledgements

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## ▶ Useful links:

[www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)

[www.familiesoutside.org.uk/faqs-jargon/faqs](http://www.familiesoutside.org.uk/faqs-jargon/faqs)

[www.forensicnetwork.scot.nhs.uk](http://www.forensicnetwork.scot.nhs.uk)

[www.lawscot.org.uk](http://www.lawscot.org.uk)

[www.mygov.scot/crime-justice-and-the-law](http://www.mygov.scot/crime-justice-and-the-law)

[www.sacro.org.uk](http://www.sacro.org.uk)

[www.scotland.police.uk](http://www.scotland.police.uk)

[www.scottishappropriateadultnetwork.co.uk](http://www.scottishappropriateadultnetwork.co.uk)

[www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

[www.siaa.org.uk/find-advocate](http://www.siaa.org.uk/find-advocate)

[www.scotland-judiciary.org.uk/29/0/Glossary](http://www.scotland-judiciary.org.uk/29/0/Glossary)

[www.shinementoring.org](http://www.shinementoring.org)

[www.slab.org.uk](http://www.slab.org.uk)

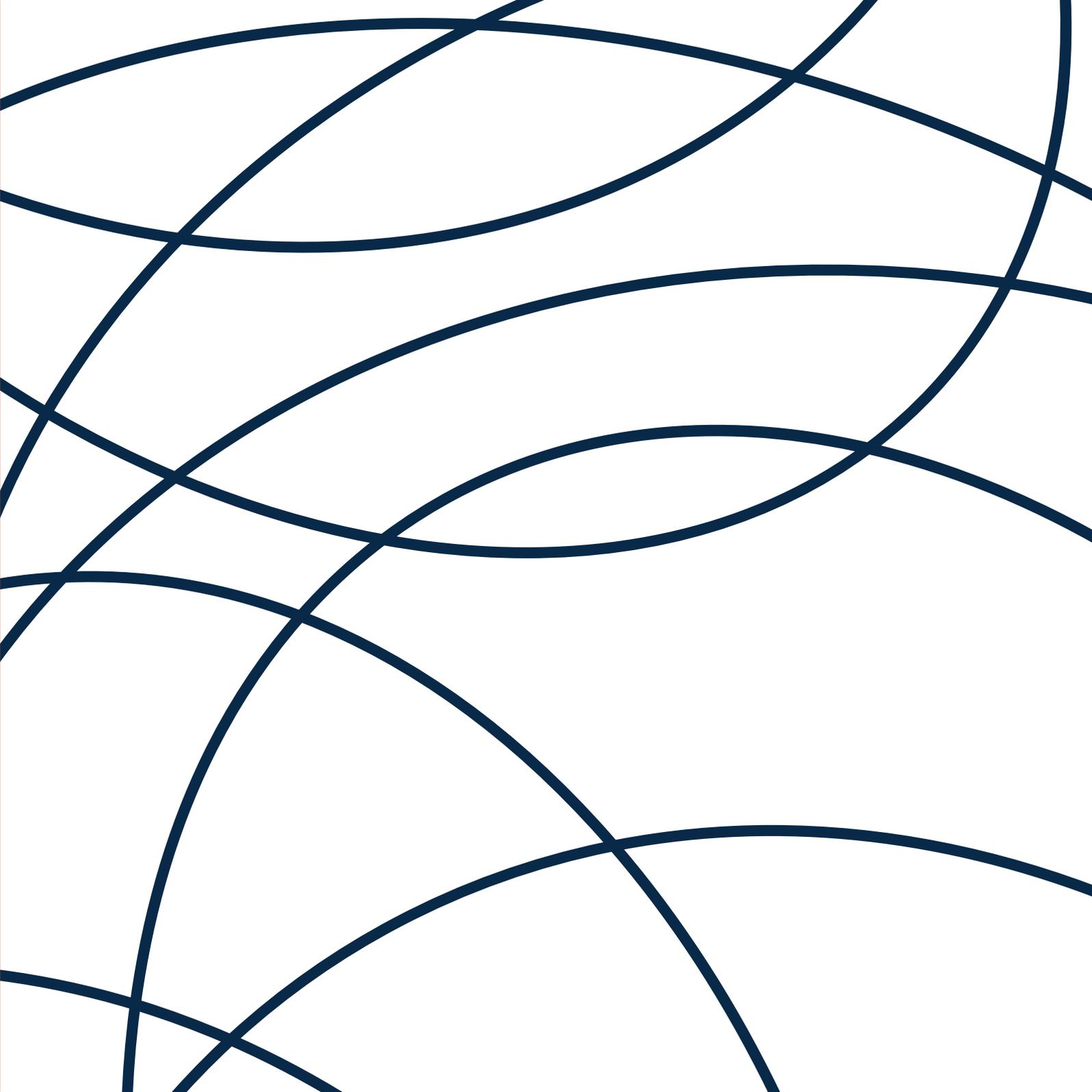
[www.sps.gov.uk](http://www.sps.gov.uk)

[www.socialworkscotland.org](http://www.socialworkscotland.org)

[www.soldnetwork.org.uk](http://www.soldnetwork.org.uk)

[www.victimsupportsco.org.uk](http://www.victimsupportsco.org.uk)







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