

GBV 34

Communities, Equality and Local Government Committee

Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill :  
Stage 1

Response from : The Wales Observatory on Human Rights of Children and  
Young People

**Wales Observatory on Human Rights of Children and  
Young People  
Arsyllfa Cymru ar Hawliau Dynol Plant a Phobl Ifanc**

**Response to Assembly Committee on Communities, Equality and Local  
Government's**

Consultation on the Gender-based Violence, Domestic Abuse and Sexual  
Violence (Wales) Bill

**Date: 5 September 2014**

The Wales Observatory on Human Rights of Children and Young People provides a forum for research, advocacy, expertise and information exchange at local, national and international levels. The Observatory's vision is to ensure that the highest quality knowledge, expertise and best practice is targeted where it can make most difference in the process of making human rights a reality for children and young people. We welcome the opportunity to respond to the Committee's consultation on this Bill. We focus on areas most relevant to the human rights of children and young people, and wish to make three short points.

First, while we support the Welsh Government's overarching policy objective as set out in the Explanatory Memorandum and Impact Assessment for the Bill, and while we note that the background includes participative research and investigation of local practices on domestic violence in several parts of Wales, this appears to have been confined to the needs of adult victims of gender violence, domestic violence and sexual violence. Little investigation appears to have been carried out in relation to the needs of children in Wales, even though we know the impact on children is very significant, with negative developmental and long-lasting effects. The reasons given by the Welsh Government for not including provision specifically directed to improving protection and rehabilitation of

children who suffer from these forms of violence (including by witnessing violence to others) is that there is already in place a statutory system under the Children Acts 1989 and 2004. This reasoning is unconvincing, since it is equally true that there are already statutory regimes in family and criminal law and in local government legislation that could be said to be protective of adults. Despite the pre-legislative child rights impact assessment in this case, the Bill is lacking in the kind of provision that might be expected from a proper analysis of the evidence combined with analysis of the requirements of the UNCRC. At the very least, there is ample research and evidence and media coverage to suggest that all is not right in the *implementation* of CA 1989 and 2004 processes. This could and should have been addressed.

Second, we acknowledge that child rights impact assessment remains a relatively new administrative process for Welsh Government officials, but question whether in this case the assessment adequately supported the Welsh Ministers to fulfil their non-delegable duty of due regard to the UNCRC under section 1 of the Rights of Children and Young Persons (Wales) Measure. In this case we suggest the CRIA lacks adequate appreciation of the requirements of the UNCRC, especially with regard to child protection and rehabilitative support. The CRIA does not mention Article 37, even though it is well-established by the UK courts that negligent failure on the part of a public body to protect a child from domestic violence can engage the right not to suffer inhuman or degrading treatment, generating potential civil liability on the part of the public body. We note also the greater depth of the equality impact assessment in this case, and a degree of overlap between that and the CRIA. This raises issues of quality and coherence of child rights, human rights and equality impact assessments which are not confined to this Bill. We hope these issues will be monitored with a view to improving advice to the Welsh Ministers about the values and principles they are legally obliged to think carefully about when exercising their functions.

Third, we take the view that this Bill was and is an opportunity for Welsh Ministers to fulfil the undertaking given by the Deputy Minister for Social Services Gwenda Thomas in February 2014 to find a legislative opportunity for the Assembly to vote on the equalisation of protection for children from the crime of common assault. The Bill is described as being intended to create a stronger and more consistent focus on prevention of violence between family members, the protection of victims and support for all affected. While there remains lesser protection for children than adults under the criminal law, attempts to ensure consistency of approach in both prevention and protection from violence and abuse are undermined. There exists an amendment to section 58 of the Children Act 2004 that was drafted and ready during the passage of the Social Services and Well-being Bill, and this could surely be used as a basis for a provision in the current Bill. Such a provision would, according to research and comparative evidence, be wholly supportive of achievement of the stated aims of the Bill and would indeed remove an impediment to its effective implementation in practice.

In conclusion, while commending the Welsh Government for seeking to improve protection and support for victims and potential victims of these kinds of violence, we hope that positive consideration will be given to the points made here as the Bill progresses.

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