Written submissions on the General Scheme of the Guardianship of Infants (Amdt.) Bill 2025

Summary:
Original Draft bill text is in *Italics*. Comments are preceded by **COMMENT:** and are in BOLD
This is followed by a page of Additional Comments and a list of relevant Research. 2025-06-19

Draft General Scheme

Guardianship of Infants (Amendment) Bill 2025

Head 1 – Short title, commencement, construction and collective citation
Provide that

1. (1) This Act may be cited as the Guardianship of Infants (Amendment) Act 2025.

(2) This Act and the Guardianship of Infants Act 1964 may be cited together as the Guardianship of Infants Act 1964 - 2025.

2.- This Act shall come into operation on such day or days as the Minister for Justice [Home Affairs and Migration] may appoint by Order or Orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory Note:

These are standard provisions.
An Order altering the title of the Minister for Justice is in preparation.

Head 2 - Amendment of Guardianship of Infants Act 1964

Provide that:
The Guardianship of Infants Act 1964 is amended by the insertion of the following section after section 6F:

“6G (1) Where a guardian or parent of a child has been convicted of an offence:-
(a) of murder or manslaughter of another parent or guardian of the child; or

(b) of a serious offence resulting in the incapacitation of another parent or guardian of the child
and having regard to the circumstances mentioned in subsections (14) and (16) the Child and Family Agency, within 6 months of the person being so convicted, shall apply to the Court for an order that -

COMMENT: Our families experience of the Child and Family Agency since 2019 has been that they are very focused on the "birth family" and the rights of the father. This support appears to be deeply embedded in their practices. The CFA's focus on preservation and reunification of birth family is referenced in their own documentation (for example, *'Child protection and welfare policy has traditionally been strongly orientated towards a sequential planning approach where social workers' first and foremost priority is family reunification."*[1]) and has been referenced by others (for example, *'..the care system in Ireland has been described as being more paternalistic than care systems in other jurisdictions, making it more focused on the preservation of the family and reunification'*[2].
Considering the above, I am wary of the onus resting only on the Agency to make this Court application. Ideally a member of the children's relatives,a guardian or guardian ad litem or maybe another party such as a Family Law Judge on their own application can also do this.
CFA involvement is primarily on behalf of children taken into care and the children left after a murder may not be in care. Research indicates the best outcomes are when they are with the victim's family (predominantly this is maternal family). At minimum a specialist trained unit with the Child and Family Agency should be tasked with this.

(i) the guardian or parent so convicted be removed from office and that the Court may appoint another person as a guardian of the child, or
(ii) that the guardian or parent so convicted be confirmed as [the] [a] guardian of the child.

COMMENT: Rather than "removed" from office it would be preferable if it was "suspended" from the office of guardian. I understand that this could avoid potential constitutional issues with "removal".

(2) Where a guardian or parent of a child is convicted in a manner as set out under subsection 1 and thereafter dies the Child and Family Agency, within 6 months of the death of that person may apply to the Court for an order that a guardian be appointed for the child.

[1] Tusla, Child and Family Agency (2020) Pathways to Permanency Handbook
[2] O'Brien, V. (2014) 'Children in care, adoption and permanency', Paper presented at the AAI Conference – The Irish Care System and Adoption Dublin: UCD.

(3) The Court may extend the periods provided in subsection (1) or (2) within which an application may be made but shall only do so if it is satisfied that—
(a) there is good and sufficient reason for doing so, and
(b) it is in the best interests of the child to do so.

(4) Where, on an application for an order under subsection (1) or (2) the Court determines that it is in the best interests of the child, in accordance with section 3 [of this Act] and with regard to the factors and circumstances as set out in section 31 [of this Act], to remove a guardian, appoint a guardian, or confirm a guardian, the Court shall make the order accordingly.

(5) Where the Court makes an order under subsection (4), the Court shall give such directions and make such orders as it thinks proper regarding the custody of the child and the rights of access to the child.

(6) When making an order under subsection (4) the Court shall have regard to the relevant provisions of sections 11, 11A, 11B, 11E and 12A [of this Act] as appropriate and such an order may—
(a) specify the period for which it shall remain in effect,
(b) impose such conditions relating to the periodic review by the court of the order as the court considers necessary for the best interests of the child concerned, and
(c) provide for such additional matters as the court considers necessary in the best interests of the child concerned.
(d) provide that the guardian so removed by an order under subsection (4) be prevented from making an application under sections 6A, 6C, 6F, or 8 [of this Act] [in respect of the child named in the order under subsection (4)]
(7) Where the Court makes an order that a guardian be appointed for the child -
(a) in addition to the parent concerned or
(b) in the place of the parent concerned or
(c) in addition to any other guardian or
(d) for any other reason which seems appropriate to the Court,
the Court shall appoint as a guardian -
(i) a person who is a relative of the child who is suitable and has agreed to discharge the rights and responsibilities of a guardian, or
(ii) a person who is not a relative but in the circumstances is suitable and has agreed to discharge the rights and responsibilities of a Guardian.

COMMENT: It is important to remember that the relatives of the child on the murderer's side of the family usually support his defence position and do not accept the verdict. Research shows placement with the perpetrator's family leads to worse outcomes for the children in terms of behavioural and emotional problems. It may not be a matter for legislation but a matter for the CFA and the Court to prioritise the victim's relatives in

case of competition for custody. It is important that the victim's family are made notice parties and involved with the Court for this decision.

(8) The rights and responsibilities referred to in subsection (5) are the rights and responsibilities of a guardian:
(a) to decide on the child's place of residence;
(b) to make decisions regarding the child's religious, spiritual, cultural and linguistic upbringing;
(c) to decide with whom the child is to live;
(d) to consent to medical, dental and other health related treatment for the child, in respect of which a guardian's consent is required;

COMMENT: I would explicitly add "mental health and therapeutic treatments" here as a child bereaved in this way may require bereavement counselling or other post-trauma therapy particularly when there is evidence of prior domestic abuse.
(e) under an enactment specified in subsection (12) of section 6C, and
[(f) to place the child for adoption, and consent to the adoption of the child, under the Adoption Act 2010.]

COMMENT: Is it necessary to redefine the rights and responsibilities of a guardian within this amendment ?
COMMENT: The privacy of the child is important and needs to be protected. A guardian is also entitled to know where the children are and receive progress reports. This should not be omitted. In our case the children are frightened of the murderer, that he will come out and kill them or send his friends out to kill them or the people they live with. Despite these fears, the murderer is provided with their details and their answers to social workers in the annual Child in Care reviews are shared with the murderer.

(9) In deciding whether to make an order removing as guardian of the child the person concerned, the Court shall have regard to all the circumstances, including in particular—
(a) the best interests of the child in accordance with section 3 with regard to the factors and circumstances as set out in section 31 [of this Act],
(b) the damage caused to the child's welfare as a result of the violence inflicted on the child's other parent or guardian,

COMMENT: The damage caused by the loss of a parent in this manner is massive and ongoing. There can be a tendency to treat a dead person as something in the past and the murderer parent as better than no parent. Their effect on the child is much worse than having no parent.

(c) the extent to which that damage would be aggravated by permitting the person concerned to remain as guardian of the child,

COMMENT: How is this to be assessed ? The expectation should be that in the vast majority of cases the guardianship should be removed/suspended. The sole exception may be when a manslaughter verdict is given in the context of self-defence after domestic abuse. That is the only case where it might be considered. I can not envisage a circumstance where a murder charge should not result in suspension/removal of guardianship.

(d) the views of the child, to the extent possible given his or her age and Understanding,

COMMENT: A child has no agency without information. The full details of the homicide, and possible preceding coercive control and domestic abuse would usually be kept from the child or minimised. This means their views are usually not fully informed and based on incorrect or incomplete information and this has to be taken into account.

(e) the number of persons, if any, who are guardians of the child concerned, and the degree to which those persons are involved in the upbringing of the child, and

COMMENT: In our case and most others the victim's family would not be involved in the day to day upbringing of the child prior to the killing of a parent, and so would not be guardians. A convicted murderer will attempt to veto this process in the Courts in any case.

(f) the availability and suitability of any other person who would be appointed by the Court as guardian of the child.

(10) The court may, if satisfied that having regard to the special circumstances of the case it is necessary in the best interests of the child to do so, appoint a guardian ad litem for the child.

COMMENT: To assure real independence, these are ideally fully independent of CFA/Tusla and not paid by or receiving ongoing business from CFA/Tusla.

(11) Without prejudice to the generality of subsection (10), in deciding whether to appoint a guardian ad litem, the court shall, in particular, have regard to—
(a) the age and understanding of the child,
(b) any report on any question affecting the welfare of the child that is ordered by or furnished to the court under section 32 (1) (b), or under section 47 of the Family Law Act 1995,
(c) the welfare of the child,

(d) the views of the child, to the extent possible given his or her age and

understanding, and
(e) any submission made in relation to the matter of the appointment as a guardian ad litem that is made to the court by or on behalf of a party to the proceedings or any other person to whom they relate.

COMMENT: Note that the victim's family need to be made notice parties to the proceedings. Judges can do this on their own application. In my case CFA/Tusla opposed my notice party status application and this was supported by the murderer. I won, the murderer appealed and CFA/Tusla supported him, even post conviction. In 2025 I won the appeal which was a de-novo hearing. CFA/Tusla argued privacy of the children being the important issue. Without notice party status the victim's family are outside the Court process (which is held in-camera) while the killer by virtue of their guardianship is inside.

(12) If having regard to the gravity of the matters that may be in issue or any other special circumstances relating to the particular case, it appears to the court that it is necessary in the best interests of the child that the guardian ad litem ought to be legally represented, the court may order that the guardian ad litem be so represented in the proceedings.

(13) The fees and expenses of a guardian ad litem appointed pursuant to subsection (10) and the costs of obtaining legal representation pursuant to an order under subsection (12) shall be paid by such parties to the proceedings concerned, and in such proportions, or by such party to the proceedings, as the court may determine

(14) Where the child is habitually resident in the State an application under this section shall be brought by the Child and Family Agency where the relevant murder, manslaughter, [suspected killing], or serious offence occurred in another state, and the Court shall determine such application in accordance with this section.

(15) An application for an order under this Section shall not be made in relation to a child concerned other than on notice to any parent or guardian of the child.

(16) The provisions of this Section apply to a murder, manslaughter, serious offence, or suspected killing referred to in subsection (1) or (2) where such occurred prior to the commencement of this Act, and the Child and Family Agency shall act accordingly within 6 months of such commencement.

COMMENT: I would greatly welcome this, obviously provided that it is constitutional. I understand this means the Child and Family Agency would be required to act for each child they currently have in care whose remaining parent was convicted of killing the other.

(17) For the purposes of this Section An Garda Siochana shall advise the Child and Family Agency of the conviction of a person of a murder, manslaughter or serious

offence referred to in subsection (1) or (2) and of the conviction of that person in relation to any relevant murder, manslaughter or serious offence.

(18) For the purposes of this Section An Garda Síochána, the Courts Service, the Child and Family Agency, the Director of Public Prosecutions, and other agencies of the State shall share and exchange data relevant to an application under subsection (1) or (2) with each other.

(19) In this section—
“child” shall include a reference to a person who
(a) has not attained the age of 18 years, or —
(b) has attained the age of 18 years and is or will be, or if an any order were made under this Act providing for payment of maintenance for the benefit of the person, would be, receiving full-time education or instruction at a university, college, school or other educational establishment, and who has not attained the age of 23 years
(c) by reason of a mental or physical incapacity it is not reasonably possible for the person to maintain himself or herself fully;

“incapacitation” means incapacity to exercise the rights and fulfil the responsibilities of a guardian under subsection 7;
“Parent concerned” means a guardian or parent of a child who has been convicted of an offence as described in subsection (1) of this section;
"serious offence" means an offence for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of five years or by a more severe penalty.

Additional Comments

Murderer’s guardianship has meant the children are in care.

In our case the murderer and CFA/Tusla blocked the victim’s family proposal to take the children out of care. Even post-conviction CFA/Tusla has refused to rule out family reunification with the murderer and are focussed on rehabilitating him in the eyes of the children. This has included providing the children with information known to be false around the murderer’s location, state of mind and what actually occurred.

Killing a parent is child abuse

This is the motivating insight and it is important to appreciate that the loss and consequent harm is ongoing for a child's life. The assumption has to be that the Court will suspend/remove guardianship.
"Children are primary victims in this situation. It is a direct crime against the children." Kathryn Joy (father killed her mother in Australia in 1985).
Research confirms that to abuse a child's mother is to abuse the child[3].
A submission to the Human Rights Commission by Relationships Australia in 2015 includes the following insight: *'We would also call for acknowledgement, in definitional terms, of men's use of violence as a father, as a choice to be an abusive father. There should be a shift in focus that recognises men's choice to use violence towards women and children as a fathering and parenting choice. This would focus attention on the father's responsibilities as a parent.'.*

Charter of Fundamental Rights of the European Union :

Article 24 The Rights of the Child
1. Children shall have the right to such protection and care as is necessary for their well-being
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.
I met Commissioner for Justice Michael McGrath on this topic in Brussels in April, 2025

Reporting

As with all family law there should be monitoring and reporting of the application of this amendment to see how it works in practice. This should be an explicit task for the Courts to report on and should not just rely on the Child Care Law Reporting Project (CCLRP) or similar body.

Research

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