Child Law Project

Submission to Joint Committee on Justice, Home Affairs and Migration on Guardianship of Infants (Amendment) Act 2025

by Carol Coulter, Director

Introduction

I am founder and director of the Child Law Project, which since 2012 has been reporting on child care proceedings in the courts, initially under the name Child Care Law Reporting Project. These proceedings have included a small number of cases where one parent has killed or attempted to kill the other, giving rise to issues which, to date, have not received sufficient attention from law- and policy-makers.

There is extensive international literature on the damage done to children by the trauma caused by the violent death, or incapacitating injury, inflicted by one parent on another, and on the need for urgent and very specialised therapeutic intervention in such circumstances.[1] Without it, the children are likely to suffer from PTSD into adulthood. [2]

The Guardianship of Infants (Amendment) Bill, which will allow the courts to suspend the guardianship rights of a parent who kills or inflicts incapacitating injuries on a child's other parent, is therefore very welcome. The Child Law Project recommended such a change in the law in its 2021 report, *Ripe for Reform* [3]and also made a submission on this issue to the Department of Justice report, *Study on Familicide & Domestic and Family Violence Death Reviews*[4].

Homicide and attempted homicide cases observed by Child Law Project

Between 2018 and 2021 the Child Law Project attended four cases involving children where there had been a killing or attempted murder of a parent (mothers in all cases) by the other parent, three where a mother had been killed by the father of her children, and one where an attempted murder by her husband had left the mother severely disabled so that she

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1 Peter Mertin, 'The Neglected Victims: What (Little) We Know about Child Survivors of Domestic Homicide' [2019] Cambridge University Press.

2 Harris-Hendriks J, Black D, Kaplan T. When father kills mother. London: Routledge; 2000; Kaplan et al, Outcome of Children Seen after One Parent Killed the Other, *Clinical Child Psychology and Psychiatry* 6(1):9-22, January 2001.

3 https://www.childlawproject.ie/wp-content/uploads/2021/11/CCLRP-Executive-Summary-Ripe-for-Reform-Report-October-2021.pdf

4 https://gov.ie/en/department-of-justice/publications/study-on-familicide-domestic-and-family-violence-death-reviews/

would never be able to care for her child. These cases gave rise to our submission to the Study on Familicide and the chapter of domestic homicide in our *Ripe for Reform* report.

Comment on Head 2 of the Draft General Scheme:

6G 1 provides for the suspension of the guardianship rights where a parent or guardian has been convicted of the murder, manslaughter, or infliction of catastrophic injuries on the other parent/guardian.

It is silent on what should happen when the alleged perpetrator is charged with murder, manslaughter, attempted murder or a serious offence causing incapacitation, but the case has not yet resulted in conviction. Such cases typically can take years to come to trial. For example, over five years elapsed between the murder of Valerie French-Kilroy and the conviction for her murder of her husband, James Kilroy, who remained in custody during this time.

The intervening years between charge and trial are crucial for the welfare of the children. Yet if the alleged perpetrator remains the children's guardian, he or she has the right to direct, or have input into, where and with whom they live, whether and how they receive appropriate therapy or other treatment, and generally influence the lives of children already traumatised by the person's actions. If the alleged perpetrator is on bail, he or she can, unless otherwise ordered by a court, have access to the children, potentially influencing any evidence they might give in the criminal trial. At the very least, the children are at risk of being re-traumatised by contact.

In some cases the children may be in the care of the Child and Family Agency and, if under full care orders, it will be responsible for their care and welfare. But in other cases, for example, where there is a close relative willing and able to care for the children, the grounds may not exist under the Child Care Act 1991 to take the children into care. In any case, where care orders are indicated, a child invariably spends at least a number of months initially under an interim care order, where the parent retains guardianship rights, and even when children are under full care orders a parent does not lose all guardianship rights.

Obviously, an accused person enjoys the presumption of innocence. But this cannot usurp the right of children to be safe from harm. Provision should be made for the interim suspension or limitation of the guardianship rights of a person charged with the listed offences, but not yet convicted.

6G (10) provides for the appointment of a guardian *ad litem* for the child, but this appears to be contingent on the removal of guardianship rights following conviction. Consideration should be given to the appointment of a guardian *ad litem* for a child whose guardian has

been charged with the killing or infliction of serious injury on the other guardian at the point where they are charged.

6G (7) provides for the appointment of a guardian for the child, who is either a relative or a person otherwise deemed suitable, without any further qualification. Section 49 of the Children and Family Relationships Act 2015 amends the 1964 Act by the insertion of Section 6C, and its subsection (b) (i) stipulates that a putative guardian must have provided for a child's day-to-day care for a continuous period of more than a year.

The 2015 Act does not envisage a situation where the parents' provision of care is abruptly terminated by domestic homicide or catastrophic injury and the subsequent death or imprisonment of the surviving parent. There is therefore an apparent inconsistency between Sections 6C and 6G under the proposed amendment. Consideration should be given to amending 6C to permit, in exceptional circumstances, individuals with close links to the child to apply for guardianship without having had day-to-day care of the child for at least a year.

Recommendations

1. Amend 6G (1) to include provision for suspending the guardianship rights of a parent who has been charged with, but not yet tried for, the murder, manslaughter or causing incapacitating injury to the other parent;
2. Amend 6G (7) to provide for the appointment of a guardian *ad litem* for a child where a parent has been charged with, but not yet tried for, the offences listed;
3. Amend Section 6 C of the 1964 Act to ensure no conflict with Section 6 G of the Act.

I am happy to answer any questions on this submission the committee may have.