Submission to the Joint Committee on Justice, Home Affairs and Migration
Children (Amendment) Bill 2024

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Introduction

1) I am grateful for the invitation to make a submission regarding the Children (Amendment) Bill. While the Children Act is considered relatively strong by international standards (according to my reading of research by children's rights experts such as Prof. Ursula Kilkelly), there is always the potential to strengthen approaches to children in conflict with the law in line with Ireland's international legal obligations and research evidence on supporting and protecting children in conflict with the law, prioritising their interests, and promoting prevention and desistance.

2) I am an Associate Professor in Criminology at Maynooth University, where I have worked since 2018. In preparing this submission, I draw on the following expertise:

a) Since July 2021, I have sat on the Department of Justice's Youth Justice Advisory Group which oversees the implementation of the 2021-2027 Youth Justice Strategy.
b) From 2021-2023, I sat on the Garda Youth Diversion Projects Evaluation Steering Group which oversaw the corresponding research project,[1] commissioned by the Department of Justice.
c) I have conducted and published research with Irish children's rights and legal expert Dr. Louise Forde, focused on the use of restorative justice and restorative practices in Irish youth justice.[2]
d) I have collaborated with organisations including An Garda Síochána, the Probation Service and Le Chéile to map and develop the use of restorative justice in Irish youth justice.[3]
e) I have collaborated with various Youth Diversion Projects on projects and activities relating to restorative practice, police-community dialogue and developing youth justice research.
f) In 2024, I established the Criminal justice Open Research Dialogue (CORD) Partnership. CORD, a research-policy-practice partnership, seeks to embed a culture of open research in criminal justice in Ireland. CORD includes partners from over 60 organisations, including many in youth justice (e.g., An Garda Síochána, the Department of Justice, Probation Service, Oberstsown, Foróige, Extern, the REPPP project and several academics who research youth justice).[4]
g) Previously, I worked as Project Manager at the Restorative Justice Council in the UK, for whom I researched the use of restorative justice with young adults aged 18-25.[5]

[1] See https://www.drugsandalcohol.ie/38981/1/Evaluation%20of%20youth%20diversion%20projects.pdf
[2] See https://journals.sagepub.com/doi/full/10.1177/14732254221122568
[3] See https://restorativejustice.ie/
[4] See https://www.maynoothuniversity.ie/cord-partnership
[5] See https://restorativejustice.org.uk/sites/default/files/resources/files/a7je_t2a.pdf

Heads 1-29

3) My understanding of these Heads is that they mostly seek to ensure that children cannot 'age out' of the various protections to which they were entitled at the time of their offence, before the criminal justice process has taken its course and the sentence has been completed.

4) While I support these changes, **the Children (Amendment) Bill as drafted represents a missed opportunity to extend the protections and the young person-sensitive facets of the criminal justice system to young adults up to age 25**. As the Youth Justice Strategy 2021-27 recognises, there is a very strong scientific basis for 1) treating young people differently from fully mature adults for the purpose of criminal justice processes and sentencing **and** 2) applying this logic to young adulthood, from 18-25, because young people continue the process of psychological and neurological maturation up to that age. There is now a general scientific consensus within the criminological and youth justice literature to this effect, and many European governments have made changes to national legislation, policy and practice in recent years to reflect this.

5) Given that the importance of having a criminal justice system which responds to young adults' needs is emphasised in the Government's own Youth Justice Strategy, and given the significant body of work that is being done to amend the Principal Act, it would be a shame and a wasted opportunity if we do not also extend the scope of youth justice as outlined in the Principal Act so that all its provisions apply to young people in conflict with the law up to the age of 25. The opportunity to make these amendments may not present itself again in the coming years.

6) Second**, it would be unfortunate if this process did not involve amending s.78 of the Principal Act**, as proposed in the Youth Justice Strategy. This section relates to family conferences which are a form of court-referred restorative justice process, delivered by Young Persons' Probation and seldom used. Although we do not have data specifying exactly how many s.78 conferences were completed in recent years, my understanding is that there have been years in which the number was either zero or one, and many other years where the number is in the single digits. The Courts Service's Annual Report for 2024 notes that 3,922 orders were made in the District Court relating to juvenile crime that year, including 150 orders of detention, suggesting there is greater potential to use restorative justice to meet victims' needs in situations where there is also the potential to de-escalate children towards more constructive interventions.[6]

7) The potential to enhance the use of this provision is stated in the Youth Justice Strategy, which provides that (p. 34, emphasis added):

There is a clear need to improve on the provisions on family conferencing, which are little used in practice. The intention is to provide for an individualised consideration of the situation and needs of each child (whether at Diversion or Court stage) involving the relevant agencies and family members, as appropriate to the situation of each case. In some cases this may more or less replicate the existing family conferencing provisions, but in others a different configuration of players will be needed. ***For***

[6] See https://www.courts.ie/acc/alfresco/5a87d7d6-b27d-407f-bf9d-fb3b8e47627e/Courts%20Service%20Annual%20Report%202024.pdf/pdf/1 p.110

cases heard in Court legislation might require that reasons be given for not using restorative or collaborative approaches and that Probation Officer recommendation should also say whether a collaborative plan/conference is appropriate*. More detail might be provided (and amended flexibly) by way of Regulations or guidelines, including in relation to the use of restorative approaches. Draft Regulations / guidelines should be published at the same time as an amending Bill.*

8) Certainly, further amendments to the Bill could reflect the proposals in the Strategy: the Court might be required to give reasons why they have *not* referred a child to a conference, or there might be a requirement to seek a Probation Officer's recommendation as to whether a family conference is appropriate. There would be other ways of strengthening this provision which I am happy to discuss.

9) Crucially, victims' rights, needs, support and protection need not be perceived to be in tension with the rights, support and protection of young people in conflict with the law. If we invested in victim services, including therapeutic and practical supports and restorative justice, we can ensure victims' needs are met, separate from the response to a young person who committed an offence against them. Growing independent and bespoke victim support services for young people also represents an essential crime prevention tool, given substantial overlaps between offending and victimisation among young people in conflict with the law.

Thank you again for giving me this opportunity to comment on the draft Bill. I am more than happy to provide further information or assistance as required.

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