Irish Penal Reform Trust Submission on the Children (Amendment) Bill 2024

19 August 2025

Irish Penal Reform Trust

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and progressive reform of Irish penal policy, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system, and to reducing the use of imprisonment. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Niamh McCormack

Legal, Policy and Public Affairs Manager

Address: Irish Penal Reform Trust
MACRO Resource Centre,
1 Green Street,
Dublin 7

Phone: +353 1 874 1400
Email: nmccormack@iprt.ie

Summary of recommendations

Head 3

IPRT recommends that Head 3 be amended to explicitly raise the age of criminal responsibility to at least 14 years for all offences.

Head 9

IPRT recommends amending Head 9 to provide that a child or relevant person must not be remanded to detention where an appropriate alternative order is available to the Court, including a bail supervision order.

Head 19

IPRT recommends retaining Head 19 insofar as it aligns with the recommendation set out by the Law Reform Commission in its 2020 report on suspended sentences.

Head 21

IPRT recommends amending Head 21 to explicitly require that rehabilitation and reintegration are a paramount consideration when making a decision on the weight applied to the period of detention and that applied to the period of supervision.

IPRT recommends that Head 21 is amended to provide that a resumed hearing must take place once the person subject to a detention and supervision order reaches the age of majority to assess whether continued detention is necessary under the criteria set out in the proposed section 15(2).

IPRT recommends that provision is made for the accommodation of 18- to 24-year-olds in a separate facility to those aged 25 and older.

IPRT recommends that the sanctions, standards and principles which apply in the youth justice system be extended to apply to young people up to the age of 24 years to align with government policy and human rights standards.

Introduction

The Irish Penal Reform Trust ('IPRT') welcomes the opportunity to make a submission on the Children (Amendment) Bill 2024 ('the Bill').

This Bill, when enacted, will implement commitments set out in the *Youth Justice Strategy 2021-2027* and important recommendations made to the State by the UN Committee on the Rights of the Child.[1] Alongside the Criminal Justice (Amendment) Act 2024, which amended section 2 of the Criminal Justice Act 1990 to disapply the mandatory life sentence for murder for someone who was a child at the time the offence was committed but 'age-out' by turning 18 before or during the trial process, this Bill marks an important step towards bringing Irish youth justice in line with human rights law.

There are many positive developments proposed by this Bill, including expanding the jurisdiction of the Children's Court, the continuation of community sanctions for those who age-out during their sentence and amendment of the Bail Act to provide that failure to pay recognisance will be treated in the same manner as failure to pay a fine, meaning a young person cannot be imprisoned on that basis.

In particular, IPRT welcomes ending the practice of prosecuting those who have aged-out as an adult for an offence they committed as a child, although we note that it follows a successful legal challenge against the State.[2] Another positive development is proposed under Head 23 that explicitly states imprisonment should only be used as a measure of last resort and penalties imposed should cause as little interference as possible with the relevant

[1] United Nations Committee on the Rights of the Child, concluding observations on Ireland 2023.
[2] *Doe (No 1), Doe (No 2) and Doe (No 3) v DPP & Ors* [2025] IESC 17.

person's legitimate activities and pursuits. This aligns with the *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*.[3]

This submission focuses on some critical elements of youth justice arising from the Bill, including the age of criminal responsibility, alternatives to pre-trial detention, community sanctions and 'ageing out' of the youth justice system and detention facilities.

Head 3

IPRT welcomes Head 3 insofar as it restricts criminal proceedings against children. However, IPRT is of the view that this Bill presents an important opportunity to increase the age of criminal responsibility in line with our international human rights obligations and IPRT urges the Committee to consider this in the pre-legislative scrutiny process.

The Criminal Justice Act 2006 raised the age of criminal responsibility to 12 years for most criminal offences, but also provided that, in the case of allegations of serious offences such as murder, manslaughter, rape or aggravated sexual assault, a 10-year old child may be prosecuted with the consent of the Director of Public Prosecutions.

While IPRT welcomes the purpose and intent of this Bill, the age of criminal responsibility remains a critical issue in child justice. The UN Committee on the Rights of the Child's General Comment 29 on children's rights in the child justice system recommends that States raise the minimum age of criminal responsibility to 14 years of age as a minimum standard.[4] In 2023, following its examination of the State, the Committee reiterated its call for the Government to increase the minimum age of criminal responsibility to at least

[3] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice (Council of Europe 2011) Part IV, Rule 82.
[4] UN Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system CRC/C/GC/24, September 2019.

14 years of age.[5] The European Committee on Social Rights in its 2019 conclusions on the State's compliance with the European Social Charter, found that, "the situation in Ireland is not in conformity with Article 17(1) of the Charter on the ground that the age of criminal responsibility is too low".[6]

Before the enactment of the 2006 Act the general standard was children aged seven to 14 years were exempt from criminal responsibility because legally it was considered that they did not have the capacity to understand the consequences of their actions and could not be held entirely responsible for these actions to a standard of criminal intent. The 2006 Act was therefore a backsliding in the longstanding legal approach in Ireland, which had aligned with the UNCRC's position long before the Convention had even been ratified.

The former Special Rapporteur on Child Protection in Ireland has summarised this approach to the setting of the age of criminal responsibility:

> The approach to the minimum age of criminal responsibility in Ireland, as it is in many countries, is highly illogical. The law deems children incapable of consenting to sexual activity until the age of seventeen years, and prohibits the drinking of alcohol until eighteen years, yet children as young as ten years are essentially held to have the necessary mental development to knowingly and intentionally engage in a criminal act.[7]

This report goes on to note that the State has an obligation to protect vulnerable children, including those who have perpetrated harm, acknowledging that if a 10-year-old child has engaged in serious offending such as murder or rape, it is 'clearly symptomatic' of a serious child

[5] UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Ireland CRC/C/IRL/CO/5-6, February 2023.
[6] European Committee of Social Rights, Ireland Conclusions 2019, March 2020, P. 38.
[7] Geoffrey Shannon, 'Tenth Report of the Special Rapporteur on Child Protection' (Department of Children and Youth Affairs 2016).

protection issue in the child's life.[8] IPRT's position is that criminalising a child of this age is inappropriate and does not align with the obligations on the State to protect vulnerable children and uphold their human rights.

It is well-recognised that children and young people do not possess the same cognitive abilities or developmental capacity as adults. Research has shown that the capacities of children and young people are influenced by a lack of future orientation, a lack of risk aversion, impulsivity and suggestibility.[9] In particular, adolescents are more driven by opposition to authority and gaining peer approval.[10] Research in the Children's Court in Ireland has demonstrated that an overwhelming majority of those who come before the court are boys from disadvantaged areas.[11] In that study, it was estimated at least 80 per cent of the boys surveyed would satisfy the diagnostic criteria for at least one psychological disorder, with cannabis and cocaine abuse witnessed in males as young as 13. These underlying psychological issues and sociological disadvantage, combined with the general neurological development of adolescents discussed above, make many young offenders vulnerable to external influences without the cognitive ability to form criminal intent in the same way a fully-neurologically developed adult could.

While recognising the harm that can be caused by the offending behaviour of a child, it is important that the legal framework adopts an approach centred on modern research and understanding of the mental capacity and maturity of a child who engages in offending behaviour. IPRT believes that Head 3 of the

[8] Ibid, p. 84.
[9] Ido Weijers, 'Requirements for Communication in the Courtroom: A Comparative Perspective on the Youth Court in England/Wales and The Netherlands' (2004) 4(1) Youth Justice 25.
[10] Elizabeth Scott & Thomas Grisso, 'Developmental Incompetence, Due Process and Juvenile Justice Policy' (2004) 11 University of Virginia Law Scholl: Public Law and Legal Theory Working Paper 23-24.
[11] Jennifer Carroll, Emer Meehan and Sinead McPhillips, The Children Court: A National Study (Association for Criminal Justice Research and Development 2007) 18.

Bill provides an opportunity to bring the age of criminal responsibility in line with human rights standards and State obligations.

IPRT recommends that Head 3 be amended to explicitly raise the age of criminal responsibility to at least 14 years for all offences.

Head 9

IPRT welcomes the proposal under Head 9 to disallow remanding a child to custody where there is no place in Oberstown Detention Campus and avoiding their detention in a Garda station or other inappropriate setting. Currently there are 46 spaces in Oberstown with 40 for boys and six for girls although this unit is seldom used with only two girls detained in 2024.[12] The Bail Supervision Scheme (BSS) began as a pilot in Dublin in 2016, with the evaluation demonstrating that there was a 72 per cent reduction in reoffending (six months post-BSS versus six months pre-BSS). Of the young people who successfully completed the programme, 85 per cent were given a non-custodial sentence. BSS was rolled out to greater Dublin, Cork and Limerick in 2021.

Young people at high risk of bail denial tend to have complex needs; they may have experienced multiple adversities, be early school leavers and live in challenging environments. Such conditions often place additional challenges on the young person's ability to adhere to the strict bail conditions laid down by the court. The BSS model provides intensive support from a multi-disciplinary team (MST) for the young persons in their home. Taking a holistic strengths-based, collaborative, problem-solving approach, the BSS team works predominantly with the caregiver to help them to support the young person. By tackling barriers to positive change within the young person's home and community environment and facilitating the caregiver to challenge the

[12] Oberstown Detention Campus Annual Report 2024, p. 8.

young person's problematic behaviour, the BSS aims to facilitate sustainable pro-social change in the young person's behaviour.

The project evaluation in 2019 found that the BSS enabled young people at high risk of bail denial to adhere to bail conditions and reduce reoffending by effectively supporting their caregivers.[13] This ensured that these young people remained in the community instead of detention during the pre-trial stage.

The BSS demonstrates the tangible, transformative effects of child-centred youth justice. While not an option for every child or relevant person, the scheme is a positive development that diverts children from detention, which should only be used where no other option is suitable. Rates of remand custody among children is high, with 47.5 per cent of children admitted to Oberstown in 2024 on remand detention orders and an average length of stay on remand of 101 days.[14] This would be higher if not for the BSS as in 2024, 59 young people were eligible for the Scheme.[15]

While section 114 of the Children Act 2001 provides that the court shall not make an order imposing a period of detention on a child unless it is satisfied that detention is the only suitable way of dealing with the child and that a place in a children detention school is available for them, the disproportionately high rates of remand custody demonstrate that it is unlikely that detention is always being used as a last resort at the pre-trial stage. This may be due to the fact that BSS is not currently available across all circuits and therefore only available to a limited number of judges. The statistics for the number of children detained in 2024 suggest that judges are availing of the BSS where it is available. For example, the number of young people detained from Limerick (where BSS is available) was the same as that

[13] Department of Children and Youth Affairs, Evaluation of the Bail Supervision Scheme for Children, December 2019.
[14] Oberstown Detention Campus Annual Report 2024, p. 8.
[15] Ibid, p. 70.

from Waterford which has a much smaller population.[16] Furthermore, there were only four more young people detained from Cork despite it having a population almost five times the size of Waterford.[17]

The current proposed language under Head 9 is welcome insofar as it compels the Court to not remand a child to custody where no space is available to accommodate them, however this does not have the same meaning as detention only being used as a last resort. IPRT understands that while BSS orders are currently not available to judges in all circuits, the legislation must allow for the expansion of this scheme into the future through wording which compels the court to consider a BSS order as paramount where it is available and appropriate.

IPRT recommends amending Head 9 to provide that a child or relevant person must not be remanded to detention where an appropriate alternative order is available to the Court, including a bail supervision order.

Head 19

IPRT welcomes the proposed introduction of deferred sentence supervision orders. The order aligns with a recommendation made by the Law Reform Commission recommendation in 2020,[18] and would allow the sentencing court to specify a detention order but defer its imposition to a later date. While initially this provision will address overcrowding in Oberstown through diverting children from detention, it would also provide a general power for deferment when it is in the interests of justice, considering the offence's nature and the child's age, understanding, character, and circumstances. At the resumed hearing, which occurs no more than one year later (even if the child has turned 18), the court can impose the deferred detention period,

[16] Ibid, p. 8.
[17] Central Statistics Office, Census of Population 2022 Profile 1 – Population Distribution, June 2023.
[18] Law Reform Commission, *Suspended Sentences* (LRC 123-2020).

suspend all or part of it, or impose a community sanction. The deferred detention order is similar to a fully suspended sentence because neither involves immediate custody, and the child may not serve any time in detention depending on their behaviour. However, it is distinct because the sentence length is not imposed at the outset; it is only imposed if deemed necessary at the resumed hearing. IPRT welcomes this provision and believes if enacted, it will have a positive effect on individuals and institutions within the youth justice system.

IPRT welcomes the obligation on the court under Head 19 to explain the meaning, purpose and consequences of the deferred sentence supervision order to the child in open court in language appropriate to the level of understanding of the child.

IPRT recommends retaining Head 19 insofar as it aligns with the recommendation set out by the Law Reform Commission in its 2020 report on suspended sentences.

Head 21

Head 21 makes provision for a detention and supervision order. A detention and supervision order would essentially reverse the sequence of detention from a deferred detention and supervision order, whereby the person is placed in detention immediately with the second part of their sentence served in the community under supervision.

This order applies to children aged 16 to 18 when detention is the only suitable option. It involves a period of detention in a children detention centre followed by supervision in the community by the Probation Service. This order largely mirrors the part-suspension of a sentence of imprisonment available for adults. For serious offences, a detention and supervision order provides supervision to assist children who offend (who often turn 18 during lengthy sentences) in their reintegration into society upon release.

While IPRT welcomes that there is no requirement that there is an even division of time spent in detention and time spent under supervision in the community, without robust safeguards there is a risk of backsliding whereby a person could spend the majority of their sentence in detention. IPRT welcomes the flexibility afforded by the provision in terms of dealing with individuals on a case-by-case basis but cautions against any unintended consequences resulting in a young person spending a disproportionate length of their sentence in detention under this type of order with a smaller period in the community which is designed to support their rehabilitation and reintegration into the community.

IPRT recommends amending Head 21 to explicitly require that rehabilitation and reintegration are a paramount consideration when making a decision on the weight applied to the period of detention and that applied to the period of supervision.

IPRT welcomes that Head 21 largely reflects the 2023 recommendation by the UNCRC to strengthen measures to provide community-based social reintegration services for children leaving the youth justice system. The focus under the proposed section 151(2) on the principle of rehabilitation is also a welcome development. However, we remain concerned that there is a cohort of children who serve part of their sentence in a child detention centre, with a focus on education and therapeutic responses to offending behaviour, who go on to age-out of that centre and are moved to an adult prison from the age of 18. In 2024, 13 young people were transferred from the care of Oberstown to the Irish Prison Service.[19] This can have a serious effect on the rehabilitation and mental health of that young person and does not align with the principles they were initially sentenced under, given they were a child at the time the offence was committed.

[19] Oberstown Detention Campus Annual Report 2024, p. 8.

IPRT recommends that Head 21 is amended to provide that a resumed hearing must take place once the person subject to a detention and supervision order reaches the age of majority, to assess whether continued detention is necessary under the criteria set out in the proposed section 151(2).

There is a conflict between the proposed new approach to sentencing with the principles of youth justice at its core and the continuation of the practice of children ageing out of a child detention centre. Given it is well-established and recognised that someone who was a child at the time an offence was committed should be dealt with under the youth justice system at the point of sentencing, with a focus on the children's rights principles that underpin youth justice, it follows that those principles should continue to be prioritised when they age-out of the child detention centre or the system.

Ageing-out of the youth justice system can have a detrimental effect on rehabilitation. Previous IPRT research describes the 'cliff-edge' effect that occurs when someone turns 18 and "loses access to age-appropriate interventions, entitlements and supports overnight – both in the criminal justice system, and in services provided in the community".[20] The Irish Prison Service statistics, in June 2025, indicated that there were 436 young people aged 18 to 24 in adult prison with young men making up 10 per cent of the male adult prison population while seven per cent of women in prison were under 25.[21]

While we understand that someone who has reached the age of 18 cannot continue to be accommodated at a child detention facility with children under 18, recommendations have been made regarding the accommodation of this cohort. The *Youth Justice Strategy 2021-2027* includes a strategic objective around the management and care of young adults aged 18-24 in the prison

[20] Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015).
[21] Irish Prison Service, 'Monthly Information Note – June 2025' (IPS).

system, recognising that there is a need for the work carried out with the young person in Oberstown once someone ages out of the system into the adult prison system.[22] This includes protecting against further criminal involvement and supporting rehabilitation and personal development.

There are also welcome commitments to progress and put in place a dedicated diversion scheme for young adults which IPRT hopes would negate the need for many of these young people to be detained.

IPRT recommends that provision is made for the accommodation of 18- to 24-year-olds in a separate facility to those aged 25 and older.

The current framework appears to be at odds with the fact that stated government policy accepts that "[w]hile young people aged 18-24 are adults, the Government recognises that they may have specific difficulties accessing their rights, as they face transitions into further education or employment, leaving care or moving from child to adult health or mental health services".[23] *Young Ireland: The National Policy Framework for Children and Young People 2023-2028* and other youth-related strategies are clear that young people up to the age of 24 fall within their remit.[24] The *National Youth Strategy 2015-2020* defines the period of youth as "that between the ages of 10 and 24 years".[25] Furthermore, existing Irish legislation defines a young person as "a person who has not attained the age of 25 years".[26]

IPRT maintains that the State is consistent in its approach to young people and recognises the particular vulnerabilities of this cohort of 18 to 24 year

[22] Department of Justice, Youth Justice Strategy 2021 – 2027, p. 27.
[23] Department of Children, Equality, Disability, Integration and Youth, *Young Ireland: The National Policy Framework for Children and Young People 2023-2028*, (Government of Ireland 2023) p. 2.
[24] Ibid.
[25] Department of Children and Youth Affairs, *National Youth Strategy 2015-2020*, (Government of Ireland 2015) p. v. This definition is reiteraterated in *Opportunities for Youth National Strategy for Youth Work and Related Services* (Government of Ireland 2024) p. 11.
[26] Section 2, Youth Work Act 2001.

olds in the criminal justice system by affording them every opportunity to move away from criminality during this crucial developmental period. This approach would reflect the emerging neuroscience on adolescent brain development and maturity levels of young adults. International evidence demonstrates that young adults are more amenable to rehabilitation than older adults, as the brain and maturity continue to develop into a person's mid-twenties.[27] The right interventions at this age support desistance but the wrong interventions can deepen offending behaviour.[28]

Different measures have been taken in other jurisdictions to recognise the distinct position of young adults in terms of sentencing decisions. For example, the Sentencing Council in England and Wales includes 'age and/or lack of maturity' where it affects the responsibility of the offender as a mitigating factor in its sentencing guidelines for adults.[29] A 2020 review by the Scottish Sentencing Council found that brain development may be delayed by factors such as adverse childhood experiences, traumatic brain injury, alcohol and substance use and mental disorders.[30] It outlines the need to consider an individual's culpability relative to their cognitive maturity during sentencing. In both Germany[31] and Victoria in Australia,[32] there are other examples of the court being able to apply youth justice sanctions to young adults up to the age of 2020.

The highest rates of prison recidivism statistics in Ireland have consistently been for young adults,[33] demonstrating that prison is not an appropriate

[27] Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015) p. 25.
[28] Ibid.
[29] Sentencing Council (UK), 'General Guideline: overarching principles' (October 2019).
[30] Suzanne O'Rourke et al., The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts (Scottish Sentencing Council 2020).
[31] Fair and Just Prosecution, Young Adults in the Justice System (Fair and Just Prosecution 2019).
[32] Australian Institute of Health and Welfare 'Youth justice in Australia 2015–16' (March 2017).
[33] Central Statistics Office, Probation Re-offending Statistics 2020. 29 November 2024.

response for many of these young people and we could serve them better through promoting, expanding and investing in alternatives to custody.

IPRT recommends that the sanctions, standards and principles which apply in the youth justice system be extended to apply to young people up to the age of 24 years to align with government policy and human rights standards.