DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

JOINT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

Dé Máirt, 4 Samhain 2025

Tuesday, 4 November 2025

Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	**Seanadóirí / Senators**
Paula Butterly,	Garret Kelleher,
Michael Cahill,	Anne Rabbitte,
Catherine Callaghan,	Lynn Ruane.
Gary Gannon,	
Pádraig O'Sullivan,	
Mark Ward.	

Teachta / Deputy Matt Carthy sa Chathaoir / in the Chair.

General Scheme of the Children (Amendment) Bill 2024: Discussion

An Cathaoirleach: Tá fáilte roimh gach duine. Apologies have been received from Deputy Tom Brabazon and Senator Michael McDowell. I remind members and witnesses to turn off their mobile phones or to switch them to flight mode.

The purpose of our meeting is to have an engagement with a number of stakeholders as part of the committee's scrutiny of the general scheme of the children (amendment) Bill 2024. I welcome to the meeting Dr. Ian D. Marder, associate professor in Maynooth University and Ms Saoirse Brady and Ms Niamh McCormack from the Irish Penal Reform Trust. We are delighted to welcome Ms Valerie McAllorum Ryan, who will be giving a personal testimony. We welcome Ms Claire McEvoy and Mr. Seán Egan from the Irish Council for Civil Liberties, Ms Amanda Connolly and Dr. Brian Hunt from the Law Society of Ireland and Dr. Louise Ford, who is representing Brunel University of London. Also here as observers are Ms Marisa Gomez and Ms Susanna Gillespie, officials from the Department of Justice, Home Affairs and Migration who will assist the committee if any clarification is needed on the general scheme. You are all very welcome.

Before I invite opening statements, I need to advise witnesses in relation to parliamentary privilege. Witnesses and members are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity, by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

I am going to invite each organisation and individual in turn to make an opening statement of a maximum of three minutes. Once all the opening statements have been delivered, I will call on members of the committee in the order in which they indicate to me to put questions. The committee operates a rota system, which will provide each member with an initial seven minutes to engage with the witnesses. That is both for questions and answers and we ask both questioner and respondent to be as succinct as possible. Following that initial round we will allow a second round if time permits.

I ask Dr. Marder to give his opening statement.

Dr. Ian D. Marder: I thank members for having me at the committee. I am a criminologist at Maynooth University and among other things I sit on the Department of justice's youth justice advisory group, which oversees the implementation of the recent youth justice strategy. I also collaborate on research and policy and practice development with a number of organisations of relevance to this committee's work, including the Garda, the Probation Service and several youth justice and restorative justice organisations in the community sector.

I support the intention of the Bill to address the ageing out problem in youth justice, but primarily I propose that as we are opening up the Children Act, we take advantage of those amendments to make further changes that would ensure Ireland holds its place as a world leader in youth justice.

First, this is a great opportunity to extend the protections and the young person-sensitive facets of the criminal justice system to young adults up to the 25th birthday. The scientific

basis for this is accepted in the Department's youth justice strategy and has been implemented in a growing number of youth justice systems around the world, including Scotland, Germany and the Netherlands. It is not necessary to have an entirely new legislative system for young adults. It does not need to be legally complicated. There will be practice-based issues to be addressed but we can take advantage of this chance to increase the age to which existing legal provisions apply by revising the definition of "relevant person" in the new section 70A to include this cohort.

Second, it is also recognised in the youth justice strategy that we could use this process to strengthen the family conferencing provisions starting at section 78 of the Children Act. These sections are very specific and well developed. They allow for flexible restorative justice processes that can include victims or a young person's family or other significant people. Northern Ireland has shown this is part of the puzzle of keeping children out of prison in ways that also help victims recover from crime, where a child's rights are not infringed by participation. I recommend looking at what has been achieved in Northern Ireland through systematic referrals to restorative justice and the correlating drastic reduction in children in prison and considering what we can learn from this. Those family conferencing provisions are seldom used here. There are years in which the number of those sits at zero or one and many others when it sits in the single digits. The Courts Service's annual report for 2024 notes 3,922 orders were made in the District Court relating to youth last year, including 150 orders of detention. This suggests there is potential to use restorative justice to reduce those numbers here. In amending this Act we could strengthen the referral process so more people are considered for restorative processes. For example, the court might be required to give reasons why it has not referred a child to a conference or there might be a requirement to make a referral or to seek a probation officer's recommendation as to whether a family conference is appropriate.

Third, as the amended Bill introduces a number of new or different sanctions, I urge some caution when introducing new sentencing measures that permit intensive alternatives to prison to ensure they are used only to reduce the sentencing tariff for children and not to up-tariff them. This is where a person receives a sentence greater than they would have done were a new sentence type not introduced. That has been a problem in sentencing regimes in other countries.

Finally, and perhaps most importantly, this is a good opportunity to raise the age of criminal responsibility, which is far too low in Ireland and out of line with both mature democracies across Europe and with the principles of the Children Act itself. I thank the committee.

An Cathaoirleach: I thank Dr. Marder and invite Ms McCormack to give the Irish Penal Reform Trust's opening statement.

Ms Niamh McCormack: I thank the Cathaoirleach and the committee for inviting us to provide observations on the general scheme of the children (amendment) Bill. While the IPRT welcomes this Bill's purpose and intent, there is currently a missed opportunity to align with our international human rights obligations and address repeated calls from the UN Committee on the Rights of the Child to raise the minimum age of criminal responsibility to 14. Children do not possess the same cognitive abilities or developmental capacity as adults. Research shows they are influenced by impulsivity, suggestibility and a lack of both future orientation and risk aversion. The State is obliged to protect children, including those who have

perpetrated harm. Criminalising a child as young as ten is inappropriate and it is important that the legal framework adopts a child rights and evidence-based approach to children who offend. We therefore recommend amending head 3 to explicitly raise the age of criminal responsibility to at least 14 years for all offences.

We welcome the proposal to disallow custodial remand of a child where there is no place available in Oberstown, a situation which is increasingly common. The principle of detention as a last resort - under the 2001 Act - must be upheld. However, the disproportionately high rates of remand custody for children are concerning. The largely successful bail supervision scheme, which is an intensive intervention that has been proven to reduce reoffending, currently only operates in Dublin, Limerick and Cork but is regularly used by judges in those areas and should be extended nationwide. Head 9 should be amended to provide that a child must not be remanded to detention where an alternative order is available to the court, including a bail supervision order.

The proposed expansion of deferred sentence supervision orders under head 19 is welcome to address the current deficit around suspended sentences for children, which would be inappropriate if applied in the same way as adults. Where a child complies with the order in the year before a resumed hearing takes place they will be diverted from detention entirely as the court can suspend all or part of the sentence and propose a community sanction instead. For serious offences where detention is the only suitable option, a detention and supervision order provides for a period of probation supervision to assist young people to reintegrate into society upon release from detention. The IPRT welcomes the flexibility 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. The IPRT recommends amending head 21 to explicitly require that rehabilitation and reintegration are the primary considerations when calculating the length of a detention period.

Finally, the IPRT believes the children's rights principles underpinning these proposals should continue to apply for young adults. Ageing out of the youth justice system can have a detrimental effect on rehabilitation due to the cliff edge effect that occurs when someone turns 18 and loses access to age-appropriate interventions and supports overnight. The IPRT recommends extending youth justice sanctions and standards up to the age of 24, as happens in other jurisdictions.

My colleague, Ms Brady, and I are happy to answer the committee's questions.

An Cathaoirleach: Gabhaim buíochas le Ms McCormack. As members will know, this committee prides itself that as well as inviting expert witnesses to discuss issues before us we also welcome a real-life experience of the matters under discussion. For that reason, we are delighted to welcome Ms Valerie McAllorum Ryan to the committee to give her personal testimony. Mc McAllorum Ryan is welcome to make her opening statement.

Ms Valerie McAllorum Ryan: I thank the committee for this opportunity. My name is Valerie McAllorum Ryan. I am here today to share my lived experience of the Children's Act 2001 and, in particular, a loophole within it. There is no legal framework for a suspended sentence for juvenile offenders. This leaves judges with very limited powers, namely detention or no detention at all.

On the evening of 2 November 2018, I was the victim of a hit-and-run by a juvenile driver. His speeding car was clipped by another car moving out of a parking space, which caused him to lose control and mount the footpath, hitting me. Both drivers were uninsured and left the scene. My injuries were catastrophic. I suffered multiple fractures to my toes, heel, shin bone and ankle. My ankle was open and required grafting. My lumbar spine was fractured, my pelvis was shattered, causing massive internal bleeding and multiple clots on my lungs. I also suffered a degloving injury to my right thigh where the skin and tissue were ripped away from the muscle and bone. I required extensive orthopaedic and reconstructive plastic surgery and spent eight weeks in hospital. To date, I have had eight general anaesthetics, ten local anaesthetics and over 160 hospital visits. I live with permanent nerve damage and extensive scarring.

During my recovery, I faced two criminal cases. The driver of the parked car received a custodial sentence which was later suspended on appeal despite further offending. In 2020, the juvenile driver received a three-year detention order suspended on conditions, one of which was not to reoffend. He reoffended within that period. When the case returned to court, I was told the sentence could not be enforced because there is no power under the Children Act to reactivate a suspended detention order. The DPP confirmed that while section 144 of the Act allows for suspension, there is no mechanism to enforce it when breached. This stems from a Supreme Court ruling in 2017. I found it incredible that three years after that ruling, an unenforceable sentence could still be handed down. The proposed deferred sentence supervision order in the new general scheme is a fair and balanced solution. This gives judges flexibility, while recognising the seriousness for both offender and victim. The general scheme also aims to address the ageing-out process, which was a factor in my case. It is essential that any reform ensures such orders remain enforceable. I also believe restorative justice is an underused but valuable tool. It can promote accountability and rehabilitation, key principles of the Act, yet I was never offered this option.

I respect the Children Act 2001. It is a good and compassionate law. It is not my wish to disrupt it, but no justice is not an option. When the law lets consequences and accountability slip through its fingers it fails not only victims but all of us.

An Cathaoirleach: Very well said. Again, we really appreciate Ms McAllorum Ryan being here to share what was a traumatic personal experience. We commend her on the dignified way in which she has dealt with her personal issues but has also advocated for others who may be in similar situations.

Next I invite the Irish Council for Civil Liberties, ICCL. Ms McEvoy will give the opening statement. She has three minutes.

Ms Claire McEvoy: I am the head of research and policy with the ICCL. We thank the committee for the opportunity to be here. The ICCL felt it was especially important to bring our expertise on civil liberties and procedural rights and our understanding of Ireland's youth justice system to the committee. Our comments are informed by my colleague Seán Egan's experience representing children in the Children's Court. Mr. Egan will highlight three key areas: head 3, on restrictions in criminal proceedings against children; head 10, on restrictions on reports of proceedings involving children; and heads 19 and 21, on additional sentencing options and increased discretion for judges.

Mr. Seán Egan: This Bill, amending the Children Act 2001, contains many sensible improvements which will assist the court in doing its important work. It is very welcome. Head 3 proposes that the DPP's permission will be required to prosecute a child for an offence they allegedly committed before the age of 14. This is a clear improvement from the current provision because it relates to the age of the actual offending when it occurred and provides for a clearer assessment of the child's maturity and whether prosecution is appropriate.

Alongside our colleagues at the Irish Penal Reform Trust and the Children's Ombudsman, the ICCL has echoed the UN Committee on the Rights of the Child's recommendation for Ireland to raise the age of criminal responsibility to at least 14 to fulfil our obligations as signatories to the convention. This would be in line with other EU member states and would better reflect our evolving understanding of young people's cognitive development and its impact on offending behaviour.

The extension of anonymity to children who reach the age of majority during criminal proceedings proposed under head 10 is welcome. Importantly, it aligns the legislation with the recent ruling of the Supreme Court in DPP *v.* PB. This will facilitate the operation of youth justice and uphold privacy rights to aid young people's rehabilitation and reintegration into society. We are concerned, however, that the criteria for when a judge may dispense with the anonymity provision refer to regard for the public interest, but do not specify that the judge must consider the best interests of the child. This could lead to decisions which give insufficient weight to the potential stigma a child offender whose identity is revealed may experience. We ask the committee to consider recommending that this head be amended to include a reference to the best interests of the child.

Head 19 creates a new sentencing option, namely a deferred sentence supervision order. This will serve a similar function to a suspended sentence for adults and will allow the court to acknowledge a serious offence has occurred, while still giving a child an opportunity to demonstrate that they have desisted from offending before a final sentence is imposed. This reflects an existing approach used in Dublin's Children's Court.

Head 21 proposes to give judges greater discretion in structuring sentences using detention supervision orders. These orders currently impose a sentence on a child, the first half of which is spent in detention in Oberstown and the second half spent under the supervision of the Probation Service. Currently, they cannot be applied to children who will turn 18 during the existence of the order. Head 21 will give judges greater flexibility by allowing them to make these orders for young people who will reach the age of majority during the sentence and will permit them to set whatever ratio between detention and supervision they think is suitable, instead of it being fixed at 50:50. The ICCL welcomes this and hopes that judges will uphold the sentencing principles embedded in section 96 of the Children Act 2001, which dictate that detention is to be used as a last resort.

I thank the committee. We are available to answer questions.

An Cathaoirleach: I thank Mr. Egan and Ms McEvoy. I now invite Ms Amanda Connolly from the Law Society to make her opening statement. Ms Connolly has three minutes.

Ms Amanda Connolly: I thank the committee for the invitation to address members today and share the perspective of the Law Society of Ireland on the general scheme of the children (amendment) Bill 2024. I am joined by my colleague Brian Hunt, director of policy.

The Law Society of Ireland is the representative, professional and educational body of the solicitors' profession in Ireland. We represent over 12,000 practising solicitors. Many members of the Law Society deal with juvenile justice matters in courts across the country on a daily basis. Society has progressively moved away from considering children as fully formed adults subject to criminal liability. The Children Act 2001 marked a welcome change in the approach to juvenile justice by placing the interests of the child at the centre of the justice system.

The general scheme of the children (amendment) Bill is a further step forward that seeks to protect the interests of children. Among other things, it will end the unfair situation of minors who have been charged with an offence ageing out of the children courts. Also positive is the proposal to extend the entitlement to anonymity to adults prosecuted for offences committed as a child. We also welcome the proposal to abolish parental supervision orders. It will align Ireland with the international approach which provides that parents should not be criminalised for their child's offending behaviour.

In our view, the general scheme represents an opportunity to correct other elements of unfairness inherent in the juvenile system. I refer here to the youth diversion programme.

In the submission we presented to the committee in August, we proposed that additional provisions be included in the general scheme. First, we proposed that the general scheme should introduce a requirement for a statutory information leaflet or notice to be provided to the child and their parents or guardian upon referral. The leaflet or notice would inform the child and their family of their rights, the main elements of the process as well as possible outcomes and the potential consequences of accepting or not accepting responsibility. Second, we proposed that it should be made clear in the general scheme that an admission provided by the child during the discussion for consideration of their inclusion in the diversion programme would not be admissible in subsequent proceedings. Third, we proposed that the general scheme should amend section 24 of the Children Act 2001 to explicitly require a written decision stating the grounds for refusal of admission to the diversion programme. Fourth, we recommend that the general scheme should provide a structured timeline that reflects the principle of prompt intervention in youth justice. Fifth, we propose that the general scheme should include a provision requiring that the information advising the child of their rights, including the right to consult a solicitor, be provided a second time and that it be recorded on camera.

The general scheme represents an opportunity to give consideration to how the legal aid scheme recognises the role of solicitors in advising juveniles. Under the current scheme, there is no provision for a juvenile to avail of free legal aid in order to seek advice from a solicitor when considering whether to accept a diversion programme. Similarly, the legal aid scheme does not enable a juvenile to be legally advised in circumstances where they opt to provide a voluntary statement at a Garda station.

The general scheme is a good step towards an improved juvenile justice system, but we recommend that the Bill should include the additional provisions that I have just outlined.

An Cathaoirleach: I thank Ms Connolly. Our final guest speaker is Dr. Louise Forde.

Dr. Louise Forde: I thank members for this opportunity to attend today's meeting in order to engage with the committee on the general scheme of the children (amendment) Bill. I am

presenting this statement on behalf of myself and Professor Ursula Kilkelly. Professor Kilkelly is a leading international scholar in children's rights and youth justice and a former chair of Oberstown Children Detention Campus. I am a senior lecturer in law at Brunel University of London, a member of the research advisory group for the Oberstown Children Detention Campus and a member of the Academic Liaison Network for the Youth Justice Board for England and Wales.

The proposed children (amendment) Bill represents an important opportunity to bring Ireland's framework for youth justice further into line with our international obligations under the UN Convention on the Rights of the Child, UNCRC. We welcome the aim behind the general scheme to extend key provisions of the Children Act to those who are children at the time of their alleged offences but who reach 18 prior to the conclusion of legal proceedings.

The Children Act is generally acknowledged to have provided a largely progressive foundation for Irish youth justice. Nonetheless, there are still several areas in respect of which further progress is needed in order to bring Irish law fully into line with UNCRC requirements. Under the latter, the rights children are entitled to in the justice system are found in Articles 37 and 40. Both articles include requirements to ensure age-appropriate treatment, provide support for reintegration and provide adequate protection for procedural rights. Children in conflict with the law are also entitled to enjoy their convention rights without discrimination, to have their best interests taken into account as a primary consideration, to have their views taken into account in matters affecting them and to have their right to develop respected.

In 2023, the Committee on the Rights of the Child highlighted some key areas where further steps are needed to strengthen UNCRC compliance. It was recommended that Ireland take steps to ensure that children below the age of 18 are not prosecuted as adult offenders, without exception, to raise the minimum age of criminal responsibility to 14 and to strengthen measures for children leaving the justice system. The general scheme of the children (amendment) Bill provides an important opportunity to address some of these issues.

The extension of the Children Act to those who commit offences as children but who reach 18 prior to the conclusion of proceedings is a very important step. The non-application of the Act to children who age out has been problematic in view of the fact that it has resulted in young people being sentenced as adults and the loss of important privacy protections and their entitlement to benefit from other provisions under the Act. The steps taken in the general scheme of the Bill in this regard are therefore extremely welcome.

There are, however, areas where further amendments could help to further promote rights-compliant youth justice. For instance, consideration should be given to including a general section that makes it clear that the UNCRC principles apply to all decision-making under the Act and to further strengthening privacy provisions under the Act. Consideration could also be given to updating and refining provisions relating to family conferencing, the application of fines, providing supports for young people leaving the justice system and other matters in order to bring them more fully into line with international requirements. Extending the Children Act to young adults and raising the age of criminal responsibility should also be given careful consideration. A number of these issues have been highlighted by the Committee on the Rights of the Child, and several were highlighted as areas for development in the Youth Justice Strategy 2021-2027. We have elaborated further on these in our written submission.

The proposed amendments to ensure that all those who commit offences as children will be treated as children during legal proceedings will help to address key recommendations made by the Committee on the Rights of the Child. There is also an important opportunity to give further consideration to the other matters we have highlighted in order to maximise the opportunity to ensure the development of a progressive youth justice system that is underpinned by respect for our international legal obligations. I thank members for their time and am happy to take questions.

An Cathaoirleach: I thank the witnesses. Can I just clarify that Dr. Forde's written submission was also in the name of Professor Ursula Kilkelly.

Dr. Louise Forde: Yes, it was a joint submission.

Deputy Mark Ward: I thank the witnesses. Their statements were very informative. In my previous role as a mental health spokesperson, we did a lot of work on trying to get the age for access to child and adolescent mental health services, CAMHS, up to the age of 23 for mental health services. In the general scheme, there are many references to trying to increase the age. When I was my party's mental health spokesperson, many of the arguments I used were in relation to how a child develops into an adult, how treatment can be unsuitable for young people once they turn 18 and how young people fall off a cliff edge once they turn 18. Many of these arguments were made by the witnesses. I do not mean to pick bones, but different ages were suggested by different witnesses. Can we see if we can get a general consensus on that? Dr. Marder stated that protection should be extended to young adults up to the age of 25. Ms McCormack recommended extending youth justice sanctions to people up to the age of 24. Dr. Forde mentioned extending the provisions in the Children Act to those aged 23. In a written submission, the Ombudsman for Children recommended extending access to the youth justice system to those aged 24. Is there a general consensus on the age that these could or should be extended to? What is the rationale behind that? Is there international best practice in this area?

Ms Niamh McCormack: From my perspective, it is up to the age of their 25th birthday. That is just a technicality in terms of 25.

Deputy Mark Ward: It age given in the statement is 24.

Ms Saoirse Brady: In other places, it is recognised. It is also recognised in other legislation. Under the Youth Work Act, young people are recognised up the age of 25. That would be 24 from our perspective. The national policy framework on children and young people includes up to the age of 24, so that includes 24-year-olds as well. That is our perspective. The youth justice strategy is the same.

Deputy Mark Ward: Is it the same for Dr. Marder?

Dr. Ian D. Marder: Yes. I concur with that. It is up to the age of 25, by which I mean up to the 25th birthday. In some countries, it is a bit different. Ultimately, it is a political question as to how high an age we want to include. The higher it is, the greater the number of people who lack full cognitive maturity will be included. This is why in some countries where something like this has been done, there might be a slightly different age. The Netherlands has done something similar around young adults, and it is up to and including 23-year-olds.

Deputy Mark Ward: The youth justice strategy recommends up to the age of 25 as well. This is the same as Sharing the Vision when it comes to mental health. If we are going to do this, it is important to get it uniform across all agencies.

Ms Saoirse Brady: The Department of Justice ran a consultation on extending the youth diversion programme to young adults up to the age of 25, and 18- to 24-year-olds was what was recommended in its their briefing paper.

Deputy Mark Ward: Is there any rationale for using the age of 23?

Dr. Louise Forde: We refer to the incremental raising of the age to 23 as the first point. That was based on some international practice, for example, in the Netherlands, which extends juvenile justice laws up to the age of 23. Up to the age of 25 would be in line with our other strategies or policies and it would also be in line with the neuroscientific evidence.

Deputy Mark Ward: That would be incremental; it would start at 23 and would move up to 25. That would make sense.

In his written submission, the Ombudsman for Children recommended that separate detention facilities apply to young people up to the age of 24. Can I get the witnesses' opinion on that? Has this been done in other jurisdictions and does it work?

Ms Saoirse Brady: Yes. We would agree with that. I am a member of the youth justice advisory group, and this is something that has been discussed in the context of the youth justice strategy. I think it is the intention of the Government to deliver that. If we look up the road at Hydebank Wood in the North, they have a facility for 18- to 24-year-olds. It works really effectively. Again, it is about recognising the cognitive differences between those young adults and other adults. When we consider the adult prison population, about 10% of it is currently under the age of 25, which is that 18 to 24 cohort. It is a cliff edge. We have spoken to people who work at the Oberstown campus. They talk about the absolute despair those young people feel when they age out and have to go to adult prison, because it is so different from what they experience in Oberstown where it is really rehabilitative. We do not have that in the adult system with the current overcrowding levels.

Deputy Mark Ward: Is the facility in the North separate from other prisons? Is it a stand-alone facility? What way does that work? I am trying to figure out the logistics in the context of how it would work

Ms Saoirse Brady: It is a stand-alone facility but is located on the same campus as the women's detention centre.

Deputy Mark Ward: Would people in facilities in the North equivalent to Oberstown be automatically transferred to the Hydebank Wood young offenders facility between the ages of 18 and 24?

Ms Saoirse Brady: I am not sure about that but I think people can be remanded into custody if they are over the age of 18. I imagine they would age out into that facility rather than going into adult prison.

Deputy Mark Wall: Is the onus on rehabilitation rather than punishment, because that is what seems to be happening in prisons at the moment?

Ms Saoirse Brady: It should be in the adult system as well.

Deputy Mark Wall: I agree. Ms Brady is preaching to the converted on that one. I know how difficult it is for people, when they are in the prison system, to get the help to stop recidivism when they leave and have the supports in place. In this particular regard, would there be a big emphasis on rehabilitation and stopping recidivism in the future?

Ms Saoirse Brady: Yes.

Deputy Mark Wall: Has it worked as well? Okay.

Deputy Gary Gannon: I thank all the witnesses for their contributions. I will begin with the IPRT. I note that around 80% of boys before the children's court met the criteria for at least one psychological disorder, with substance use evident from a young age. What does this tell us about the background and needs of the young people coming before the courts and how should that shape our responses to youth offending?

Ms Saoirse Brady: That study is quite old. I think it was from 2011 but a lot of the principles still apply. We are conducting research at the moment on the link between social deprivation and disadvantage and the criminal justice system, because if we look at the Pobal deprivation index, those issues still underpin a lot of the reasons young people end up in the youth justice system. We are in the midst of a homelessness crisis. We are in a cost-of-living crisis. We see child poverty rates going up. We are not dealing with addiction. What we would like to see is prevention and early intervention measures. Looking further upstream, we have a huge amount of investment in youth diversion, and while that is welcome, we need to see further investment in youth work. Very often, the substantial investment in youth diversion comes at a cost to what used to go into youth work and we need to look at investing in those communities, investing in mental health services and investing in addiction in particular.

Deputy Gary Gannon: I thank Ms Brady. I will ask a question more broadly of any contributor who wants to come in. Which young people end up before the courts at the moment? Has anyone done a demographic breakdown of ethnicity, addiction and so on?

Mr. Seán Egan: I can speak anecdotally from my own experience of representing children in front of Dublin Children's Court. I do not have a table of figures in front of me to break out but it is very clear that the vast majority of children coming before the court are from socially deprived backgrounds. Oftentimes, they are coming from families that are living in emergency accommodation. Sometimes, there is a situation where there are families living in homeless hubs and there will be a number of teenage boys getting into trouble on a pretty persistent basis together and it can be a repeating cycle. I echo what Ms Brady said, in that there is a huge amount of neurodiversity, mental illness and early school leaving. Oftentimes, people have become frustrated at their educational experience because they have needs that go unmet or behavioural issues that make it hard to get the most out of school, so they end up with a lot of time on their hands in an area where they can be preyed on by rather sinister adult figures who groom young people into being involved in crime. It is very important to realise that, while these young people are sometimes the perpetrators of harm, they very often are the victims of crime as well.

Deputy Gary Gannon: Will Mr. Egan tell us a bit more about grooming? Not in any individual cases but the idea a young person being groomed into crime, for example, drug

addiction? Will he speak more broadly about what a young person in that situation would have experienced?

Mr. Seán Egan: Anyone who has worked with young children will recognise this pattern of young people from deprived areas where there is a lot of criminality. Often, they will have been given drugs and, in return for those, they will have been expected to sell drugs. There is a situation where young people are being groomed into involvement in the drugs business and that can take the form of selling drugs. It can also take the form of engaging in intimidation or violent crimes to collect drug debts or even acts of arson to-----

Deputy Gary Gannon: I thank Mr. Egan. Even more broadly, that child who has been groomed into engagement in a criminal enterprise, be that through violence or the sale of drugs, will be incarcerated. What is the impact on their life chances following that act of incarceration? This question is for anyone to answer.

Mr. Seán Egan: We know that youth detention is criminogenic. That is what criminologists call it. It means that when one is detained as a young person, he or she is more likely to go out and commit further offences. That is despite the really heroic, progressive, dedicated and loving work the people at Oberstown do. They do a lot of really valuable work and have a huge impact on some of the young men and women who go through there. However, the evidence seems to indicate that someone involved in the criminal justice system at an early age is more likely to reoffend than the other young people who are diverted through the process through the Garda national youth diversion programme. These criminal justice interventions for young people can have the unintended effect of creating further offending down the line because it can sometimes harden people's attitudes towards the Garda. It can mean people end up associating with other people who have dysfunctional personal issues or who are involved in crime, and that can lead to further engagement in the criminal justice system and criminal activities upon release.

Deputy Gary Gannon: I thank Mr. Egan. Dr. Marder highlighted that family conferences were very specific and well developed in law but almost never used in practice, sometimes never or once per year, despite their potential for both victims and young people. Will he expand on the more practical changes that could encourage greater use of these restorative practices?

Dr. Ian D. Marder: I thank the Deputy. The system they have in Northern Ireland is that the court is required to make a referral for all cases, apart from those that would result in a mandatory life sentence, so not for murder or terrorism. For all other cases, the court is required to refer to restorative justice, in between conviction and sentencing, where the child consents to that. That does not mean restorative justice takes place in every case but it does mean there is a requirement to explore whether restorative justice is possible in that case. As I mentioned, that has correlated with a very significant reduction in the use of imprisonment for children in Northern Ireland.

This means that children and their families can be involved in deciding what needs to happen next in order to prevent it from happening again. It also means the victim is enabled to participate in that process. Victims gain very high levels of satisfaction from restorative justice. The North has published some evaluations and annual statistics. The evaluation of its system found that victim participation was very high at 69%. They included personal victims and also

people representing those victims. They found victim satisfaction was above 75% each year. The point of having it before the criminal procedure is completed is that the judge is permitted, not required, to take it into account. What we find in Northern Ireland is that a very high number of judges effectively sign off on the restorative justice agreement as the sentence. The evaluation found 67% of agreements were ratified by the court in their original form. The judge can choose to add things to them or not ratify them all. More recently, a 2015 review found ratification rates rose to between 76% and 78%. This means that, even though the judge is permitted to vary what happens and to sentence as they wish to sentence, the agreements reached at restorative justice stage have very high rates of legitimacy among the Judiciary whereby those agreements are deemed to be appropriate in terms of being part of the sentence.

There are also very high rates of compliance with these agreements. A 2019 review of cases referred by the prosecution service found that there were 560 diversionary conferences completed every year between 2015 and 2018, with an average of only 15 returned to prosecutors for non-compliance. That is an enormous rate of compliance with those agreements among the young the people. This helps to explain why there is lower reoffending among the young people who participate in those conferences. A 2014 review of the Northern Irish work found that reoffending after a youth conference order was at 54% compared with 63% for young people who received a probation or supervision order.

An Cathaoirleach: I can bring Deputy Gannon in for a second round. I want to invite Senator Kelleher, followed by Senator Rabbitte.

Senator Garret Kelleher: I would like to focus initially on a flaw referenced by Ms McAllorum Ryan in her presentation. I thank her for the strength of her testimony and the bravery she has shown in coming before this committee, which cannot be easy, given all she has been through. Through pre-legislative scrutiny, we are looking to improve areas where the legislation may be considered weak or in need of improvement. I would just like to hear a little bit more from Ms McAllorum Ryan in relation to how she felt she was let down. I ask particularly in relation to the inability to impose sentences that can be suspended, which seems to be at odds with her own experience. She also made reference to restorative justice. How does she feel she could have been better served by the system with more emphasis put on this aspect?

Ms Valerie McAllorum Ryan: Ultimately, the system did let me down because there were no consequences for either offender, but more particularly for the juvenile, which was the more serious of the two. I was actually okay with the suspended sentence. I was just floored then when it could not be enacted. I really believe in the rehabilitative process of the Children Act 2001. We have to go by children's cognitive ability and maturity at the time and everybody can make mistakes and children tend to make more mistakes. When you have been handed a golden egg, though, and then you smash down in front of somebody, that is really hard to take, because I was okay with the suspended sentence. I think there have to be consequences, especially in the case of the more serious crimes. Probation and the youth diversion programme should absolutely be used for more minor crimes, while a very heinous crime like murder deserves detention. There is a whole raft of crimes in between that are quite serious to very serious, where I feel restorative justice and the deferred sentence supervision orders would close the gap. It would close it significantly I think. It would still retain meaning for the victim

and the offender. In my case, having no apology was really hard. I know people are directed by their legal teams not to apologise because that would incriminate them-----

Senator Garret Kelleher: Yes.

Ms Valerie McAllorum Ryan: -----but they did not even seem remorseful. The apology came because it was directed by a judge that it be given, so it was meaningless to me. I do think that if we had sat in front of each other and he saw the consequences of how my life and my family's lives have been turned upside down, it might have had some impact.

Senator Garret Kelleher: Considering not only direct interaction or the potential for direct interaction with the juvenile offender, did Ms McAllorum Ryan feel very much let down in the sense that her experience and what she might have learned and felt, having gone through such an incident, were not taken into account to any degree or to a certain degree-----

Ms Valerie McAllorum Ryan: To no degree. I did feel, initially, that, yes, it was to some degree because there was the suspended sentence. Not in a million years did I think that could not be enacted when he reoffended. I did feel, without feeling to be Mystic Meg, that he would reoffend. He did, and I just felt like absolutely everything I had gone through meant nothing. He was free to move on with his life whereas my life has been changed irrevocably. I have not been back to work and I am still constantly facing having operations and procedures. Nearly seven years later, it is still ongoing. I just feel that I have suffered a lot of consequences and the offender has had absolutely no consequences.

Senator Garret Kelleher: I thank Ms McAllorum Ryan very much for that. Following on from that, I turn to a point made by Mr. Egan in his response to Deputy Gannon. He made reference to the fact that being in detention can be looked upon as being criminogenic, in other words, that it would be a cause or a likely cause of engaging in future criminal behaviour. In respect of the environments Mr. Egan discussed in response to Deputy Gannon concerning areas of social deprivation, he made particular reference to a higher proportion of people with neurodivergence and that they would be more susceptible to the grooming that can take place. Surely that type of environment is every bit as criminogenic. I would like to hear Mr. Egan's views on the alternative of maybe putting more focus on restorative justice.

Mr. Seán Egan: The way to address the criminogenic factors in the community is by addressing income inequality, the gaps in youth services and these kinds of things. I know the Government has drafted legislation to criminalise this behaviour of grooming children into criminality. That is an important aspect too. I certainly believe that just because an individual might come from a deprived background, and there are criminogenic factors when they are on the outside, does not mean we can ignore the fact that there are these criminogenic factors related to detention in the first instance. It is obviously a very complicated situation. Multiple things need to happen at once. I certainly think that we need to be sceptical of the effects of detention. I am not saying it is not the right option in certain instances. The people working in Oberstown make absolutely heroic efforts and can make significant impacts on the lives of young people. It is also important, though, that the work is done in the community to reduce those factors that make it more likely that people in general and young people in particular engage in criminal behaviour.

Senator Garret Kelleher: Would Mr. Egan mind commenting on the situation of Ms McAllorum Ryan? I am not referring to the specifics of the case, but the fact that she felt let down by the system.

Mr. Seán Egan: I think Ms McAllorum Ryan's contribution was so remarkably compassionate, humane and moving. I think she was very much let down. She was let down because the laws were inadequate, basically. The laws governing suspended sentences are found in the Criminal Justice Act 2006. I do not want to bore the Senator with a long technical explanation, but those laws were basically not acting in concert with the Children Act 2001. One referred to "detention", which is a sanction that happens currently to people under the age of 18. The provisions around suspended sentences refer to "prison", which is a sanction that happens to people over 18. Those elements did not talk to each other and the superior courts found this out. It meant the situation could not be resolved with the legislation as drafted. This is an important sign that when criminal legislation is being drafted by Deputies and Senators, as legislators, great care has to be taken to make sure it is rigorous and thorough and that it all joins up. People like Ms McAllorum Ryan, who go through this horrible process and have found some measure of closure, should not have the rug pulled out from under them after the fact.

An Cathaoirleach: I will ask a supplementary question on that point. Is Mr. Egan satisfied that the general scheme addresses this anomaly?

Mr. Seán Egan: Yes, I am.

Senator Anne Rabbitte: I thank everyone for being here. I was struck by all the contributions, but particularly by Ms Connolly's in respect of the delay in a child accessing the opportunity of the youth diversion programme because of the court systems. From Ms Connolly's point of view, how would the extension of the age have a positive impact on a young person?

Ms Amanda Connolly: Is the Senator referring to the age being extended?

Senator Anne Rabbitte: Yes, exactly.

Ms Amanda Connolly: Sometimes, when a child is apprehended or suspected of doing an offence, it can take a number of months before they are actually charged with the offence. They may be questioned in relation to it. Regarding a drugs matter, as my colleague referred to, a lot of kids are used as drug mules because they do not have any criminal convictions. They will be asked to carry drugs from A to B because they will not have any problems since they have no convictions and nothing will happen to them. To get a certificate of analysis from the forensic laboratory can take up to nine months or 12 months. If a child is arrested when aged 16, it is conceivable they would be aged 18 by the time they come before the courts. A file might then have to go to the DPP and it may take time for that office to decide whether the case will be dealt with and whether the direction given will be to deal with the matter in the District Court or the Circuit Court.

Senator Anne Rabbitte: When one hears the timelines presented in that fashion, one can totally understand why the age extension would be essential. It is because of the timelines. It is a system and a process to come out the other side, engage in restorative justice and give people the opportunity to have a second chance.

Ms Amanda Connolly: Yes.

Senator Anne Rabbitte: That second chance is the most important thing. It cannot happen if all the other milestones have to be achieved first. The last person who benefited is the offender who might need the opportunity for what we see in the wonderful work of the youth diversion programme. I thank them for that.

I do not know who can answer me on Oberstown. I have a keen interest in Oberstown. I absolutely agree with Mr. Egan that they do phenomenal work in Oberstown but I do not know if it is the solution for everybody. At the same time, if we extend the age to 24, then we will have the younger and the not-so-young in the one environment. Is that the right environment? We should be looking to give every opportunity through the youth diversion programmes first. Of course, there are more serious crimes that Oberstown has a complete function for, and I acknowledge that.

I suppose this is for Ms Brady. Are there better ways of supporting young people than just needing everything to go to Oberstown? That is not taking away from the work that is being done in Oberstown.

Ms Saoirse Brady: Based on the demographics of Oberstown, you are more likely to be in Oberstown if you are a Traveller. Between 23% and 33% of young people in Oberstown are Travellers, who face systemic and structural discrimination every day of their lives. There is an over-representation of young people with care experience. Young people often go into Oberstown because their behaviour in a care setting has been criminalised. They might have damaged property in a care setting. We do not have enough secure care beds and very often that is what is required. I was at a conference recently held by the ACJRD, the Association for Criminal Justice Research and Development, where Judge Paul Kelly, who is president of the District Court and oversees the Children's Court, talked about a particular case. Young people might age out of the system completely and they should maybe have had secure care before that. This happens all the time where you see young people in that system who would have been better served by having a secure care bed or, even better, having access to the mental health supports that they needed or the family support that is needed as well. The majority of young people who end up in the youth justice system may have experienced an adverse childhood experience themselves. They have often lost a parent, whether that is through going into State care, through bereavement or sometimes where the parent has gone to prison themselves. We really need to address those matters.

At the other end of it, Oberstown does amazing work but then there is no through-care, so if somebody leaves Oberstown, sometimes it stops. There is no aftercare support and Oberstown is not able to provide that support, both because of capacity and because of the way the system is currently structured.

The other thing I would draw attention to is the bail support scheme. I have spoken to this committee about this before. There is a proposal now to extend the bail support scheme nationwide and we outlined in our submission that it is available in Dublin, Limerick and Cork. We are seeing judges use it where it is available. There is a proposal by Extern, the organisation that provides bail support, to extend that nationwide by providing bail support in Donegal, the midlands and Waterford. If we look at where the young people are coming from, particularly those who end up on remand in Oberstown, they are coming from areas where bail support is

not available. It is highly successful for those young people who engage with it and where they can work with the family as well. We can provide more data on that to the committee, which we have got from Extern.

Senator Anne Rabbitte: That would be very helpful.

Ms Saoirse Brady: It is also much more cost effective. It costs about €232,000 a year to keep a young person in Oberstown. It is less than €20,000 to provide bail supervision with much more effective supports and lower reoffending rates.

Dr. Louise Forde: I completely support all the points that have been made, especially around the need to ensure adequate support is available within the community for young people. Oberstown does great work but it is not the ideal place for the work to be carried out and it can be done in the community.

On the transition from Oberstown, there is a need for more robust supports for young people leaving Oberstown. This is something that has been noted by the Committee on the Rights of the Child in terms of increasing community-based social reintegration supports for young people who are leaving the justice system. Something else noted by the research is the lack of support for reintegration. One of the points we made in our written submission is that the international standards, the Havana Rules, require supports to be given for reintegration. We do have some supports for this. You might draw a parallel for young people leaving the State care system who are in the care of the State. When young people are in Oberstown, they are in State care and they require supports to support them after that in making that transition and to help them to maintain any benefits that have been gained through the interventions within Oberstown. Providing a right to aftercare support and providing access to aftercare supports for young people leaving Oberstown would be really important.

An Cathaoirleach: I thank Dr. Forde. As no one else is indicating, I will ask a few questions myself before a second round.

I found the opening statements and the debate so far very enlightening and constructive. We are looking at youth justice broadly. There are a number of objectives that I think everyone would agree on. One is that we want to reduce the numbers of young people who are engaged in crime and the causes of that happening, we want to reduce the overall levels of youth crime, and we want to reduce the numbers of young people who engage in crime reoffending. I think, although I am open to contradiction, that on all three metrics we are failing at the moment. If we move to the reasons why, the conversation could cover a myriad. We are at a point where, based on all the metrics, we have a potentially very serious issue on our hands because youth crime evolves into much greater societal issues, although one argument is it is reflective of societal issues in the first place.

My first question is for the Penal Reform Trust on the bail supervision scheme. What are the comparative rates of reoffending? The CSO figures suggest that those under 21 years have a 60% reoffending rate within 12 months of release from custody. What are the comparative numbers?

Ms Niamh McCormack: The bail supervision scheme began as a pilot scheme. In order for it to be extended out beyond Dublin to Cork and Limerick, a review had to be conducted. The figures we have are from that review. There was a 72% reduction in reoffending from six

months post bail supervision scheme versus six months pre-bail supervision scheme so it is incredibly effective. It is important to note the really important point that was raised in the Law Society's submission around youth diversion and how the duration of the process means there are lags in that system.

An Cathaoirleach: Is that a 72% reduction on top of the 60%?

Ms Niamh McCormack: For those who completed the scheme.

An Cathaoirleach: Yes. Do we have a number for the actual reoffending rate was among those who participated?

Ms Niamh McCormack: There was a figure of 63% no new arrests.

An Cathaoirleach: So 37% reoffending.

Ms Niamh McCormack: Yes. There is a slight nuance there in terms of the difference between the two.

An Cathaoirleach: Are those who participate in the scheme reflective of the overall cohort? Is it randomised? Does participation depend on the jurisdiction where it is available, or is it the case that those who are selected for the scheme might be more amenable to engage in the scheme rather than the general population who might end up in custody?

Ms Niamh McCormack: It is kind of all three at the same time because it is only available to judges in Dublin, Cork and Limerick and where it is available, it is being used. The whole point of the bail supervision scheme is that it is used for children who are at risk of not adhering to bail conditions so they are inherently more susceptible to not engaging with it, which means they are living in more chaotic circumstances. From that, assessments are conducted in terms of, from Extern's point of view, what types of interventions are made. Those interventions are made from the family point of view as well as with the child themselves.

An Cathaoirleach: Those figures seem to be even better than the restorative justice figures Dr. Marder cited from the North. Am I correct in saying he mentioned a 53% reoffending rate?

Dr. Ian D. Marder: Yes. The bail supervision scheme is about children not being remanded in custody before conviction or sentencing, whereas restorative justice is a process by which we decide what would happen next. Everyone who is at risk of being remanded in Oberstown should have access to the bail supervision scheme and then, in addition to that, everyone who accepts responsibility for offending and goes through the criminal justice process should have access to restorative justice.

An Cathaoirleach: We hear about the limitations on the bail supervision scheme. In terms of restorative justice in the State at present, what happens generally in terms of that option being used in court?

Dr. Ian D. Marder: That particular option, which is the section 78 family conference – the court order conference – is basically not used at all. Although the legislation does outline in quite some detail what it would look like, which is that the judge makes a-----

An Cathaoirleach: Is that in the existing legislation?

Dr. Ian D. Marder: Yes, in the existing legislation, but what was noted in the youth justice strategy was that there was scope for amendments to the Children Act to incentivise or require judges to make those referrals so that children would be assessed for suitability for restorative justice.

An Cathaoirleach: Does the general scheme adequately reflect that?

Dr. Ian D. Marder: No, the general scheme does not have anything on that.

An Cathaoirleach: I will turn to Ms McAllorum Ryan. She was a witness in the court when the perpetrator was given a suspended sentence. Am I correct in saying there was no engagement with her through any bail process or in the post-conviction scenario?

Ms Valerie McAllorum Ryan: No.

An Cathaoirleach: Ideally, from the perspective of a victim, what would that look like in terms of a practical outworking and at what point along the system does she think that type of intervention would be most effective?

Ms Valerie McAllorum Ryan: In the case of serious to very serious cases like mine, it should be offered. I would definitely have been agreeable to restorative justice. I never heard of the bail supervision scheme. I cannot get over the fact that it has such good outcomes, yet it is not available all over the country. I do not have a law degree so I did not come across it in the little bit of research I did. I am kind of shocked at that. I would be open to those options. Those three together - a mixture of restorative justice, the bail supervision scheme and the supervised detention orders – would close a huge gap, giving the victims the feeling that they have been seen and heard while the juvenile who needs to be treated differently to an adult is not overly punished.

An Cathaoirleach: Ms McAllorum Ryan has just proven that she does not need a law degree to have a very constructive analysis of how the system currently operates.

If Deputy Butterly wishes to make a first intervention, she is welcome to do so.

Deputy Paula Butterly: Yes. I apologise, as I was in another committee and did not make it here in time.

By and large, the proposals are very good. I agree that bail supervision should be extended nationwide. I am conscious that an awful lot of the proposals being made are going to put a huge emphasis on the Probation Service. While we increased the funding for the Probation Service this year, in light of all of these changes and what will be expected of it in the future, we need to continue to invest in the Probation Service and, in particular, youth diversion programmes. I see it myself in County Louth. Very often, the programmes are living from hand to mouth year on year to see if we are going to get funding for the following year. We had an issue with the drug court recently, which has now been resolved. There are very positive outcomes from this.

That said, I am very interested in hearing about raising the minimum age of criminal responsibility. I read the opening statements, but I am of the opinion that it should stay where it is. If we have the appropriate services in place and we put forward the appropriate defences - I am very conscious at the moment that we are dealing with human trafficking, in particular

of children - these cases can always be dealt with on a case-by-case basis when they appear before the courts.

I will start with Mr. Egan and then move on to the other witnesses. I understand that we are perhaps talking about the psychological effect on the child, the level of maturity and everything else, but would it not be better to keep it at ten and 12? Someone is definitely going to quote the point about hard cases making bad law. I am aware of that, but I am also conscious that we should have a mechanism in place if and when it arises. It tends to arise rarely, but more frequently these days.

Ms Claire McEvoy: If I may, I will respond to that initially.

Deputy Paula Butterly: Absolutely.

Ms Claire McEvoy: The current age is out of step with our human rights obligations. That is the first point. It has been recommended by the UN Committee on the Rights of the Child that we should raise the age. That is clear. It is based on the human rights system that has been developed, to which Ireland is a party. We ratified the Convention on the Rights of the Child in 1992, more than 30 years ago. It is time we got this right. That is one point. The second point is that with this very low age, we are out of touch with our European neighbours. Globally, the most common age is 14.

Deputy Paula Butterly: Are some European countries not considering lowering their age from 14 or 15 down to 13 and 12?

Ms Claire McEvoy: There is one that I am aware of – Sweden - but I was going to say Iceland, Denmark, Norway, the Czech Republic and Finland were all at 15. Italy and Spain are at 14. It is out of touch with both our human rights obligations and the norms in our fellow liberal democracies within Europe. For those two reasons, we feel it is essential that the age be raised. It is about a legal obligation under the Convention on the Rights of the Child.

Mr. Seán Egan: If I could just add in regard to the Swedish example, I was discussing this with Dr. Ciara Kelly on the radio this morning. It has been suggested that the Swedes are looking at reducing it because young people are being groomed to be involved in crime by criminal gangs that are exploiting the fact that they fall below the age of criminal responsibility. To me, that is horrifying as a prospect, but it is wrong to then extend the aperture of punishment to include those young people who are being groomed and exploited. The better thing to do is what the Irish Government is currently exploring, which is to criminalise the grooming behaviour towards children to get them involved in crime. The emphasis must be on punishing the very sinister calculating adults who are at the heart of this, not making our system less fair, failing to abide by our human rights and children's rights obligations and negatively impacting children who, even if they are perpetrating harm, are often the victims of even greater harm themselves.

Ms Niamh McCormack: I will just come in there as well. For good reason, a lot of the conversation at the moment has been dealing with very specific types of crime. For serious crimes like manslaughter, rape and murder, the criminal age of responsibility can go as low as ten years old, which is incredibly shocking because, before the enactment of the current Act, the age of criminal responsibility was 14, as it was assumed under law that from seven years up to 14 years, one would not have capacity to develop criminal intent. The special rapporteur

on child protection issued a report in which he was incredibly scathing – rightly so – and described this as being illogical in that if a child as young as ten years' old was committing rape or murder, it was clearly indicative of a child welfare issue. While it is uncomfortable to acknowledge this, the State does have a duty to protect children, even those who cause harm. If what we are looking to do is to reduce that harm being caused, we really need to ask ourselves whether having an age of criminal responsibility below 14 years would benefit anyone.

Dr. Louise Forde: Very quickly, just to add to the other points that have been made, those international legal obligations that recommend a minimum age of 14 is based on a body of neuroscientific evidence. It is based on an acknowledgement that the capacity of children, and especially very young children, is still evolving in a very complex way. They do not have the full capacity to make rational decisions. They do not have the capacity to understand the full consequences of their actions in the same way as adults because of the normative changes that happen to all children in early adolescence. There is an increased susceptibility to risk-taking behaviour, sensation seeking and, especially, to negative peer influence. This body of neuroscientific evidence is what is underpinning the international recommendations on standards in this area.

Deputy Paula Butterly: I am just wondering what the alternative is. I take the point that children might not have capacity, and I am equally concerned about children at this moment in time. Recently I attended a conference discussing human trafficking and children between the ages of seven and ten being used to traffic drugs. The average age when these children are expected to start selling the drugs is between ten and 12. I believe there is an element of protection in this. There is also the issue of particularly heinous and very severe crime and the capacity issue. I am also very conscious of the victims who have been subject to a particularly cruel and maybe deadly offence. What do we do with a child at the age of ten, 11, 12 or 13 when something like this happens?

I had a little bit of an issue at the mention of welfare and that if a child behaves in such a manner it is a child welfare issue. This indicated to me that it was maybe the parents' fault or society's fault. I would like clarity on this. If we do not have legal recourse, what do we do with a child who has committed a serious offence or repeated offences? Perhaps restorative justice or rehabilitation might not work in certain cases. If there is no possibility of bringing the child before the courts, what do we do with that child?

An Cathaoirleach: If somebody can give a very brief answer now we might come back to this again.

Mr. Seán Egan: There is not necessarily no legal recourse. If the Act were amended as several of us are suggesting, it would decree this age of 14. If somebody under this age commits a severe offence there would still be existing recourse under civil law. For instance, children who have done horrific offending could be candidates for special care under the Child Care Act. This would involve a relevant place in terms of a secure care placement for their welfare and for the welfare of the broader community that might be at risk from a child in crisis engaging in dangerous offending behaviour. They would be contained for their own welfare and the welfare of everyone else but it would be outside of a criminal context. This is one attitude. Another element is the Mental Health Act.

An Cathaoirleach: I am going to allow others to come in for another round, and I think we can allow for four minutes.

Deputy Gary Gannon: This is incredibly interesting and informative and I thank all of the witnesses. What I am taking from the responses is that we have created conditions in which young people and children in care and detention are more likely to be in that scenario if they are from a socially deprived background, if they experience neurodiversity, if they have a substance misuse issue themselves, if they come from a State care facility, if they are from a Traveller background or if they are deprived. It seems incredible to us. Is there any scenario in which youth detention does work? For me it is quite clear that the evidence suggests it does not work. Is there any scenario in which evidence points to this actually working?

Dr. Ian D. Marder: It depends on what we are trying to achieve. Youth detention is extremely effective if what we want to do is make the child suffer, and if we want to do retribution, which is one of the rationales of criminal justice that a lot of people put a lot of weight on. It really depends on what we are trying to achieve. If what we are trying to achieve is reducing crime and helping people solve the problems in their lives that lead to crime in the first place, it is not going to be very effective. If what we want to do is incapacitation, as we have heard from Mr. Egan there are non-criminal approaches to this, whereby children can be placed in secure care that is not criminalising. If what we want to do and prioritise is retribution it is very effective, but this is what the Children Act is trying to avoid us prioritising and what all of these countries we have cited are increasingly moving away from. The Scottish sentencing guidelines for young people, which cover people up to their 25th birthday, state that in all sentencing for all young people under the age of 25 the priority should be assessing their maturity and then rehabilitation. How much weight we want to put on retribution determines how effective we think it is.

Ms Saoirse Brady: What we are speaking about here we also speak about in the adult system. We are not trying to excuse behaviour but we really need to understand it if we want to effect change and change offending behaviour. There are instances where, if a young person poses a threat to public safety and where they have been given chances, maybe detention is appropriate for a particular period of time. We know there are young people going to Oberstown who require some of the intervention they get there. They may have dropped out of school or, for the first time, they get a diagnosis of neurodiversity, a mental health issue or a substance misuse issue. They should not have to go to detention to get these services but that is a reality of what is happening. It goes back to investing upstream in community services, prevention and early intervention, so they never reached a crisis level. Unfortunately some of them do.

There is a lot of discussion at the moment about capacity in Oberstown and it is the elephant in the room. I do not believe Oberstown needs to be expanded. We could expand it overnight but we would not have the staff to cope with the demand there. Looking at interventions such as bail supervision and restorative justice, it is not either-or. We have to assess each individual case on its own merits and see what is appropriate for that child or young person. What we all want to do is to stop the offending behaviour from happening in the first place, if possible, and where it has happened to help that young person rehabilitate and change their behaviour. On the other side of this, and I have mentioned it already, once they leave Oberstown we cannot expect them to maintain that behaviour by themselves if the proper supports are not in place for the aftercare, as Dr. Forde alluded to earlier.

Deputy Gary Gannon: I have one more question and it is for any of the contributors. I want to ask about the special Children's Court in Dublin and how it works differently to other courts elsewhere. Does it display innovations?

Mr. Seán Egan: I am in front of the Children's Court in Dublin regularly and one of the things that is really valuable about it is that children who are accused of crimes in Dublin go to a special court where judges hear these cases all the time every single day. Also, with regard to the people the court has ended up attracting, from the judges, the court staff, the gardaí and the lawyers who work there, everyone is working in concert to create an environment where it is legally rigorous and people who are found guilty are held accountable but it is a child-friendly space where people's anonymity is protected. It is a bit of a postcode lottery. If a child is accused of a crime in any other county they are in front of the normal District Court list. The judge will hear the case in private and they will be listed on the board outside the court with just their initials but they are still with dozens or hundreds of other people milling around and, occasionally, the full name does get said. It really does not fit the criteria in terms of the protection of the child's privacy and it is not a supportive or child-friendly environment. It is very chaotic and very busy. In my view it would be highly desirable to roll out specialist child courts throughout the country. I am only echoing the recommendations of the UN Committee on the Rights of the Child that made this recommendation during its review of Ireland in 2023.

Deputy Gary Gannon: I am often accused of being very Dublin-centric but I would like such a service to be extended to everyone in the country.

An Cathaoirleach: That is very magnanimous of Deputy Gannon.

Deputy Mark Ward: There has been a lot of talk about the supervision scheme and it is something that I am very interested in. As I have told the committee previously, I have seen it working well in my own area. For somebody watching in here today and listening to this committee meeting, what exactly is the bail supervision scheme in layman's terms? What therapies and rehabilitation services does the young person get in that bail supervision scheme, which is not simply a curfew as some people think it is?

Ms Saoirse Brady: A multidisciplinary team works with the young person if they are in the family home. There is a slightly different system for people who are in State care. In the family home, team members will assess the likelihood of that young person re-offending. They will look at their suitability for the scheme. They will also look at what underlying factors led them to offending in the first place. They will look at whether they are in school or training. They will look at the family supports that are in place and whether there are substance misuse issues or mental health issues. They will also identify if there is underlying trauma that has never fully been identified in the first place or addressed afterwards. Then the team will maybe meet the family and the young person two to three times a week. Team members will go into the family home and carry out the interventions, including therapeutic interventions. They will engage with the school or a youth training programme to see if they can get them back in. There are a couple of examples that we can give. Representatives from Extern spoke in the audiovisual room here before about a young person who had committed a string of serious offences and had quite a number of charges. The team went into the family home and identified that the young person had experienced trauma, had a mental health issue and an underlying misuse issue, and had been out of the family home. After the interventions, they ended up back in school and becoming a star pupil. The mother had never worked before and did not feel

confident in her parenting. By the end of the process, she had gone and got her first job. She felt like she had the skills to deal with the younger siblings who were also going down a similar route. It is something that can have a ripple impact, not just for the young person themselves, but for the rest of their family and for the wider community. That young person disassociated from the peers they had been associating with when they were committing the offences. This kind of process can be transformational.

Deputy Mark Ward: That is really interesting. Do these interventions take place in the home or does the young person have to go outside the home? Sometimes, the home may be one of the causes of the trauma that the child is experiencing in the first place.

Ms Saoirse Brady: The team will identify that and they will also identify a network of people around them, so it is not just the one good adult. They will get the young person to identify a number of adults they can go to if they feel like they are relapsing or in trouble. A lot of it will happen in the family home, but if therapies need to happen outside the home, they will.

Deputy Mark Ward: At what the age can a young person be referred into the bail supervision scheme? Is there a lower age limit?

Ms Saoirse Brady: It is 12.

Deputy Mark Ward: From the age of 12 they can be referred into the bail supervision scheme. I thank the witnesses.

Senator Anne Rabbitte: This is addressed more so to the Department or anybody who wishes to answer it. When one piece of legislation is addressed, it sometimes has an unintended consequence that another piece of legislation does not keep up with it and actually it ends up with a gap. It is wonderful that we are addressing quite a number of the issues and we have taken some good points to address them. However, if we do not then talk to the Department of children and if it is not addressing the Child Care Act 1991 at the same time, it makes it very difficult for anybody working in the Courts Service to actually have an understanding from the Child Care Act of what is happening on the justice side of it. What engagements have been going on to ensure that the Department of children is involved? There is a role for Tusla in all of this. There is also a role in terms of understanding the Act. I feel that progress will be made here, but that there will still be a connection gap. Mr. Egan is nodding, so I will ask him to answer first.

Mr. Seán Egan: On a practical level, there certainly is some overlap. For instance, it is a common sight in Dublin's Children's Court for solicitors from Tusla to be in attendance in relation to certain people before the court who may be the subject of care orders or special care orders or who are in or out of the system. Tusla is sometimes there to inform the judge sitting at the Children's Court and update the judge in relation to that. Often, it will be young people who are subject to detention orders in Oberstown and if they come out on the other side, they may be subject to a special care order and they may be detained on a civil level in the care system because they are seen to still be in crisis and a danger to themselves. There is definitely an overlap. The same children who will often be subject to orders under the Children Act and the Child Care Act, cyclically. I certainly agree that work needs to be done on a cross-departmental basis to make sure that the legislation is aligned, but the various State actors, be they the Child and Family Agency, CFA, or the Prison Service and the people administering

Oberstown, need to work in tandem also. That sort of collaborative work is going on already to a certain extent.

Senator Anne Rabbitte: The reason I asked the question related to what Ms Brady said earlier about 33% of those in Oberstown being from the Traveller community. The issue of secure-care beds is one for Tusla to address.

Ms Saoirse Brady: If an application is made to the court, a secure-care order is considered and a detention order is given, Tusla can wash its hands of it, and this is what happens. There is a conflict between these two pieces of legislation. The other thing I would say is that there used to be a Irish youth justice service co-located between the Departments of children and justice. Those are now siloed again. Policy on Oberstown sits in the Department of children and the youth justice system sits in the Department of justice. They speak to each other but they are siloed and need to come together. We have made a case multiple times for a youth justice agency like they have in other jurisdictions to address this and bring a lot of these things together.

Senator Anne Rabbitte: I think that is a fantastic suggestion. Chair, can I have another bit of leniency?

An Cathaoirleach: Yes, go ahead.

Senator Anne Rabbitte: Where I was going with the final train of thought is that it goes back to the point Ms Connolly made about going through the court system yet again. When the actors can leave the pitch and say it has nothing to do with them anymore, that creates the imbalance of the required wrap-around support Dr. Forde referred to. If all actors do not stay on the pitch until we get to the end of the process, it leaves a very imbalanced support for the family or the individual, regardless of age.

Ms Amanda Connolly: Yes. A huge number of juveniles who come before the court have neurodiversity issues. ADHD is very prominent, and that brings with it its own problems, which can go undiagnosed. Therefore, they drop out of school and it becomes cyclical. What they need is a multifaceted approach in relation to CAMHS. They may be on the waiting list for CAMHS and then drop out of school, which is a recipe for disaster. The need for CAMHS services is obviously a separate issue in relation to mental health facilities. A lot of people do not have the support mechanisms, so if they have an underlying neurodiversity issue and they start taking drugs, any underlying mental health issues are exacerbated. Then there is no support mechanism to try to get them into treatment. That travels all the way up through. When they are in care and age out of the system, they are rendered homeless. We represent a lot of young adults who went through the care system, became homeless and are now in the adult prison system and have no support mechanism. In one case, I am down as the person's next of kin. It is a very sad situation to be in and people who have mental health issues are criminalised. Some of them have very low cognitive ability.

An Cathaoirleach: A number of the opening statements refer to the criminal age of responsibility, and obviously there is no reference to it in the general scheme. Is the Department examining this in terms of the overall Bill?

Ms Marisa Gomez: I thank everyone for their contributions and for the rich discussion. Regarding raising the age of criminality from 12, which is the case at the moment, we obviously

will consider every recommendation coming from the committee as regards this Bill. I do have to say that, at the moment, it is not under consideration as such, but we will consider any recommendation.

An Cathaoirleach: This is a follow on, in some respects, to the points made by Deputy Butterly. One of the issues we hear about in policing debates is that of repeated violent and-or criminal acts being perpetrated by very young people who consider themselves to be outside the law. We have seen gangs of these types of young people who are clearly coming from deprived backgrounds, and there are other issues at play. However, from a policing perspective and a community safety perspective, there are huge challenges because there is an immunity there. If we were to expand that immunity, it would create challenges.

To repeat the question, what interventions can be made to deal with those types of issue? If you have a 13-year-old or a group of 13-year-olds who might be terrorising their own local community, the police feel they have no ability to intervene and no other statutory agency is, to be frank about it, stepping up to the mark, what is the answer in that respect?

Ms Niamh McCormack: I might return to Deputy Butterly's point. To be clear, I was quoting the special rapporteur on child protection at the time, and now judge, Dr. Geoffrey Shannon. It was his position that it was clearly symptomatic of a child protection issue. That might not be a child protection issue in the home, but in what they are accessing online and all the complications that go with that. I know that is a live conversation in the Houses at present.

On the point of those who are below the age of 14, much of the conversation today has been around the types of intervention available but it is important to note that currently, under the 2001 Act, there is a provision that refers to antisocial behaviour. It applies to those who are below the age of criminal responsibility. There is a lower threshold so that they are not criminalised in the same way. That is where youth diversion, including funding youth diversion properly for the type of policing done in those communities and the interventions that are made, comes in. However, it also needs to go hand-in-hand with youth work projects.

We keep speaking about the bail supervision scheme but the point I was going to make earlier, and why I think it is so important, is that when there are delays in the system, interventions like the bail supervision scheme can be transformative at that early stage. A bail application is when they are brought before the court for the first time after they have been charged. If you can make interventions at that point and there is a delay of 18 months before they go to trial, they may come back a completely different child with a completely different family environment. Those are the kinds of intense social intervention we are trying to describe in moving it away from a criminal response.

An Cathaoirleach: Before she comes in, I have a question for Ms Brady. She rightly mentioned that, if it was decided to expand Oberstown, one of the challenges would be staffing it. Would staffing not equally be an issue were we to expand the bail supervision scheme or other social interventions that are required?

Ms Saoirse Brady: I do not know that it necessarily would. At present, the funding is the issue and the fact that it is only available in three areas. If you think about a place in Oberstown costing the guts of €230,000 and a bail supervision intervention costing €20,000, the latter is much more cost effective as well as more effective in the long run.

An Cathaoirleach: Agreed.

Ms Saoirse Brady: If we are thinking about what the State invests in, then we need to do that. Oberstown is a place of detention and has an issue with recruiting and retaining people. It is also in the middle of nowhere, so it is difficult to get there. There are people who travel hours to get to work in Oberstown. We have a social care and social worker deficit in the State, so we need to look at other availabilities. With the bail supervision scheme, it is not just those two disciplines. You are talking about other types of therapists who might also be involved in it. It could be easier to staff that than it is to staff Oberstown at the moment.

The other point I was going to make is we are talking about that age of under 14. You cannot access youth work or a youth work service if you are under 12. We are treating the same children very differently depending on their behaviour. At present, a child as young as eight can access youth diversion. That is stigmatising and I have said as much to the youth diversion project conference last year, which I am sure did not go down well. I know the projects are trying their best for those young people-----

An Cathaoirleach: Is Ms Brady suggesting a child of eight should not be able to access youth diversion?

Ms Saoirse Brady: They should be able to access youth work in the first instance rather than going straight to youth diversion. If we are going to look at how we treat children, we need to treat them equally and provide the same level of service in those different categories of services available to them.

An Cathaoirleach: I thank Ms Brady. I have a short amount of time but do any members have a final question? No. On that note, I just want to thank again-----

Ms Claire McEvoy: Could I make a final point?

An Cathaoirleach: Yes, please. My apologies.

Ms Claire McEvoy: By raising the age of criminal responsibility, we are not suggesting that offenders should not be held accountable. That needs to be clear. They can be held accountable, but by using a different mechanism. There can still be a police investigation. They can go through the special care system, there can be detention under the Mental Health Act if that is appropriate, and there are the Garda diversion programme and youth services. The focus is on rehabilitation. The focus is on a future for these young offenders, knowing there is tremendous potential for them to change their ways. That has been established and has been accepted by the Supreme Court. It is a question of changing the focus towards rehabilitation and away from punishment.

An Cathaoirleach: I thank Ms McEvoy for that. It is proposed that we publish all the opening statements on the committee website. Is that agreed? Agreed.

On behalf of the committee, I thank all of the witnesses for taking part in our meeting on an extremely important matter, for all their constructive contributions and for what was a very useful engagement.

There are some private matters we need to deal with in private session. Is that agreed? Agreed.

The joint committee went into private session at 4.47 p.m. and adjourned at 5.23 p.m. until 3 p.m. on Tuesday, 11 November 2025.