



# ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Ireland



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## A. Juvenile Justice

### **A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.**

In Ireland, the juvenile justice system is governed, principally, by the Children Act 2001, as amended by the Criminal Justice Act 2006. The Act provides for the diversion of children who come into conflict with the law via a police cautioning and conferencing programme and for the prosecution of those over the age of 12 years (with some exceptions). The Act provides for a specially adapted criminal court – the Children Court – for diversion to the Probation Service as an alternative to conviction and for a range of community-based sanctions for those convicted. It provides for detention as a measure of last resort. The Act is supplemented by the Youth Justice Action Plan 2014-2018 (Tackling Youth Crime), which sets out how five strategic goals are to be achieved.

#### **A.1.1. Is there a special law or code regarding juvenile justice?**

In Ireland, there is no single code setting out the criminal law pertaining to children in that offences committed by children are set out in the ordinary criminal law, comprising multiple pieces of primary legislation. With some limited exceptions, the offences with which children are charged are not specific to them as a group.<sup>1</sup>

The Children Act 2001 is Ireland's special law concerning juvenile justice in that it provides a statutory basis for the response to offending by children. The Act provides a statutory basis for the police diversion scheme (the Garda Diversion Programme), makes

<sup>1</sup> See for example the Criminal Justice (Public Order) Act 1994.

provision for the rights of children in police custody<sup>2</sup> and questioning and sets out how the Children Court is to operate. It sets out important principles as to how the jurisdiction of the Court is to operate<sup>3</sup> and recognises the powers of the Children Court to divert children to the attention of social services or to the Probation Service in certain circumstances.<sup>4</sup> Provision is made for the prosecution of children over 12 years (although children may be prosecuted for certain indictable offences including murder and manslaughter from 10 years<sup>5</sup>) and the Act provides for a range of community-based sanctions<sup>6</sup> and detention measures.<sup>7</sup> Overall, the Act reflects the need to divert children from offending, from court and from detention<sup>8</sup> and although it enshrines a justice-based response to offending by children it provides welfare-based responses at each stage of the process.

### **A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?**

Part 7 of the *Children Act 2001* makes provision for the establishment of a Children Court. In effect this consists of the District Court subject to a number of variations concerning its jurisdiction and procedure. The legislation requires this Court to sit at a different time or in a different place from the ordinary courts. While most young offenders are tried by the Children Court, those charged with more serious offences appear before the Circuit or Central Criminal Courts either by transfer from the Children Court when it refuses jurisdiction or by direction of the Director of Public Prosecutions. The *Children Act 2001* makes provision for the Children Court to sit in private and a recent Practice Direction issued by the President of the District Court has proposed that those in attendance are limited to those directly involved in the proceedings. According to section 2 of the Children Act “court” means the Children Court in Parts 7 and 8, these provisions are limited to the Children Court and do not apply to proceedings involving children in the Circuit Criminal Court or the Central Criminal Court.

Under the Children Act 2001, judges are required to undertake such training or education as is required by the President of the District Court prior to sitting in the Children Court.<sup>9</sup> There is no formal training for lawyers representing children and no specialist division in the office of the Director of Public Prosecutions.

2 Part 5 of the Act places the *Treatment of Persons in Custody Regulations* as they specifically relate to children on a statutory basis.

3 See section 96 of the Act.

4 See sections 77 and 78 respectively.

5 See section 52 as amended by the Criminal Justice Act 2006.

6 See sections 115-141.

7 See sections 142-156.

8 Detention as a last resort if specifically mentioned in section 96.

9 See section 72.

Members of An Garda Síochána (the police) known as ‘Juvenile Liaison Officers’ are specially trained in mediation and operate the Garda Diversion Programme under Part 4 of the Children Act 2001. More recently, members of An Garda Síochána have undergone training to work as case managers in order to co-ordinate the charges brought before the Children Court and to promote better outcomes for the young people involved.

The Probation Service also has a specialised division – Young Person’s Probation (YPP)- established to work with children and young people between 12 and 18 years who come before the Courts or are in detention. YPP has a court liaison role, Probation Officers deliver a service to Court through the presentation of reports and taking referrals and they provide appropriate guidance and information relating to the community sanctions.

**A.1.3 What is the scope (only criminal also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?**

The scope of the Children Act is limited to criminal offences committed by children. Provision to extend the juvenile justice to include anti-social behaviour was made in 2006<sup>10</sup> when ‘good behaviour’ contracts – incorporated into the Garda (police) Diversion Programme - and ‘behaviour orders’ to be made by the court in respect of anti-social behaviour – were introduced.<sup>11</sup> These have been very rarely used and so the system continues to focus, predominantly, on criminal offences.

The Children Act defines a child as a person under 18 years.<sup>12</sup> The Act also provides that a child under 12 years shall not be charged with an offence with certain exceptions.<sup>13</sup> First, a child aged 10 or 11 years who is charged with murder, manslaughter, rape, rape or aggravated sexual assault.<sup>14</sup> Second, although the principle of ‘doli incapax’ was abolished, the Act provides that where a child under 14 years of age is charged with an offence, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.<sup>15</sup> This provides an additional safeguard in respect of children under 14 years. In respect of children who cannot be prosecuted, there is an onus on the Gardaí (police) to take a child under 12 years of age to his/her parents or guardian, where they have reasonable

<sup>10</sup> See Part 13 of the Criminal Justice Act 2006 which inserted a new Part 12A into the Children Act 2001.

<sup>11</sup> Section 257A as inserted provides that a child behaves in an anti-social manner if the child causes or, in the circumstances, is likely to cause, to one or more persons who are not of the same household as the child harassment, significant or persistent alarm, distress, fear or intimidation, significant or persistent impairment of their use or enjoyment of their property.

<sup>12</sup> See section 3 of the 2001 Act.

<sup>13</sup> Section 52(1) as amended by the Criminal Justice Act 2006.

<sup>14</sup> See section 52(2) as amended by the Criminal Justice Act 2006. These indictable offences must be tried in the Central Criminal Court (rather than the Children Court).

<sup>15</sup> See section 52(3) re doliincapax and 52(4) re the DPP’s consent.

grounds for believing that the child has committed an offence with which the child cannot be charged due to the child's age. Where this is not possible the Gardaí will arrange for the child to be taken into the custody of the Health Service Executive (social services). In this way, children under 12 years of age who commit criminal offences will be dealt with by social services rather than through the criminal justice system.<sup>16</sup>

**A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?**

The Children Act provides for children to be prosecuted before a Children Court which is a court at District Court (local or low level) in respect of summary (or minor) charges brought against children under 18 years. The Court has extensive jurisdiction to hear charges against children (other than those including murder, manslaughter and sexual assault/rape which must be tried by the Central Criminal Court).<sup>17</sup>

Particular rules govern the operation of the Children Court including the following:

- The court must sit at a different time or in a different place to the 'adult' court.
- As far as practicable, sittings must be arranged so that persons attending are not brought into contact with persons in attendance at a sitting of any other court.
- As far as practicable, the hearing of proceedings in the Court shall be arranged so that the time that the persons involved have to wait for the proceedings to be heard is kept to a minimum.
- The time stated in every summons requiring a person to appear before the Court shall be a time which the person preparing the summons reasonably expects that the proceedings in respect of which the summons is issued will be heard.

According to a Practice Direction issued by the President of the District Court which took effect on 31 January 2014, the following factors should also be taken into account:

- Only those directly involved in proceedings and representing the bona fide press should be allowed to attend hearings of the Children Court.
- In acknowledgment of the potential vulnerability of young defendants, the trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress. The ordinary trial process in the Children Court is therefore adapted to meet those ends and ensure due regard to the welfare of the young defendant as appropriate.

<sup>16</sup> See section 53 of the Act, as amended by the Criminal Justice Act 2006.

<sup>17</sup> See section 75 of the Children Act 2001.

- No wigs, gowns or formal police uniform should normally be worn in the Children Court.
- Young defendants should be able to sit with their family during the proceedings.
- Lawyers should bring to the court's attention any vulnerabilities infringing on the young defendant's ability to understand and participate in proceedings.
- Lawyers should take all steps necessary to ensure that young defendants are fully aware of what is involved in complying with bail conditions and understand the consequences which flow from breach of bail conditions.

No such special provision applies to the higher courts – either the Circuit Criminal Court or the Central Criminal Court – meaning that these effectively operate as adult courts. The principles governing the exercise of criminal jurisdiction in respect of children do, however, apply to ‘any court’. Relevant here is the requirement that any court dealing with children charged with offences shall have regard to the principle that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them.

All children have the right to legal representation and that is provided free of charge – through criminal legal aid scheme – if it cannot be afforded.

The press are not permitted to publish any details concerning a child appearing on charges before any courts that would allow them to be identified. This requirement – which applies to all courts - can be dispensed with in certain circumstances including where it is considered to be in the public interest. Since the law was amended in 2006, no such application to publish the identity of a child before the courts has been made.

## **A.2. Please describe the sanctioning system regarding juvenile justice in your country.**

Imposition of criminal sanctions can only be undertaken by the courts and so children convicted of an offence by a criminal court receive one of the measures or sanctions provided for under the Children Act 2001, as amended. There are no sentencing guidelines other than those set down through the case-law of the superior courts. The most pertinent provision to sentencing is section 96 of the Children Act 2001, as explained below. It is not clear the extent to which this informs sentencing practice.

### **A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings**

Sanctions available under the Children Act 2001, as amended, encompass a range of both custodial and non-custodial or community-based sentencing options, which may

be imposed by the Children Court on a child convicted of a criminal offence. Possibilities to divert the young person from the court also exist under the Irish law, both before a child is charged with a crime (in this case police diversion takes place as an alternative to prosecution), and in certain circumstances, before or as an alternative to conviction (i.e. where a charge is brought against the young person and they appear before the Children Court). In this case, the child can be diverted to social services where they have unmet needs or the Probation Service where it is considered that a family conference would support the child to avoid further offending.<sup>18</sup>

### **A.2.2. Which possibilities exist to divert a juvenile from a trial? (diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?**

The possibility to divert a young person from trial exists in Irish law through the Garda (police) Diversion Programme. Part 4 of the Children Act sets out the operation of the Diversion Programme, which provides an alternative mechanism for addressing offending behaviour by young people. The objective of the Programme is to divert a young person from further criminal or anti-social behaviour.<sup>19</sup> To be eligible for admission to the Programme, the child must be at least ten years of age (in practice the age of 12 years is applied as a minimum) and under eighteen years of age, must accept responsibility for his/her behaviour, must consent to be cautioned, and, where appropriate, must consent to be supervised by a Juvenile Liaison Officer (JLO). The Director of the Garda Diversion Programme makes the final decision on admission to the Programme and will decide in particular whether admission to the programme is in the public interest.<sup>20</sup>

Under the Diversion Programme, the child will receive either a formal or an informal caution.<sup>21</sup> If the child receives a formal caution, he or she will be placed under the supervision of a JLO for a period of twelve months.<sup>22</sup> However, if the young person receives an informal caution, he or she will, in general, not be placed under a JLO's supervision.<sup>23</sup> However, section 27(1)(c) provides that in "exceptional circumstances" a young person who accepts an informal caution may, under the recommendation of the Director, be placed under the supervision of a JLO for a period of 6 months. The nature of the supervision given to the young person will vary from case to case, and will be decided on by the JLO. It may involve the young person checking in with the JLO or another Garda, or agreeing to engage in certain activities, such as attendance at a youth project.<sup>24</sup>

18 See sections 77 and 78 of the Children Act, 2001.

19 Section 19(1) of the Children Act, 2001, as amended by section 124 of the Criminal Justice Act 2006.

20 Section 24 of the Children Act, 2001. See also section 18 of the Act.

21 Section 25 of the Children Act, 2001.

22 Section 27(1) of the Children Act, 2001.

23 Section 27(2) of the Children Act, 2001.

24 An Garda Síochána, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the*

Under the Garda Diversion Programme, the Children Act also provides for the possibility of holding a family conference in respect of the young person. Under section 29, the purpose and functions of this conference include gathering “the child in respect of whom the conference is being held, his or her parents or guardian, such other family members, relatives and other persons as appropriate and the facilitator”<sup>25</sup> in order to discuss why the child became involved in the criminal behaviour,<sup>26</sup> how the child’s family, relatives, or other persons connected to the child can help to prevent the child from becoming involved in further criminal behaviour,<sup>27</sup> and, if appropriate to review the child’s behaviour since admission to the Programme.<sup>28</sup> The family conference also provides an opportunity to “mediate between the child and the victim”,<sup>29</sup> to “formulate an action plan for the child”,<sup>30</sup> and “to uphold the concerns of the victim and have due regard to his or her interests”.<sup>31</sup> As part of the proceedings of the family conference, an action plan is put together and agreed upon.<sup>32</sup> This action plan may include an apology, reparation to the victim, participation by the young person in an appropriate sporting or recreational activity, the attendance of the child at a school, or a number of other actions set out under the provisions of section 39(3).

The diversion programme is supported by a number of Garda Projects which are aimed at diverting young people away from crime. They represent a partnership between the police, the Probation Service, youth service organisations and local communities to engage the interest and energies of young people with a view to diverting them away from crime and anti-social activities. They have no statutory basis but are increasingly been viewed as a response to youth crime.<sup>33</sup>

Where a young person is deemed unsuitable for inclusion in the Garda Diversion Programme, cases are returned to the Gardaí with a view to initiating prosecution against the young person before the Children Court.

### **A.2.3. What types of interventions can the competent court impose?**

Even when a young person appears on a charge before the Children Court, there remains a possibility that the young person may avoid a criminal conviction, as section 78 of the

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*Diversion Programme 2012* (Dublin: Garda Office for Children and Youth Affairs, 2012) (available on [www.justice.ie](http://www.justice.ie)) at p. 7.

25 Section 29(a) of the Children Act, 2001.

26 Section 29(a)(i) of the Children Act, 2001.

27 Section 29(a)(ii) of the Children Act, 2001.

28 Section 29(a)(iii) of the Children Act, 2001.

29 Section 29(b) of the Children Act, 2001.

30 Section 29(c) of the Children Act, 2001.

31 Section 29(d) of the Children Act, 2001.

32 Section 39 of the Children Act, 2001.

33 See the Youth Justice Action Plan 2014-2018.

Children Act provides that, subject to the condition that “the child accepts responsibility for his or her criminal behaviour, having had a reasonable opportunity to consult with his or her parents or guardian and obtained any legal advice sought by or on behalf of him or her,”<sup>34</sup> and it appears desirable that an action plan be formulated at a family conference,<sup>35</sup> and “the child and child’s parent or guardian, or members of the child’s family or relatives of the child who in the opinion of the Court could make a positive contribution at a family conference, agree to attend such a conference and to participate in its proceedings”,<sup>36</sup> the Court may adjourn proceedings and order that such a family conference be held.

This family conference would be arranged by the Probation service, under the aegis of Young Persons’ Probation,<sup>37</sup> but otherwise operates in much the same way as the family conference does under Part 4 of the Children Act. The Court may direct that particular matters be considered at the family conference.<sup>38</sup> An action plan should be drawn up for the young person,<sup>39</sup> and the outcome of the conference is reported to the court by the Probation Officer.<sup>40</sup> The Court then has the option to approve or amend the action plan, and then direct that the young person should comply with it, under the supervision of a Probation Officer.<sup>41</sup> If no agreement on an action plan has been reached at the family conference, however, the Court may either formulate an action plan on behalf of the young person and direct the young person to comply with it and be supervised by the Probation Officer for its duration, or, alternatively, resume the proceedings in respect of the offence the young person was charged with.<sup>42</sup> Where the Court orders compliance with the action plan and the plan was not complied with, the Court may resume proceedings in respect of the offence with which the child was charged, under section 83 of the Children Act.

Where a young person is convicted of a charge before the Children Court, a range of sanctions, encompassing both custodial and non-custodial dispositions, are available. These are set out under Part 9 of the Children Act.

Importantly, section 96 of the Children Act sets out principles designed to guide the Court in deciding which sanction is most appropriate. In particular, it sets out that “any penalty imposed on a child for an offence should cause as little interference as possible with the child’s legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive

34 Section 78(1)(a) of the Children Act, 2001.

35 Section 78(1)(b) of the Children Act, 2001.

36 Section 78(1)(c) of the Children Act, 2001.

37 Section 79 of the Children Act, 2001.

38 Section 78(2) of the Children Act, 2001 (No 24 of 2001)

39 Section 80 of the Children Act, 2001 (No 24 of 2001)

40 Section 81 of the Children Act, 2001 (No 24 of 2001)

41 Section 82(1) of the Children Act, 2001 (No 24 of 2001)

42 Section 82(2) of the Children Act, 2001 (No 24 of 2001)

form that is appropriate in the circumstances; in particular, a period of detention should be imposed only as a measure of last resort.”<sup>43</sup> The Court also has to take into account that young people’s rights in the court proceedings,<sup>44</sup> and other mitigating factors such as the young person’s age and level of maturity.<sup>45</sup> Before any sentence is imposed, the Children Court may also require a report from Young Person’s Probation, and will require it where a community sanction, or a detention order or detention or supervision order is considered appropriate.<sup>46</sup>

A number of types of non-custodial sanctions are provided for under Part 9 of the Children Act. These include fines, parental orders, and community sanctions.

The Children Court has the power to impose a fine on a young person found guilty of an offence under sections 108-110 of the Children Act. This fine should not exceed half the amount which the District Court would impose on a person of full age and capacity convicted of a similar offence, and the Court must consider, in imposing the fine, the young person’s ability to pay.

Under sections 111-114 of the Children Act, the Court also has power to make certain orders in respect of the parents or guardians of the young person charged with the offence. In particular, they may be subject to a parental supervision order,<sup>47</sup> which may require the parents or guardians to undertake a number of activities, including undergoing treatment for substance abuse, participating in parenting skills courses or ensure that they adequately and properly control or supervise their child.<sup>48</sup> This order can last for up to six months, during which time the parents or guardians will be supervised by a Probation Officer. Parents or guardians may also be required to pay compensation, where the Children Court is satisfied that a wilful failure by the parents or guardians to control the young person contributed to the criminal behaviour,<sup>49</sup> or the parent or guardian may be bound over.<sup>50</sup>

A range of community sanctions are also available to the Children Court under sections 115-141 of the Children Act. Particular conditions may be attached to a community sanction, such as requiring the young person to attend school, or relating to the young person’s employment, place of residence, attendance at counselling, or limiting the young person from associating with particular persons, prohibiting the consumption of intoxicating liquor, or relating to any other matters the Children Court considers

43 Section 96(2) of the Children Act, 2001 (No 24 of 2001)

44 Section 96(1) of the Children Act, 2001 (No 24 of 2001)

45 Section 96(3) of the Children Act, 2001 (No 24 of 2001)

46 Sections 99-107 of the Children Act, 2001 (No 24 of 2001)

47 Section 111 of the Children Act, 2001 (No 24 of 2001)

48 Section 111(6) of the Children Act, 2001 (No 24 of 2001)

49 Section 113 of the Children Act, 2001 (No 24 of 2001)

50 Section 114 of the Children Act, 2001 (No 24 of 2001)

appropriate.<sup>51</sup> Types of community sanction which may be imposed by the Children Court include:

- A day centre order,<sup>52</sup> which requires that a young person attend a particular day centre for the purpose of participating in a particular activity, or receiving instruction. This type of order can be imposed for up to 90 days (although these do not have to be 90 consecutive days), and the young person will be under the supervision of a Probation Officer during this time.
- A probation (training or activities programme) order,<sup>53</sup> whereby the Children Court can require the young person to complete a programme of activities or training under the supervision of a Probation Officer.
- A probation (intensive supervision) order,<sup>54</sup> which requires the young person to undergo intensive supervision for a period not exceeding 180 days under the supervision of a Probation Officer.
- A probation (residential supervision) order,<sup>55</sup> which requires the young person to reside in hostel residence provided by the Probation and Welfare Service for a period of time not exceeding one year, during which time the young person remains under the control, direction and supervision of the person in charge of the hostel.
- A suitable person (care and supervision) order,<sup>56</sup> allows the Children Court to assign the young person to the care of a suitable person, including a relative of the young person for a period not exceeding two years. The written consent of the parent or guardian of the child must be obtained, and the Probation and Welfare Service must confirm that this option is available, before this order is made.
- A mentor (family support) order,<sup>57</sup> whereby a mentor, including a relative of the young person, may be assigned to “help, advise and support the child and the child’s family” in efforts to prevent further offending by the young person, for a period not exceeding two years. Le Chéile, a voluntary organization which works with the Probation Service, provides mentors for young people subject to a mentoring order under the Children Act.<sup>58</sup>

51 Section 117 of the Children Act, 2001 (No 24 of 2001)

52 Section 118-123 of the Children Act, 2001 (No 24 of 2001)

53 Section 124 of the Children Act, 2001.

54 Section 125 of the Children Act, 2001.

55 Section 126-127 of the Children Act, 2001.

56 Section 129-130 of the Children Act, 2001.

57 Section 131-132 of the Children Act, 2001.

58 See further [www.bookvault.ie](http://www.bookvault.ie).

- A restriction on movement order,<sup>59</sup> allows the Children Court to order a young person to be at a particular residence during the hours between 7 p.m. and 6 a.m. for a period not exceeding 6 months, or to order a young person to stay away from specified places at specified time for a period not exceeding 12 months.
- Or a dual order,<sup>60</sup> which requires either supervision by a Probation Officer of the young person for a specified period, *or* to attend a day centre for a period not exceeding 90 days, *and* which restricts the child's movement for a period of time not exceeding 6 months.

#### **A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?**

Custodial sanctions are also provided for under the Children Act. The principle that detention should only be used as a last resort in relation to children who commit offences is set out under section 96.

A detention order, which allows the young person to be detained in a Children Detention School is provided for under section 142. Section 143 provides that "The court shall not make an order imposing a period of detention on a child unless it is satisfied that detention is the only suitable way of dealing with the child and, in the case of a child under 16 years of age, that a place in a children detention school is available for him or her."<sup>61</sup> Although the Children Act formerly provided that a sentence of detention imposed on a child should be between three months and three years, this was abolished in 2006. Section 149 of the Act, as amended by the Criminal Justice Act 2006, stipulates that deprivation of a young person's liberty through detention in a Children Detention School can be for any term, but not for a period longer than the term of detention or imprisonment which would be imposed on an adult who committed a similar offence.

Section 151 provides for the option of making a detention and supervision order. This provides that the young person will be detained in a Children Detention School, and this detention should be followed by a period of supervision by a Probation Officer in the community. It is envisaged that half of the period of time which this order remains in force would be spent in detention, and the other half in the community.<sup>62</sup>

<sup>59</sup> Section 133-136 of the Children Act, 2001.

<sup>60</sup> Section 137 of the Children Act, 2001.

<sup>61</sup> Section 143(1) of the Children Act, 2001.

<sup>62</sup> Section 151(3) of the Children Act, 2001.

### **A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?**

There are three Children Detention Schools in which the young person may be detained: Oberstown Boys' School, Oberstown Girls' School and Trinity House School. These Schools accommodate children on remand and on sentence and are located on a single campus in North County Dublin. Traditionally, children under 16 years were accommodated in the Children Detention Schools, whereas 16 and 17 year olds were detained in a young offender institution (St Patrick's Institution) for young people between the ages of 16 and 21.

Section 156A of the Children Act allowed for males aged 16 and 17 years to be detained in St. Patrick's Institution as a transitional provision until additional places become available within the Children Detention Schools. This practice is being phased out, and since 1<sup>st</sup> May 2012, all new 16 year old males subject to a detention order or a detention and supervision order are detained in a Children Detention School only.<sup>63</sup> Work is underway to extend the number of places available at the Oberstown campus and when this is complete towards the end of 2014 all children under 18 years will be detained there (with none in adult prison).

Part 10 of the Act provides for the regulation of children detention schools. Section 158 sets out the principal object of children detention schools as follows:

“It shall be the principal object of children detention schools to provide appropriate educational and training programmes and facilities for children referred to them by a court and, by:

- a.** Having regard to their health and safety, welfare and interests, including their physical, psychological and emotional wellbeing;
- b.** Providing proper care, guidance and supervision for them;
- c.** Preserving and developing satisfactory relationships between them and their families;
- d.** Exercising proper moral and disciplinary influences on them, and
- e.** Recognizing the personal, cultural and linguistic identity of each of them,
- f.** To promote their reintegration into society and prepare them to take their place in the community as persons who observe the law and are capable of making a positive and productive contribution to society.”

63 See further <http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/YouthJustice/detentionmenu.htm>

Therefore, the primary function of the schools includes the provision of education to young offenders and also the promotion of their reintegration on release and rehabilitation.

**A.2.6. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?**

In practice, the majority of children are diverted from court via the Garda (police) Diversion Programme. The most recent figures available – from 2012 – are that there are currently 123 JLOs, including 8 JLO Sergeants working in the Diversion Programme.<sup>64</sup> In 2012, a total of 12,246 young people were referred to the Garda Diversion Programme, a figure which had fallen from 12, 809 in 2011. These young people were referred in respect of 24,069 separate incidents in 2012, compared with 27,384 separate incidents in 2011.<sup>65</sup> 75% of the young people referred were male, while 25% were female.<sup>66</sup> 9,776 young people (80%) were admitted to the Programme, compared to 9,721 (76%) in 2011.<sup>67</sup>

Of the young people not deemed suitable for admission to the Diversion Programme, 88% were male and 12% were female.<sup>68</sup> Reasons that a young person may not be admitted to the Programme include a refusal by the young person to accept responsibility for his/her behaviour, or if he/she refuses to consent to being cautioned, or, where appropriate, supervised by a JLO. Other reasons a young person may not be deemed suitable for inclusion include where it is considered that it would not be in the interests of society to caution the young person, or where the young person is offending persistently.<sup>69</sup> In 2012, 66% of those deemed unsuitable for inclusion in the Diversion Programme had received six or more referrals in 2012.<sup>70</sup>

Where a young person was deemed suitable for admission to the Programme, 6,265 (representing 51% of the total number of young people referred) were given an informal caution, compared to 6,944 (54%) in 2011. 1850 (15% of the total referred) young people received a formal caution, compared with 2,777 (22%) in 2011. 671 (5%) young people had a decision in their case pending, compared with 515 (4%) in 2011, while a further 648 (5%) young people were deemed to require no further Garda action to be taken compared to 738 (6%) in 2011.<sup>71</sup>

64 An Garda Síochána, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme 2012* (Dublin: Garda Office for Children and Youth Affairs, 2012) (available on [www.justice.ie](http://www.justice.ie)) at p. 5

65 *ibid.*

66 *ibid.*

67 *ibid.*

68 *ibid.* at p. 23

69 *ibid.*

70 *ibid.* at p. 15

71 *ibid.* at p. 5

Figures are also available from the courts service relating to crime committed by young people and the type of orders made. Most recent figures indicate that orders were made in respect of 3,452 defendants, relating to 5,769 offences in the Children Court.<sup>72</sup> This represented a decrease of orders in respect of offences of 29% from 8,093 orders made in 2011.<sup>73</sup> 2,815 offences were struck out or taken into consideration with other offences.<sup>74</sup> 675 offences were either dismissed or dismissed under the Probation of Offenders Act.<sup>75</sup> Fines were imposed in respect of 684 offences, and peace bonds imposed in respect of 114 offences.<sup>76</sup> Community service orders were imposed with respect to 36 offences, and probation was ordered in relation to 636 separate offences.<sup>77</sup> Orders of detention were imposed in relation to 264 separate offences, while detention orders which were either suspended or part-suspended were imposed in relation to 155 offences before the Court.<sup>78</sup> 152 offences were returned to a higher court for trial in 2012.<sup>79</sup>

<sup>72</sup> Courts Service, *Courts Service Annual Report 2012* (Dublin: Courts Service, 2013) at p. 38 (available at [www.courts.ie](http://www.courts.ie))

<sup>73</sup> *ibid.* at p. 24

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid.* at p. 38

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

<sup>79</sup> *ibid.* at p. 24

## B. Restorative approach within juvenile justice

### B.1. Where do you see a restorative approach within the juvenile justice system?

The main area where restorative justice operates in the Irish juvenile justice system is in the Garda Diversion Programme and to a limited extent in the Probation convened family conference.<sup>80</sup>

### B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

As outlined above, the Programme affords three methods by which young offenders can be diverted from prosecution by an informal caution, a formal caution,<sup>81</sup> or by the convening of a conference of those concerned for the welfare of the child, where the victim may also be present.<sup>82</sup> There is provision in the Children Act 2001 for the victim to be present at the formal caution and at the family conference and the use of restorative practices has been increasing in recent years. In 2012, for example, 1,036 cautions were administered by way of restorative justice, an increase from less than 400 referrals in 2011.

Restorative justice is also evident in the family conference convened by the Probation Service and directed by the Children Court under s 78 of the Children Act 2001. Although the Probation Service has reported that 15 family conferences were carried out in Ireland in 2012 in respect of young offenders (four less than had been carried out in 2011),<sup>83</sup> this is a dramatically lower number than takes place under the Diversion programme. The lack of popularity of restorative justice at this phase of the juvenile justice system is not well understood.

### B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

No.

<sup>80</sup> For a full review of restorative justice in Ireland see National Commission on Restorative Justice, *Final Report*, June 2009, available at [www.justice.ie](http://www.justice.ie).

<sup>81</sup> Section 25 of the Children Act 2001 governs the administration of cautions.

<sup>82</sup> Section 29 of the 2001 Act deals with the provision of conferences while Section 26 deals exclusively with the victim's presence in the restorative justice process.

<sup>83</sup> The Probation Service Annual Report 2012, p.36.

#### **B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?**

An Garda Siochana (the police) are the main body with responsibility in this area. Other restorative interventions and events are organised by community groups, children's organisations and charities.<sup>84</sup>

84 See the work of the Tallaght West Childhood Development Initiative at <http://www.twcdi.ie>.

## C. Foster care within the juvenile justice system

### **C. 1. Does foster care play any role in your juvenile justice system?**

No, there is no provision formal or informal for foster care to be used in the juvenile justice system in Ireland.

### **C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?**

N/A see above.

### **C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?**

No. There are plans to put in place a fostering scheme to support children's compliance with bail conditions for example but these have not advanced beyond the discussion of a pilot programme.









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