Oral Submission by the Irish Youth Justice Alliance to the Joint Oireachtas Committee on Justice, Equality and Women's Rights, March 28th, 2006

Good Afternoon Chairman and Committee members,

I would like to begin by expressing our appreciation to the Committee for providing us with the opportunity to make this presentation.

My name is Jillian van Turnhout and I am the Chief Executive of the Children's Rights Alliance, which brings together 80 non-governmental organisations concerned with the rights and welfare of children in Ireland.

I am speaking here today as a representative of the Irish Youth Justice Alliance, a coalition concerned with reforming the youth justice system. It comprises the Children's Rights Alliance, the Irish Council for Civil Liberties, the Jesuit Centre for Faith and Justice and the Irish Penal Reform Trust, along with leading legal practitioners, academics and other professionals working in the area. Joining us today are Dr. Ursula Kilkelly of the Faculty of Law, UCC, Maria Corbett of the Children's Rights Alliance, Catherine Ghent, a solicitor who works daily in the Children's Court and Louise Cadwell of Catholic Youth Care who works on the ground with diversion projects.

Our presentation will focus on the proposed changes to the Children Act, 2001 under the Criminal Justice Bill, 2004. Time will allow us only to touch briefly on our concerns; we have supplied you with a detailed submission and would welcome on-going dialogue with the Committee.

The Criminal Justice Bill substantially amends the Children Act. While some of the amendments simplify the implementation of the Act and are to be welcomed, others roll back on commitments made in the Act and weaken the protections it afforded to children in conflict with the law.

Five years after its enactment, key provisions of the Children Act are not yet in force, and as such, its full potential is not being fulfilled. For example, the principle that detention shall be a measure of last resort underlies the Act but courts currently have few sentencing alternatives to detention as only two of the ten community sanctions provided for in the Act have been commenced.

The Alliance is very concerned that rather than fully implementing the Children Act and resourcing the necessary prevention, early intervention and rehabilitative services, the Government is introducing further new measures which will both complicate and weaken the Act. Rather than ensuring the coherence of the youth justice system, the Government's proposals will bring about unnecessary intervention in the lives of young people, particularly those who have committed anti-social rather than criminal behaviour. The case for these amendments has not been made and many of them are incompatible with our obligations under the Convention on the Rights of the Child and the European Convention on Human Rights and with international best practice. In addition, we question whether there is sufficient capacity within the system to ensure the full implementation of the Act let alone the additional measures proposed.

Our key areas of concern are

- The age of criminal responsibility
- Anti-Social Behaviour Orders (ASBOs) and amendments to the Garda Diversion Programme, and

- A weakening of safeguards relating to children in detention

We ask the Committee to give these problematic proposals detailed consideration and debate, to reflect on why they are being proposed and to ask whether their introduction will make a positive impact on the lives of our children and young people.

Age of Criminal Responsibility
The Criminal Justice Bill rolls back on commitments made in the Children Act and recommended by several reports and committees since the 1960s to raise the age of criminal responsibility to twelve years. While this part of the Act has never been implemented, the Bill now proposes to reduce the age to 10 years for children charged with serious crime.

While children of 10 and 11 years who commit serious crime require intervention in their lives and measures must be taken to protect society from any risk they may pose, the Alliance believes that appropriate action in these cases is not to prosecute, try and detain these children but to address the very complex and serious problems that gave rise to their violent behaviour.

We ask you to consider what will be achieved by bringing a child of ten years to court, detaining him/her with older teenagers without treatment, therapy or re-education? This may punish, but it will not prevent the child from re-offending or harming himself or others in the future. Such children need the support of specially trained professionals to address their violent and/or sexualised behaviour and to engage them in rehabilitative and therapeutic programmes which address their complex needs and prevent them from re-offending.

We call on the Committee to abandon the proposed amendment and set the age at twelve for ALL children.

Doli Incapax
In addition, the rule of doli incapax has been abolished. The Children Act set in law this principle that a child between the age of 12 and 14 years is incapable of committing an offence because he/she did not have the capacity to know that the act or omission concerned was wrong. As a rebuttable presumption, this provision had the effect of raising the age of criminal responsibility to 14 years. However, it is now proposed to abolish this principle altogether and to replace it with a requirement that the Director of Public Prosecutions must consent or take action with respect to charges against children under 14 years. This gives the power to the DPP to prosecute a child, rather than to reserve to the Children Court the matter of whether the child had capacity to commit the offence in question.

We urge the Committee to delete this amendment as we believe it will result in more children being prosecuted and weakens safeguards for children, as there is no statutory obligation placed on the DPP to act in the best interests of the child, or to uphold the principles of youth justice in the fulfillment of its duties in this area.

I will hand over now to Dr Ursula Kilkelly.

Anti-Social Behaviour Orders and the Right to Privacy
The opposition of the Irish Youth Justice Alliance and others to ASBOs is well documented. Our clear articulation of the likely and disproportionately negative effects of ASBOs on the lives of young people, we believe, led the Minister of Justice, Equality and Law Reform to develop an alternative model of ASBOs for those under 18 years.

Nevertheless, we remain opposed to the application of ASBOs in any form on children and young people. They are a crude instrument which at best penalise youthful behaviour, and at worst fail to address the needs of young people who are at risk and/or vulnerable.

In addition, the Alliance finds one particular aspect of the proposed model particularly worrying. Under the Criminal Justice Bill, section 93 of the Children Act, which prevents the media from publishing or broadcasting details of the child's identity, has been amended so that in certain circumstances it will be possible to remove reporting restrictions when an ASBO has been made. This involves a weakening of the internationally recognised right to privacy, which children currently enjoy before the Children Court, and which serves to protect them from the harm which publicity can cause in the light of their vulnerability and youth.

If the Committee rejects our recommendation to abandon the introduction of ASBOs on children and young people in their entirety, we strongly urge you to reject the proposal that removes the child's right to privacy and protection of their identity.

Amendments to the Diversion Programme

The Diversion Programme operated by An Garda Síochána since 1963 is one of the uniquely successful elements of the Irish youth justice system. Research shows the intervention of Juvenile Liaison Officers (JLOs) has had an 87% success rate in diverting children and young people from further offending. Despite this success, the Criminal Justice Bill proposes to make three fundamental changes to the Programme.

1. Admissibility of evidence of involvement in the Diversion Programme

Under the Programme any child admitted must accept responsibility for his or her behaviour and agree to be cautioned by a JLO. The State, on the other hand, agrees not to prosecute the child in respect of the offence. This is the fundamental quid pro quo on which the Diversion Programme – and any diversionary scheme which operates according to international standards – is based. This approach encourages young people to enter the Programme as they are guaranteed that the offence, in respect for which they were admitted to the Programme, will not be held against them.

However, the Criminal Justice Bill proposes to amend the Children Act by making it possible to introduce evidence as to the child's involvement in the Diversion Programme in subsequent criminal proceedings. What this means, therefore, is that contrary to the current position where the Court is not entitled to hear any evidence relating to the child's involvement in the Diversion Programme or any of the offences which gave rise to his/her involvement, this amendment will give the prosecution a discretion to inform the Children Court not only of the child's involvement in the Programme and of the offences giving rise to this involvement but also, importantly, any acceptance by the child of responsibility for that criminal behaviour. Accordingly, the amendment will allow information concerning offences with which the child was neither charged nor convicted to be admitted in evidence in subsequent criminal proceedings. As well as being contrary to the child's due process rights, we believe that the proposed amendment has the potential to undermine the entire basis of the Diversion Programme. The case has simply not been made for interfering with such a successful Programme in this way.

2. Good Behaviour Contracts

The proposed introduction of ASBOs has resulted in two further amendments to the Diversion Programme. First, it is proposed to introduce what appears to be a parallel diversion scheme which acts as a precursor to application for an ASBO. This mechanism – involving meetings and the drawing up and supervision of Good Behaviour Contracts - is an almost entire duplication of the Diversion Programme currently operated by An Garda Síochána under the Children Act and, as such, it is difficult to see its added value. In our view, introducing a second diversion scheme is unnecessary, unworkable and will over-complicate the work of the Gardaí in this area. The Committee is asked to reject these proposals for these reasons.

3. Expansion of the Diversion Programme to include Anti-Social Behaviour

The Criminal Justice Bill also proposes to extend the Diversion Programme to include anti-social behaviour in a measure which could have a significant net-widening effect. This is largely due to the introduction of ASBOs insofar as children alleged to have committed anti-social behaviour are to be diverted to the Programme before an application for an ASBO is made. Nonetheless, the extension of the Programme to include behaviour which is not criminal in nature is a widening of Garda powers which will allow formal intervention in the lives of children and young people. Moreover, the Bill proposes to give An Garda Síochána the power to admit children as young as 10 to the Diversion Programme even when the age of criminal responsibility is raised to twelve. This is completely contrary to best practice which advises against formal interventions for any behaviour that does not harm the child or others.

3. Amendments to the arrangements for children in detention.

While some of the Bill's proposals in relation to detention are to be welcomed, a number of the proposals are deeply worrying:

1. The weakening of provisions for the inspection of Children Detention Schools;

The Children Act provides for the establishment of an Inspectorate of Children Detention Schools. However, this provision was never brought into force. The Criminal Justice Bill proposes to replace this Inspectorate with a person authorised by the Minster for Justice, and to reduce the frequency of inspections from every six months to once a year. This weakening of the inspectorate is unacceptable; the circumstances of children in detention need regular, expert supervision by an independent, permanent body. The Alliance strongly recommends that this proposal be deleted and the original Inspectorate established as a matter of priority.

2. The insertion of an amendment to require the court to take into account the child's educational needs when deciding on the length of detention;

The proposal to allow judges to give children who have particular educational needs longer sentences appears to break with the constitutional principle of proportionality in sentencing – where the punishment must fit the crime – as it will allow for longer sentences to be given to those who have suffered educational disadvantage. The rationale behind this proposal is unclear and it should be deleted.

3. The removal of the duty under the Children Act, 2001 to separate children detained on remand from those detained following conviction;

The IYJA is concerned that the Bill proposes to remove from the Children Act the duty to detain children on remand separately from those detained following conviction. This is a rolling back on the commitment in the Children Act to keep these children separate, in order to protect them from being 'contaminated' by those serving a sentence of detention.

4. The failure to make immediate provision for the closure of St Patrick's Institution.

It is to be welcomed that the Criminal Justice Bill addresses an anomaly in the Children Act whereby children under and over 16 were treated differently. The Bill provides for the detention of all children under 18 in Children Detention Schools and brings the responsibility for all children in detention under the remit of one Department.

However, while the facilities for children under 16 years are already established, those between the ages of 16 and 17 years are detained in adult prisons. The majority of those detained in this age group are detained in St Patrick's Institution, which detains boys from 16 to 21 years.

St Patrick's Institution has been heavily criticised by the Inspector of Prisons and the Council of Europe Committee for the Prevention of Torture for its detention of children alongside adults (this is contrary to several international human rights treaties including the Convention on the Rights of the Child) and its failure to provide those detained there with any meaningful activity or education.

It is neither appropriate nor acceptable that children under 18 continue to be detained in St. Patrick's Institution. While the proposals clearly envisage the use of St Patrick's Institution as an interim measure, the Alliance is seriously concerned that making specific provision for St Patrick's Institution in the Children Act will secure its medium term future, and delay rather than accelerate the removal of 16 and 17 year olds to Children Detention Schools. For this reason, we call on the Committee to remove express reference in the Bill to St Patrick's Institution.

Once again, on behalf of the Irish Youth Justice Alliance, I am grateful to you for taking the time to engage with us this afternoon. My Alliance colleagues and I would be happy to answer any questions you might have.

Thank you.