

Submission by the Children's Rights Alliance to the National Crime Council

December 2002

1 Introduction

The Children's Rights Alliance is a coalition of 72 non-governmental organisations concerned with meeting the needs and safeguarding the rights of children in Ireland. The Alliance works to secure the full implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child, to which Ireland is a State Party.

The Alliance appreciates the opportunity to make a submission to the National Crime Council. The submission does not attempt to address all issues relating to children, many of which are discussed in the consultation report of the National Crime Council. The submission will focus on the Children Act 2001 and on issues relating to promoting and protecting the rights of children in detention and on the commingling of the welfare and justice systems.

UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child recognises and stipulates children's basic human rights, including their civil, political, economic, social and cultural rights and their right to protection from abuse and exploitation. The Convention sets forth the minimum standards necessary for the well-being of every child. The Convention also imposes obligations on the ratifying States Parties to undertake specific actions to ensure the full realisation by children of the rights stipulated in the Convention.

Four principles are basic to the implementation of the Convention:

- Respect for the best interests of the child (Article 3)
- The right of all children to life, survival and development (Article 6)
- Participation: the right of all children to express their views freely on all matters affecting them (Article 12)
- Non-discrimination: the right of all children to enjoy all the rights in the Convention without discrimination (Article 2).

The UN Convention provides for the protection of the rights of children in the criminal justice system.

Detention as a Measure of Last Resort

*The arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time.
(Article 37)*

Treatment of Children in Detention

Every child deprived of liberty shall be treated with humanity and respect... and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her

family through correspondence and visits, save in exceptional circumstances. (Article 37)

State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, ... and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. (Article 40)

National Children's Strategy

The National Children's Strategy was launched by the Government in November 2000 to advance the implementation in Ireland of the UN Convention on the Rights of the Child. The Strategy lays out a set of objectives and commitments to improve the quality of life for all children in Ireland over a ten-year period. The Strategy aims to achieve the following three National Goals:

1. Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity.
2. Children's lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services.
3. Children will receive quality supports and services to promote all aspects of their development. The Strategy recognises that all children have a basic range of needs and that some children have additional needs.

In relation to children in conflict with the law the Strategy states that:

Children with behavioural problems coming before the courts or in trouble with the law will be supported in the least restrictive environment while having their needs addressed.

2 Emphasis on Detention over Preventive Measures
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2.1 Slow and selective progress in implementing the Children Act, 2001

The juvenile justice system in Ireland is governed by legislation (the Children Act, 1908) that dates back nearly a hundred years. New legislation (the Children Act, 2001) has been enacted but the ongoing delay in bringing most of its provisions into force has resulted in the continued use of the outdated 1908 Act. Full introduction of the 2001 legislation is not expected to take until the end of 2006.

Underlying the Children Act, 2001 is the principle that detention should only be used as a measure of last resort. The Act emphasises community-based non-custodial measures as alternative approaches for dealing with young offenders, including restorative justice, cautioning, family group conferences and the strengthening of the Garda Juvenile Diversion Scheme. Given the overall focus of the Act it is disappointing that the first commencement order (May 1st 2002) focused primarily on punitive measures and non-resource intensive sections of the Act.

It has been recognised that investment in community and statutory services that offer prevention, early intervention and diversion will be necessary for the full

implementation and effective functioning of the Act. The Alliance calls for the preventive elements of the Act to be given priority and to be introduced as a matter of urgency and for the investment of resources in community and statutory services necessary to support these measures. This must include full staffing of the social work service which is currently experiencing a severe shortage of workers. The Eastern Regional Health Authority (ERHA) indicated that on March 31st there were 2,272 cases on the waiting list for social work services. In two regions of the ERHA, 81 out of 232 posts are vacant. In some Dublin community care areas more than half of all social work posts are vacant (Irish Times, 10.5.02)

2.2 Emphasis on Detention Facilities over Preventive Measures

In light of the slow rate of investment in prevention, early intervention and diversion services, the increase in the provision of detention places over the past five years suggests an emphasis on incarceration over rehabilitation. The number of places in St. Patrick's Institution, for example, has increased by 47% during the past five years from 163 to 239 places (Statement from the Minister for Children Mary Hanafin, 15.4.02). While there is a recognised need to provide secure places it is the Alliance's belief that the provision of detention facilities should not be given priority over investment in preventive measures that will ultimately impact on the future need for such facilities.

2.3 Children's Prison for 14 and 15 year olds

In April 2002, following the death of two Gardai in connection with a juvenile-related auto theft and joyriding offence, Minister for Justice John O'Donoghue announced plans to open a "temporary" children's prison wing for 14 and 15-year-olds at St. Patrick's Institution. The announcement of the planned children's prison wing was preceded by revelations that one of the youths involved in the crash had been in the care of the health board and had been refused a place in a Children Detention School last year as it was full. It was also highlighted that in order for the youths to be detained another young offender, described as being "prone to extreme physical violence", had to be released from custody (Irish Independent, 19.4.02 and Irish Times, 19.4.02).

The re-designation of a wing (3 floors) of St. Patrick's Institution, a prison for juveniles aged 16 to 21 years, to a detention centre for offenders between the ages of 14 and 15 years, was reported to cost €9 million (Irish Times, 7.5.02). The new prison is described as a stopgap measure that will not be in force for more than two years. This proposal constitutes a reversal of stated Government policy and is entirely inconsistent with the spirit, if not the letter, of the recently passed Children Act, 2001, which holds that detention should only be used as a measure of last resort. The Alliance also believes it constitutes a violation of children's rights and represents a major step backwards with respect to juvenile justice policy and practice in Ireland.

The re-designation of St. Patrick's Institution is possible only under the 1908 Act. It would not be possible if the 2001 Children Act had been implemented, as there is no provision in the 2001 Act to detain children under the age of 16 years in a place of detention [Section 150]. The 1908 Act permits such a measure if the child is "so unruly and depraved" that he or she could not be detained elsewhere.

Juveniles aged 14 and 15 years at present are detained in Children Detention Schools. These centres are managed by the Department of Education and have a specific therapeutic and educational focus. St. Patrick's Institution, on the other hand, is run by the Irish Prison Service and operates a regime not dissimilar from that of an adult prison. A Report of the Committee of Inquiry into the Penal System (July, 1985),

known as the Whitaker Report, called for St. Patrick's Institution to be closed down citing unsuitable physical conditions of the building and an inappropriate prison regime.

Young people interviewed for a report, *Left Out on Their Own: Young People Leaving Care in Ireland* (2000), spoke of their experiences in Children Detention Schools and in adult prisons. One young person noted the difference in the regime between Trinity House (Children Detention School) and St. Patrick's Institution:

It's an absolute nightmare. You don't know who to trust. You're locked up for 18 hours a day in Pat's. I don't like Pat's. Staff are different here than in Trinity. They don't really care about you here.

A young person spoke of conditions within St. Patrick's Institution:

Pat's is worse than Mountjoy. It is a dump. You cannot go anywhere without the doors locking behind you. There are flies in the food. You can't eat it.

Another young person noted the loneliness of life in an adult prison:

You can't ring home. The only way to have contact is to write. I can't write. My mother has ten kids and my father is sick. They are not able to come to visit me. It's lonely. You get locked up in the cell at 7.15 for the night. It is a tiny cell.

3 Safeguards and Monitoring

3.1 Exclusion from the Ombudsman for Children Act, 2002

Legislation to establish an Office of Ombudsman for Children was passed into law in April, 2002 (Ombudsman for Children Act, 2002). Although broadly welcomed, the Act contains certain inappropriate exclusions in relation to the Ombudsman's authority to hear complaints, including the exclusion of children in prison. During the debate on the Ombudsman for Children Bill this exclusion was defended on the basis that under the Children Act it will be illegal for children to be held in inappropriate places, and that the exclusion of children in detention will refer only to children who are legitimately in places like St. Patrick's Institution by virtue of their being offenders. It should be noted, however, that section 56 of the Children Act 2001 provides that a detained child can be kept in a cell when no other place is available. [See also section 263 of the 2001 Act]. Section 150 gives the Minister discretion in defining a 'place of detention' suitable for the detention of offenders who are between the ages of 16 and 18 years of age.

The exclusion of children in prisons from the remit of the Ombudsman for Children is particularly worrying in light of the lack of clear legislative guidelines on what may or may not constitute a place of detention and on the type of regime that should operate in a place of detention.

3.2 Limited Role of Garda Inspectorate

Advocates who work regularly with children who interact with the Gardai state that they routinely hear credible individual allegations of ill treatment of juveniles by Gardai at Garda Stations and reports of juveniles who have been detained for

questioning by Gardai without a parent or other adult being informed. Such allegations are often unsupported by independent, corroborative evidence. In the words of one who has worked with poor and often homeless youth from deprived areas for more than 25 years, *"It is the word of a poor, sometimes criminally involved, young person against adults with authority, power and respectability."* (Statement of Peter McVerry, SJ). Not surprisingly, these allegations are often unreported or not verified. The Garda Complaints Board itself has recognised the difficulty in verifying such allegations.

In October 2002, the Minister for Justice announced plans to establish a Garda Inspectorate, with powers of an Ombudsman, to replace the Garda Complaints Board. The Alliance welcomes this development as an important step in the promotion and protection of children and young people's rights as they interact with the Gardai. However concern has been raised in relation to restrictions on the remit of the Garda Inspectorate.

It has been reported that the proposed remit of the Garda Inspectorate will only extend to "the most serious allegations". All minor disciplinary matters and "more serious allegations" will continue to be dealt with "internally" within the Garda Síochána (Irish Times, 23.11.02). Peter McVerry, a campaigner for homeless children, recently commented that

"Presumably, allegations of assault by young people in deprived areas would be covered by the term "more serious allegations". In such cases, Gardai will continue to investigate Gardai, which is the central problem with the present system"

The Inspectorate's remit must be extended to ensure that the rights of children and young people, who interact with the Gardai, are protected and vindicated.

3.3 Separation of Children from Adults in Detention

The Children Act, 2001 states that *"as far as practicable ...any child while detained in the [Garda Síochána] station shall not associate with an adult who is so detained and shall not be kept in a cell unless there is no other secure accommodation available"* (Section 56). The 2001 Act does not thereby require the separation of children and adults and is thus in breach of Ireland's obligation under the UN Convention on the Rights of the Child which states that children in detention *"shall be separated from adults unless it is considered in the child's best interest not to do so"* (Article 37).

It has been reported that juveniles awaiting court proceedings in the Children's Court have been detained in cells with their co-accused, who may be adults. Solicitors have also expressed concern about the physical conditions of the holding cells in the Children's Court.

Children in detention must be separated from adults. In addition, all Garda stations must make available rooms that are child friendly and separated from adult cells and holding rooms.

3.4 Lack of Safeguards

Children Detention Schools

Section 185 (1) requires that an Inspector of Children Detention Schools be appointed. The Alliance calls for the immediate appointment of such an Inspector.

4.1 The Detention of Non-Offenders

The lack of treatment, services and secure accommodation for young people with serious emotional and behavioural problems has led to the use of the High Court as a means of accessing placements for these non-offending youths within the juvenile justice system. The use of the courts in this manner began in 1995 when a court ruling in the FN case placed the onus on the State to provide facilities for such children. In general, the young people who have come before the courts and been subsequently placed in secure accommodation have been in the care of the health boards for several years. Their care histories show episodes of homelessness and a series of care placements which were either inappropriate or could not offer the young person sufficient support to meet their needs.

The health boards have been criticised for not meeting the needs of these young people at an earlier age and for allowing their situations to deteriorate to the point where the only alternative is to seek a secure detention place to ensure the young person's safety. Two secure Special Care Units have been established to respond to the needs of these young people. However, the delay in providing such units and the inadequate number of beds provided prompted a High Court judge, Mr. Justice Peter Kelly, to hold three Government Ministers in contempt of court last year.

The lack of secure health board accommodation has led to non-offending children being routinely detained under court orders in Children Detention Schools, police stations, hotels, adult prisons and adult psychiatric hospitals (See section 4.2). It has been reported that at times as many as 40% of places in Oberstown and Trinity House are occupied by children who have not been sentenced for a criminal offence but have been remanded due to behaviour or emotional needs (*Irish Times*, 7.05.02).

The detention of non-offending children in Children Detention Schools and within the prison system is a regressive practice. On the 16th of May 2002, the European Court of Human Rights ruled against the Irish Government the *D.G. v Ireland* case. The case challenged the legality of detaining in St. Patrick's Institution a 16 year-old non-offending child with serious behavioural problems who had previously committed offences. The European Court ruled that the detention of the child in St. Patrick's was in contravention of rights guaranteed under Article 5.1 of the European Convention on Human Rights. The court ruled that the State acted unlawfully in failing to provide the disturbed child with a safe, suitable therapeutic unit and upheld the claim that the young person's human rights were violated and his right to compensation denied.

The Alliance is concerned that there appears to be little political will to mobilise the necessary resources, both financial and management, to put in place an appropriate and comprehensive care system to meet the need of these vulnerable children.

4.2 Inappropriate Detention Placements

The lack of suitable placements and step-down facilities for young people (both offenders and non-offenders) has led to the routine detention of juveniles in completely inappropriate facilities with respect to age-appropriateness and to meeting the needs and safeguarding the rights of young people. This situation also poses the risk that young people will be detained longer than necessary because of a lack of alternative facilities.

The placement of children who are either non-offenders or are below the age of 16 years of age in St. Patrick's Institution is particularly worrying. Such children are

segregated from the main prison population in a small landing area in the basement referred to as “the base”. This area is used to segregate prisoners who are in need of “protection”, including sex offenders, prisoners on protection and prisoners on punishment.

Media coverage has highlighted individual cases where juveniles have been detained for extended periods of time in police stations, hotels, adult prisons and adult psychiatric hospitals, including the Central Mental Hospital. Children have also been sent to care institutions outside the State.

The following are some individual examples of cases where children have been held in detention in inappropriate placements while a more appropriate place was being sought:

- A 15 year old boy described as “extremely disturbed” was detained on a small landing in St. Patrick’s Institution in what inmates described as the “punishment” basement with sex offenders, prisoners on protection and prisoners on punishment (*Irish Times*, 20.1.02)
- A 16-year-old boy has been detained in an adult psychiatric hospital due to the lack of any secure psychiatric facilities for adolescents in the country. A report from the hospital described the placement as detrimental to his welfare. The boy had previously been detained on a civil order in a remand centre where, according to a psychologist’s report, he was at serious risk of self-induced harm and had to be removed from the remand centre. He recently attempted suicide and had to be resuscitated. (*Irish Times*, 3.05.02)
- A 14-year-old boy was detained in Waterford Garda station for more than a week (*Irish Independent*, 21.09.01).
- A 13 year old boy was held in a hotel for some weeks (*Irish Times*, 20.2.01)
- A 15 year old girl, described as “unruly and incorrigible”, spent two weeks in the Women’s Section of Mountjoy Jail (*Irish Times*, 20.12.01)

The length of time children spend in inappropriate placements varies from a matter of hours to over a year. In one recent case, a 17 year-old girl was placed in the Central Mental Hospital for approximately one year.

4.3 Misplacement within Children Detention Schools

Misplacement within the Children Detention Schools is also a problem. According to the report, *Left Out on Their Own: Young People Leaving Care in Ireland* (2000), staff at the schools believed that 23% of the young people surveyed were inappropriately placed. Some were in need of a less secure setting, while others required specialised units to deal with addiction problems or to respond to the specific challenges of mental handicap or the cultural needs of the Travelling community. The report comments that the “*misplacement of a significant proportion of the population results from the fact that many young people are placed not on the basis of need but on the basis of which places are available*” (Kelleher et al, 2000: 72):

The report surveyed 103 young people in Children Detention Schools. Of those surveyed 67.6% were under court orders for criminal behaviour, 19.5% were under court orders for non-attendance at school and 12.9% were under voluntary

agreements between the parents and the health board. In the opinion of staff, some of these children required more specialised units to deal with their specific needs:

Eoin has a mild mental handicap and has difficulties with learning. At the age of 13, the courts committed him to a detention centre (special school) for school non-attendance. While in the special school he found it difficult to interact with such a large group of boys and had difficulty following staff directions and rules. Staff are of the opinion that a smaller unit which could accommodate a person with a mild mental handicap and learning difficulties would have been a more suitable placement.

While in care 49.5% of the surveyed young people were described as having a problem with drugs, solvents or glue. In some cases drug use was the young person's primary problem:

Gerry lives in an area where drugs are widespread. He became involved with drugs when he was 12 years of age. He was also involved in petty crime in order to fund his drug problem. He was committed to a secure unit at the age of 14 for two years for receiving stolen goods worth £10. Staff are of the opinion that Gerry should not have been placed in a secure unit. He is a drug addict, not a criminal.

The use of detention in instances where there is family discontent is a matter of particular concern, both in terms of the rights of the child and of the subsequent impact on the child's relationship with his or her family:

Stephen was committed to a secure detention centre (special school) for breaking his mother's window. Staff were of the opinion that the underlying issue was one of family breakdown. His mother was in a new relationship and had two young children with her new partner. Stephen felt left out of the new family and began to react against his mother. His mother felt that he was out of control and asked the court that he be taken into a secure unit. The school subsequently found it difficult to engage his mother in a process to resolve the difficulties between her and Stephen. Staff are of the opinion that Stephen should not be detained in a secure unit. His underlying problem is the need to resolve the problems with his mother.

The report tracked 88% of the young people after they left the Children Detention Schools. Two years after leaving care, 33% of those tracked had experienced homelessness, 65% had been in a place of detention or prison and a further 7% had been sentenced by the courts but not sent to prison (Kelleher et. al., 2000).

4.4 Staffing

One of the main difficulties facing the juvenile justice system is recruiting and retaining suitable, qualified and experienced staff. The high level of staff turnover poses difficulties in creating a stable environment for the children and building up trust between the workers and the young people. Many justice and welfare centres are operating well below full capacity due to difficulties in recruiting and retaining qualified and experienced staff. For example, the Ballydowd Special Care Units was built to cater for twenty-four young people but due to recruitment difficulties has never been able to deal with more than eight young people at a time (*Irish Times*, 4.2.02)

The inadequate training of staff is also a matter for concern. Many staff members do not have formal training and few have specialised training in working with troubled

young people. All staff working with children should be fully trained in children's rights and committed to the principle that children are to be treated as children first.

Finally, as noted above, the widespread and chronic failure to fill vacancies in the social service, particularly in the Dublin area, has had a crippling impact on efforts to provide non-punitive services to children with behavioural problems, to children who have committed offences and to children in and out of care who are at-risk of becoming offenders. No system of service provision can operate with any reasonable degree of effectiveness when staff vacancy rates reach 25 – 50% of staff complement, as they have in the Dublin area. No child in need of social services should be unable to receive care because of a lack of staff, as have the 2,272 children on the waiting list for social services in the Eastern Regional Health Authority service area as of the end of March of this year. Management and operational deficiencies of this order of magnitude ultimately translate into more placements that violate children's rights; ever-increasing numbers of children coming before the courts, both as offenders and non-offenders; and – despite stated government policies, domestic law and international treaties to the contrary – the ascendancy of punitive measures over preventive, therapeutic and rehabilitative approaches to the treatment and care of children with behavioural problems and to the treatment and care of children who have committed offences.

References

Kelleher, P. Kelleher, C. & Corbett, M. (2000) *Left Out on their Own: Young People Leaving Care in Ireland*, Dublin: Focus Ireland.

National Children's Strategy (2000), Dublin: Stationery Office.

United Nations Committee on the Rights of the Child (1998) *Reply to the First National Report Ireland: Concluding Observations of the Committee on the Convention on the Rights of the Child*, Geneva: United Nations.

Website

Social Services Inspectorate – www.issi.ie

Legislative Acts

- Children Act, 1908
- Children Act, 2001
- Child Care Act, 1991
- Office of Ombudsman for Children Act, 2002