



Report to members of joint consultation on a new youth justice strategy

October 2019

1. Introduction

The Children's Rights Alliance unites over 100 members working together to make Ireland one of best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

The National Youth Council of Ireland is the representative body for voluntary youth organisations in Ireland. We use our collective expertise to act on issues that impact on young people.

The first [National Youth Justice Strategy](#) was launched in 2008 and covered the period up to 2010. It was followed by the [Action Plan on Youth Justice](#), spanning the period of 2014-2018. The Department of Justice and Equality is in the process of drafting a new strategy with a view to aligning this with the mechanism that is expected to follow on from [Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People](#) which is due to expire in 2020.

In the process of developing a new strategy, the Department of Justice and Equality has engaged with other departments, agencies, civil society organisations and other stakeholders, including the Children's Rights Alliance, through a steering group. The group first met in February 2019. The Alliance was invited to take part due to the role of its Chief Executive, Tanya Ward, as Chair of the National Advisory Council under the *Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020*. As the key youth organisation on the Advisory Council, the Alliance has joined with the National Youth Council of Ireland (NYCI) for the purposes of this consultation.

2. The Consultation

The Children's Rights Alliance and NYCI held a joint consultation on the new youth justice strategy with their members on 4 July 2019 for the following purposes:

- Ascertain members' views in respect of issues and challenges arising in relation to youth justice in their work;
- Identify key priorities to focus the work of the Alliance and the NYCI on the new strategy;
- Identify policy or other solutions to the issues for the purposes of a strategy.

A position paper was shared with participants ahead of the consultation. It set out key areas for discussion to guide the consultation in order to achieve the above goals.

The aim of this report is to report back to members on the outcome of the consultation.

3. Priorities and proposed solutions identified by members at the consultation

Priorities	Proposed solutions
DES engagement and role of schools	<ul style="list-style-type: none"> • Alternative education consultation could provide guidance. Alternative learning systems are not seen as positive, the DES is founded on philosophy of third level education, so alternatives are sometimes stigmatised. • School Completion programme reform could provide an opportunity • Better School-based diagnoses needed • Community justice in Scotland • Youth agencies should be given greater access to schools • Use existing vehicles and resource them • Schools not engaging or being given opportunity to engage with youth/state agencies
Interagency cooperation and early intervention:	<ul style="list-style-type: none"> • More parental involvement is needed • Move from crisis to prevention • Joint protocols needed • Work should be conducted with youth and younger siblings • Early diagnosis of special needs is important • Cooperation and interaction between youth and state agencies and schools
Turnover of staff and so many services ending trust that is built over years	<ul style="list-style-type: none"> • Multi-annual funding needed
End delays in system	<ul style="list-style-type: none"> • Courts – delays should be minimised • Gardaí should look at all offences together • Delays lead to additional offences being carried out • Consider impacts of delay on children/youth overall • Training of professionals is important • Young people should have information on their rights and know their rights • Access to a reasonable adult to sit in with a child during questioning and training for that person.
Age	<ul style="list-style-type: none"> • Prioritise different age groups in the strategy • Sentencing of individuals at 18 – should be sentenced as children but requires legislation

4. Next Steps



The priorities and solutions identified by the joint memberships will be presented to the Steering Group on a new youth justice strategy. Any outcome or direct feedback we receive on it will be shared with the members.

As a member of the Steering Group, the Children's Rights Alliance will continue to update members on progress and updates in relation to the strategy and will hold a further consultation if necessary when a draft is available. Where other opportunities arise for members to feed in, we will let you know.

If you have any further questions or inputs to make, please don't hesitate to get in touch with Saoirse Brady, Head of Legal, Policy and Public Affairs at the Children's Rights Alliance on saoirse@childrensrights.ie or (01) 6629400.

5. Appendix – Guidance for the joint consultation on a new youth justice strategy



Guidance for the joint consultation on a new youth justice strategy

July 2019

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In the process of developing a new strategy, the Department of Justice and Equality has engaged with other departments, agencies, civil society organisations and other stakeholders, including the Children’s Rights Alliance, through a steering group. The group first met in February 2019. The Alliance was invited to take part due to the role of its Chief Executive Ms Tanya Ward, as Chair of the National Advisory Council under the National Policy Framework for Children and Young People. As the key youth organisation on the Advisory Council, the Alliance has joined with the National Youth Council of Ireland (NYCI) for the purposes of this consultation.

The proposed structure of the new youth justice strategy

The Department of Justice and Equality has identified five key themes for the new youth justice strategy:

- Early Intervention;
- Diversion (upon contact with the Justice System);
- Procedural Rights (during investigation, prosecution, and through the court process);
- Sanctions (including detention);
- Post-Detention (e.g. re-integration).

The Department has also outlined that consideration of each of these strategic themes should include a number of cross-cutting issues:

- Disproportionate disadvantage (child in care, ethnic minority communities, criminal networks);
- Transitions (under 12’s, and 18-24 year olds);
- Research and data;
- System oversight and interagency cooperation;
- Legislative issues.

2. The Consultation

At this juncture, the Children's Rights Alliance and NYCI seek to engage and consult with their members to:

- Ascertain members' views in respect of issues and challenges arising in relation to youth justice in their work;
- Identify key priorities to focus the work of the Alliance and the NYCI on the new strategy;
- Identify policy or other solutions to the issues for the purposes of a strategy.

The aim of this paper is to set out some key areas for discussion to guide the consultation on 4 July 2019 in order to achieve the above goals. The issues outlined in this paper do not necessarily reflect Children's Rights Alliance or NYCI policy and are included to facilitate discussion at the consultation. Feedback will be provided to consultation participants on the outcome of this consultation.

Through our own work and from our conversations with some members and other stakeholders, we have identified the issues below under the relevant headings. We have also noted some questions or in a small number of cases suggested options for recommendations for discussion.

Overarching questions for the consultation:

1. What issues should be prioritised by the Government in progressing the strategy? Have the right issues been identified and do we have an evidence base for them?
2. How should the Children's Rights Alliance and NYCI prioritise the issues in their work?
3. What are the policy solutions that could provide a response to these issues?

Our ultimate goal for the consultation is to get a smaller number of issues which we could prioritise in our advocacy on the Steering Group.

3. Vision and Principles

The strategy should be underpinned by the UNCRC, the Council of Europe Guidelines on Child Friendly Justice and the UN Riyadh Principles, specifically:

- Best interests of the child
- Voice of the child
- Dignity
- Equality
- Detention as a measure of last resort.

These principles should form the foundation of the strategy in order for it to be truly child-centred. The principles should be explicitly included in the strategy with clear direction on how and when they apply.

4. Themes and issues arising under the new strategy

▪ Early Intervention

Early identification of children likely to come into contact with the law: Research shows that children who have more Adverse Childhood Experiences (ACE) are more likely to end up in detention.¹ Twenty per cent of young people in detention in May 2018 were considered to be at risk of abuse or neglect. Almost half of young people in detention demonstrated challenging behaviour either in the past, in Oberstown or both.² What solutions can be put in place to divert these children from a path that could lead to them coming into contact with the Gardaí and/or ending up in detention? What would a prevention and early intervention model look like? We know that having one good adult in their life can help deter young people from crime, how can we ensure that young people have that one good adult?

Early School Leaving: According to statistics from Oberstown from May 2018, almost 50 per cent of young people were not engaged in education prior to detention.³ Of these 45 children, 17 were in care, eight had significant involvement with Tusla, 22 exhibited challenging behaviour, 16 were involved with CAMHS and 32 had substance misuse concerns. Twenty per cent had a diagnosed learning disability. How can we prevent young people from leaving school early and ending up in detention? What supports need to be put in place? Can appropriate supports for those with a learning disability be provided to enable them to remain in school?

Health issues: Statistics from Oberstown show that in May 2018, 52 per cent of the young people in detention had a mental health need and 27 per cent were prescribed medication for a mental health condition.⁴ This compares with around 10% of the general population of children and young people.⁵ Almost three quarters of the young people were considered to have substance misuse problems. There were concerns about self-harm in respect of 23 per cent of the young people. What services are available or should be made available to support young people with mental health or addiction problems to ensure they do not end up in detention? How can we ensure adequate resourcing of prevention and earlier intervention services such as Jigsaw, as well as additional resourcing of the Child and Adolescent Mental Health Service (CAMHS)?

Trauma-informed training: The Adverse Childhood Experiences (ACE) scale has ten points which include events like childhood abuse, neglect or other traumatic experiences that happen to children like homelessness or parental imprisonment. Research results 'consistently indicate that exposure to toxic stress or trauma as a child is significantly correlated with deleterious adult health and social behaviours'.⁶ A trauma-informed approach is a framework for providing services that should be integrated into every aspect of a programme or system.⁷ It can help staff to navigate difficult circumstances with service users:

1 Public Health Wales, *Welsh Adverse Childhood Experiences (ACE) Study: Adverse Childhood Experiences and their impact on health-harming behaviours in the Welsh adult population*, Public Health Wales NHS Trust, 16; ACEs Connection Network, 'Pipeline to Prison May Start with Childhood Trauma' <<https://bit.ly/2Jl98fp>> accessed 1 July 2019.

2 Oberstown Children Detention Campus, 'Key characteristics of young people in detention: A snapshot (Q1, 2018).

3 Oberstown Children Detention Campus, 'Key characteristics of young people in detention: A snapshot (Q1, 2018).

4 Oberstown Children Detention Campus, 'Key characteristics of young people in detention: A snapshot (Q1, 2018).

5 Mental Health Ireland, 'Life Stages, Children' <<https://www.mentalhealthireland.ie/children/>> 30 September 2019.

6 Lambert, S., Gill-Emerson, G., Horan, A. and Naughton, A. (2017) *Moving Towards Trauma Informed Care. A model of research and practice*, Cork: Cork Simon Community <<http://www.corksion.com/acesat-cork-simon/>> accessed 1 July 2019.

7 Youth.gov 'Implementing a Trauma-Informed Approach for Youth across Service Sectors' <https://youth.gov/docs/Trauma_Informed_Approach_508.pdf> accessed 1 July 2019.

A trauma informed service is cognisant that trauma is pervasive, complex and sometimes self-perpetuating. A trauma informed service seeks to do no harm and to avoid and reduce the potential for retraumatisation for [service users] and reduce vicarious trauma for staff.⁸

Do you think trauma-informed training would be useful in the context of the youth justice system? How do you think it could be implemented?

- **Diversion (upon contact with the Justice System)**

Location of the Garda Youth Diversion Project Are there any issues arising from the sponsorship of youth diversion programmes by the Gardaí and Department of Justice and Equality? Where should these programmes take place?

No automatic right to diversion The Irish Human Rights and Equality Commission (IHREC) has raised concerns about transparency in the application of criteria for admission to the Garda Youth Diversion Project (GYDP).⁹ If a child accepts responsibility for their behaviour they do not have an automatic right to diversion in Ireland. The Director of the GYDP must be satisfied that the admission of a child is not inconsistent with the interests of society and any victim.¹⁰ There appears to be a lack of transparency about how the criteria for admission to the GYDP are applied by the Director, as well as the existence of delays in the administrative decision-making process.¹¹ Is there a general lack of transparency about admission to the GYDP and what is the best way to address this? How could the delays in the decision-making process be reduced?

- **Procedural Rights (during investigation, prosecution, and through the court process)**

Access to Bail Supervision Scheme for children in care: To access the Bail Supervision Scheme, a young person must have a primary caregiver who they live with. This is a problem for children in care. As a result, they are less likely to be able to access the scheme and find themselves disproportionately on remand. This is in contrast to a child who lives with a family member and can thereby access the Scheme.¹² Are there issues related to children in care accessing the Bail Supervision Scheme? Does it impact any other groups of children?

Training for professionals in the courts system: Professionals interacting with children in the courts and wider justice system should be trained on how to effectively communicate with children and ensure their rights are protected within those systems. What type of training would you like to see made available for these professionals?

Delays in the criminal justice system: The European Court of Human Rights has acknowledged that it is essential that cases involving children are dealt with speedily.¹³ Due to delays in cases coming to trial, an individual who commits an offence while a child may be over 18 at the time of trial and therefore cannot benefit from the protections of the Children Act 2001 (as amended), such as child sentencing provisions, the case being heard in the Children's Court, and reporting restrictions. In a

8 Lambert, S., Gill-Emerson, G., Horan, A. and Naughton, A. (2017) Moving Towards Trauma Informed Care. A model of research and practice, Cork: Cork Simon Community <<http://www.corksion.com/acesat-cork-simon/>> accessed 1 July 2019.

9 IHREC, Comments on Ireland's 16th National Report on the implementation of the European Social Charter, <<https://www.ihrec.ie/app/uploads/2019/05/Comments-on-16th-National-Report-on-the-Implementation-of-the-European-Social-Charter-May-2019-1.pdf>> accessed 27 June 2019, 17

10 Section 23 of the Children Act 2001.

11 Children's Rights Alliance, Child Law Audit – Chapter 7: Youth Justice (2015) 160.

12 IPRT, Care and Justice, Children and young people in care and in contact with the criminal justice system, <<http://www.iprt.ie/files/Care-and-Justice-web.pdf>> accessed 26 June 2019.

13 Hokkanen v Finland (1994) 19 EHRR 139, para. 72.

2012 decision, the Supreme Court held that the Director of Public Prosecutions (DPP) has a duty to act expeditiously in matters relating to minors.¹⁴ However, there is no legislative guidance on how these cases should proceed to mitigate the effect of any delay in prosecuting children. What systemic changes could be made to reduce delays in prosecuting children?

- **Sanctions (including detention)**

Because of the wide discretionary powers provided to courts in respect of sentencing minors:

The consequence of this is an ad hoc discretionary application of principles developed through case law, which can lead to an inconsistent approach to sentencing.¹⁵

The introduction of sentencing guidelines similar to the regime adopted in England and Wales, *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery* has been suggested. This sets out a comprehensive set of considerations relating to the treatment of children in all courts, including the factors a court should consider over and above the usual factors that apply to adults, and how to approach the sentencing of children and those who have reached the age of 18 before sentence. Guidelines in relation to the sentencing of children and young adults ‘could assist courts in deciding on appropriate sentences with some level of consistency, but without being so prescriptive as to fetter the necessary discretion of the judge in relation to the specific facts of each case’.¹⁶ Do you think that guidelines like this would be beneficial? Do you envisage any drawbacks from such guidelines?

Single separation

Single separation is meant to be a measure of last resort to deal with young people who are a risk to themselves and to others. Depriving a young person of social contact is a very serious action and should never be used as a form of punishment or discipline.

Latest statistics from Oberstown	No: of Single Separations Per Month	No: of Young People Involved	Population per Month
Jan 2019	57	19	52
Feb 2019	87	26	60
Mar 2019	82	30	55

Reports from the Health Information and Quality Authority (HIQA) have found that:

There were a number of instances of children spending prolonged periods of time in single separation and there was a lack of robust management oversight in the monitoring of these incidents.¹⁷

The report states there were 3,027 incidents of single separation during 2016.¹⁸ While the length of time in single separation varied, inspectors reviewed the records of three specific children who had been placed in single separation for between three and nine consecutive days. While there were

14 In this case, there had been a 17 month delay in charging the young person and he would have been an adult at the time of his trial. PD v Director of Public Prosecutions 2012/332 JR.

15 McNickle, “Rejuvenate juvenile justice”, [2018] Bar Review 23(4), 112-114.

16 Ibid.

17 HIQA Regulation Directorate, ‘Monitoring Inspection Report - Detention Schools Services under the Children Act, 2001 (as amended by section 152 of the Criminal Justice Act 2006)’ [March 2018] <<https://bit.ly/2X7Hesb>> accessed 27 June 2019.

18 Ibid.

examples where 'single separation' was used appropriately, HIQA also found situations where single separation was used for other reasons including:

... following admission, when the level of risk was not fully known; to manage violent or threatening behaviour; when a child was found to have prohibited substances; and when a child damaged property or when a child was in conflict with other children.

There are also concerns around a lack of children's access to fresh air or outdoor exercise while in single separation, and the reasons for this were not always clearly recorded. There were also cases where a review did not take place during prolonged periods of single separation, which is worrying. A new national policy on single separation was introduced in 2017 which clearly states that it should only be used on the basis of serious risk and as a final stage intervention in the management of a child's behaviour. While this report shows that many recommendations have been taken on board, it is vital that outstanding recommendations are now acted upon. Is there evidence that the new national policy on single separation has reduced the number of children placed in single separation? What other measures could be taken to prevent this practice from happening?

- **Post-Detention (e.g. re-integration)**

Is there a focus on reintegration following a young person's detention? Are there any post-detention actions that routinely take place? Are there any good examples of re-integration programmes or actions following a young person's detention?

The Department has also outlined that consideration of each of these strategic themes should include a number of cross-cutting issues:

- **Disproportionate disadvantage (children in care, ethnic minority communities, criminal networks, children of prisoners)**

Children in Care: Forty per cent of young people in Oberstown in May 2018 were either in care or had significant involvement with Tusla.¹⁹ These children can find themselves facing particular problems due to their being in the care of the State, which are not faced by children who come into contact with the Gardaí who are in the care of their family.²⁰ For example, if a teenager is aggressive and throws a cup in the home out of anger, it is unlikely that the Gardaí will be called. However, if a teenager does the same thing while in the care of the State, the Gardaí may be called. This leads to the potential criminalisation of the young person in care unlike those living in a family setting.²¹ The children could end up with a long list of call outs against their name.²² Should there be a joint protocol between Tusla and the Gardaí on this issue? What else could be done to reduce the likelihood of young people in care being criminalised?

Ethnic minority communities: Children from Traveller families are disproportionately represented in the statistics in Oberstown with statistics showing that in May 2018, 22 per cent of young people in detention were members of the Traveller community.²³ How can we support these communities to intervene early and prevent contact with the law?

Criminal Networks: Research has identified that in some disadvantaged communities drug dealers and gangs are identifying vulnerable children and grooming them, often at a very young age, to become involved in illegal activities on their behalf, such as delivering or collecting drugs, money or

19 Oberstown Children Detention Campus, 'Key characteristics of young people in detention: A snapshot (Q1, 2018)

20 IPRT, Care and Justice, Children and young people in care and in contact with the criminal justice system, <<http://www.iprt.ie/files/Care-and-Justice-web.pdf>> accessed 26 June 2019.

21 IPRT, Care and Justice, Children and young people in care and in contact with the criminal justice system, <<http://www.iprt.ie/files/Care-and-Justice-web.pdf>> accessed 26 June 2019.

22 ibid.

23 Oberstown Children Detention Campus, 'Key characteristics of young people in detention: A snapshot (Q1, 2018)

fire arms.²⁴ In addition, over the past few years a number of children²⁵ teenagers and young adults have been killed,²⁶ and in other instances children have witnessed their parents being killed in violent circumstances that are suspected to be gang or were drug-related.²⁷ What measures could be taken to intervene to prevent children and young people being used in this way?

Children of prisoners: Children with a parent in prison have a distinct set of needs. These children are likely to experience trauma, feelings of loss, anxiety and uncertainty as a result of the absence of, and separation from, a parent. They are likely to experience disruption to their care arrangements and face stigma from their peers, schools, communities and wider society. Imprisonment also has an impact on family dynamics and may result in family breakdown or prove an additional burden to the family. This can be the result of the loss of income or additional costs such as those associated with travelling to prison. International research shows that children with a parent in prison are twice as likely to experience mental health issues compared with their peers.²⁸ Therefore, there is a need to identify and support the specific needs and rights of children with a parent in prison in their own right. Some practical solutions have been suggested including building a solid knowledge base about these children, hearing from them directly, recognising their needs in national policy, establishing multi-agency partnerships at national and local levels and developing monitoring frameworks.²⁹ What measures could work to support children and prisoners and break the intergenerational cycle of detention?

- **Transitions (under 12's, and 18-24 year olds)**

Spent Convictions Act: Section 258 of the Children Act 2001 provides that an offence committed by a child can be automatically removed from the record as if never committed, once certain conditions are met. One of these conditions is that three years have elapsed since the time of the offence and the child has not been committed another offence in that three year period. Halving the length of time to 1.5 years would be a more proportionate response and allow young people, in particular in the 18-24 age bracket to access education and employment. It also applies in the context of diversion. Do you agree that the time should be reduced for spent convictions for young people?

- **Research and data**

Adequate resources: These should be allocated to support regular and sustained research and data collection in order to inform policy and decision-making in the youth justice area. A scoping exercise should be carried out in order to determine where the gaps exist. Are there any specific areas that require further research?

24 M. Higgins, The Drugs Crisis in Ireland: A new agenda for action. CityWide Policy Statement February 2012, http://www.drugsandalcohol.ie/17145/1/Citywide_the_drugs_crisis_in_ireland_a_new_agenda_for_action.pdf [accessed 14 May 2015].

25 In June 2014, a six year old boy was shot in the neck in a hallway of a house when two gunmen missed their intended target. T. Brady, G. Gittens, C. McQuinn 'Boy (6) has been shot in the neck at his Dublin home', Irish Independent [online], <http://bit.ly/Independent-boy6-shot-Ballyfermot> [accessed 19 January 2015].

26 For example in February 2012 a 16 year old girl was murdered in a drive-by shooting, the gunman was also a minor at the time of the shooting. 'Man (19) found guilty of Melanie McCarthy McNamara murder' Irish Independent [online], <http://bit.ly/Independent-McCarthyMcNamara-Murder> [accessed 19 January 2015].

27 C. Lally, 'Gardaí identify two men linked to murder of Tallaght teenager', Irish Times [online], 10 February 2012, <http://www.irishtimes.com/newspaper/ireland/2012/0210/1224311576260.html> [accessed 2 January 2013]; RTÉ, 'Gardaí to speak to child who saw father shot dead in Dublin' RTÉ News [online], 26 September 2012, <http://www.rte.ie/news/2012/0925/declan-oreilly-dublin.html> [accessed 3 January 2013].

28 Glover, J. (2009) Every night you cry: the realities of having a parent in prison. Essex: Barnados, 2.

29 Dr Fiona Donson, Dr Aisling Parkes, University College Cork, Irish Penal Reform Trust and the Children's Rights Alliance, 'Principles of Action for Children with a Parent in Prison: Explanatory Document', <http://www.iprt.ie/files/Action_Plan_Explanatory_doc.pdf> accessed 27 June 2019.

- **System oversight and interagency cooperation**

Oversight: The Optional Protocol to the UN Convention the Rights of the Child provides that States should,

... establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.³⁰

HIQA currently has responsibility for the oversight of Oberstown. The Council of Europe's Committee for the Prevention of Torture reviews countries on a four yearly basis but this monitoring may not necessarily include Oberstown. There is no one regular comprehensive mechanism to provide oversight of the entire system. A national preventative mechanism would set up an independent body or coordination of existing bodies with power to publish reports, interview children privately, ongoing systematic regular oversight and to include all places of custody: police cells, Garda cars, court cells etc. Do you think such a body should be established or is there an existing body that could exercise this remit?

30 Optional Protocol to the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006, Article 1.