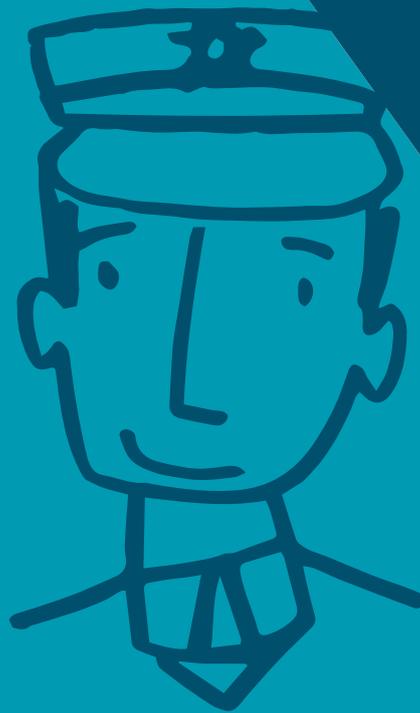


My rights in dealing with criminal law and the Gardai



Chapter 7



7.1 Victim of a crime

Who is a victim?

A victim of crime is a person who has suffered physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. Family members are also victims if the death of their loved one was directly caused by a criminal offence.

Who can I contact for support?

If you have been the victim of a crime you can contact the Crime Victims Helpline by:

- calling 116006
- texting on 085 133 7711.

They can provide you with information and support.

What are my rights if I have been the victim of a crime?

If you are the victim of a crime you have the right to get information that you can understand. If you need assistance, like an interpreter, you should be provided with this.

You also should report that crime to the Gardaí (the Irish police) on 999 or 112. When you report a crime to the Gardaí you have an entitlement to receive a formal written acknowledgement of what you have reported. You usually have an entitlement to a copy of any statement you make to the Gardaí.

You are entitled to be told by An Garda Síochána (the police force) about any victim support services, including specialist services, which may be able to help you. If you wish, the Gardaí can also refer you to these services.

Usually, you also have the right to be accompanied by a person of your choice and your lawyer, if you wish, whenever you:

- approach the Gardaí for the first time to tell them about the crime
- complain to the Gardaí that a crime has been committed against you.

If for whatever reason your parent or guardian can't come with you, an 'appropriate person' like another suitable adult, can be asked to come instead.

As a person under the age of 18 you are automatically presumed to need special protections as a victim of a crime. This includes having any interviews carried out by a person who has specialised training.

Your interview may be recorded on DVD, and that recording may be played back in court.

The Gardaí must consider your best interests and your views when carrying out an assessment of what special protection measures you need.

It is up to the Gardaí and the Director of Public Prosecutions (DPP) to decide whether or not to investigate a crime and bring it to court. Where a decision is made not to prosecute, you have the right to ask for a summary of the reasons for this decision.

Will I have to speak in court about what happened to me?

As the victim of the crime, you may be asked to appear in court as a witness to the crime if the accused person does not plead guilty.

If you are under the age of 18 you are automatically presumed to need special protections. These special protections include the right to avoid contact with the offender. This can mean testifying:

- from a different room, using a video link
- from behind a screen.

It can also mean that you will not be questioned by the accused person themselves. Neither can you be questioned by a lawyer for the accused person on parts of your private life that are unrelated to the offence.

Finally, it can mean that the court is closed to the general public. This means the news media reporters must not report anything that could lead to a child being identified.

A victim can also prepare a victim impact statement. If the accused is found guilty, when it comes to sentencing this statement may be read by the judge or by the victim themselves to the court.



7.2 Exploitation

What is trafficking?

Human trafficking is the moving of people from one place to another to be used and exploited. Victims are trafficked into various types of work, including farm work or domestic work or may be forced into prostitution.

In the case of children, it is still trafficking even if there is no violence, deception or threats.

Where can I go for help?

If you or someone you know is being exploited, you can contact your local Gardaí. If you want to report it anonymously, you can contact Crime Stoppers on 1825 0022. You can also send an email, anonymously and with strict confidentiality, to blueblindfold@garda.ie.

You can find information about support services on the national anti-human-trafficking website www.blueblindfold.gov.ie.

What should I do if I am being forced to commit a crime?

If someone you know is forcing you to carry out an illegal activity like carrying drugs, you should talk to an adult you trust about what is happening to you. You can also contact your local Gardaí. If you want to report it anonymously, you can contact Crime Stoppers on 1800 250 025.



7.3 Witness to a crime

Should I tell the Gardaí if I have seen a crime take place?

You should report all crimes to the Gardaí. For some serious offences, like a sexual offence against another child or a vulnerable adult, it is a crime not to tell the Gardaí what you know.

Will I have to go to court if I am a witness to a crime?

You might. It depends on what you saw or heard and whether or not the State wants you to be a witness in the case. If you are asked to tell the court what you saw, you can avoid being in the same room as the accused person. You may be able to do this by giving your evidence during the trial:

- from behind a screen, or
- by a live video link from a different room in the courthouse.

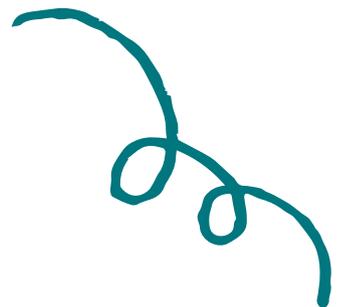
Will the alleged criminals know it was me who reported them?

The alleged criminals will not necessarily be told who reported the crime. However, if a young person provides a formal written statement of complaint to Gardaí and the Director of Public Prosecutions decides the case should proceed to trial, that statement will be shared with the accused before the trial. Anyone accused of a crime has a right to hear the evidence against them, and so they will be able to see and hear what you say to the court.

Is there support available to me if I am a witness to a crime?

Yes, there are a number of supports available to you like:

- the Court Support Service, phone 01-872 6785 or 087 288 552
- Childline, phone 1800 66 66 66
- Crime Victims Helpline, Freephone 116006, text 085 1337711.



7.4 Suspected or accused of a crime

What is the age of criminal responsibility?

In Ireland the age of criminal responsibility is 12 years of age. This means that children who have not reached the age of 12 years cannot be charged with an offence. However, there is an exception for children aged 10 or 11 who can be charged with murder, manslaughter, rape or aggravated sexual assault.

If you are under age of 12 and the Gardaí have reasonable grounds to believe that you have committed an offence they must take you to your parent or guardian.

Can I be searched without a warrant or without my consent?

If a Garda has good reason to think you have committed an offence, they can search you without your consent, This applies to everyone under the age of 18.

The Garda does not need the consent of your parent or guardian. The Garda should tell you why you are being searched.

Gardaí usually need a search warrant to search a house or other premises. A court, or sometimes a senior Garda, can issue a search warrant. If a search requires anything more than searching your pockets it should be carried out by a member of the same sex.

Can a Garda search my car?

A Garda can search your car if they have good reason to think that:

- you have committed or are about to commit an offence under the Offences Against the State Acts, like a homicide or other specific offence, or
- you have a controlled drug like cannabis or heroin or others specified under the Misuse of Drugs Acts.

A Garda can also search your car under various other powers.



When can a Garda enter my home?

Generally, a Garda cannot enter your home without your consent. However, there are some exceptions. The most common is if the Garda has a valid search warrant or is chasing a suspect.

Does a Garda need a warrant to search my home?

A Garda needs a warrant for most entries and searches of property, but not for all. For example, a Garda can enter your home if they believe someone is committing a crime within it.

Are shop security guards or other people allowed to search me?

Security guards and other people do not have any power to search you without your permission. They may only keep you against your wishes if they believe you have committed an offence and are attempting to avoid arrest by the Gardaí. If a security guard or another person does arrest you, they must transfer you to Gardaí as soon as possible. The Gardaí may search you if necessary.

Can the Gardaí arrest me if I am under 18?

The Gardaí have the same powers whether they are dealing with a child, a young person or an adult. But, if you are under 18, the Gardaí must take more account of your age and your level of maturity.

Will the Gardaí tell my parents if I am arrested and brought to a Garda station?

The Garda in charge of the Garda station must tell your parents or guardian that you are in custody, why you are there and that you have the right to a solicitor. This Garda must ask your parents or guardian to come to the station as soon as possible.

Can the Gardaí question me on my own?

No, you have the right to have a solicitor with you during questioning. You may be able to access free legal advice under the Garda Station Legal Advice scheme, for more see the [Legal Aid Board website](#). If not, you or your parent or guardian will have to pay to have a solicitor with you during questioning.

In addition, if you are under the age of 18, the Gardaí are not allowed to question

you or ask you to make a written statement without your parent or guardian present, except if:

- they cannot get in touch with your parent or guardian
- your parent or guardian has been told but has not come to the Garda station within a reasonable time
- the Gardaí believe that people or property might be at risk of harm if questioning is delayed.

The Gardaí can refuse to let your parent or guardian sit in on the interview. They can do this if they believe that your parent or guardian could have been involved in the suspected offence or that their presence might cause an obstruction of justice. This might happen, for example, if the Gardaí thought your parent might interfere with the interview process.

However, if the Gardaí want to question you without one parent or guardian present, they must try and arrange for your other parent, another relative or some other responsible adult to be present at the interview.

Where will I be held in the Garda station?

The Garda in charge of the Garda station must make sure that you are not detained with adults unless there is no other secure accommodation available.

Do I have the right to know the reason for my arrest?

Yes. You have the right to be told in clear, easy to-understand language that you are under arrest and the reason why.

Where can I find out about my rights when dealing with the Gardaí?

See the 'Child and Young Person' section of the Irish Council for Civil Liberties Know Your Rights guide on criminal justice and Garda powers. You can find this on the [Know Your Rights website](#).

The guide will tell you about your rights when dealing with the Gardaí, and about:

- Garda search powers
- Garda powers of arrest
- Garda public order powers.

7.5 Diversion programme

What is the Diversion Programme?

A child suspected of breaking the law is generally referred to the Diversion Programme by the Gardaí. If you accept responsibility for breaking the law you can be considered for the Programme. The exception is when the Gardaí believe this would not be in the interest of society.

The programme aims to divert children from committing further offences by giving the child a warning known as a 'caution'. You may be included in this programme if you:

- accept responsibility for breaking the law (also known as 'committing an offence')
- consent to be cautioned
- are aged between 12 and 18.

However, this depends on the severity of the offence or your previous record of offending.

You may also be supervised by a Juvenile Liaison Officer (JLO). You have the right to talk to your parent or guardian and a solicitor before you make this decision.

How does the Diversion Programme work?

The Diversion Programme aims to prevent any child who has committed an offence from entering the full criminal justice system – it offers them a second chance.

There will be a meeting to discuss and highlight the seriousness of your offence and its effect on the victim or victims attended by:

- you
- your parents or guardian
- your Juvenile Liaison Officer (JLO)
- possibly another member of the Gardaí
- the victim.

To be included in the Diversion Programme and possibly receive a caution you must accept responsibility for your criminal behaviour and agree to engage with your JLO.

You must take steps to make sure you don't do anything again that is against the law. You may be required to stay in school or say sorry to the victim. You may also be supervised by a JLO for up to 12 months.

What are Garda Youth Diversion Projects (GYDPs)?

The Diversion Programme is supported by a network of Garda Youth Diversion Projects (GYDPs). GYDPs are community based and supported youth development projects that seek to divert young people from becoming involved (or further involved) in anti-social or criminal behaviour. There are currently 106 GYDPs state-wide and 10 projects with a special focus (for example more challenging children or family support.) The Diversion projects are operated by organisations like [Foróige](#) and [Youth Work Ireland](#).

Each young person involved in a Garda Youth Diversion Project goes through an assessment process to identify their individual needs and strengths. This allows the project to tailor a programme of activities specifically to meet the needs of the young person.

Will anyone know that I am involved with the programme?

No, your involvement in the Diversion Programme is confidential. A judge will be told of previous inclusion in the Diversion Programme if you are convicted in court of offences after you were in the Diversion Programme.



7.6 Before the courts as the accused

What is the Children's Court?

If you are considered unsuitable for the Diversion Programme, you may face prosecution and have to go to court. In these circumstances, you will go to the Children's Court.

This Children's Court hears cases involving children and young people under the age of 18. There is a Children's Court building in Dublin. Outside Dublin, the Children's Court is usually held in a District Court building on a different day to the court hearings for adults.

The Children's Court can deal with most criminal cases that involve a young person under 18 and young adults who were children at the time of the offence.

It does not deal with serious offences like manslaughter. Serious offences are sent forward from the Children's Court to the Central Criminal Court.

Sometimes a young person charged with a serious offence can choose to go before the Judge of the Children's Court or be tried in an adult court by a jury.

You may have a solicitor who you have met in their office. Sometimes this solicitor will represent you in court. Sometimes the solicitor will instruct a barrister to represent you instead on his or her behalf.

What should I expect in the Children's Court?

The courtroom is a formal place and you are expected to behave in a formal way. Ask your solicitor or barrister before your hearing to explain:

- what the courtroom looks like
- who will be attending your hearing
- where everyone will sit.

If you don't understand what is happening during the hearing, ask your solicitor or barrister to explain the hearing to you.

If you come before the Children's Court, it is important that you continue going to school or attend education or training and do not commit any crimes. The judge may take this into consideration when they are deciding on your case and looking at whether or not you have tried to improve your behaviour.

What are my rights if my case goes to court?

If you have committed a more serious crime, you will go either to the Circuit Court or the Central Criminal Court.

You will have the right to have your parent or guardian with you for the hearing.

Will my case be heard differently from an adult case?

Yes. In the Children's Court, your hearing will be at a different time, on a different day or in a different courtroom than regular adult court hearings. That means you won't be in the same place as adults who are facing criminal charges.

The judge should also run the trial so that you understand what is happening.

Will my identity be made public?

It depends on which court you attend. In general, if you are under 18, the court will sit in private with those present only:

- court staff
- solicitors
- barristers
- your parents or guardians
- the Gardaí.

Your name should not appear in the media or online. If someone tells your identity to the public, they can be fined or sent to prison.

In the Children's Court, names are called by initials. When you are waiting for your case to be called, you will be sitting with other children and their parents or guardians and solicitors. Your case might be reported in the newspaper but your name, or any other identifying features, like your school, will not appear.

Will a solicitor (a type of lawyer) represent me in court?

Yes. The type of solicitor will depend on the nature of the charges against you, and your family's ability to pay for one. If your family cannot afford a solicitor, you may qualify for legal aid (a free lawyer). Before you are appointed a solicitor, the Director of Public Prosecutions must decide if you will go before the Children's Court or the Central Criminal Court for a jury trial.

Your solicitor will tell you what will happen at the conference and in court. You should always ask your solicitor if you are unsure about what is happening in court or what will happen afterwards.

What could happen when my case comes before the court?

One of three things could happen, the judge may:

- hear your case
- adjourn your case
- 'strike out your charge'.

Your case is heard

If the judge decides to hear your case, they may:

- put off making a decision on the charge and send you to the Young Persons' Probation Service for a meeting called a family conference, or
- order a probation report – this means that a probation officer will be asked to examine your case and your personal circumstances, or
- convict you of the charge and sentence you.

The judge may adjourn your case

This means that the case will be postponed and heard on another day.

If this happens, the judge might decide to keep you in custody. This means sending you to a detention centre until your case is heard – this will only happen if the charge is very serious or if you are continually breaking the law. This is known as being held 'on remand'. If you are held in a detention centre on remand you have the right to be held separately from other young people who have been convicted.

The other option is that the judge may grant you bail. This means that your parent or guardian will have to pay money or promise to pay money to keep you out of detention. If the judge grants you bail, it will probably include strict conditions like:

- a curfew (where you **have to** stay in at certain times)
- staying away from certain people or places
- not drinking alcohol
- not taking illegal drugs
- going to school.

If you break these conditions you may be placed in detention. If bail is refused by the Children's Court, an application for High Court Bail can be made by your solicitor.

Strike out your case

The judge may decide to 'strike out' your charge. This means that nothing further will happen in your case, but you could be charged again depending on the circumstances.

What happens if the judge sends me for a family conference?

A family conference is a meeting between you, your family and a probation officer. At this meeting you will work with these people to work out a plan for you to follow instead of you being convicted and sentenced. The aim of the plan is to stop you offending.

What happens if I am found guilty of an offence and convicted?

If you are found guilty of an offence and convicted, the judge will sentence you to either a community sanction or detention. This will depend on:

- the crime you committed
- how serious it was
- your personal circumstances as assessed by a probation officer.

The court order you to:

- pay a fine
- receive probation bond which is when you are required to behave within the law and may also have conditions attached to it such as living in a particular place or staying out of a certain area.
- be detained (if the offence is very serious).

Probation and detention are explained in the next sections.



7.7 Probation

What is probation?

Probation is a formal warning that the judge may give you instead of sending you to detention. The court may order you to stop the offending behaviour and may set down certain conditions for your behaviour for a specific length of time. You will be given a probation officer whose job it is to make sure that you follow the conditions of the court order. Conditions may include:

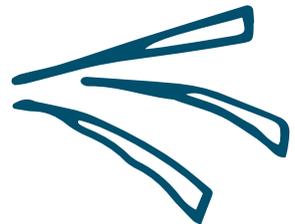
- continuing with education or training
- doing a drug or alcohol course
- engaging with Le Chéile Mentoring, a one to one programme that will be able to offer some support and general guidance for you.

What happens if I don't follow my probation conditions?

You can be brought back before the court. The court may direct you to comply with the condition or cancel the order and replace it with another community sanction.

Is there a special probation service for young people?

The Young Persons' Probation (YPP) Service is a special division of the Probation Service which works with young people aged 12 to 18 who come before the courts. The YPP promotes community-based sanctions (such as a community service order or a fine) and restorative justice (this is where victims are given the opportunity to meet or communicate with the offender to describe and explain exactly how the crime has affected them) to reduce re-offending.



7.8 Detention

Can I be sent to prison?

No. Young people under the age of 18 cannot be sent to prison. However, the judge may decide that a young person is to be removed from the community, either:

- while the judge is deciding what to do, or
- because the judge has decided to send a young person to detention.

If the judge decides a young person is to be removed from the community, they send the young person to Oberstown Children Detention Campus in Dublin. The Campus aims to provide appropriate educational and training programmes. It provides care, education and training, but it is a secure facility which means you are not free to come and go. Though the Campus aims to maintain and encourage family relationships, if you are in detention, it may affect how much contact you have with the outside world.

What will happen when I am in Oberstown?

Oberstown's objective is to provide safe, secure and appropriate care so you can meet your health and education needs. Oberstown will help you to address your offending behaviour and prepare you for your return to your families and communities after you are released from detention.

For more information on what will happen see the [Oberstown Information Guide](#) for young people.

What are my rights while I am in detention?

You have a right to have your health, safety and welfare looked after. You should be provided with education. You can do Junior and Leaving Cert subjects and exams or QQI (Quality and Qualifications Ireland) modules. Classes run for 45 minutes each. You will have three or four classes each day.

- You should receive proper care and be able to maintain and develop relationships with your family.
- Your personal, cultural and linguistic needs should be recognised.
- You must be treated with respect and protected from discrimination and harm, including bullying.

If you require medical treatment that cannot properly be provided for on the Campus, the Director of the Campus should make arrangements for you to be admitted into a hospital. All decisions should be made in your best interests and you have a right to have your voice heard while in Oberstown. You can take part in a range of meetings including meetings about your care and unit meetings.

Can I complain about my treatment in detention?

Yes, you can complain about your treatment to your key worker who is a member of the Oberstown staff. You can also speak to the management at Oberstown.

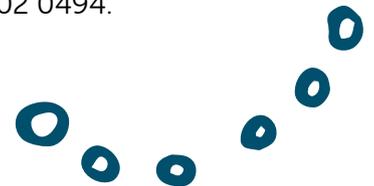
- The complaints system should be fair and easy for you to access.
- You should also be provided with clear information and support on how to complain.
- Your key worker can explain the complaints process to you.
- You should receive feedback on any complaint made.

Empowering People In Care (EPIC) also provides a monthly visiting service to help you understand your rights. If you want to make a complaint while you are in detention, EPIC will help you to do so. You can contact EPIC directly on (01) 872 7661.

If you are not happy with the response to your complaint, you can appeal to the Director of Oberstown. If you are not happy with the outcome (result) of the appeal, you can complain to the Ombudsman for Children.

You can also complain to the Health Information and Quality Authority who carry out inspections of Oberstown and publish inspection reports. They will not publish details of your complaint, but it may affect their next inspection.

If you would like information about how to navigate the complaints process you can contact the **Children's Rights Alliance** Information Line on 01-902 0494.



Do I have to tell people that I have a conviction?

This depends. If your offence was less serious, you can have your conviction removed from your record providing you do not offend again for three years after you turn 18. If this happens, you do not have to tell anybody about the offence. Your inclusion in the Diversion Programme may be disclosed (shared) if you are undergoing Garda Vetting depending on the circumstances.

Some convictions cannot be removed from your record, for instance if you were convicted in the Central Criminal Court or if your offence came under the Sex Offenders Act 2001. For more information, contact the Children's Rights Alliance Information Line on 01-902 0494.

Different countries may still require you to tell them about your convictions if you are looking for a visa to travel or emigrate there. This includes the USA and Australia. A conviction might prevent you getting a visa or being allowed to emigrate there. For more information on this you should contact the embassy of the country you are looking to travel to.

How do I get eligible convictions removed from my record?

Eligible convictions should be removed from your record automatically. If you think convictions that should have been removed still appear on your record, you should contact the [National Vetting Bureau](#) and ask them about it.

