

Child Care, Juvenile Justice and the Children Act, 2001

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The juvenile justice system in Ireland is governed by legislation (the Children Act, 1908) that pre-dates the creation of the present Irish State. 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enacted but the ongoing delay in bringing most of its provisions into force has resulted in the continued use of the outdated 1908 Act.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 expected to take at least another several years.

Underlying the Children Act, 2001 is the principle that detention should only be used as a last resort. In this respect the Act upholds the UN Convention on the Rights of the Child which provides that detention of those under the age of 18 "shall be used only as a measure of last resort and for the shortest appropriate period of time." 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.

Public investments in community and statutory services offering prevention, early intervention and diversion must be made if the Act is to be fully and successfully implemented. Its effective functioning will also require the full staffing of the social work and child care services which are currently experiencing severe shortages of workers.

Priority given to Detention Facilities over Preventive Measures

Despite the Act's overall focus on prevention and alternatives to detention, most of the commencement orders to date have brought into force the punitive and non-resource intensive sections of the Act (Commencement Order, May 1st 2002). Similarly, the slow rate of investment in prevention, early intervention and diversion services contrasts with an increase in the provision of detention places over the past five years, suggesting an emphasis on incarceration over rehabilitation. St. Patrick's prison, for example, has increased its places by 47% during the past five years, from 163 to 239.

Proposed 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 plan involves re-designating 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 at a reported cost of €9 million (*Irish Times*, 7.5.02). The new prison is described as a stop-gap measure which will not be in force for more than two years.

This proposal constitutes a reversal of stated Government policy and is inconsistent with the recently passed Children Act, 2001. It represents a major step backwards for juvenile justice policy and practice in Ireland.

The re-designation of St. Patrick's is possible only under the 1908 Act. It will not be possible if and when the relevant sections of the 2001 Children Act are brought into force, as there is no provision in the new 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 are detained at present 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 to be closed down citing unsuitable physical conditions of the building and an inappropriate prison regime.

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 Detention of Non-Offenders

Primarily due to the failure to provide appropriate services and facilities to children with severe behavioural problems, Ireland's child care and juvenile justice systems are now thoroughly intertwined. The lack of treatment 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 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 placed subsequently 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 ongoing 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 even adult psychiatric hospitals. It has been reported that at certain times as many as 40% of the places in Oberstown and Trinity House are occupied inappropriately 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.

Staffing

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. Many centres are operating well below full capacity due to difficulties in recruiting and retaining qualified and

experienced staff. For example, the Ballydowd Special Care Unit 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).

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, or when there are 2,272 children on the waiting list for social services, as there were 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 ever-increasing numbers of children coming before the courts, both as offenders and non-offenders, and more placements that violate children's rights. Moreover, despite government policies, domestic law and international treaties to the contrary, the knock-on effect promotes an increased reliance on 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.

Proposed Actions

We believe the following steps should be taken as quickly as possible to address the current crisis in the child care and juvenile justice systems:

- 1. Abandon plans to open a new children's prison.** The Government should drop its plans to open a "temporary" children's prison wing for 14 and 15-year-olds at St. Patrick's Institution. St. Patrick's is an unsuitable place of detention for children. Prison officers are not child care or social workers. It is a mistake to expend substantial resources on inappropriate and futile training programmes when the same resources could be devoted to hiring professional child care workers and to opening and adequately staffing facilities appropriate for children.
- 2. End the practice of placing non-offending children in facilities for offenders.** Children with severe emotional or behavioural problems should not be placed in facilities for offenders, including juvenile justice institutions as well as the adult prison system.
- 3. End the practice of mixing children and adults in detention.** Children must not be detained in prisons, adult psychiatric hospitals, Garda stations, hotels and other inappropriate places of detention.
- 4. Correct the practice of misplacing children in Children Detention Schools.** Provide specialised community services (and if necessary residential services) to meet the needs of certain at-risk children and adolescents. These children include those with learning disabilities, acute psychiatric illnesses, children requiring medically supervised detoxification for drug use, persistent school non-attendees and those at risk of leaving home. Culturally appropriate prevention services are needed to tackle the disproportionate representation of children from the Travelling Community in detention.
- 5. Bring into force the remaining provisions of the Children Act, 2001, including the sections covering family welfare conferences, special care provision and private foster care.** Introduce bail supervision and support schemes to avoid children committing crimes on bail. Priority should be given to the preventive elements of the 2001 Act and to the investment of resources in community and statutory services necessary to support these measures, including the full staffing of the social work service. Priority should also be given to resourcing community-based, non-custodial options and to the provision of community supervision services, step-down facilities and after-care services.
- 6. Fill vacancies in the social work service to provide children with access to care and counselling services without delays.** Implement a drive to recruit and retain suitable,

qualified and experienced staff. Ensure that all staff have received formal training adequate for their posts and that all staff who work with children are fully trained in children's rights and are committed to the principle that children are to be treated as children first.

7. Have all Garda stations provided with child-friendly holding rooms separate from adult cells. Ensure the separation of children in detention from adults and ensure that all Garda stations make available rooms that are child friendly and separated from adult cells and holding rooms.

8. Provide children with the right to representation at care reviews. Introduce guidelines to define the grounds on which a child may be detained in a Special Care Unit to ensure the right of the detained child to have access to a solicitor and the right to representation at reviews.

9. Provide additional safeguards for children under Special Care Orders and for offending children in detention. Draw up a national regulatory framework to govern disciplinary practices. Introduce guidelines to govern the type of accommodation and regime which the Minister may define as a 'place of detention' (Section 150, Children Act, 2001) and in relation to the detention of children in cells where no other place is available. Appoint an Inspector of Children Detention Schools. Implement the guidelines of the Special Residential Services Board, particularly in relation to the duration of placement and review intervals.

10. Ensure that all children in detention are informed of their rights.

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