



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Ireland

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

The Youth Justice System of Ireland is based on the Children Act 2001. The institutions involved, as well as relevant laws and policies vary depending on whether the child is a suspect or victim (for the most part witnesses are treated in the same way as victims though victims' rights are more extensive). Victims and witnesses do not have formal participation rights during criminal proceedings, while child offenders are entitled to the right to be heard and to participate in any proceedings of the court that can affect them. The Irish legislator has also established several institutions in the area of youth justice and welfare (e.g., Irish Youth Justice Service, The Office of the Ombudsman for Children, The Health Service Executive etc.).

Overview of children's involvement before, during and after judicial proceedings

There are no specific restrictions on a child's ability to report crime in Ireland. All victims and witnesses should be provided with a range of information on their rights and on the progress of the case from the moment they report a crime and throughout criminal proceedings. The Irish legislator has introduced measures to ensure that victims are protected from harm (e.g. urgent police protection, civil law orders for protection) though such measures are in principle applicable to all victims and not only to child victims. Although there is no specific provision in Irish law which seeks to protect child victims from secondary victimisation, a few mechanisms to protect children have been identified (e.g. specialist interview suites located across Ireland in child friendly environments for joint interviewing of children in respect of allegations of sexual abuse).

Child victims, in common with all victims and witnesses in criminal proceedings, do not have a right to legal counsel, assistance or representation. They may pay for their own legal advice, but there are no obligations on authorities to permit legal advisors to be present during interviews or to assist during the process. In Ireland, child and adult victims may seek compensation either from the offender or in certain circumstances from the State.

The age of criminal responsibility in Ireland is 12 years of age. There is an exception, however, for children aged 10 or 11 in case of particularly serious offences (e.g. murder, manslaughter, rape). Apart from in those circumstances, it is possible that children under 12 years of age who commit criminal offences will be taken into the custody of the Health Service Executive (HSE).

Special rules are provided with regard to a child suspect's right to information (this embodies a number of matters such as the alleged offence, the child's entitlement to consult a solicitor, and the notification of the arrest of a child to the child's parent or guardian. The information procedures vary depending on whether the child's parent or guardian is present or not at the station where a child is in custody. Further, specific provisions are in place to ensure the protection of child suspect's rights with regard to police questioning.

When a child is arrested and brought to a police station, the officer in charge of the station may release the child on bail with a guarantee. When a decision is made to charge a child with a criminal offence the officer in charge of the station may direct that the child to be brought before the next available sitting of the Children Court. This could involve the child remaining in the custody of the police until the following morning.

Court sessions in cases where child offenders are involved are private and there is a general prohibition to disseminate information which is collected during the court proceedings. Moreover, in order to ensure separation from adult cases, whilst the Children Court takes place in the District Court building, its hearings should take place in a different room or building or on a different day or time from other courts. Further, a court considering a criminal charge against a child may convene a family conference which can lead to the adoption of an action plan (e.g. an apology to the victim, financial or other reparation). If the court is satisfied that the child complied with the plan, then the charge may be dismissed. Several other measures have been introduced in order to minimise the burden of court proceedings upon child suspects/defendants. These include the participation of the parents or guardians of a child at all stage of proceedings against the child for an offence; special training or education required for judges who sit in the Children Court.

In general, if the accused does not have the resources for legal representation, a number of decisions by the Supreme Court have established a constitutional right to legal aid in certain cases. Child suspects generally do not have the means to pay for their own representation and because of their age and inexperience are considered to be at a disadvantage in understanding procedures and conducting a defence. In most cases where accused children apply for legal aid, it is therefore awarded.

Child offenders in Ireland may be subject to corrective measures (e.g. an order that the child pay a fine, an order imposing a community sanction, a detention and supervision order). There is no maximum period of detention specified in respect of children in Irish law. Child offenders who are deprived of their liberty are held in separate facilities from adult offenders.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

The Youth Justice System in Ireland is overseen by the Irish Youth Justice Service (IYJS), with responsibility for leading and driving reform in the area of youth justice. Further, the office of the Ombudsman for children is charged, inter alia, with ensuring the promotion of the rights and welfare of children. In addition, each police district in Ireland has a juvenile liaison office, responsible for administering the juvenile diversion programme under the Children Act 2001.

The strengths in the Irish system are related to a wide range of positive reforms in youth justice law and practice passed in recent years, including the adoption of the Children Act 2001 and the establishment of the IYJS. The gaps are mostly related to decision making processes and services for children (e.g. invisibility of children in decision making processes, lack of complaints mechanisms and systems to monitor and regulate services for children, failure to mainstream positive initiatives etc.).

Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
IYJS	Irish Youth Justice Service
HSE	Health Service Executive
ISPCC	Irish Society for the Prevention of Cruelty to Children
CASS	Court Accompaniment Support Service
DPP	Director of Public Prosecutions
JLO	Juvenile Liaison Officer
NJO	National Juvenile Office

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

The institutional framework relevant to children in criminal proceedings in Ireland is a complex mix of criminal law, public and private law provisions. The institutions involved, as well as relevant laws and policies vary depending on whether the child is a suspect or victim. For the most part witnesses are treated in the same way as victims though victims' rights are more extensive. They also vary depending on the type of crime committed.

Youth Justice System – Child suspects, defendants and offenders

The Youth Justice System of Ireland was overhauled by the [Children Act 2001](#). Prior to 2001, the youth justice system in Ireland was based on the Children Act 1908. Although the 1908 Act was regarded as a liberal and innovative measure of its time, by the dawn of the 21st century its provisions were increasingly regarded as archaic and out of touch with current thinking on juvenile justice. The key changes introduced by the Children Act 2001 were “an increase in the age of criminal responsibility, a provision to separate the care and justice systems, an increased focus on parental responsibility, an expansion of the Garda Síochána [Ireland's national police service] juvenile cautioning programme, the introduction of restorative cautioning and family conferencing, the enshrinement of the principle of detention as a measure of last resort, the abolition of imprisonment for children and the expansion in the range of community based sanctions¹”.

The Youth Justice System in Ireland is overseen by the Irish Youth Justice Service (IYJS). Established in December 2005, the IYJS is staffed by officials from the Department of Children and Youth Affairs and the Department of Justice and Equality. The main responsibilities of IYJS are to develop a unified youth justice policy, devise and develop a national strategy to deliver this policy and service, link this strategy where appropriate with other child-related strategies, manage and develop children detention facilities, manage the implementation of provisions of the Children Act 2001 which relate to community sanctions, restorative justice conferencing and diversion, co-ordinate service delivery at both national and local level, establish and support consultation and liaison structures with key stakeholders including at local level to oversee the delivery of this service and response and develop and promote information sources for the youth justice sector to inform further strategies, policies and programmes².

The objectives of the IYJS have been stated as the following:

1. To provide leadership and build public confidence in the youth justice system.
2. To work to reduce offending by diverting young people from offending behaviour.
3. To promote the greater use of community sanctions and initiatives to deal with young people who offend.
4. To provide a safe and secure environment for detained children that will assist their early re-integration into the community.
5. To strengthen and develop information and data sources in the youth justice system to support more effective policies and services³.

The Office of the Ombudsman for Children was established in 2002. The functions of the Ombudsman for Children include the promotion of the rights and welfare of children, to advise the Government on the development and co-ordination of policy relating to children,

¹ Seymour, M., *Juvenile Justice in the Republic of Ireland*, *European Working Group on Juvenile Justice, European Society of Criminology*, (2003).

² See generally www.iyjs.ie/en/IYJS/Pages/WP08000009.

³ [Ireland, Irish Youth Justice Service \(2008\), National Youth Justice Strategy 2008-2010, \(Dublin 2008\) at p.2.](#)

to encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children, to collect and disseminate information on matters relating to the rights and welfare of children and to highlight issues relating to the rights and welfare of children that are of concern to children.

The Health Service Executive (HSE) is a public body responsible for running public health services in Ireland. The functions of the HSE include child protection and the promotion of child welfare and safety⁴. The HSE has also published the Children First: National Guidance for the Protection and Welfare of Children⁵. These guidelines set out clearly how child protection must be placed at the core of any organisation working with children. The guidelines also set out clear rules on interagency co-operation regarding the roles and responsibilities of organisations and personnel working with children and include a protocol for liaison between the HSE and An Garda Síochána in relation to child protection.

An Garda Síochána is the national police service of Ireland. Among the core functions of An Garda Síochána are the detection and prevention of crime, prosecution of minor criminal offences, and working with communities to prevent anti-social behaviour⁶.

The Director of Public Prosecutions (DPP) enforces the criminal law in the courts on behalf of the people of Ireland; directs and supervises public prosecutions on indictment in the courts; and gives general direction and advice to the Garda Síochána in relation to summary cases and specific direction in such cases where requested⁷.

There is a growing awareness of the need for the various agencies involved in youth justice in Ireland to co-ordinate their activities, and ensure that they have relevant capability and knowledge to deal with children. However, there are many situations which demonstrate the need for greater co-operation between the different agencies, in order to ensure proper respect for the evolving capacity of the child, ensuring the child's best interests are a primary consideration and combating discrimination.

There are no specialist units within the judiciary, the court system or the prosecutor's office to deal with juvenile offenders, child victims or child victims of specific crimes. Within the police force, the Domestic Violence and Sexual Assault Investigation Unit provides advice, guidance and assistance to police investigating child sexual abuse, other sexual crimes and domestic violence. The Garda Victim Liaison Office is responsible for formulating police strategy and policy in relation to victims, driving the implementation of the Victims Charter and ensuring the delivery of appropriate police services to victims of crime nationally. Each police district in Ireland has a juvenile liaison office, staffed by juvenile liaison officers. These officers are responsible for administering the juvenile diversion programme under Part 4 of the Children Act 2001.

Criminal Trials

The majority of children under the age of 18 years are tried in the Children Court, which is a specialist branch of the District Court. The Children Court was established under the Children Act 2001 in order to separate criminal court proceedings involving children from those which involve adults. Judges who sit in the Children Court are required to undergo special training or education as deemed necessary by the President of the District Court. The Children Court can try a child or a young person for any offence except homicide provided that in certain cases the child's parent or the young person has been told of their right to trial by jury and has consented to be dealt with by the District Court. In cases involving homicide, or where the child or the child's parent has opted (for the child) to be tried by jury, the case will be heard by the Circuit Criminal Court or the Central Criminal Court. No clear procedural guidelines are in place regarding the conduct of trials in these

⁴ [Section 3 of the Child Care Act 1991](#).

⁵ [Ireland, Department of Children and Youth Affairs, Children First: National Guidelines for the Protection and Welfare of Children \(Dublin, 2011\)](#).

⁶ See generally www.garda.ie/Controller.aspx?Page=5416&Lang=1.

⁷ See generally www.dpp.ie/about_us/.

courts in a manner that takes account of the rights of the child and no reports of trials of children in the Circuit Criminal Court or Central Criminal Court in the recent past were found. Thus there is no information on what would happen in practice. However, as Ireland has given effect to the ECHR by the European Convention on Human Rights Act 2003, the jurisprudence of the Strasbourg court on procedural safeguards for children in criminal proceedings in cases such as *V and T v United Kingdom* (1999) would apply.

Young victims and child protection systems

In contrast to the specific provision which has been made for child offenders, child victims and witnesses must go through the formal criminal justice system where the offender is an adult. Some specific rules and procedures exist for dealing with child victims in formal criminal proceedings but these are not extensive. For the most part, such matters are dealt with through guidelines and advisory information.

Training

Requirements with respect to the training of practitioners dealing with children vary. Broadly speaking, it can be said that key services such as police, prosecution and courts (court staff and judges) do not receive general training on appropriate treatment of children. However, there are some specialist services used in criminal proceedings, such as the specialist victim interview training given to pre-selected members of the police force. As noted above, judges who are assigned to the Children Court are required to undergo special training or education as deemed necessary by the President of the District Court.

General Approach towards children: definition of child, participation, age and maturity, discrimination

With respect to the general approach taken towards children, the starting point is that any victim, suspect or witness under the age of 18 is a child under Irish law. Details of special measures and treatment are provided below under specific sections under the phases of criminal proceedings. There is no fixed minimum age limit on when a child may provide evidence in respect of a crime; this is determined on a case by case basis depending on the age and maturity of the particular child.

There is a growing awareness of the need to afford children with an opportunity to participate in criminal proceedings and to provide their views in accordance with their abilities. However, a number of practical obstacles have been identified below under the phases of criminal proceedings which demonstrate that this objective is not always achieved in Irish law.

Non-discrimination

Equality legislation in Ireland prohibits discrimination on nine grounds, including age; however, the equality legislation goes on to say that treating a person who has not reached 18 years of age less favourably or more favourably than another, whatever that other person's age, shall not be regarded as discrimination on the age ground⁸. In other words, the prohibition against discrimination on grounds of age does not apply to children under the age of 18.

⁸ [Section 3 of the Equal Status Act 2000.](#)

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There are no specific provisions on a child's ability to report crime in Ireland. It is therefore assumed there are no restrictions on children reporting crimes in Ireland.

In general, a child can report a crime to the Garda Síochána by calling the national emergency number or by going to the police station in person. A parent or guardian can also do this on behalf of the child. The only crime which may be reported online in Ireland is a declaration of theft of property not exceeding the value of €500⁹. No other crimes can be reported online in Ireland.

The [Irish Society for the Prevention of Cruelty to Children](#) (ISPCC) runs two telephone lines – Childline is a telephone line for children to talk about any concerns they have and Supportline is a telephone line for parents or members of the public who may be concerned about the welfare of a child and who need more information and support¹⁰.

In addition, children can take advantage of support services which assist a victim in reporting a crime, including through anonymous reporting. [Crimestoppers](#) is a joint initiative between the Gardaí and the business community which operates by encouraging people to report crime by calling a freephone number. The caller can remain anonymous. In addition, there are a range of specialist organisations assisting victims, child victims or child victims of specific crimes, for example, the [ISPCC](#) and [CARI](#).

2.1.2 Provision of information

In Ireland, all victims and witnesses should be provided with a range of information on their rights and on the progress of the case from the moment they report a crime and throughout criminal proceedings including after judgment and sentencing.

Details on what information should be provided, when the information should be provided and by whom are all set out in the [Garda Síochána Victims Charter](#). This Charter is not legally binding. There are no specific provisions relating to children, so a child has the right to receive the same information as an adult witness or victim. Nor are there provisions on how this information should be provided to a child.

The [Garda Síochána Victims Charter](#) states that once a victim has reported a crime, the police will:

- Respond promptly to the victim's call and investigate the complaint;
- Tell the victim the name, telephone number and station of the investigating officer and PULSE incident number;
- Explain what will happen during the investigation and keep the victim informed throughout the process;
- Tell the victim about the services available through the National Crime Victims Helpline 1850 211 407;
- Advise the victim about the services provided by the Tourist Victim Support Service if the victim is a visitor to Ireland;
- Exhibit special sensitivity in relation to sexual offences;

⁹ Further details can be found on the [Garda website](#).

¹⁰ For further information on [Childline](#). For further information on [Supportline](#).

- Make the services of a police officer and a doctor of the same gender (as far as possible) available to the victim;
- Try to attend to any special needs or requirements the victim may have;
- Provide a free translation service if the victim is unable to communicate fluently in Irish or English.

The [Garda Síochána Victims Charter](#) also says that when a suspect is due to appear in court, the police will inform the victim:

- Whether the suspect is being held in prison ('in custody') or on bail and any conditions of the bail, such as staying away from the victim or his or her house;
- The time, date and location of the court hearing;
- The circumstances under which a victim is allowed to give a victim impact statement; If the victim is likely to be called as a witness, the police will advise the victim of the support available from the appropriate voluntary organisations. ;
- About court expenses; and
- The final result of the criminal trial.

There is no specific provision made in relation to the provision of information to vulnerable victims and witnesses who are children. Further, there are no specific time limits on the provision of such information.

The [DPP Statement of General Guidelines for Prosecutors does not explicitly refer to child victims. However, it](#) notes that whilst the decision whether to prosecute or not is of great importance to the victim, the prosecutor must make this decision as objectively as possible¹¹. The guidelines say that in deciding whether to prosecute, a number of factors tend to increase the likelihood that a prosecution is in the public interest. This includes where the victim of the offence has been put in fear, or suffered personal attack, damage or disturbance¹². The Guidelines also say that the attitude of the victim or the family of a victim of the alleged offence to a prosecution and the likely effect on the victim or the family of a decision to prosecute, or not to prosecute, should also be taken into account in the decision whether or not to prosecute¹³. In relation to pre-trial discussions concerning pleas, the guidelines state that the views of the victim should be taken into account in deciding whether to accept a proposal advanced by the defence¹⁴. The only reference to children is as one of the 18 factors to be considered in the decision as to whether to prosecute, and it refers to children as witnesses and not as victims per se¹⁵.

2.1.3 Protection from harm and protection of private and family life

Protection from Harm

A range of provisions exist in Irish law or policy which facilitate the protection of victims from harm and protection of private and family life.

Custody and conditions for release

If the court believes that the suspect/ defendant may interfere with any victim, conditions may be imposed on their release. The possible conditions are not detailed in legislation nor in procedural rules. However, the most relevant conditions are those restricting contact with the victim (whether child or adult), imposing curfews or movement restrictions. **Civil Law Restraining Orders**

¹¹ [Ireland, Director of Public Prosecutions, Statement of General Guidelines for Prosecutors \(Dublin 2001\), p.9.](#)

¹² Ibid at p.14.

¹³ Ibid at p.15.

¹⁴ Ibid at p.32.

¹⁵ Ibid at p.12.

A range of protection measures are also available to children and adults alike, in civil proceedings through injunctions. These are basically restraining orders which require someone to do or not to do something e.g. prohibition from contacting the child, entering certain locations.

The [Domestic Violence Act 1996](#) makes provision for specific restraining orders in the context of domestic violence¹⁶. These may be particularly relevant to children who are victims of a crime committed by a member of their own family.

Whilst a child may apply for an injunction, they may not do so in their own right – instead an application must be made on behalf of the child by a parent or next friend.

Protection of Private and Family life

A court may impose restrictions to protect the privacy and identity of a child victim¹⁷. The court can direct that no report of the proceedings shall reveal the name, address or school, or include any particulars likely to lead to the identification of any child or young person concerned in the proceedings. The court can also direct that no picture of the child, or which his likely to lead to his or her identification, shall be published or broadcast. These restrictions are mandatory but can be dispensed with if the court is satisfied that it is appropriate to do so in the interests of the child¹⁸.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

There is no specific provision in Irish law, nor any policy documents or guidelines, which seek to protect child victims from secondary victimisation. The [Joint Committee on Child Protection Report on Child Protection](#)¹⁹ specifically acknowledged the potential for secondary victimisation and the importance of ensuring a child friendly environment and made a number of recommendations aimed at addressing these concerns, including the establishment of specialist regional child protection units within the police with responsibility for investigation of child sexual abuse from the outset; provision of comfortable, non-threatening facilities, including video-recording facilities, for interviewing child victims in the design and maintenance of police stations; and a structured programme of training and education on child psychology, child development and the reaction of children to incidents of child sexual abuse to be developed and provided to the police, officers of the DPP, prosecuting solicitors and counsel and judges hearing cases involving allegations of child sexual abuse.

At present, there are seven specialist interview suites located across Ireland in child friendly environments for joint interviewing of children in respect of allegations of sexual abuse²⁰.

Although the DPP Statement of General Guidelines for Prosecutors recognises that the victim has an interest in the decision whether to prosecute, and in the outcome of the prosecution, the Guidelines make no reference to the speed and timeliness of proceedings or the prioritisation of cases involving children.

The [Victims Charter describes](#) the criminal justice system from a crime victim's point of view and sets out a victim's rights and entitlements to the services given by the various state agencies and one voluntary organisation working with crime victims. It states that the Courts Service will aim to look after the needs of crime victims by providing the following facilities and services:

¹⁶ See e.g. safety orders, protection orders and barring orders under the [Domestic Violence Act 1996](#).

¹⁷ [Section 251 of the Children Act 2001](#).

¹⁸ [Section 252\(2\) of the Children Act 2001](#).

¹⁹ [Ireland \(2006\) Oireachtas Joint Committee, Report on Child Protection Report on Child Protection \(November 2006\)](#).

²⁰ [Health Service Executive, National Review of Sexual Abuse Services for Children and Young People \(June 2011\), p. 18](#).

- Victim waiting rooms are available in almost all refurbished courthouses and also in a number of other courthouses;
- A dedicated victim suite of four rooms and reception area is available within the Criminal Courts of Justice in Dublin²¹;
- Where possible, rooms will be specially set aside for victims in all future refurbishment projects;
- Video link facilities are available in a number of courtrooms – subject to order of the Court, these may be used by vulnerable witnesses when they are giving evidence. If these facilities are not available in a particular courtroom, the court may order the hearing to be moved to a courtroom where such facilities are available, so that the victim can give evidence by video link²²;

The Courts Service will also arrange for victims to visit the courthouse before the trial, by prior arrangement if necessary. Customer liaison officers are appointed within each of the Courts Service offices – these officers are the first point of contact for inquiries by victims. Customer liaison officers can arrange access to victim rooms, where available, reserve family seating in murder and manslaughter cases, and organise advance visits to courthouses. They can also give victims contact details of voluntary organisations that offer support to crime victims²³.

In Ireland, CARI (a charitable non-governmental organisation) operates a Court Accompaniment Support Service (CASS). This service was established in response to the particular needs of child victims of sexual abuse who are called as witnesses in criminal court. CASS supports the children and their parents, carers or guardians who have to go to court. In 2009, CARI decided to widen the remit of the CASS in order to accept referrals to assist children attending court no matter what the crime. The overall objectives of the CASS are as follows:

- Preparing the child, on a practical level, before scheduled appearance at court (e.g. explaining court procedure and physical layout, with the help of age appropriate literature).
- Clarifying legal terminology and procedures for the family.
- Accompanying the child and family to the court in advance of case date with a view to familiarising them with the court environment & interview suite.
- Continued support up to and following the sentence hearing, where appropriate.

The CASS officer is specially trained to help alleviate anxieties experienced by the child as well as those of the parent or carer so that they can better support the child. The CASS officer will facilitate them in a pre-trial visit to the court so that the child will get to see the surroundings which act as a method of reducing anxiety for all concerned. Such a visit will often include the video link suite so that the child will learn about the remote room away from the formal court, where they might be giving evidence from. Throughout the course of a trial and in the post-trial period, the CASS officer will remain in contact with the child and carers so that they can ask any questions or seek assistance. The CASS officer will also offer support (and attend if requested) around the time of the sentencing so that the child and carer never feel that they are going through this ordeal alone²⁴.

Restorative justice was introduced for the first time in the [Children Act 2001](#). There are two restorative justice initiatives provided for in the Act. First, the Act provides for a restorative

²¹ The Criminal Courts of Justice is a purpose built, centralised facility in Dublin which caters for all criminal business including the District Court, Circuit Criminal Court and Central Criminal Court. It was opened in 2010.

²² [Victims of Crime Office Victims Charter \(Department of Justice and Law Reform, 2010\) p.23.](#)

²³ Ibid, p.24.

²⁴ See www.cari.ie/our-services/cass-court-accompaniment-support-service.

conference²⁵ or restorative caution²⁶, as part of the Garda Juvenile Diversion Programme²⁷. Secondly, the court can order a restorative justice conference delivered through the Probation Service²⁸. These are addressed below at [section 2.3.6](#).

2.1.5 Protecting the child during interviews and when giving testimony

According to the [Garda Síochána Policy on the investigation of sexual crime, crimes against children and child welfare \(Garda Síochána Policy\)](#), the interview of a victim should be conducted by two members at the earliest opportunity and in a suitable location for the victim and police. The guidelines make specific provision that children under 14 years of age who have been the victim of a sexual offence or an offence involving violence will be interviewed by trained specialist victim interviewers²⁹. The policy document sets out detailed guidelines for the conduct of such interviews. This includes the need for the investigating member to keep in mind the emotional and physical pain the victim may be suffering, the obligations of the [Children First Guidelines](#), and the need to use positive and child-friendly language.

The [Garda Síochána policy](#) also addresses the issue of specialist victim interviewer training. This training is designed for pre-selected Gardaí (police officers) to develop knowledge and skills in the interviewing of all victims of serious crime occurrences but in particular, children under the age of 14 years.

There are three stages involved in specialist victim interviewer training. Stage one is made up of two ten day modules, the first of which is aimed at providing the knowledge foundation to support the development of skills, covering legislation, procedures and required learning in relation to interaction with children and persons with intellectual disabilities. The second module aims to develop candidates' interview skills within the format of the Good Practice Guidelines for persons involved in video recording interviews with complainants under 14 years of age (or with intellectual disability) for evidential purposes in accordance with [section 16\(1\)\(b\) of the Criminal Evidence Act 1992](#).

The training is predominantly practice based, following a case study format, designed to develop interviewing skills. Stage two aims to support the professional development of the participants in practical case management, with the provision of operational case supervision by designated sergeants within each District, who liaise with the HSE. At six monthly intervals participants will be required to submit a structured reflective report that identifies developmental requirements. Following submission of the report the developmental issues will be addressed in a one day training seminar delivered by persons with expertise in the management of the interviewing process, and the legality of the evidence obtained. Stage three is a two day module designed to support any professional requirements identified.

²⁵ [Section 29 of the Children Act 2001](#) provides that a child who is under the supervision of a juvenile liaison officer as part of the diversion programme may be the subject of a conference which is intended to bring together the child, his or her family and any other relevant persons with relevant expertise to establish the reasons for the child's criminal behaviour and discuss how the family can help the child not to re-offend. In appropriate cases, the conference may include mediation between the child and his or her victim, who may be invited to attend the conference.

²⁶ [Sections 25 and 26 of the Children Act 2001](#) provide that two types of caution or warning may be given, formal or informal. A formal caution is given by a police inspector or other senior police officer. The child, the child's parents or guardians and a juvenile liaison officer must be present at the administration of a formal caution. The victim may also be invited to attend. A formal caution normally takes place at a police station to highlight to the child the seriousness of the situation. An informal caution may be given for less serious criminal behaviour. An informal caution is administered by the juvenile liaison officer to the child in the presence of his or her parents or guardians. An informal caution may be administered at the child's home or in a police station. There is no specific wording or procedure for a caution, but it will generally involve a discussion of the child's criminal behaviour and highlighting to the child the seriousness of his or her actions. When the victim is present, the police officer administering the caution may invite the child to apologise and offer some form of compensation to the victim.

²⁷ [Part 4 of the Children Act 2001](#).

²⁸ The Garda Juvenile Diversion Programme allows a child over the age of 12 who has committed a criminal offence an opportunity to be cautioned instead of being prosecuted before the Children Court.

²⁹ [Ireland, An Garda Síochána \(2010\), Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare \(Dublin, 2010\), p.14.](#)

In terms of giving evidence in court, evidence may be given by live television link if the person concerned is under 17 years of age, unless the court believes there are good reasons to avoid such a link³⁰. The prosecutor or the accused may also forward questions to a child witness under the age of 17 through an “intermediary” (go-between) if, having regard to the mental condition and age of the child witness, such a procedure is still deemed necessary in the interests of justice³¹. In addition, “questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked³²”.

A video recording of any statement made by an alleged victim under 14 years of age during an interview with a member of the Garda Síochána or any other person who is competent for the purpose, shall be admissible as evidence at the trial³³.

In 2006, the *Oireachtas* Joint Committee on Child Protection recommended that all lawyers involved in the prosecution or defence of cases of child sexual abuse or sexual offences against children, and all judges hearing such cases, should be required to undergo a specialist programme of training to enable them to perform their respective functions in the manner least traumatic for child victims and witnesses. The Committee also recommended that consideration be given to the development of an on-going training programme for all lawyers involved in the prosecution or defence of cases of child sexual abuse or sexual offences against children, and all judges hearing such cases, to take account of developments in knowledge relating to child development and children’s responses to the criminal justice system³⁴. To date, this study has not revealed evidence of the extent to which this recommendation has or has not been implemented.

2.1.6 Right to be heard and to participate in criminal proceedings

Victims and witnesses (whether child or adult) are not parties to criminal proceedings in Ireland and do not have legal standing. As such they do not have formal participation rights during those proceedings and are only able to participate and be heard to the extent provided in the victims’ charter, which is not legally binding.

With respect to the right to be heard, the key provisions have been outlined in [section 2.1.5](#) where both the police and the prosecutor have a general obligation to listen to the views of victims and witnesses, and in particular consider their views when making key decisions such as deciding whether to prosecute or whether to accept a proposal by the defence prior to the trial. However, there is no obligation on prosecutors to use evidence or to call any particular person as a witness during the trial.

In addition, in any criminal proceedings the evidence of a person under 14 years of age may be received otherwise than on oath or affirmation if the court is satisfied that he is capable of giving an intelligible account of events which are relevant to those proceedings³⁵. [Section 28 of the Criminal Evidence Act 1992](#) also abolished the requirement in section 30 of the Children Act 1908, of corroboration of unsworn evidence of a child given under that section³⁶.

³⁰ [Section 13 of the Criminal Evidence Act 1992](#).

³¹ [Section 14 of the Criminal Evidence Act 1992](#).

³² Ibid.

³³ [Section 16\(1\)\(b\) of the Criminal Evidence Act 1992](#).

³⁴ [Ireland, Oireachtas \(2006\), Joint Committee on Child Protection Report on Child Protection \(Dublin 2006\), p. 75](#).

³⁵ [Section 27 of the Criminal Evidence Act 1992](#).

³⁶ [Section 28 of the Criminal Evidence Act 1992](#).

2.1.7 Right to legal counsel, legal assistance and representation

A child, in common with all victims in criminal proceedings does not have a right to legal counsel, assistance or representation. They may pay for their own legal advice, but there are no obligations on authorities to permit legal advisors to be present during interviews or provision of testimony or to assist during the process.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

Victims in general (whether child or adult) have limited rights with respect to altering key decisions about proceedings such as the decision to end an investigation or prosecution, the decision to accept a guilty plea, the decision on the charge against the accused etc. As such, and as explained in the previous sections, all victims including children have a right to have their views taken into account, but those views don't need to be followed.

However, in 2008 the DPP announced a pilot project where reasons would be given for decisions not to prosecute in respect of certain offences (murder, manslaughter, infanticide, fatalities in the workplace and fatal road traffic accidents). Reasons for decisions not to prosecute, or to discontinue a prosecution, will be given on request to parties closely connected with the deceased, such as members of the deceased's family or household; their legal or medical advisers; or social workers acting on their behalf³⁷.

A child may complain about breaches of the Victims' Charter on the same basis as an adult. Breaches of the Charter may be the subject of complaint to the relevant service. If no satisfactory response is received, a complaint may also be made to the Ombudsman for Children's Office under [section 8 of the Ombudsman for Children Act 2002](#) which allows the Ombudsman to investigate any action taken by or on behalf of a public body where it appears that the action has or may have adversely affected the child³⁸.

Compensation

In Ireland, child and adult victims can seek compensation either from the offender or in certain circumstances from the State.

With respect to offender compensation, this is available once the offender has been convicted of the offence³⁹. No specific rules exist for the making of compensation orders in respect of children. The maximum amount which can be ordered to be paid under a compensation order is €6,350 where the prosecution takes place in the District Court, and €38,100 where the prosecution takes place in the High Court.

Child and adult victims of violent crime may also seek compensation from the State through the Criminal Injuries Compensation Scheme⁴⁰. The Criminal Injuries Compensation Tribunal will consider claims for compensation made by or on behalf of either the victim, or any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim's injury.

2.2 The child as a witness

2.2.1 Reporting a crime

See [section.2.1.1](#)

³⁷ See [Office of the Director of Public Prosecutions, Report on Prosecution Policy on the Giving of Reasons for Decisions \(Dublin 2008\)](#).

³⁸ [Section 8 of the Ombudsman for Children Act 2002](#).

³⁹ Compensation orders may be made under [section 6 of the Criminal Justice Act 1993](#).

⁴⁰ See [www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme](#).

2.2.2 Provision of information

According to the Director of Public Prosecution's information booklet on going to court as a witness, the prosecution will:

- Treat witnesses with respect and take account of witnesses' personal situation, rights and dignity;
- Work with the police to make sure that witnesses are kept up to date on the case, especially if it is about a violent or sexual offence; and
- Arrange for witnesses to talk to the prosecution solicitor and barrister before the court case begins, if the witness desires it. They will explain what will happen in court, but they cannot talk to the witness about the evidence he or she will give⁴¹.

This information booklet makes no specific reference to child witnesses or any special arrangements which might be made in that regard.

2.2.3 Protection from harm and protection of private and family life

The same rules outlined in [section 2.1.3](#) for the protection of child victims from harm and for protection of private and family life also apply to child witnesses.

The court may impose conditions on the release of the suspect/ defendant if it believes he/she may interfere with any witness, such as restricting contact with the witness (whether child or adult), imposing curfews or movement restrictions. In addition, the separate offence of witness intimidation can be prosecuted and sentenced separately to the original offence⁴².

Children and adults alike may also be granted protection in civil proceedings through injunctions -- civil law restraining orders which require someone to do or not to do something, e.g. prohibition from contacting the child, or entering certain locations. The [Domestic Violence Act 1996](#) provides for specific restraining orders in the context of domestic violence⁴³. These may be particularly relevant to children who are witnesses to a crime committed by a member of their own family.

Whilst a child may apply for an injunction, they may not do so in their own right; instead an application must be made on behalf of the child by a parent or next friend.

Measures are also available for protection of private and family life, such as court-imposed restrictions to protect the privacy and identity of a child witness⁴⁴. The court can direct that no report of the proceedings shall reveal the name, address or school, or include any particulars likely to lead to the identification of any child or young person concerned in the proceedings. The court can also direct that no picture of the child, or which is likely to lead to his or her identification, shall be published or broadcast. Whilst these restrictions are mandatory, the court can also dispense with them if it is satisfied that it is appropriate to do so in the interests of the child⁴⁵.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

The rules for child witnesses are similar to those for child victims, as outlined in [section 2.1.4](#).

There is no specific provision in Irish law, nor any policy documents or guidelines, which seek to minimise the burden of proceedings and ensure a child friendly environment for child

⁴¹ [Ireland, Director of Public Prosecutions, *Going to Court as a Witness* \(Dublin 2010\).](#)

⁴² [Section 41 \(1\) of the Criminal Justice Act 1999](#) created the statutory offence of intimidation of witnesses with a maximum sentence on conviction of 10 years imprisonment.

⁴³ See e.g. safety orders, protection orders and barring orders under the [Domestic Violence Act 1996](#).

⁴⁴ [Section 251 of the Children Act 2001.](#)

⁴⁵ [Section 252\(2\) of the Children Act 2001.](#)

witnesses. The [Joint Committee on Child Protection Report on Child Protection](#)⁴⁶ specifically acknowledged the importance of ensuring a child friendly environment and made a number of recommendations aimed at addressing these concerns, including the need for facilities in police stations to allow formal identification parades to be conducted without the identifying witness needing to be in the presence of, or visible to, the suspect. The report concludes:

“By comparison with measures that have been introduced in other jurisdictions in recent years, the absence of general statutory provision for the identification and proper care of vulnerable and intimidated witnesses may be seen as a defect in the Irish criminal justice system and one that urgently needs to be remedied... children, by virtue of their age, immaturity and incomplete intellectual development, can be presumed in all circumstances to be in need of special measures of protection where they complain of or witness a crime⁴⁷”.

2.2.5 Protecting the child during interviews and when giving testimony

In terms of giving evidence in court, evidence may be given by live television link if the child witness is under 17 years of age, unless the court believes there are good reasons to avoid such a link⁴⁸. The prosecutor or the accused may forward questions to a child witness under the age of 17 through an “intermediary” (go-between) if, having regard to the mental condition and age of the child witness, such a procedure is still deemed necessary in the interests of justice⁴⁹. In addition, “questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked⁵⁰”.

In 2006, the *Oireachtas* Joint Committee on Child Protection recommended that all lawyers involved in the prosecution or defence of cases of child sexual abuse or sexual offences against children, and all judges hearing such cases, should be required to undergo a specialist programme of training to enable them to perform their respective functions in the manner least traumatic for child victims and witnesses. The Committee also recommended that consideration be given to the development of an on-going training programme for all lawyers involved in the prosecution or defence of cases of child sexual abuse or sexual offences against children, and all judges hearing such cases, to take account of developments in knowledge relating to child development and children’s responses to the criminal justice system⁵¹. To date, this study has not revealed evidence of the extent to which this recommendation has or has not been implemented.

2.2.6 Right to be heard and to participate in criminal proceedings

No specific provisions relate to the right of a child witness to be heard. In general, witnesses’ rights to be heard are somewhat reduced compared to those of the victim. The general commitments of the relevant authorities in relation to witnesses, as set out in [section 2.1.6](#) concerning child victims, remain.

2.2.7 Right to legal counsel, legal assistance and representation

A child, in common with all witnesses in criminal proceedings does not have a right to legal counsel, assistance or representation. Witnesses may pay for their own legal advice, but authorities are not obliged to permit legal advisors to be present during interviews or provision of testimony or to assist during the process.

⁴⁶ [Ireland \(2006\) Oireachtas Joint Committee Report on Child Protection Report on Child Protection \(November 2006\)](#).

⁴⁷ Ibid at para.9.3.4.

⁴⁸ [Section 13 of the Criminal Evidence Act 1992](#).

⁴⁹ [Section 14 of the Criminal Evidence Act 1992](#).

⁵⁰ Ibid.

⁵¹ [Ireland, Oireachtas \(2006\) Joint Committee on Child Protection Report on Child Protection \(Dublin 2006\), p. 75](#).

2.2.8 Remedies or compensation for violation of rights and failure to act

The information booklet issued by the DPP on Going to Court as a Witness states that if a witness has a complaint about how the DPP's office they can contact that office to make that complaint. The booklet provides no information on the procedures or possible outcomes of such complaints process. There are no specific provisions relating to children.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Until the introduction of the Children Act 2001 many expressions were used to identify someone within the scope of the juvenile justice system in Irish law. Expressions such as minor, juvenile, youth offender and young person were commonplace. However, the word child is now defined by section 3 of the 2001 Act to mean a person under the age of 18 years.

The age of criminal responsibility in Ireland is 12 years of age. This means that children who have not reached the age of 12 years cannot be charged with an offence. There is an exception, however, for children aged 10 or 11 who can be charged with murder, manslaughter, rape or aggravated sexual assault⁵². In addition, where a child under 14 years of age is charged with an offence, no further proceedings can be taken without the consent of the DPP⁵³.

Although the 2001 Act in general prohibits children under 12 years of age from being charged and convicted of a criminal offence, they do not enjoy total immunity from action being taken against them. The onus is placed on the Gardaí to take a child under 12 years of age to his/her parents or guardian, where they have reasonable grounds for believing that the child has committed an offence with which the child cannot be charged due to the child's age⁵⁴. Where this is not possible the *Gardaí* will arrange for the child to be taken into the custody of the Health Service Executive for the area in which the child normally resides. It is possible that children under 12 years of age who commit criminal offences will be dealt with by the HSE and not the criminal justice system⁵⁵.

Under [section 142 of the Children Act 2001](#), a court may impose a period of detention on a child. Where the child is under 16 years of age the child is detained in a child detention school⁵⁶. Children aged 16 and 17 are detained in child detention centres. However, the court can only impose a detention order where it is satisfied that it is the only suitable way to deal with the child and, for a child under 16 years of age, a place in a children detention school is available.

2.3.2 Provision of information

[Part 6 of the Children Act 2001](#) deals with the issue of treatment of child suspects in police custody in Ireland. Where a child is arrested and brought to a police station on suspicion of having committed an offence, the member in charge of the station⁵⁷ must ensure that the child is informed, without delay, of a number of matters⁵⁸. These matters include:

⁵² [Section 52\(2\) of the Children Act 2001, as amended by s.129 of the Criminal Justice Act 2006.](#)

⁵³ [Section 52\(4\) of the Children Act 2001, as amended by s.129 of the Criminal Justice Act 2006.](#)

⁵⁴ [Section 53 of the 2001 Act as amended by section 130 of the Criminal Justice Act 2006.](#)

⁵⁵ See generally www.citizensinformation.ie/en/justice/children_and_young_offenders/children_and_the_criminal_justice_system_in_ireland.html.

⁵⁶ There are currently three designated children detention schools in Ireland: Trinity House School, Oberstown Boys School and Oberstown Girls School. For further information on [children detention schools](#).

⁵⁷ The "member in charge" of the station is defined by [regulation 4 of the Criminal Justice Act 1984 \(Treatment of Persons in Custody in Garda Stations\) Regulations 1987](#) as the member of the police force who is in charge of the police station. The superintendent in charge of each police district issues instructions from time to time as to

- The offence in respect of which the child has been arrested;
- The child's entitlement to consult a solicitor and how this can be done; and
- That the child's parent or guardian is being informed that the child is in custody in the station and requested to attend at the station without delay.

This information must be given to the child in language that is appropriate to the age and level of understanding of the child⁵⁹.

[Section 58 of the Children Act 2001](#) deals with notification of the arrest of a child to the child's parent or guardian. When a child is arrested and brought to a police station on suspicion of having committed an offence, the member in charge of the station must make sure the parent or guardian of the child is told that the child is in custody in the station, the nature of the offence for which the child has been arrested, and that the child is entitled to consult a solicitor. The member in charge of the station must also request the parent or guardian to attend at the station without delay.

If the member in charge of the station is unable to communicate with a parent or guardian of the child, or the parent or guardian indicates that he or she cannot or will not attend at the station within a reasonable time, the member make sure that the child is informed of this fact without delay. The child must also be informed of the right to have an adult relative or other adult reasonably named by him or her given the information set out above and requested to attend at the station without delay.

The parent or guardian of a child suspected of a criminal offence must also be notified of proceedings⁶⁰. Furthermore, where a child who is in custody in a police station is charged with an offence and the child's parent or guardian is present at the station, the member in charge of the station shall ensure that the parent or the guardian of the child receives a copy of the charge sheet. Moreover, the parents or the guardian of the child must also receive a notification in writing indicating the time, date and place of the child's first appearance before the court. The notification must also describe the consequences of not attending the court proceedings without reasonable excuse.

Where the child's parent or guardian is not present at the station and his or her address is known, the member in charge of the station shall ensure that the parents or the guardian receive as soon as possible a copy of the charge sheet and the notification described above.

However in this case the notification must also include information on whether a recognisance (guarantee) was taken from the child; the details of any person who attended at the station at the request of the child and the name of the solicitor consulted by the child (if the child consulted a solicitor).

Where a child is charged with an indictable (serious) offence, the Children Court may decide to deal with the charge in a summary manner in certain circumstances. This means the child waives the right to a trial by jury, and instead is tried by the judge sitting in the Children Court who may impose more limited penalties in the event of conviction. In deciding whether to waive the right to jury trial in these circumstances, the child is entitled to the assistance of his or her parents or guardians⁶¹.

In any proceedings against a child accused of a criminal offence, the court may suspend the trial and refer the matter to the Health Service Executive for a family welfare conference, with the aim of identifying the supports necessary to address the child's needs, including taking

who is the member in charge of each station in the district. The regulations do not require that the member in charge of the station be of any particular rank.

⁵⁸ [Section 57 of the 2001 Act.](#)

⁵⁹ Ibid.

⁶⁰ [Section 62 of the Children Act 2001.](#)

⁶¹ [Section 75 of the Children Act 2001.](#)

the child into the case of the State. On hearing from the HSE, the court has the power to dismiss the charges against the child⁶².

Where the child accepts responsibility for his or her criminal behaviour, and has had a reasonable chance to consult with his or her parents and obtain legal advice, the court can direct the Probation and Welfare Service to arrange a family conference in respect of the child and adjourn the case until the conference takes place.

The parents or guardian of a child are required to attend all proceedings against the child concerning a criminal offence. If the whereabouts of the parents or guardians are unknown, the child may be accompanied to court by an adult relative or other adult⁶³. There are no other rules or guidelines in Irish law regarding the provision of information to parents/guardians or legal representatives on all aspects of judicial proceedings.

2.3.3 Immediate actions following first contact with police or other relevant authority

In any investigation relating to offences committed by children, members of the police must act taking into account the personal rights of the children, their dignity as human persons, their vulnerability, their age and level of maturity and any possible special needs due to their physical or mental disability⁶⁴.

As noted above, a child has the right to be given certain information, in a manner and in language that he/she can understand. The information provided should include a description of the offence in respect of which he or she has been arrested. The child should also be informed that he or she is entitled to consult a solicitor, that his/her parent or guardian is being informed, that he/she is in custody in the station, and that his/her parent guardian is requested to attend at the station without delay⁶⁵.

As noted above, if the police are unable to contact the child's parent or guardian or that person is unable or unwilling to attend at the police station within a reasonable time, the child must be informed that he/she can nominate an alternative adult⁶⁶. However, there are no guidelines and the police have wide discretion in deciding whether to allow the adult named by the child to attend the interview⁶⁷.

There are no legal time limits to arrest a child in Irish law. However, in respect of very minor criminal offences, the police must issue a summons within six months of the date of commission of the offence⁶⁸.

With respect to access to legal assistance, where a child who is in custody at the police station has asked for a solicitor, the police must call the solicitor as soon as practicable⁶⁹. Where the solicitor cannot be contacted within a reasonable time or is unwilling or unable to attend at the station, the child shall have the opportunity to ask for another solicitor⁷⁰. These principles also apply where the request for a solicitor has been made, on behalf of a child, by a parent, guardian, adult relative or alternative nominated adult. Where a child has asked for a solicitor, the police must provide him/her with the name of one or more solicitors that the police believe may be willing to attend at the station within a reasonable time⁷¹.

⁶² [Section 77 of the Children Act 2001.](#)

⁶³ [Section 91 of the Children Act 2001.](#)

⁶⁴ [Section 55 of the Children Act 2001.](#)

⁶⁵ [section 57 of the Children Act 2001.](#)

⁶⁶ [section 58 of the Children Act 2001.](#)

⁶⁷ Kilkelly, U., *Children's Rights in Ireland: Law, Policy and Practice* (Tottel 2008) at pp.541-542.

⁶⁸ A summons is a document which issues to a person who has been charged with a criminal offence, ordering the person to appear in court on a particular date at a particular time to answer the charge. See the [Irish citizens' information website](#).

⁶⁹ [Section 60\(1\) of the Children Act 2001.](#)

⁷⁰ [section 60\(2\) of the Children Act 2001.](#)

⁷¹ [Section 60\(5\) of the Children Act 2001](#)

With respect to the interviewing of the child suspect, the general rule is that a child who has been detained in a police station can be questioned, or asked to make a written statement, only if a parent or guardian or another adult nominated by the police (but not being a member of the police itself) is present⁷².

However, the police may ask questions of the child or take written statements in the absence of a parent or guardian, where there are reasonable grounds for believing that to delay the questioning would involve a serious risk to persons, property, or gathering of evidence⁷³.

The police may also authorise the exclusion of a parent or guardian during the questioning of the child or the taking of a written statement where the parent or guardian is involved as victim, perpetrator or as a party in the offence that is being investigated. Moreover, the police may also exclude the parent or guardian from the questioning of the child if they believe that he/she would obstruct the course of justice⁷⁴.

Where the child or his or her parent or guardian asks for a solicitor, the child cannot be asked to make a statement in relation to an offence until a reasonable time for the attendance of the solicitor has elapsed⁷⁵. The legal representative is not required to sign the child's statement.

2.3.4 Conditions for pre-trial detention/ custody

When a decision is made to charge a child with a criminal offence, the member in charge of the police station may direct that the child be brought before the next available sitting of the Children Court. This could involve the child remaining in the custody of the police until the following morning⁷⁶.

In this case, the member in charge of a police station shall, as far as practicable, ensure that any child while detained in the station shall not associate with an adult who is also detained there⁷⁷. Furthermore a child must not be kept in a cell unless there is no other secure accommodation available. However, it is notable that there is no absolute prohibition on separating children in police custody from adults who are also detained. It is also clear that a child may be kept in a cell where there is no other secure accommodation available.

With respect to the release of a child on bail, the general rule is that when a child is arrested and brought to a police station, the member in charge of the station may release the child on bail with a guarantee which sets out the terms and conditions for their appearance before the Children Court⁷⁸.

The Children Court was established by the Children Act 2001 in order to separate criminal court proceedings involving children from those which involve adults.⁷⁹ The Children Court has the power to deal with most criminal offences which have been committed by children. Hearings for all minor offences are held in the Children Court, as are most serious (indictable) offences⁸⁰. Section 88 of the Children Act 2001 establishes the following rules with respect to custody of children.

The Children Court has the power to remand a child in custody

⁷² [Section 61\(1\) of the Children Act 2001.](#)

⁷³ [Section 61\(2\) of Children Act 2001.](#)

⁷⁴ Ibid.

⁷⁵ [Section 61\(5\) of the Children Act 2001.](#)

⁷⁶ See www.citizensinformation.ie/en/justice/children_and_young_offenders/treatment_of_child_suspects_in_garda_custody.html.

⁷⁷ [Section 56 of the Children Act 2001.](#)

⁷⁸ [Section 68 of the Children Act 2001.](#)

⁷⁹ See generally www.citizensinformation.ie/en/justice/courts_system/children_court.html.

⁸⁰ There are, however, some exceptions to this rule; the crime of manslaughter, for example, must be dealt with in the Central Criminal Court. This is provided for by [section 75\(1\) of the Children Act 2001](#).

- If he or she is charged with or found guilty of one or more offences;
- If he or she is being sent forward for trial; or
- If the Court has postponed a decision regarding the child's situation.

Where the court remands a child in custody it must explain the reasons for its decision in open court in language that is appropriate to the age and level of understanding of the child.

Only designated places can be used for the custody of a child. Such remand centres are designated by the Minister of Justice and can be any place including part of a children detention school, which in the Minister's opinion is suitable for the custody of children. The designation must specify the sex and age of children who may be remanded to the remand centre.

Males aged 16 or 17 years may be remanded to Saint Patrick's Institution until places in a remand centre are available for males in that age group. Saint Patrick's Institution is a penal institution which detains males up to the age of 21. However, on 2 April 2012 the Minister for Children announced that capital funding of approximately €50 million over three years had been secured to end the detention of 16 and 17 year old boys in St. Patrick's Institution⁸¹. As of 1 May 2012 all newly remanded or sentenced 16 year olds in Ireland will be detained in the children's detention facilities, although it will not be until 2014 that detention of 16 and 17 year old males in St Patrick's Institution completely ceases.

2.3.5 Protection of private and family life

A number of protection measures exist with respect to child suspects. In relation to any proceedings before the Children Court against a child, no report which reveals the name, address or school of any child concerned in the proceedings or includes any particulars likely to lead to the identification of any such child may be published or included in a broadcast or any other form of communication⁸². In addition, no photographs or videos of or including any child in the proceedings or which is likely to lead to his or her identification may be published or included.

Publication of any information in breach of the above prohibition is a criminal offence which is punishable by a maximum fine of €12,700 or three years imprisonment, or both⁸³.

Only the officers of the Court, the parents, the guardian or another adult if the parents cannot be found can attend the hearing at the Children Court., Persons directly concerned in the proceedings and bona fide representatives of the press can also attend, along with other persons permitted to remain at the discretion of the court⁸⁴.

However, the court may make an exception to such a rule in order to avoid injustice to the child; for the purpose of apprehending the child, where the child is unlawfully at large; or in the public interest. At the trial of a child suspect under the age of 17, the child may be asked questions through an intermediary (go-between) if necessary and if the mental condition and age of the child require it, but only if such procedure is strictly necessary and only in the interests of justice⁸⁵. However, where the child is the accused/suspect, the option of giving evidence by videolink is expressly excluded⁸⁶.

2.3.6 Alternatives to judicial proceedings

[Part 4 of the Children Act 2001](#) placed the long-running Garda Juvenile Diversion Programme on a statutory footing in Ireland. The basic principle underpinning this diversion

⁸¹ [Ireland \(2012\) Department of Children and Youth Affairs, Press release "Minister Fitzgerald to End Detention of 16 and 17 Year Olds in St. Patrick's Institution" \(2 April 2012\).](#)

⁸² [Section 93 of the Children Act 2001 as amended by s.139 of the Criminal Justice Act 2006.](#)

⁸³ [Sections 93\(4\) and 51\(3\) of the Children Act 2001.](#)

⁸⁴ [Section 94\(1\) of the Children Act 2001.](#)

⁸⁵ [Section 14 of the Criminal Evidence Act 1992.](#)

⁸⁶ Ibid.

programme is that any child who) has committed an offence, or has behaved antisocially and who accepts responsibility for his or her criminal or anti-social behaviour can be admitted to a diversion programme⁸⁷.

The objective of the juvenile diversion programme is to divert any child who accepts responsibility for his or her criminal or anti-social behaviour from committing further offences or engaging in further anti-social behaviour⁸⁸. This objective should be achieved primarily by giving the child a caution and, where appropriate, by placing him or her under the supervision of a juvenile liaison officer and by convening a conference to be attended by the child, family members and other concerned persons⁸⁹.

Before a child is admitted, the Director of the juvenile liaison programme must be satisfied that the admission of the child to the programme would be appropriate, in the best interests of the child and not inconsistent with the interests of society and any victim⁹⁰. It is possible for the Minister of Justice to determine that some criminal behaviours of a serious nature will preclude the possibility of the child being admitted to the programme⁹¹. However, to date no such regulation has been made.

Any child who has been admitted to the Garda Juvenile Diversion Programme is protected from prosecution for the criminal behaviour which resulted in his/her admission to the programme. Any acceptance by the child of responsibility for their criminal behaviour in respect of which they have been admitted to the programme will not be available in any civil or criminal proceedings against that child. However, it may be used where a court is considering the sentence to be imposed in respect of an offence committed after admission to the programme⁹².

The identity of any child who is either admitted to or considered for admission to the programme is not disclosed publicly. Any person who publishes or broadcasts such information is guilty of a criminal offence.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

As far as practicable, the hearing of proceedings in the Children Court shall be arranged so that the time that the persons (whether adult or child) involved have to wait for the proceedings to be heard is kept to a minimum⁹³.

As noted above, the Children Court was established by the Children Act 2001 in order to separate criminal court proceedings involving children from those which involve adults⁹⁴. In general, the Children Court takes place in the District Court building but it should take place in a different room or building or on a different day or time from other courts⁹⁵. In addition, as far as practicable, sittings of the court should be arranged so that persons attending are not brought into contact with persons in attendance at a sitting of any other court. Judges who sit in the Children Court are required to undergo special training or education as deemed necessary by the President of the District Court.

There does not appear to be any specific provision in Irish law regarding preparation or support of children when attending proceedings such as interviews or court sessions.

⁸⁷ [Section 18 of the Children Act 2001 \(as amended by section 123 of the Criminal Justice Act 2006\).](#)

⁸⁸ [section 19 of the Children Act 2001 \(as amended by section 124 of the Criminal Justice Act 2006\).](#)

⁸⁹ [Section 19\(2\) of the Children Act 2001.](#)

⁹⁰ [Section 23\(2\) of the Children Act 2001.](#)

⁹¹ [Section 23\(3\) of the Children Act 2001.](#)

⁹² [Section 126 of the Criminal Justice Act 2006](#); see also

www.citizensinformation.ie/en/justice/children_and_young_offenders/garda_juvenile_diversion_programme.html.

⁹³ [Section 73 of the Children Act 2001.](#)

⁹⁴ See generally www.citizensinformation.ie/en/justice/courts_system/children_court.html.

⁹⁵ [Section 71\(1\)\(b\) of the Children Act 2001.](#)

The Children Act 2001 sets out a number of measures available to the Children Court as a response to offending behaviour. A court considering a criminal charge against a child has a number of options, including:

- To request the attendance in court of a representative of the HSE;
- Dismiss the case on its merits;
- Direct the Health Service Executive to convene a family welfare conference in respect of the child; or
- Direct the probation and welfare service to arrange for the convening of a family conference in respect of the child⁹⁶.

[Section 77 of the Children Act 2001](#) deals with the HSE Family Welfare Conference. The function of a family welfare conference is to decide if the child is in need of special care or protection and if so, to recommend to the HSE that it applies for a special care order. If not, the conference may make appropriate recommendations to the HSE, including, if necessary, a recommendation that the HSE apply for a care order or a supervision order. A care order is a court order which removes a child from the family home and places the child in the care of the HSE until the child reaches 18 years of age⁹⁷. A supervision order is a court order which does not remove the child from the family home but which allows the HSE to visit the family home at any time to monitor the situation in the home in order to ensure the child's wellbeing⁹⁸. The conference may be attended by the child, the parents or guardians, any guardian *ad litem*⁹⁹, other relatives agreed by the co-ordinator after consulting the child and the parents, HSE officials and any other person who could make a positive contribution because of knowledge of the child or the family or because of particular expertise. When the HSE receives the conference recommendation, it may:

- Apply for a special care order; or
- Apply for a supervision order or a care order; or
- Provide any appropriate help or service for the child or his/her family.

Family welfare conferences have legal privilege - this means that any information, statement or admission disclosed at such a conference will not be admissible in evidence in court¹⁰⁰.

[Section 78 of the Children Act 2001](#) deals with the probation-led family conference. The probation-led family conference is based on principles of restorative justice which, in essence, means healing the harm done to victims, while holding the offender accountable for his or her actions. The aim of the family conference is to divert the young person, who has accepted responsibility for their behaviour, from court, conviction and custody, and from committing further offences. A court ordered family conference takes place at the stage when a young person is charged with an offence and appears in court:

- If the young person accepts responsibility; and
- The Court considers an action plan desirable; and
- The child and child's family agree to participate; then
- The Court may direct the Probation and Welfare Service to arrange for the convening of a family conference.

⁹⁶ [Section 76A of the Children Act 2001, as inserted by section 132 of the Criminal Justice Act 2006.](#)

⁹⁷ See [section 18 of the Child Care Act 1991.](#)

⁹⁸ See [section 19 of the Child Care Act 1991.](#)

⁹⁹ A guardian ad litem is an independent person appointed by the court to represent the wishes and interests of a child in court proceedings concerning the care of the child under the Child Care Act 1991. See further [section 26 of the Child Care Act 1991.](#)

¹⁰⁰ See [Irish citizens' information website.](#)

The family conference is held no more than 28 days later. At the meeting, an opportunity is given to the young person and the victim to express their views, as well as family members, and others participating. No statement made or information obtained from the conference is admissible as evidence in court. An action plan made as a result of the family conference may include:

- An apology to the victim;
- Financial or other reparation to any victim;
- An initiative within the child's family and community that might help to prevent re-offending.

The action plan is then submitted to the court for approval or amendment. The court can order the young person to comply with the action plan and be supervised by the Probation and Welfare Service. The court then adjourns the case for a period of up to six months, when a review takes place. If the court is satisfied that the child complied with the plan, then the charge may be dismissed. If the child fails to comply with the plan, the probation officer can apply to have the case returned to court and the court can resume proceedings and progress to the next stage¹⁰¹.

2.3.8 Protecting the child during interviews and when giving testimony

The general safeguards designed to protect the child during interview are set out above at [2.3.2](#) and [2.3.3](#). There are no provisions in Irish law which address how to ensure that the information gathered is admissible in court.

Thus as a starting point, as mentioned in [section 2.3.7](#), the Children Court takes place in the District Court building and should be kept separated from adult cases¹⁰². Judges who sit in the Children Court are also required to undergo special training or education.

Any court when dealing with children charged with offences must have regard to the fact that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them. Furthermore, criminal proceedings must not be used solely to provide any assistance or service needed to care for or protect a child¹⁰³.

2.3.9 Right to be heard and to participate in criminal proceedings

The participation of the child in criminal proceedings through the provision of information is addressed above at [section 2.1.2](#).

As noted above, any court when dealing with children charged with offences shall have regard to the principle that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them.¹⁰⁴ The parents or guardians of a child shall, as a general rule, be required to attend at all stage of proceedings against the child for an offence¹⁰⁵. However, the court may excuse a parent or guardian of a child from attending where, in the opinion of the court, the interests of justice would not be served by such attendance¹⁰⁶. If a parent or guardian of the child does not attend court for any reason, or the whereabouts of

¹⁰¹ See

www.probation.ie/pws/websitepublishing.nsf/Content/Probation+Work+and+Research~Probation+work+with+young+people~Family+Conference.

¹⁰² [Section 71\(1\)\(b\) of the 2001 Act.](#)

¹⁰³ [Section 96 of the Children Act 2001.](#)

¹⁰⁴ [Section 96 of the Children Act 2001.](#)

¹⁰⁵ [Section 91\(1\) of the Children Act 2001.](#)

¹⁰⁶ [Section 91\(5\) of the Children Act 2001.](#)

the parent or guardian is unknown, the child may be accompanied during the proceedings by an adult relative or other adult¹⁰⁷.

A 2006 report pointed out that the Children Act 2001 makes no provision for an advocate (who may not necessarily be a lawyer) to assist a child facing criminal charges, if a parent or other adult is unavailable for any reason. The report stated that “in practice, some young people are charged and sentenced without the help and support of a responsible and experienced adult, who could act as an advocate for their interests¹⁰⁸”. At present, there is no provision in Irish law for the assistance of such an advocate, or for the provision of specific material, to enable the child understand the general thrust of what is being said in court.

2.3.10 Right to legal counsel, legal assistance and representation

In general, Irish law provides that an accused person is entitled to legal representation in any criminal proceedings if he or she is in a position to pay privately for it. If the accused does not have the resources for this, a number of decisions by the Supreme Court have established a constitutional right to legal aid in cases where the charges are serious or the consequences of conviction are likely to be serious and the interests of justice require that he or she be represented¹⁰⁹. There is a duty on trial judges to inform accused persons of their right to legal aid, so that they can, if they wish, apply for it under the [Criminal Justice \(Legal Aid\) 1962](#). Juveniles generally do not have the means to pay for their own representation, and because of their age and inexperience are at a disadvantage in understanding procedures and conducting a defence. In most cases where accused juveniles apply for legal aid, it is therefore awarded¹¹⁰.

An application for legal aid is usually made on the first court appearance and provided legal aid is granted, legal counsel will then be provided to the child. Although there are no formal rules providing for how legal representation for the child is arranged, in practice it appears that the child does have a say in who represents them, in consultation with the child’s parents and/or guardians where appropriate.

2.3.11 Remedies or compensation for violation of rights and failure to act

Children in the court process, and those detained in places other than in Children Detention Schools, may make a complaint to the Ombudsman for Children in respect of violations of rights and failure to act¹¹¹. The Office of the Ombudsman for Children was established by the [Ombudsman for Children Act 2002](#). One of the functions of the Ombudsman for Children in Ireland is to promote the rights and welfare of children and to examine and investigate complaints by children against public bodies.¹¹² However, certain areas are excluded from the remit of the Ombudsman for Children in this regard. For example, the Ombudsman for Children was originally excluded from considering complaints in relation to children in detention, but this was recently changed to allow the Ombudsman consider such complaints¹¹³.

¹⁰⁷ [Section 91\(6\) of the Children Act 2001](#).

¹⁰⁸ [Ireland, Law Society Law Reform Committee \(2006\), *Rights Based Child Law: The Case for Reform* \(Dublin 2006\) at p.85](#).

¹⁰⁹ See eg *State (Healy) v Donoghue* [1976] 1 IR 325.

¹¹⁰ [Ireland, Law Society Law Reform Committee \(2006\), *Rights Based Child Law: The Case for Reform* \(Dublin 2006\) at p.84](#).

¹¹¹ Ireland, Office of the Ombudsman for Children (2007) *Barriers to the Realisation of Children’s Rights in Ireland* (Dublin 2007) at p.27. See also Ireland, Office of the Ombudsman for Children *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland’s second report to the Committee* (April 2006).

¹¹² [Chapter 2, Part 4 of the Ombudsman for Children Act 2002](#).

¹¹³ Section 11(1)(e)(iii) of the Ombudsman for Children Act 2002 originally provided that the Ombudsman for Children could not consider any complaints in relation to children in custody or detention; however, this was

The Office of the Inspector of Prisons was established by [Part 5 of the Prisons Act 2007](#). Although it is not the function of the Inspector to investigate complaints from individual prisoners, he may examine the circumstances relating to a complaint where necessary for performing his functions in general.¹¹⁴ On 16 October 2012 the Inspector of Prisons published a report on St Patrick's Institution, which at the time held boys aged 16 and 17. The report was highly critical of certain practices in St Patrick's Institution and referred to various complaints which had been made to the Inspector of Prisons regarding these complaints¹¹⁵. Therefore while the Inspector of Prisons may not investigate individual complaints, he may have regard to those complaints in the performance of his functions in general, which includes inspection of prisons and reports on those inspections.

A child may also seek judicial review in respect of violations of rights and failure to act in the course of the court process and/or detention. A child who is found by the court to have been unlawfully detained may seek damages for wrongful detention.

removed by the [Ombudsman for Children Act 2002 \(Section 11\(2\)\(a\)\) Order 2012 \(SI No.210 of 2012\)](#) which came into force on 1 July 2012.

¹¹⁴ See [section 31\(6\) of the Prisons Act 2007](#).

¹¹⁵ Ireland, Inspector of Prisons, (2012) *Report on an Inspection of St Patrick's Institution* (June 2012) at pp.40-42.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

[Section 2.3.2](#) above sets out the rights of parents or guardians and legal representatives to be informed on all aspects of judicial proceedings.

No specific measures are in place in Ireland to ensure that a child effectively receives relevant information after judicial proceedings, or regarding how the child's lawyer or legal representative communicates and explains the given decision or judgment to the child. A decision of the Children Court or the District Court committing a child to a children detention school or a designated place of detention may be appealed to the Circuit Court¹¹⁶. In practice, it appears that information on the right to appeal is provided by the child's legal representatives although no rules or guidelines provide for a specific procedure in this regard.

3.1.2 Sentencing

Where a court is satisfied of the guilt of a child charged with an offence it may deal with the case by making one or more than one of the following orders:

A conditional discharge order¹¹⁷;

- An order that the child pay a fine or costs;
- An order that the parent or guardian be bound over¹¹⁸;
- A compensation order;
- A parental supervision order;
- An order that the parent or guardian pay compensation;
- An order imposing a community sanction¹¹⁹;
- An order that the child be detained in a children detention school or children detention centre;
- A detention and supervision order¹²⁰.

¹¹⁶ [Section 265 of the Children Act 2001](#).

¹¹⁷ This is a dismissal of the charge where the court adds a number of conditions to the dismissal such as supervision, payment of compensation to the victim, etc.

¹¹⁸ The court can order the parent or guardian to be "bound over" which means that he or she will exercise proper control over the child. The court can impose a financial guarantee for a specified period of time as part of the order, and if the child commits another criminal offence during that time and the court is satisfied that the failure of the parents to exercise control was a factor, the guarantee must be paid over.

¹¹⁹ A community sanction includes a community service order which requires the child to perform work in the community; a day centre order which requires a child to attend at a specified day centre in order to take part in a course or activity for the benefit of the child; a probation (training or activities programme) order which requires the child to complete a particular course of training or activity; a probation (intensive supervision) order which requires the child to undergo intensive supervision; a probation (residential supervision) order which requires the child to live in a designated hostel residence; a suitable person (care and supervision) order which requires the child to reside under the care and supervision of a specified person; a mentor (family support) order which assigns a mentor to help, advise and support the child and the child's family in order to prevent the child from committing further offences and to monitor the child's behaviour; a restriction on movement order which may include a curfew or restrict a child from being in certain specified locations; or a dual order which requires the child to be under the supervision of a probation and welfare officer for a specified period, or to attend at a day centre for a specified period not exceeding 90 days, and which also restricts the child's movements for a specified period not exceeding 6 months. See [section 115 of the Children Act 2001](#).

¹²⁰ [Section 98 of the Children Act 2001](#).

Any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits¹²¹. The penalty should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances. In particular, a period of detention should be imposed only as a measure of last resort¹²².

A court may take into consideration as mitigating factors a child's age and level of maturity in determining the nature of any penalty imposed, unless the penalty is fixed by law¹²³.

Where a court is satisfied of the guilt of a child whom it has dealt with summarily (i.e., without a jury) for any offence and is of the opinion that the appropriate penalty is or includes a fine, the fine shall not exceed half the amount which would be imposed following the same procedure on a person of full age and capacity¹²⁴.

These are the only specific provisions regarding the powers of the court to sentence children. However, the general rules of sentencing would also apply; for example, a court has a discretion to reduce a sentence for an early plea of guilt, regardless of whether the offender is an adult or a child.

3.1.3 Deprivation of liberty

Detention cannot be imposed unless the court is satisfied that it is the only suitable manner of dealing with the child and a place in a children detention school is available for the child¹²⁵. There are no different rules for detention of unaccompanied minors in the context of criminal proceedings.

The duration of detention and rules on release depend on the type of crime the child has been convicted of. There is no maximum period of detention specified in respect of children in Irish law.

Where the court imposes a period of detention on a child it shall:

- where the child is under 16 years of age, order the child to be detained in a children detention school;
- where the child is between 16 and 18 years of age, order the child to be detained in a children detention centre¹²⁶.

A child who is detained is generally entitled to maintain contact with family outside, by telephone calls, letters and visits. A sentenced prisoner is entitled to one visit per week of 30 minutes' duration and a remand prisoner is entitled to a visit on any week day of 15 minutes' duration. If the sentenced prisoner is under 18 years of age, he/she is entitled to two visits per week of 30 minutes' duration. However, in practice, additional or longer visits may be granted where circumstances permit, at the Governor's discretion¹²⁷.

The conditions of children detention schools and centres is addressed above at [section 2.3.4](#).

The [Irish Youth Justice Service has issued Standards and Criteria for the Children Detention Schools](#), which provide that each centre or school must have a written care plan for each child in their care. The Standards require that individual plans are developed in consultation with parents/ guardians and the child concerned; that it is subject to regular review; that the plan stresses the need for regular family contact and prepares the child for leaving care; that

¹²¹ [Section 96\(2\) of the Children Act 2001.](#)

¹²² [Section 96\(2\) of the Children Act 2001.](#)

¹²³ [Section 96\(3\) of the Children Act 2001.](#)

¹²⁴ [Section 108 of the Children Act 2001.](#)

¹²⁵ [Section 143 of the Children Act 2001.](#)

¹²⁶ [Section 147 of the Children Act 2001.](#)

¹²⁷ See www.iprt.ie/contents/1510.

the plan promotes the general welfare of the child including appropriate provision to meet his/her educational, health, emotional and psychological needs¹²⁸.

3.1.4 Criminal records

A child's criminal record may be cleared provided the following conditions are met:

- The offence was committed before the child reached the age of 18 years;
- The offence is not an offence required to be tried by the Central Criminal Court¹²⁹ ;
- A period of not less than 3 years has passed since the finding of guilt; and
- The child has not committed any further offences in that 3-year period¹³⁰.

Outside of the specific procedure provided by section 258, there is no provision in Irish law to ensure that criminal records of children are non-disclosable outside the justice system on reaching the age of majority.

¹²⁸ [Ireland, Irish Youth Justice Service \(2008\) *Standards and Criteria for Children Detention Schools* \(Dublin 2008\) available at: \[www.hiqa.ie/system/files/Standards_and_Criteria_for_Children_Detention_Schools_2008%20.pdf\]\(http://www.hiqa.ie/system/files/Standards_and_Criteria_for_Children_Detention_Schools_2008%20.pdf\).](http://www.hiqa.ie/system/files/Standards_and_Criteria_for_Children_Detention_Schools_2008%20.pdf)

¹²⁹ Offences which must be tried by the Central Criminal Court refer to the most serious criminal offences such as murder and rape.

¹³⁰ [Section 258 of the Children Act 2001.](#)

4 Strengths and potential gaps

Shannon has suggested that the criminal justice system in Ireland has “a patchy history when it comes to dealing with children¹³¹”. Kilkelly agrees that “children in conflict with the law have been a neglected group in Irish law and society for many years¹³²”. However, there is general agreement that recent years have seen a wide range of positive reforms in youth justice law and practice. These reforms are underpinned by the Children Act 2001, which signalled “a movement towards a more progressive youth justice system¹³³”, in particular through the Juvenile Diversion Programme, the emphasis on non-custodial sanctions where possible and the use of imprisonment as a last resort.

The establishment of the Irish Youth Justice Service with responsibility for leading and driving reform in the area of youth justice is also regarded as a positive development. The Irish Youth Justice Service aims to improve the delivery of youth justice services and reduce youth offending by focusing on diversion and rehabilitation involving greater use of community-based interventions and the promotion of initiatives to deal with young people who offend. Providing a safe and secure environment for detained children and supporting their early re-integration back into the community is also a key function. The recent extension of the remit of the Ombudsman for Children to include investigation of complaints in relation to children in custody and detention is a positive development in this regard.

Other strengths of the Irish system include the Court Accompaniment Support Service for child victims of crime which is offered by CARI, as well as the provisions of Irish law allowing child victims and witnesses give evidence by video-link or through an intermediary (go-between), which is in accordance with the recommendations of the Council of Europe’s Child Friendly Justice Guidelines on the organisation of proceedings and giving of evidence by children.

Despite the progress that has been made, however, gaps remain in terms of how Irish law deals with children in criminal proceedings. For example, the lack of a specific provision in the Garda Charter relating to provision of information to children who are victims of crime, and the absence of any rules or guidelines on the provision of information to vulnerable victims and witnesses who are children appears to fall short of the Council of Europe’s Child Friendly Justice Guidelines on the provision of information and advice as a key element of child-friendly justice. The need for Irish law to address secondary victimisation and the importance of ensuring a child friendly environment was expressly acknowledged by the [Joint Committee on Child Protection Report on Child Protection](#) in 2006, yet these recommendations remain unimplemented in a number of important respects. Calls for formal training programmes for prosecutors, defence lawyers and judges to enable them to perform their respective functions in the manner least traumatic for child victims and witnesses have also gone unheeded, contrary to the recommendations of the Council of Europe’s Child Friendly Justice Guidelines on the training of professionals.

In 2007, the Office of the Ombudsman for Children identified a number of barriers to the realisation of children’s rights in Ireland, including:

- The need to establish effective, independent complaints mechanisms and systems to monitor and regulate services for children;
- The absence of dedicated supports and services for children, the fragmented co-ordination of such services and the failure to mainstream positive initiatives.¹³⁴

¹³¹ Shannon, G., *Child Law* (2nd ed, Round Hall, 2010) at p.625.

¹³² Kilkelly, U., *Children’s Rights in Ireland: Law, Policy and Practice* (Tottel 2008) at p.529.

¹³³ Shannon, G., *Child Law* (2nd ed, Round Hall, 2010) at p.626.

¹³⁴ [Ireland, Office of the Ombudsman for Children \(2007\) Barriers to the Realisation of Children’s Rights in Ireland \(Dublin 2007\) at pp.169-177.](#)



While recent years have seen some progress in respect of child-friendly justice in criminal proceedings in Ireland, further reforms are necessary in order to ensure full compliance with the Council of Europe's Child Friendly Justice Guidelines.

Conclusions

The Youth Justice System of Ireland is based on the [Children Act 2001](#). The institutions involved, as well as relevant laws and policies, vary depending on whether the child is a suspect or victim. For the most part witnesses are treated in the same way as victims though victims' rights are more extensive. The Irish legislator has also established several institutions in the area of youth justice and welfare (e.g., Irish Youth Justice Service, The Health Service Executive etc.).

Children can report crimes in Ireland. As with adults, child victims and child witnesses have the right to receive information from the moment they report a crime and throughout criminal proceedings. Recently measures to ensure that all victims, adults and children, are protected from harm have been introduced in legislation. A few mechanisms to protect children from secondary victimisation, especially in cases of sexual abuse, have been identified.

As with adults, child victims and witnesses in criminal proceedings do not have right to free legal counsel, assistance or representation. Authorities are not obliged to allow the presence of legal advisors during interviews or during the process. With regard to compensation, children and adults can seek compensation from the offender and from the State only in certain circumstances.

The age of criminal responsibility in Ireland is 12 years of age. There is an exception, however, for children aged 10 or 11 in case of particularly serious offenses. Apart from this case, it is possible that children under 12 years of age who commit criminal offences will be taken into the custody of the Health Service Executive.

Court sessions in cases where child offenders are involved are private and there is a general prohibition to disseminate information which is collected during the court proceedings. Several other measures have been introduced in order to minimise the burden of court proceedings upon child suspects/defendants. These include, *inter alia*, the participation of the parents or guardians of a child at all stage of proceedings; special training or education required for judges who sit in the Children Court.

Child offenders in Ireland may be subject to corrective measures (e.g., an order that the child pay a fine, an order imposing a community sanction, and, as a measure of last resort, a detention and supervision order). No maximum period of detention is specified in respect of children in Irish law. Child offenders who are deprived of their liberty are held in separate facilities from adult offenders.

The strengths in the Irish system are related to a wide range of positive reforms in youth justice law and practice passed in recent years, including the adoption of the Children Act 2001 and the establishment of the Irish Youth Justice Service, with responsibility for leading and driving reform in the area of youth justice. The gaps are mostly related to decision making processes and services for children (e.g., invisibility of children in decision making processes, lack of complaints mechanisms and systems to monitor and regulate services for children, and failure to mainstream positive initiatives).

Annex – Legislation reviewed during the writing of this report

- Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012
- Prisons Act 2007
- Ombudsman for Children Act 2002
- Children Act 2001
- Criminal Justice Act 1999
- Domestic Violence Act 1996
- Criminal Justice Act 1993
- Criminal Evidence Act 1992
- Child Care Act 1991
- Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations) Regulations 1987
- Criminal Justice (Legal Aid) Act 1962
- Children Act 1908