

Submission to the Commission on the Future of Policing in Ireland

2 February 2018



Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Ag Eisteacht
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
ASH Ireland
Assoc. for Criminal Justice Research and Development (ACJRD)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Autism Network Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Care Leavers' Network
Catholic Guides of Ireland
Child Care Law Reporting Project
Childhood Development Initiative
Children in Hospital Ireland
COPE Galway
Cork Life Centre
Crosscare
Cybersafe
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Down Syndrome Ireland
Dublin Rape Crisis Centre
Early Childhood Ireland
Educate Together
EPIC
EQUATE
Extern Ireland
Focus Ireland
Foróige
Future Voices Ireland
Gaelscoileanna Teo
GLEN- the LGBTI equality network
Immigrant Council of Ireland
Inclusion Ireland
Independent Hospitals Association of Ireland
Institute of Guidance Counsellors
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Centre for Human Rights, NUI Galway
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation (IYF)
Jack & Jill Children's Foundation
Jesuit Centre for Faith and Justice
Jigsaw
Kids' Own Publishing Partnership
Law Centre for Children and Young People
Lifestart National Office
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mounttown Neighbourhood Youth and Family Project
MyMind
National Childhood Network
National Museum of Childhood
National Organisation for the Treatment of Abusers (NOTA)
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
One Family
One in Four
Parentstop
Pavee Point
Peter McVerry Trust
Rape Crisis Network Ireland (RCNI)
Realt Beag
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
Sonas Domestic Violence Charity
Special Needs Parents Association
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
Step by Step Child & Family Project
Suas Educational Development
Teachers' Union of Ireland
Terenure Rugby Football Club
The Ark, A Cultural Centre for Children
The Prevention and Early Intervention Network
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
youngballymun
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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1. Introduction

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

The Children's Rights Alliance welcomes the opportunity to make a submission to the Commission on the Future of Policing in Ireland to assist in its work in further developing a more transparent, accountable and effective service of policing within the State. In particular, the Alliance wishes to highlight a number of important instruments outlining key children's rights principles that should inform the work of members of An Garda Síochána when dealing with children, whether they are children in custody or interact with the police as a victim or crime or a witness.

This submission relates to the Commission's Terms of Reference in terms of police training and ensuring that the force is responsive to the particular needs of children who come into contact with it. It outlines a number of general children's rights principles that should be considered by the Commission when formulating any child rights specific recommendations. We also point to key human rights instruments and guidance which could help to inform the work of An Garda Síochána and ensure it complies with its children's rights obligations through future training.

2. The Best Interests of the Child

Article 3(1) of the UN Convention on the Rights of the Child (UNCRC), which Ireland ratified in 1992, obliges States to:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of a child shall be a primary consideration.¹

The concept of the child's best interests is a procedural rule which should be followed in all decisions that will have an impact on the rights of the child. The Committee on the Rights of the Child has set out in its *General Comment No. 14* how this complex principle should be interpreted.² In its guidance on the best interests principle, the Committee outlines that the 'overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders' and makes clear that the best interests has implications for 'individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children'.³ The Committee states that the principle should be determined on a case-by-case basis and 'should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs'.⁴

The Council of Europe Guidelines on Child Friendly Justice, adopted by the Committee of Ministers in 2010, also advocate a 'best interest' approach in favour of children. They specifically call on States to:

... ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.⁵

The guidelines recommend a focus on 'necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them'.⁶

It is welcome that the Criminal Justice (Victims of Crime) Act 2017 provides that a member of the Garda Síochána has to take into account the best interests of the child when conducting an assessment of the victim to determine 'whether and to what extent the child might benefit from protection measures or special measures'.⁷ However, further guidance will be necessary to ensure that members of the Garda Síochána know how to fulfil this legal obligation and the factors that should be considered when making a decision informed by the child's best interests.

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 3.

2 UN Committee on the Rights of the Child *General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14.

3 *ibid*, para. 12(b).

4 *ibid*, para. 32.

5 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, Explanatory Memoranda* (Council of Europe Publishing 2010) Part V.

6 *ibid*, para 14.

7 Section 15(7) of the Criminal Justice (Victims of Crime) Act 2017.

3. Voice of the Child

Article 12 of the UNCRC states that:

1. State Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The UN Committee on the Rights of the Child has stated that all children involved in judicial and administrative proceedings must be informed in a child friendly manner about their right to be heard and the available methods for doing so.⁸ In addition, children who are victims or are witnesses to crime must be given the opportunity to exercise fully their right to express their view.⁹ The right of the child to be heard includes the right to give their views freely, without any pressure and/or manipulation.¹⁰

However, many professionals working with children are not adequately trained in how to communicate with children or do not 'have knowledge of children's rights and procedural matters in this context'.¹¹ Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.¹²

8 Committee on the Rights of the Child, *Report on the forty-third session*, September 2006, Day of General Discussion, Recommendations, para 40.

9 The UN Economic and Social Council Resolution, *Guidelines on Justice Involving Child Victims and Witnesses of Crime* UNODC/UNICEF/ 2005/20 of 22 July 2005.

10 UN Committee on the Rights of the Child *General Comment No. 12 on the Right of the Child to be heard* (CRC/C/GC/12, 1 July 2009), para 132.

11 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, Explanatory Memoranda* (Council of Europe Publishing 2010) para Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, para 67.

12 *ibid*, para 64.

4. Administration of Juvenile Justice

The child's right to due process and the use of diversion measures in place of detention are also provided for by Article 40(3) of the UNCRC:

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

... (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

The Council of Europe Child Friendly Justice Guidelines reflect Article 40 pertaining to the rights of the child in the administration of juvenile justice. They provide explicit guidance on police interaction with children:

Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.¹³

While all law enforcement officials are obliged to take account of the rights of the children they encounter, the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules') highlight the need for a specialised service in certain instances:

In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.¹⁴

The Garda Diversion Programme provides this type of specialised service and works with children on a daily basis, however, it is important that both Gardaí involved in restorative justice programmes as well as other members of the Garda Síochána receive specific training on child rights and continuous professional development training.

13 *ibid*, para 27.

14 UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules) (29 November 1985) A/RES/40/33.

5. Recommendations



- Specialised child rights training should be developed and incorporated into general training for new recruits and existing members of the Gardaí to ensure that they are aware of their obligations to children in custody or child victims and witnesses. In particular the training should encompass:
 - How to make decisions on the best interests of an individual child. Given the complexity of the best interests principle, a protocol setting out the factors to be considered when making a decision in a child's best interests should be developed and new and existing members of the Gardaí should receive adequate training on how to apply this principle in practice.
 - How to ensure that children understand the questions asked by Gardaí and are able to express their position clearly. In particular, the *Child Friendly Justice Guidelines* recommend training in communication skills, in using child-friendly language and developing knowledge on child psychology, as necessary for all professionals working with children police, lawyers, judges, mediators, social workers and other experts.¹⁵ This training should be incorporated into the training for new recruits as well as for existing members of the force.

15 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, Explanatory Memoranda* (Council of Europe Publishing 2010) para Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, para. 67.