



IPRT
Irish Penal Reform Trust

Children's Rights Behind Bars

National Report - Ireland

Executive Summary



The Irish Penal Reform Trust

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and to the progressive reform of the penal system based on evidence-led policies.

Children's Rights Behind Bars

Children's Rights Behind Bars, of which IPRT is the Irish partner, is a collaboration between 16 European and International organisations that work for children's rights, led by Defence for Children International (DCI). The goal is to increase the respect of human rights of children deprived of liberty and improve the implementation of international juvenile justice standards to protect the rights and needs of incarcerated children. The project is financed by the European Commission within the framework of the Criminal Justice Programme.

The National Report on the implementation of juvenile detention facilities' monitoring and complaint mechanisms in Ireland was completed for IPRT by Prof Ursula Kilkelly, Professor of Law, Director of the Child Law Clinic and Dean of the School of Law at University College Cork. Louise Forde, currently undertaking doctoral research with Prof Kilkelly, was the key researcher on this project.

The full report is available at www.childrensrightsbehindbars.eu

Purpose and Background

1. The purpose of this report is to provide a comprehensive picture of the legislative and policy landscape relating to the detention of children in Ireland, and the complaints mechanisms and monitoring mechanisms which are in place for detained children. Desk-based research was used to undertake a review of legislation and policy relating to detention in Ireland, and one-to-one interviews with ten key stakeholders working with and on behalf of detained children in Ireland, and with a group of detained children were undertaken to supplement the secondary analysis.
2. The detention of children in Ireland may take a number of forms. Children may be detained as a result of committing a criminal offence, as a result of behaviour which poses a substantial risk of harm to his/her own life, health, safety, development or welfare, or as a result of a mental disorder which requires treatment that the child is unlikely to obtain unless he or she is involuntarily detained. There is no formal system for the detention of migrant children in Ireland.



EUROPEAN UNION



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

3. A number of international Conventions are relevant to the situation of detained children. Ireland has signed and ratified:

- *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *UN Convention on the Rights of the Child*
- *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*
- *European Convention on Human Rights and Fundamental Freedoms*
- *European Social Charter*
- *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*

Ireland has signed but not ratified:

- *UN Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

4. Conditions in which children have been detained have been examined by the European Committee for the Prevention of Torture in 2006 and 2010, and by the UN Committee Against Torture in 2011. Key concerns highlighted by these bodies during their visits to St. Patrick's Institution – which until recently detained males aged 16-17 together with adult prisoners, and now detains 17-year-olds on remand – included the lack of adequate separation between adults and children, the suitability of staffing, the lack of engagement with activities, the regime in place for prisoners on protection, the adequacy of healthcare arrangements, and the remit of the Ombudsman for Children in relation to St. Patrick's Institution.

5. Complaint mechanisms are available to detained young people under international Conventions:

- under article 22 of the UN Convention Against Torture, which allows the Committee Against Torture to receive and consider communications from or on behalf of individuals who claim their rights under the Convention Against Torture have been breached.
- It is also possible for a detained minor to bring a complaint to the European Court of Human Rights under Article 34 of the European Convention on Human Rights and Fundamental Freedoms alleging a breach of their rights under that instrument.
- Ireland signed and ratified the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure on 24 September 2014.

Framework for the Detention of Children

6. Detention of children in Ireland may occur in the juvenile justice system, in the special care system, and as a result of a mental disorder. The Health Information and Quality Authority currently has responsibility for visiting, inspecting and monitoring compliance with national standards in places of detention for both children detained in Children Detention Schools as a result of a criminal conviction and for children detained within Special Care Units. The Mental Health Commission has responsibility for the inspection of approved centres where children may be involuntarily detained as a result of a mental disorder.

7. The detention of children within the juvenile justice system is governed by the Children Act 2001, as amended. This legislation governs the arrest and detention of children in Garda stations, the detention of children on remand, the custodial sentences which may be passed on children convicted before the Children Court, and regulates the operation and purpose of places of detention for children. National policy which relates to detained young people includes *Tackling Youth Crime: Youth Justice Action Plan 2014-2018*, the most recent national policy on the youth justice system, the *Standards and Criteria for Children Detention Schools*, which set out applicable standards to be maintained within detention facilities for children, and which are used to measure the performance of Children Detention Schools during inspections by HIQA, and various internal policies relating to the care of children adopted by the Board of Management of the Children Detention Schools. National policy now also includes *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* which contains

an express government commitment to: “*Build and open a new Children Detention Facility and end the practice of accommodating 17 year old boys in adult prison facilities. Complete the reforms of the Children Detention Schools, monitor outcomes for children in and post-detention and ensure a robust independent inspection, complaints and investigation system operates within the Children Detention schools*”.

8. Detention of children within Special Care Units as a result of behaviour which poses a substantial risk of harm to his or her own life, health, safety, development or welfare was provided for by Part 3 of the Children Act 2001, which inserted a new Part IVA into the Child Care Act 1991, and was subsequently amended by the Child Care (Amendment) Act 2011. The amendment made by the Child Care (Amendment) Act 2011 has, however, not yet been commenced, and the High Court currently operates the system of Special Care under its inherent jurisdiction. This legislation governs the process for the making of a Special Care order, and the criteria which must be met in this regard.

9. Detention of children in psychiatric units is provided for under s.25 of the Mental Health Act 2001 when it appears that the child is suffering from a mental disorder and it is considered he or she needs medical treatment which he or she would be unlikely to receive unless an order is made. Section 25 governs the criteria for the making of such a detention order, the period it may remain in force, and the granting of extensions of the orders. Provisions which govern the type of treatment which may be imposed on a detained child are also detailed under the Mental Health Act. The Mental Health Commission has published policy documents relating to the treatment of individuals involuntarily admitted to approved centres for psychiatric treatment, including *Rules Governing the Use of Seclusion and Mechanical Means of Bodily Restraint*, a *Code of Practice on the Admission of Children under the Mental Health Act* and a subsequent *Addendum to the Code of Practice on the Admission of Children*.

Places of Detention for Children in Ireland

10. Detention facilities for detained children within the juvenile justice system include Children Detention Schools, and Garda stations. Children may be detained in Garda Stations during the investigation of an offence, which are located throughout the country. There are three Children Detention Schools which detain males up to the age of 17 and girls up to the age of 18 on remand or conviction. These are Trinity House School, Oberstown Boys School and Oberstown Girls School, all based on the same campus in Lusk, Co. Dublin. The detention of 16 and 17 year old boys in St. Patrick's Institution is in the process of being phased out, however, at present 17-year-old males continue to be detained on remand in St. Patrick's Institution, and under sentence in Wheatfield Place of Detention.

11. There are three Special Care Units in Ireland, namely Ballydowd Special Care Unit, Co. Dublin, Coovagh House, Co. Limerick, and Gleann Alainn Special Care Unit, Cork. Ballydowd Special Care Unit and Coovagh House cater for both boys and girls, while Gleann Alainn caters for girls only.

12. Approved centres in which children may be detained must be registered with the Mental Health Commission, and include hospital and other in-patient facilities. There are currently five approved centres in Child and Adolescent Services including the Adolescent In-patient Unit, St. Vincent's Hospital, Dublin; the Child and Adolescent In-patient Unit, Merlin Park University Hospital, Galway; Eist Linn Child and Adolescent In-patient Unit, Cork; Linn Dara Child and Adolescent In-patient Unit, St. Loman's Hospital, Dublin; Willow Grove Adolescent Unit, St. Patrick's University Hospital, Dublin.

Monitoring Mechanisms for Places of Detention for Children

13. A number of monitoring mechanisms are in place for places where children are detained. Within the juvenile justice system, **HIQA** has responsibility for carrying out inspections of the Children Detention Schools under the Children Act 2001 at least once a year in line with the *Standards and Criteria for Children Detention Schools*. The inspection of St. Patrick's Institution and of Wheatfield Place of Detention falls within the remit of the **Inspector of Prisons** under the Prisons Act 2007, and these are carried out in line with the *Standards for the Inspection of Prisons in Ireland* and a special *Juvenile Supplement*, both of which were developed by the Office of the Inspector of Prisons.

14. Within the Special Care system, HIQA have responsibility for carrying out inspections of the Special Care Units under the Child Care Act 1991, and these inspections are carried out in line with the *National Standards for Special Care Units*.

15. The office of the **Inspector of Mental Health Services**, which is part of the Mental Health Commission, has responsibility for monitoring approved centres where children may be detained by reason of a mental disorder, and annual inspections are carried out to ascertain compliance with the Codes of Practice, regulations and rules developed by the Mental Health Commission under the Mental Health Act 2001.

Complaint Mechanisms for Places of Detention for Children

16. A number of complaint mechanisms exist for detained children. The **Office of the Ombudsman for Children** has a mandate to examine and investigate complaints against public bodies, schools and voluntary hospitals about matters affecting children. Specific complaint mechanisms also exist within each of the systems.

17. Within the juvenile justice system **HIQA** is authorized to hear complaints for children detained in Children Detention Schools. The *Standards and Criteria for Children Detention Schools* require Children Detention Schools to have a complaints mechanism in place which meets certain requirements, and the Board of Management of the Children Detention Schools on Oberstown Campus have published a *Detention Schools – Complaints Procedure*, which sets out both formal and informal complaints mechanisms. In St. Patrick's Institution and Wheatfield Place of Detention, it was also reported that there is a formal complaints mechanism in place, and **Prisons Visiting Committees** are also able to hear complaints from those detained in prisons, including children.

18. Within the Special Care system, the *Child Care (Special Care) Regulations 2004* requires complaints mechanisms to be in place, and the *National Standards for Special Care Units* require complaints mechanisms to meet certain requirements.

19. In approved centres, the **Inspector of Mental Health Services** has a duty to see every resident whom he or she has been requested to examine either by the resident himself or herself or by somebody else and to see every patient in respect of whom the Inspector doubts the propriety of their detention. The Mental Health Act 2001 (Approved Centres) Regulations 2006 require proprietors of approved centres to have a policy for the making and investigation of complaints, and in addition, the Mental Health Commission, has set out its own complaints procedure.

The Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure establishes a quasi-judicial mechanism that allows children and their representatives to submit a complaint to the Committee regarding specific violations of their rights under the UNCRC, but only after domestic remedies have been exhausted.

Recent Developments and Concerns

20. A key development in relation to the concerns raised by the international monitoring bodies around the detention of children in St. Patrick's is moves towards ending the detention of 16 and 17 year old males there. There is a plan to develop 167 new places at a new National Children Detention Facility at Oberstown, which would provide new facilities for 16 and 17 year old boys. Since the 1st May 2012, all newly remanded or sentenced 16 year olds have been detained in Children Detention Schools. However 17 year old males continue to be detained on remand in St. Patrick's Institution, and under sentence in a wing of Wheatfield Place of Detention. In July 2012, the remit of the Office of the Ombudsman for Children was extended so it can now hear complaints from children detained in St. Patrick's and in Wheatfield.

21. National monitoring bodies have highlighted a number of key concerns in recent years in relation to

places of detention for children. In relation to the juvenile justice system, the most recent HIQA reports found that overall there was a good standard of care in the Children Detention Schools. However, concerns were raised in 2011 by the Ombudsman for Children and in 2012 by the Inspector of Prisons about conditions in St. Patrick's Institution, and subsequently the closure of the facility was announced, although this has not yet been completed. Some concerns in relation to the Special Care system have also been raised by HIQA in relation to certain aspects of the Special Care Units, despite generally positive impressions being formed by the inspectors. It was recommended that certain aspects of the running of these centres be improved upon, including the complaints mechanisms in place in Gleann Alainn and in Ballydowd Special Care Unit. Concerns raised by the Mental Health Commission about the detention of children in approved centres relate to the lack of adequate child and adolescent facilities, and the resulting admission of children to adult facilities.

Monitoring Mechanisms in Places of Detention – Good Practice and Challenges

22. In examining the operation of monitoring mechanisms in places where children are detained, examples of good practice identified in interviews included:

- the regularity of visits by monitoring bodies;
- the independent nature of the monitoring bodies;
- the written standards used by monitoring bodies in carrying out inspections;
- the level of contact that monitoring bodies had with detained children;
- the completeness of the resulting reports from inspections; and
- the fact that recommendations made by monitoring bodies had led to specific improvements in practice or the provision of care.

23. Some aspects of collaboration between formal and informal monitoring and complaint mechanisms were described in consultation with key stakeholders. In Children Detention Schools, it was outlined how internal informal monitoring mechanisms were being developed within the Children Detention Schools to run side by side with the more formal inspections by HIQA. Collaboration between informal and formal mechanisms was also reported to occur where advocacy groups such as EPIC, the independent agency working with and providing advocacy services for young people in care, including detained children, may help detained young people to make formal complaints.

24. Main obstacles and difficulties with the implementation of complaints mechanisms were also identified. Differing views were expressed by stakeholders in relation to Ireland's non-ratification of the Optional Protocol to the Convention against Torture and the lack of a National Preventative Mechanism. Other difficulties with the implementation of monitoring mechanisms identified included:

- problems with the culture of the institution being inspected;
- issues around adequate resourcing of monitoring bodies;
- the enforcement of the recommendations of monitoring bodies;
- the lack of independence of the Inspector of Prisons in relation to the publication of his reports;
- the closed nature of facilities such as Children Detention Schools;
- the outdated nature of the standards used for inspection of the Children Detention Schools; and
- concerns about the monitoring of children's rights standards in contexts where their rights are already curtailed by virtue of their detention.

Complaint Mechanisms in Places of Detention – Good Practice and Challenges

25. Examples of good practice in relation to complaint mechanisms identified during interviews included:

- the existence of complaint mechanisms which constituted independent statutory oversight of places of detention for children;
- the extension of the Ombudsman for Children's remit in relation to children detained in St. Patrick's Institution;
- the existence of agreed protocols for making complaints; and
- the oversight of the complaints mechanisms by the monitoring bodies.

Key stakeholders also indicated that detained children were well aware of the complaints procedures, which were well posted within the facilities, but in interviews with detained children, there was more ambiguity about this point, with some children showing awareness of the procedures and the information, while others indicating that they found out about complaints procedures through more informal means. Children did seem to have an awareness however, about how to go about making complaints. Stakeholders also indicated that efforts were made to deal with complaints at source, reported that good relationships with staff could be used to help facilitate the making of complaints by children, and identified ways in which complaints by children could have the potential to lead to a change of practice within the detention facility.

26. Main obstacles and difficulties with the implementation of complaint mechanisms identified included:

- the culture of particular institutions;
- the challenge of empowering young people to make complaints, particularly in environments in which they were detained;
- the manner in which information was given to young people about how to complain;
- the written format of complaints mechanisms in place;
- clarity around the definition of what constitutes a complaint;
- a potential lack of independence within complaints mechanisms impacting on young people's ability to make complaints;
- relationships with staff which children perceived negatively;
- challenges around empowering staff members within detention facilities to make complaints; and
- the need to ensure a definite conclusion was reached in the complaints process, and to ensure that the outcome was clear for young people making a complaint.

The full report, including qualitative findings, is available at: www.childrensrightrbehindbars.eu and www.iprt.ie

Support the work of IPRT

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in prison and the progressive reform of Irish penal policy, with prison as a last resort.

IPRT relies on the support of its members and donors to achieve change. By becoming a member of IPRT, or by making a donation, you will be supporting our research and awareness-raising activities, and thereby making a statement that you believe there is a better, more effective way of responding to offending behaviour.

See: www.iprt.ie/what-you-can-do for more details on how you can support our work.

Ending the Detention of Children in Prison in Ireland: A timeline

IPRT is one of a number of voices who have consistently demanded of successive Governments to end the detention of children in prison in Ireland, and for all children so held to have access to an independent complaints mechanism. Specific actions by IPRT that contributed to commitments secured in 2012 include:

- **March 2006:** *IPRT Submission to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in preparation for the 2006 CPT visit to Ireland* emphasises Ireland's failings regarding the ongoing detention of children within the adult prison system.
- **March 2006:** As part of the Irish Youth Justice Alliance, IPRT makes an oral submission to the Joint Oireachtas Committee on Justice, Equality and Women's Rights, highlighting "the failure to make immediate provision for the closure of St Patrick's Institution."
- **August 2007:** IPRT publishes *The Whitaker Committee Report 20 Years On: Lessons Learned or Lessons Forgotten?* detailing the lack of progress in terms of Whitaker's recommendations on St Patrick's Institution, despite progress in other areas of youth justice.
- **October 2007:** *IPRT Submission to the Council of Europe Commissioner for Human Rights in preparation for the Commissioner's 2007 Visit to Ireland* again highlights the detention of children within the adult prison system, detailing serious concerns about conditions and practices.
- **June 2008:** *Shadow Report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political rights (IPRT/ICCL/FLAC)* identifies series issues, including that St Patrick's is "unsafe," that children so held cannot make complaints to the Ombudsman for Children, and the absence of a timescale for ending detention of children in St Patrick's Institution.
- **June 2009:** IPRT hosts a Prison Law seminar on the topic 'Sentencing and Procedures in Youth Justice Cases'. Over 115 practitioners attend.
- **Nov 2009:** IPRT Research Report on *Detention of Children: International Standards and Best Practice* published, outlines the application of international human rights standards to children detention in Ireland, and renews our call for an immediate end to the detention of boys at St Patrick's Institution.
- **August 2010:** IPRT *Briefing on Detention of Children in St. Patrick's Institution*, developed with Maria Corbett, Children's Rights Alliance and Tony O'Riordan SJ, (updated in 2010, 2011, and 2012) highlights issues including: conditions, protection regimes which see children locked up in cells for up to 23-hours a day, and the culture of bullying which persists in the Institution.
- **Sept 2010:** As part of the IPRT 'Shifting Focus' project, and working in collaboration with Barnardos and IAYIC (now EPIC), IPRT puts forward the clear argument for investment in prevention and early intervention strategies over costly and ineffective penal expansion.
- **February/March 2011:** Before and after the general election, IPRT actively pushes reform of penal policy with particular emphasis on the urgent need to end the practice of detaining children in St Patrick's Institution; IPRT welcomes that the new Programme for Government includes such a commitment.
- **November 2011:** IPRT briefing for Oireachtas All-Party Penal Reform Group on the incarceration of children in St Patrick's Instn, with presentations from Ombudsman for Children, Emily Logan, and Prof. Harry Kennedy of the Central Mental Hospital, who speaks on the impact of imprisonment on the mental health of adolescents.
- **January 2012:** RTÉ News feature, 'The Gates to Nowhere' (to which IPRT had contributed in concept, content and interviewees) highlights that proposals to end imprisonment of children in St Patrick's Instn. have stalled; intense media reaction extends over 2 weeks.
- **April 2012:** Minister for Children and Youth Affairs, Frances Fitzgerald TD, announces concrete plans to end the practice of detaining children in St Patrick's Institution by 2014, including the commitment of €50m capital funding for Oberstown, Lusk, Co Dublin.
- **June 2012:** Ministers for Justice and for Children and Youth Affairs sign an order removing the exclusion of children held in St. Patrick's Institution from the complaints remit of the Ombudsman for Children.
- **July 2012:** Final 16-year old boy leaves St Patrick's Institution; 17-year-old boys continue to be committed and detained there.
- **October 2012:** Following the publication of a highly critical report by the Inspector of Prisons on St. Patrick's Institution, which identifies serious problems at the prison including mistreatment and bullying of boys, excessive use of force, excessive use of punishment, and a completely deficient complaints system, the Minister for Justice, Alan Shatter TD, announces his intention to close St Patrick's Institution.
- **December 2013:** All 17-year old boys detained under sentence in St Patrick's are transferred to Wheatfield Prison, now designated Wheatfield Place of Detention.
- **Sept 2014:** In his report on the Mountjoy Campus, the Inspector of Prisons identifies the continuing detention of a small number of boys in St Patrick's as "at times, tantamount to holding them in isolation and it is certainly inhumane."
- **December 2014:** There are 8 boys detained on remand in St Patrick's Institution; there are 13 boys detained under sentence in Wheatfield Place of Detention.

Children's Rights Behind Bars | www.childrensrightrbehindbars.eu
December 2014



IPRT
Irish Penal Reform Trust

Irish Penal Reform Trust
MACRO Building
1 Green Street,
Dublin 7

T: 01 874 1400
E: info@iprt.ie
W: www.iprt.ie