



## **IPRT Submission to the Department of Justice on the Draft Youth Justice Strategy 2020-2026**

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## Introduction

The Irish Penal Reform Trust (IPRT) welcomes the opportunity to engage in the Department of Justice and Equality's public consultation on its [Draft Youth Justice Strategy 2020-2026](#). The Strategy presents an opportunity to create a vision and pathway for a world-leading youth justice system. Over its life course, the Strategy should be viewed as a 'living' document, considering evolving developments and best practice in youth justice.

IPRT welcomes many aspects of the Draft Strategy, in particular: proposals to extend supports for young adults; expansion of the Bail Supervision Scheme to include children in care; and placing a positive statutory duty on State agencies to work together. Overall, IPRT strongly re-emphasises that the principle of detention as a last resort must underpin the Strategy. Its Vision Statement should make reference to the importance of all stakeholders working together to transform the lives of young people, promoting equality of opportunity.

IPRT acknowledges the important inclusion of the voices of children and young people in informing the development of policies, programmes and systems as a guiding principle contained in the Draft Strategy. IPRT proposes that participation of young adults who have had recent past experiences of the youth justice system should also be included. These young adults will have invaluable insights that would enhance and inform youth justice policy in Ireland. One practical action that could be taken is to establish a panel of children, young people and young adults (particularly those with lived experience of the youth justice system) to act as advisors to the Expert Steering Group, as part of the ongoing development and implementation of the strategy.<sup>1</sup>

The Strategy must reflect the State's obligation to implement the [UN Convention on the Rights of Persons with Disabilities](#), which Ireland ratified in 2018. It must also reference responsibilities under [Section 42 of the Irish Human Rights and Equality Commission Act 2014](#) that requires public bodies to: eliminate discrimination, promote equality and protect human rights of service users and staff.

Adopting an evidence-informed approach, in its submission, IPRT outlines four key areas of youth justice that should be reinforced or inserted into the Draft Strategy. These include:

- **IPRT recommends that *Support Transitions into Adulthood (18-24 year olds)* should be an additional 'Priority Area' in the Strategy. Commitments should include: extending diversion; developing age-appropriate bail schemes; and consider amending the Children Act, 2001 to allow for maturity assessments. This would permit judges to consider whether a young adult might be more appropriately dealt with in the youth justice system.**
- **Develop innovative early release schemes, keeping in mind at all stages of the criminal justice system, that detention must be used as a last resort and for the minimum appropriate time. (Priority Area 5)**
- **The voices of children, young people and young adults, in particular those who have had contact with the justice system should participate and inform the future development of policies, programmes and systems. This could be achieved through the establishment of a panel of children, young people and young adults who could act as advisors to the Expert Steering Group as part of the ongoing development and implementation of the strategy.**

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<sup>1</sup> See as an example, Leaders Unlocked & Barrow Cadbury Trust (2020) [Young Adult Advisors on Criminal Justice: Hearing from Young Adults in the Criminal Justice System, Final Report April 2020](#)

- There should be extensive consultation with external stakeholders including civil society organisations on strengthening legislation and reviewing the Children Act, 2001. A legal framework should prohibit solitary confinement for children and govern the practice of single separation in child detention. This could be achieved through strengthening legislation by way of an amendment to the [Children Act, 2001](#) (Priority Area 6)

This submission outlines IPRT’s position under the three ‘Thematic Objectives’ outlined in the Draft Strategy. For ease of the reader, key aspects that IPRT would like to comment on are outlined sequentially under each thematic objective including points we feel should be included.

## **1. Governance, Monitoring and Support**

1.1 While priority area one focuses on enhancing governance and oversight on the implementation of the youth justice strategy, no reference is made in the Draft Strategy to the importance of external oversight. The Draft Strategy should recognise the significance of the future ratification of OPCAT to places where children can be deprived of their liberty, and the need to future-proof compliance in systems of children detention inspections and monitoring.

### *1.1.1 & 1.2 Establishment of National Oversight Group and 1.2 Research Based Facility*

Overall, IPRT welcomes that enhanced oversight and monitoring the implementation of the Youth Justice Strategy is identified as a priority area. The National Oversight Group should review progress of the Strategy on a regular basis and publish an annual report.

IPRT also welcomes plans to establish a research-based facility, which would feed into the work of the National Oversight Group. The Department of Justice and the Department of Children should consider establishing a formal structure to allow civil society organisations to engage on the programme of work of the proposed research facility.

The research facility must be adequately resourced in order to conduct certain functions. Priority areas may include:

- publication of an annual report on youth justice
- evaluation of youth offending programmes in Ireland
- gathering of data to continually assess the operation and effectiveness of community sanctions
- undertaking research in key areas such as the use of remand detention for children and strategies to reduce the use of pre-trial detention
- tracking outcomes for young people in the youth justice system

1.2.2 (e.) Given IPRT’s small-scale study<sup>2</sup> which found a link between the care and youth justice systems in Ireland, we welcome the commitment in the Draft Strategy to undertake further research on thematic issues such as Care and Youth Justice systems. Other research areas may include examining the root causes of knife crime, and effective models proven to reduce violence.

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<sup>2</sup> Carr N. & P. Mayock (2019) [Care and Justice: Children and Young People in Contact with the Criminal Justice System](#). Irish Penal Reform Trust.

**IPRT recommends:**

- **The Strategy should acknowledge the importance of external oversight, including the future ratification of OPCAT and the need to future-proof compliance of inspections and monitoring anywhere children are deprived of their liberty.**
- **The National Oversight Group should publish an annual progress report on the implementation of the Youth Justice Strategy.**
- **The purpose and functions of the proposed research facility should be clearly set out. IPRT recommends that priorities should include: publication of an annual report on youth justice in Ireland; monitoring and evaluation of the operation of community sanctions; the use of pre-trial detention; and tracking outcomes for young people in the youth justice system.**

*1.6 Statutory backing for collaboration between agencies based on principles of the best interests of children and young people*

IPRT broadly welcomes the proposed positive duty, which should be underpinned by the development of joint agency protocols and joint training of professionals. IPRT's 2019 report, [Care and Justice: Children and Young People Care and Contact with the Youth Justice System](#), identified the need for agencies and organisations such as An Garda Síochána, Tusla and residential care homes, to develop joint protocols aimed at responding to incidents in residential care homes in order to reduce children and young people's contact with the youth justice system.

Scotland has adopted a 'public health' approach to addressing and reducing violent crime<sup>3</sup>. This approach might warrant further examination in terms of identifying 'who' should be included as part of the statutory duty; for example, consideration of the role of Health Services and professionals in Emergency Health Departments.

**IPRT recommends that the duty should be underpinned by:**

- **Development of local and national joint protocols between agencies. For example, a protocol between An Garda Síochána, Tusla and residential care homes to reduce the number of children from residential care homes coming into contact with the criminal justice system.**
- **Development of joint training for professionals, for example, trauma-informed practice and restorative justice approaches. Joint training by relevant agencies may offer new insights, build capacity and develop a more co-ordinated approach among frontline professionals.**

*1.7 Update of the Children Act, 2001*

Almost 20 years on, a full review and consultation process on the Children Act, 2001 should be undertaken. This review requires input from a variety of external stakeholders including civil society organisations.

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<sup>3</sup> Scottish Government, *Crime Prevention*, <https://www.gov.scot/policies/crime-prevention-and-reduction/violence-knife-crime/>

International recommendations should be considered as part of the review process, including the Concluding Observation made by the UN Committee on the Rights of the Child in 2016 that Ireland should reinstate the provisions setting the age of criminal responsibility at 14, as originally established in the Children Act, 2001.<sup>4</sup>

**Comments on the overall indicative schedule of proposed amendments are made at the end of this document. The proposed amendment to the area of diversion is specifically addressed under section 2.9.5 of this document. Here, IPRT makes reference to one particular provision outlined in this section and a suggested amendment that we would like to draw attention to:**

#### *1.7.1 Finalise provisions to replace suspended sentences for those under 18*

IPRT notes the inclusion of an action to finalise provisions replacing suspended sentences for children. IPRT seeks further clarity on the rationale behind replacing the suspended sentence, and what sanction(s) are proposed to replace the suspended sentence. Any proposed changes should be informed by an evaluation carried out on suspended sentences with children.

IPRT observes that suspended sentencing has been shown to be more effective than short terms of imprisonment for adults.<sup>5</sup> However, this may be less consistently the case for young adults, where supervision and mentoring that addresses young adults' rehabilitative needs has been shown to have better outcomes.<sup>6</sup>

**IPRT recommends:**

- **The evidence basis for the proposed replacement of suspended sentence should be published, and an impact assessment of its abolition undertaken. Any review should include consultation with young people with experience of the justice system, including experience of suspended sentences.**

#### **Proposed Amendment to the Children Act, 2001: Prohibition of Solitary Confinement for Children**

IPRT proposes that an amendment be made to the Children Act 2001, which would prohibit solitary confinement of children in law and govern the practice of single separation in child detention. The Irish Human Rights and Equality Commission previously highlighted the absence of legislative measures related to the prohibition of solitary confinement of children in its [Comments on Ireland's 16<sup>th</sup> National Report on the implementation of the European Social Charter](#).

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<sup>4</sup> UN Convention on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Ireland*,

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvOufvUWRUJILHiLHKqpXZxUGOtZQF0I%2B37QzAKosbh7yc40d4J3lYnFaWf0Egu6J99RK6Y%2FTHjpped5r1H3f3KQliFieFkoeAPALAwKpbZz>

<sup>5</sup> O'Donnell I. (2020) *An Evidence Review of Recidivism and Policy Responses*, [http://www.justice.ie/en/JELR/An\\_Evidence\\_Review\\_of\\_Recidivism\\_and\\_Policy\\_Responses.pdf/Files/An\\_Evidence\\_Review\\_of\\_Recidivism\\_and\\_Policy\\_Responses.pdf](http://www.justice.ie/en/JELR/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf/Files/An_Evidence_Review_of_Recidivism_and_Policy_Responses.pdf) Another international longitudinal study found that adult offenders who receive a suspended sentence were less likely to be re-convicted than those given a custodial sentence. Cid J., Is Imprisonment Criminogenic?: A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions, *European Journal of Criminology* [https://journals.sagepub.com/doi/pdf/10.1177/1477370809341128?casa\\_token=1BHULdKqiU8AAAAA:WRgS\\_WXrBK6ScsUX7vngBf1p6jPfrzrnTO3bpfeBRa3F8yclshGt5fjUzADLnyz2H3rITjL65RE](https://journals.sagepub.com/doi/pdf/10.1177/1477370809341128?casa_token=1BHULdKqiU8AAAAA:WRgS_WXrBK6ScsUX7vngBf1p6jPfrzrnTO3bpfeBRa3F8yclshGt5fjUzADLnyz2H3rITjL65RE)

<sup>6</sup> See for example: <https://www.barrowcadbury.org.uk/wp-content/uploads/2011/09/CJAgettingitright1.pdf>

A HIQA inspection report, [Report of Oberstown Children Detention Campus](#), published in 2020 showed reductions in single separation incidents. However, the recording of times for the start and end of single separation incidents, and the recording of how young people's rights were promoted, had not improved to a satisfactory level.

A legal framework would ensure that solitary confinement is prohibited for children in detention. It would also provide legal safeguards on the practice of single separation. The amendment should consider the following areas:

- (a.) Definitions of solitary confinement and single separation
- (b.) Prohibition on solitary confinement for children
- (c.) Documenting and recording reasons for use of single separation
- (d.) Identifying set time limits for single separation
- (e.) Setting minimum conditions (e.g. authorisation procedures, assessment by medical staff, access to air, exercise) during a separation period.

There should be a commitment in the Strategy to reduce and eliminate restrictive practices such as single separation in child detention.

**IPRT recommends:**

- **A broader consultation process with external stakeholders, such as those working in children's services and civil society organisations, should be conducted in order to inform the review of the Children Act, 2001.**
- **A legal framework concerning the definition and prohibition of solitary confinement of children should be introduced. Provisions governing the practice of single separation in child detention should be included in the revised Children Act, 2001. Inclusion of this action in the Youth Justice Strategy would demonstrate real commitment to protecting children's rights.**

*1.9 Enhance Capacity of those working with young people and provide specific training for professionals working in the criminal justice system*

The Strategy should include a commitment to the implementation of a trauma-informed youth justice system. It is essential that trauma-informed practice is part of training received by all professionals working in the criminal justice system. Frontline staff working with children and young people should be aware of and apply the key concepts of trauma-informed care, including safety, trustworthiness, peer support, collaboration and empowerment.<sup>7</sup> Frontline staff should also receive training in cultural competency.

Oberstown research details that 31% of young people in detention had experienced the loss of one or both parents through death, imprisonment or no long-term contact.<sup>8</sup> This is one indicator of the high levels of trauma young people in detention often experience.

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<sup>7</sup> SAMHSA (2014) *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach*, [https://ncsacw.samhsa.gov/userfiles/files/SAMHSA\\_Trauma.pdf](https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf)

<sup>8</sup> Oberstown Detention Campus, [Key Characteristics of Young People in Detention, Q1 2019](#)

In 2020, IPRT research examined the rights and experiences of persons with disabilities in the prison system<sup>9</sup>. Statistics from Oberstown show that 23% of children in detention had a diagnosed learning disability.<sup>10</sup> Disability awareness training should be provided, as well as ensuring professionals are aware of their obligations under the UN Convention on the Rights of Persons with Disabilities and the [Public Sector Human Rights and Equality Duty](#).

There should also be a commitment in the Strategy to ensuring that children access child-friendly justice. According to the Council of Europe, key characteristics of child friendly justice is a justice system that is: accessible, age-appropriate, speedy, diligent, adapted to and focused on the needs of the child, respecting the right to due process, respecting the right to understand and participate in the proceedings, respecting the right to private and family life, and respecting the right to integrity and dignity.<sup>11</sup>

#### IPRT recommends:

- **The Strategy should commit to the implementation of a trauma-informed youth justice system; training should be provided to all criminal justice professionals particularly those working in frontline services, equipping them to respond more effectively to children and young people.**
- **Disability awareness training should be provided to all frontline staff, including training on the UNCRPD and the Public Sector Human Rights and Equality Duty, to ensure that children with disabilities are accommodated for in the youth justice system.**
- **All criminal justice professionals should receive training in child-friendly youth justice.**

## 2. Services and Communication with Children and Young People

### 2.2 & 2.3 Education

IPRT welcomes the focus on addressing early school leaving. According to [Oberstown Statistics in quarter 1 of 2019](#), 57% of young people in detention were not in school prior to detention. IPRT's research also shows that socio-economic factors, such as not being in education or employment, places young people at higher risk of offending.<sup>12</sup> Interventions to get young people who have had contact with the youth justice system back into education should also be available and accessible.

### 2.6 Flexible development of the existing Garda Diversion Programme

IPRT's research has found that mobile populations, such as children in care, who end up in the youth justice system may have difficulties accessing the Garda Diversion Programme as a result of being moved to different parts of the country.<sup>13</sup> This issue should be addressed as part of re-examining changes *'for the flexible development of the existing Garda Diversion Programme.'*

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<sup>9</sup> IPRT (2020) [Making Rights Real for People with Disabilities in the Prison System](#)

<sup>10</sup> Oberstown Detention Campus, [Key Characteristics of Young People in Detention, Q1 2019](#)

<sup>11</sup> See Council of Europe, *Child-friendly justice*, <https://www.coe.int/en/web/children/child-friendly-justice>

<sup>12</sup> IPRT (2015) [Turnaround Youth: Young Adults \(18-24\) in the Criminal Justice System: The Case for a Distinct Approach](#).

<sup>13</sup> Carr N. & P. Mayock (2019) [Care and Justice: Children and Young People in Contact with the Criminal Justice System](#), p.31. Irish Penal Reform Trust.

## IPRT recommends:

- **National policy on diversion should be flexible enough to respond to mobile populations such as children and young people in State Care.**

### 2.9.5 Diversion

IPRT welcomes the commitment in the Programme for Government 2020-2025 to ‘*examine increasing the age limit for the application of the Garda Youth Diversion Programme to 24 years old.*’<sup>14</sup>

IPRT strongly endorses proposed amendments to the Children Act, 2001 which would allow young adults to be diverted in line with a previous recommendation of the [Penal Policy Review Group](#). More broadly, the Joint Committee on Justice and Equality (2018) [Report on Penal Reform and Sentencing](#) recommended that Garda diversion and community projects should be expanded to offer alternatives to imprisonment.

IPRT welcomes that the Draft Strategy references extending supports for 18-24 year olds including to, ‘*assess the potential of specialised youth projects (or similar) to provide suitable diversionary programmes for the 18-24s age group, with a view to developing a pilot initiatives.*’ We welcome the rebranding of Garda Youth Diversion Projects to specialised youth projects which should help reduce stigma. These programmes should recognise emerging neuroscience on adolescent brain development and maturity levels of young adults.

However, commitments related to 18-24 year olds should be strengthened in the Strategy.

In 2019, almost 20% of prison committals were 18-24 year olds<sup>15</sup>; research suggests that access to the right interventions at an earlier stage will reduce this number.<sup>16</sup> International evidence demonstrates that young adults are more amenable to rehabilitation than older adults, as the brain and maturity continue to develop into a person’s mid-twenties. **The right interventions at this age support desistance but the wrong interventions can deepen offending behaviour. The highest rates of prison recidivism statistics in Ireland are for young adults, at 72.3% for 18-21 year olds and 54.4% for those aged 21-25 in 2012.**<sup>17</sup> **These statistics show that prison is not an effective response to young adult offending. A distinct approach that responds to the special circumstances of young people transitioning into adulthood will promote better outcomes and reduce crime.**<sup>18</sup>

There is also an economic argument to be made for young adults to access diversion programmes. Daily snapshot figures from the Irish Prison Service in 2019 show over 13% of sentenced prison committals were of young males aged 18-24. The average annual cost of an available, staffed prison space during 2019 was €75,349.<sup>19</sup> Diversion of young adults to the youth justice system would result in long-term savings to the Department after initial expenditure in setting up the programmes.

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<sup>14</sup> *Programme for Government-Our Shared Future*, p.97

<https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf>

<sup>15</sup> Irish Prison Service, [Annual Report 2019](#)

<sup>16</sup> IPRT (2015) [Turnaround Youth: Young Adults \(18-24\) in the Criminal Justice System: The Case for a Distinct Approach](#).

<sup>17</sup> Central Statistics Office, [Prison Recidivism 2011 and 2012 Cohorts](#).

<sup>18</sup> IPRT (2015) [Turnaround Youth: Young Adults 18-24s in the Criminal Justice System](#)

<sup>19</sup> Irish Prison Service, [Annual Report 2019](#)



However, this would need to be monitored to ensure that youth diversion is used as a direct alternative to prison and does not lead to net-widening.

**IPRT recommends:**

- **A stronger commitment should be made to developing diversion programmes for 18-24 year olds, given the potential social and economic savings associated with this approach.**

### *2.11 Detention*

Implementation of an effective youth justice strategy should result in a small number of children ending up in detention. A research-based assessment of likely demands for detention spaces is welcome. Particular attention must be given to the use of pre-trial detention, which should be minimal for children, and never used for welfare reasons. IPRT notes that pre-trial detainees make up approximately 15-20% of the adult prison population; this figure is 39% for children in detention, which strongly indicates it is over-used.

If findings from the assessment projects reduced demand in future, there may be potential to create a separate unit for 18-20 year olds on the Oberstown campus which would help support transitions and avoid the use of prison. **However, if the assessment projects that there will be increased demand in future, then it is vital that the drivers of such a projected increase are identified and addressed.** Ultimately, planning for an increase in detention capacity is planning for failure of youth justice interventions.

**IPRT recommends:**

- **The research-based assessment of demand for detention spaces must seek to identify and address factors driving child detention, and not plan for expansion of spaces.**
- **If reduced demand for children detention is projected, separate provision for young people in transition aged 18-20, should be considered.**

### *2.13 Specific Protocols for management and care of young adult offenders aged 18-24*

To be a world class leading youth justice system, the youth justice strategy should aspire to go further with its commitments to 18-24 year olds.

A previous commitment in the Department of Children and Youth Affairs, [Better Outcomes, Brighter Futures: The National Policy Framework for children and young people 2014-2020](#), focused on: ‘bring a stronger focus on effective transitions particularly within youth justice services.’<sup>20</sup> As both the work of the Department of Children and Youth Affairs and its national framework covers the age category of 0-24 years old, the youth justice strategy must be aligned to include young adults up to the age of 24.

IPRT believes that the Draft Strategy could go further in its approach to supporting transitions. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) states that:

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<sup>20</sup> Department of Children and Youth Affairs, p.129 [Better Outcomes, Brighter Futures: The National Policy Framework for children and young people 2014-2020](#)

*“Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders” and extend the protection afforded by the Rules to cover “proceedings dealing with young adult offenders.”<sup>21</sup>*

Developmentally, young adults are more like young people than adults, with: greater risk seeking; susceptibility to peers, stress and excitement; and diminished capacity for self-control (which in effect allows young adults to respond more positively to rewards in the justice system compared to negative sanctions.)<sup>22</sup>

Sentencing should take into account that the brain does not fully mature until the age of 25 at least. In a 2020 review by the Scottish Sentencing Council, it found that the areas of the brain that govern emotion develop sooner than those which assist with cognitive abilities. As a result of this imbalance, young people are more likely to partake in risk-taking behaviour.<sup>23</sup> The review found that brain development may be delayed by factors such as adverse childhood experiences, traumatic brain injury, alcohol and substance use and mental disorders. It outlines the need to consider an individual’s culpability relative to their cognitive maturity during sentencing.

A differential approach to sentencing young adults is reasonably common in other jurisdictions in Europe. In Germany, juvenile courts have had powers to deal with 18-20 year olds since 1953 and can apply either juvenile or adult sanctions. German courts view it as beneficial to keep young adults in the youth justice system, which is rehabilitation-focused with lower re-offending and imprisonment rates. More than 90% of young adults who commit serious offences are sentenced under juvenile law.<sup>24</sup> Croatia, Germany and the Netherlands allow young people aged 18-25 to be sanctioned in the same way as young people in the youth justice system if the judge deems it appropriate.<sup>25</sup>

A further amendment to the Children Act, 2001 or other legislation could allow for maturity assessments to be carried out when sentencing a young adult.<sup>26</sup> This would facilitate the judge to consider if a young adult aged 18 or over should be sentenced in the youth justice system.

**IPRT recommends:**

- **The Youth Justice Strategy should identify ‘Supporting Transitions to Adulthood’ as an additional priority area. It should align with the successor policy framework of the Department of Children and Youth Affairs, [Better Outcomes, Brighter Futures: The National Policy Framework for children and young people 2014-2020](#) which has responsibility of children and young people from 0-24.**

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<sup>21</sup> [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(“The Beijing Rules”\)](#)

<sup>22</sup> Fair and Just Prosecution (2019) [Young Adults in the Justice System](#)

<sup>23</sup> O’Rourke S, Whalley H., Janes S., McSweeney N, Skrenes A, Crowson S, McLean L. & M. Schwannauer (2020) *The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts*, Scottish Sentencing Council, <https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>

<sup>24</sup> Fair and Just Prosecution (2019) [Young Adults in the Justice System](#)

<sup>25</sup> Matthews, S, Schiraldi V. & L. Chester (2018) Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System, *Justice Evaluation Journal*.

<sup>26</sup> For more see IPRT (2015) [Turnaround Youth: Young Adults \(18-24\) in the Criminal Justice System: The Case for a Distinct Approach](#).

- Amend legislation such as the Children Act, 2001 in order to allow for maturity assessments to be made when sentencing young adults aged 18-24. Maturity assessments would allow judges to consider whether the young person might be more appropriately dealt with in the youth justice system, an approach that is common in other European jurisdictions.<sup>27</sup>

#### 2.14 Post Detention

IPRT welcomes the focus of the Draft Strategy on post-release planning for children and young people. Every child or young person leaving Oberstown Children Detention Campus should be provided with aftercare services and have access to stable accommodation upon release. We welcome the inclusion of aftercare services for those who may have little or no supports upon release. The tracking of outcomes for young people post-release is important in order to improve services.

#### IPRT recommends:

- Longitudinal tracking of outcomes for young people post-release in order to enhance service delivery.

### 3. Criminal Justice System and Processes

#### 3.1 Extend Bail Supervision

Building on the success of the Bail Supervision Scheme for children<sup>28</sup>, an innovative and tailored supervised Bail programme should be introduced for the 18-24 year olds. IPRT's research previously identified models of good practice that provide non-custodial alternatives to young adults, such as the Intensive Alternative to Custody Order in Manchester and supervised bail schemes in the UK.<sup>29</sup>

The high number of children held on remand is of concern to IPRT. In May 2020, 39% of children in Oberstown Children Detention Campus were on remand.<sup>30</sup> Children must never be held on remand due to welfare reasons. It is also of concern that the most recent statistics provided by Oberstown Children Detention Campus, as of quarter 1 of 2019, show that 41% of children were in care or had significant involvement with Tusla.<sup>31</sup> In this respect, IPRT previously highlighted the need for children in care to have equitable access to service provision, including adaptations so that children in care can avail of the Bail Supervision Scheme.<sup>32</sup> Therefore, IPRT welcomes the action to ensure that children in care can avail of Bail Supervision Scheme.

#### IPRT recommends:

- The Strategy should include a commitment to developing an innovative and age-appropriate Bail Scheme for young adults aged 18-24.

<sup>27</sup> IPRT (2015) [Turnaround Youth: Young Adults 18-24s in the Criminal Justice System](#)

<sup>28</sup> Department of Children and Youth Affairs (2019) [Bail Supervision Scheme receives ICPA Community Corrections Award.](#)

<sup>29</sup> IPRT (2015) [Turnaround Youth: Young Adults 18-24s in the Criminal Justice System](#)

<sup>30</sup> Oberstown Children Detention Campus, [Statistical Breakdown of Young People on Campus May 2020](#)

<sup>31</sup> Oberstown Children Detention Campus, [Q1 2019 Profile of Young People in Detention.](#)

<sup>32</sup> Carr N. & P. Mayock (2020) [Care and Justice: Children and Young People in Contact with the Criminal Justice System.](#) Irish Penal Reform Trust.

### 3.5 Maximise the support which the Probation Service can give children and young people

IPRT makes the case for a distinct approach for young adults aged 18-24. In order to support the diversion of this age cohort, Young Persons Probation should be adequately resourced in order to support diversion and supervise community sanctions for this age cohort.

#### IPRT recommends:

- **Young Persons Probation should be adequately resourced and extended to include young adults up to the age of 24.**

### 3.6 Provide a range of options for the Courts, both prior to sentencing and as alternatives to detention

IPRT welcomes the commitment to improve the range and implementation of community-based sanctions, which should be accessible to children and young people in all parts of the country. Community sanctions must be used as a direct alternative to detention and should not result in any net-widening. Research and evaluation into the operation of community sanctions for children, young people and young adults should be undertaken to assess 'what works'. This could be a task allocated to the proposed established research facility.

A commitment to provision of supports for young people both before, during and after sentencing should be included. For example, if substance misuse is a cause of offending behaviour, the young person should be able to avail of and have access to relevant treatment.

Development of supported early release schemes for children in detention should also be considered. A young person could become eligible for an early release scheme having engaged with therapeutic services and rehabilitative activities. Early release schemes can be used as an incentive to encourage young people to participate in pro-social activities and work towards early release. Research by O'Donnell (2020) in an [Evidence Review of Recidivism and Policy Responses](#) shows that placing trust in people through the use of early release schemes can play an important role in crime prevention.<sup>33</sup> Oberstown Children's Detention Campus in conjunction with Young Persons Probation could develop innovative programmes tailored to the needs of young people.

IPRT reiterates the importance of using restorative approaches. A key commitment contained in the Programme for Government 2020 is to 'Work with all criminal justice agencies to build capacity to deliver restorative justice, safely and effectively.'<sup>34</sup> [An Evaluation and Social Return on Investment Study of the Le Chéile Restorative Justice Project in Limerick](#) showed that for every €1 invested in the Restorative Justice Programme, the return was approximately €2.92 in social value.

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<sup>33</sup> Early release schemes such as Community Return in the adult prison system have had success and high compliance rates. See: McNally G. & A Brennan (2015) Community Return: A Unique Opportunity, *Irish Probation Journal*,

[http://www.pprobation.ie/EN/PB/0/92A3B976DF13B9E28025802E00493470/\\$File/IPJ2015pages140to159.pdf](http://www.pprobation.ie/EN/PB/0/92A3B976DF13B9E28025802E00493470/$File/IPJ2015pages140to159.pdf)

<sup>34</sup> *Programme for Government-Our Shared Future*, p.97

<https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf>

Evidence from Germany shows the importance of restorative approaches for young people: high participation rates (80-90%) in mediation by offenders and victims and Federal Statistics on Victim-Offender Mediation from 2006-2009 show a settlement was reached in 89% of cases on average.<sup>35</sup> The Council of Europe encourages the development of innovative restorative approaches, which may fall outside of criminal justice procedures.<sup>36</sup>

There should also be an increased focus on the value of mentoring young people in the Strategy. For example, previous research has demonstrated the importance of relationships and ‘one good adult’ in children’s lives.<sup>37</sup> <sup>38</sup> Having one good adult is a key indicator of how well a young person can cope with a problem.<sup>39</sup> Having one good adult supports the well-being of a young person. Interventions such as mentoring and parent mentoring should be rolled out at a national level.

#### **IPRT recommends:**

- **Consider the development of innovative early release schemes for children in detention, supporting the principle of detention as a last resort and for the minimum period.**
- **Invest in supports and community-based sanctions for children, young people and young adults, including the roll out of restorative approaches and mentoring nationwide.**
- **The operation of community sanctions should be evaluated in order to assess ‘what works’, while also ensuring that these sanctions do not lead to any net-widening effect for children and young people in the youth justice system.**

### **Comments on Indicative Schedule of areas for amendment in the Children Act 2001**

#### **Principles**

- IPRT welcomes the proposed statement of principles of the Children Act, 2001 in particular that detention is used as last resort.

#### **4.1 Diversion over 18**

- We welcome a proposed amendment to the Act which would allow diversion approaches to be trialled for young adults in line with the recommendation of the Penal Policy Review Group.

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<sup>35</sup> Dunkel F., Horsfield P, & A Parosanu (2015) *Research and Selection of the Most Effective Juvenile Restorative Practices in Europe: Snapshots from 28 EU Member States*, [http://www.eijc.org/sites/default/files/volume\\_i\\_-\\_snapshots\\_from\\_28\\_eu\\_member\\_states.pdf](http://www.eijc.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf)

<sup>36</sup> Council of Europe, European Committee on Crime Problems, Council for Penological Co-operation, *Draft Recommendation CM/Rec (2018) XX of the Committee of Ministers to member States concerning restorative justice in criminal matters*

<sup>37</sup> Mc Elvaney, R. Tatlow-Golden M., Webb R., Lawlor E. & B.Merriman (2013) *Someone to care: the mental health needs of children and young people in the care and youth justice system* Dublin: Children’s Mental Health Coalition.

<sup>38</sup> KC Consulting (2017) *Reducing Youth Crime in Ireland: An Evaluation of Le Chéile Mentoring*

<sup>39</sup> Dooley, Barbara A., Fitzgerald, Amanda: *My World Survey: National Study of Youth Mental Health in Ireland*. Headstrong and UCD School of Psychology, 2012.

## 4.2 Age at time of offence

- We welcome the proposed amendment which would allow the Children’s Court to hear cases of young people aged over 18 in relation to offences that occurred aged under 18. This amendment could go further to allow for maturity assessments in which judges could deem it more appropriate, based on the assessment, that the young adult be dealt with in the youth justice system.

## 7. Post-Detention Support (Part 10)

- IPRT welcomes provision for the right to aftercare support after a child’s release from detention.

## 8. Alignment of Diversion with Spent Convictions in section 258 (Part 13)

- IPRT welcomes the proposed amendment, which will allow a child’s diversion records to expire the same way as convictions, as previously identified in IPRT’s research.<sup>40</sup>

## Conclusion

**IPRT would like to reiterate the importance of enhancing four key areas in the Draft Strategy:**

- **Supporting Transitions to Adulthood:** This could be an additional priority area in the Draft Strategy. This would mean strengthening commitments to the 18-24 year olds including developing diversion programmes and bail schemes for this cohort, and introducing maturity assessments so young adults could be tried in the youth justice system. This would align the Youth Justice Strategy with the remit of the Department of Children and Youth Affairs; the successor of the *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*; and with the upper age threshold of the Youth Work Act 2001.
- **Including the voices of children, young people and young adults:** The voices of children, young people and young adults, in particular those who have had contact with the justice system should participate and inform the future development of policies, programmes and systems. This could be achieved through the establishment of a panel of children, young people and young adults who could act as advisors to the Expert Steering Group as part of the ongoing development and implementation of the strategy.
- **Developing Early Release Schemes:** which would be another way to support adherence to the principle of detention as a last resort and for the minimum appropriate time.
- **Broader consultation on provisions of the Children Act 2001,** including consideration of a legal framework related to the prohibition of solitary confinement and governing the use and practice of single separation in child detention centres in Ireland.

IPRT is ready to engage with the Expert Steering Group on the Draft Strategy on any of the aspects above covered in this submission. Our contact details are included on the cover page.

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<sup>40</sup> Carr N. & P. Mayock (2020) [Care and Justice: Children and Young People in Contact with the Criminal Justice System](#), Irish Penal Reform Trust.