



## **Youth Diversion Projects (YDP) Conference 2024**

**19 November 2024**

### **Youth Justice Strategy: Reform, Priorities and Impact – Saoirse Brady, Executive Director, IPRT**

The Irish Penal Reform Trust (IPRT) is Ireland's principal non-governmental organisation working for systemic penal reform. Our vision is a just, humane Ireland where prison is used as a last resort. Our mission is to advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through research, campaigning and changing attitudes.

I would like to thank the Department of Justice, in particular Deaglán and his team for the invitation to speak here today at this important forum. When the current Youth Justice Strategy was in development, I was working with the Children Rights Alliance at the time and involved in the consultation with the children and youth sector so was viewing it primarily from a children rights perspective rather than solely through a criminal justice lens. The youth justice system intersects with so many of the issues that I was working on in my former role – child poverty, multiple disadvantage, early school leaving and the need for alternative education, family support and early intervention and prevention. I am pleased to see that many of these essential strands have been incorporated into the Strategy and that it is not only rights-based, but it is person-centred and puts an emphasis on identifying and addressing the reasons why young people might come into contact with the youth just system.

When it was published in 2021, IPRT welcomed the *Youth Justice Strategy 2021-2027* particularly its focus on diversion, prevention and early intervention, underpinned by children's rights and the use of detention as a last resort. While we are approaching the mid-way point of the Strategy and a mid-term review is imminent, I think it's important to reflect on what has been achieved to date and what more needs to be done to implement and fulfil the commitments made. I don't intend to conduct a comprehensive review here today, but I will focus on a number of elements or actions that are particularly relevant from IPRT's point of view. While we are often associated with our work around prison, we are not called the Prison Reform Trust like our counterparts elsewhere. We focus on reform of the wider penal or criminal justice system as a whole. Underpinning our work is the belief that our penal system matters. That it forever alerts us to addressing the root causes of offending behaviour right across the different stages of life.

We know that certain groups of people continue to be particularly impacted by the criminal justice system – people experiencing poverty and deprivation, those who have fallen out of the education system, people with addiction, people with mental health issues, or who have disabilities, some migrant and ethnic minority communities including Irish Travellers who continue to be over-represented in terms of youth justice, women's detention, and adult male prisons. Very often IPRT's work starts where the work of other social justice advocates ends as the penal system – and I would

also argue the youth justice system – is often left to respond to the failures of or deficits in other social, educational, and health services.

And I find it reassuring that there is public understanding of this reality by the general public. Very recently, in October of this year, IPRT commissioned RED C to conduct nationally representative polling with 1006 people of voting age, to gauge public opinion about the criminal justice system in Ireland. While the focus was on the adult rather than the youth justice system, a number of the results are relevant for today's discussion and to inform future policy development. For example, there was clear appetite for reform with four out of five people believing that it is important for the next government to prioritise alternatives to custody in cases of non-violent offending. Only 26 per cent viewed detention as an effective tool for addressing non-violent crime, underlining a strong appetite for more innovative approaches, such as specialist courts and community service.

We also asked how people would spend an annual budget of €10million to deal with people who commit less serious crimes, over one in three would prioritise person-centred interventions such as additional drug treatment places, extra youth workers, and more consultant psychologists. The number one priority was additional Gardaí with 41 per cent of people choosing to invest in that option.

From some of the other poll results, people clearly recognised the social issues that may lead some people to offend in the first place including mental health challenges, trauma, addiction, the cost in the rise of living and homelessness for example. A majority of people also believed in diversion from prison for people with mental health or addiction challenges – they agreed that they should be treated in a dedicated health facility rather than being sent to prison. While these may have been focused on the adult system, they are relevant given that many of the underlying causes outlined also result in young people coming into contact with the youth justice system because these same issues impact their everyday lives or those of their family.

IPRT's polling also complements other recent RED C polling commissioned by the National Youth Council of Ireland which highlighted a keen awareness of youth work organisations and their importance in providing non-formal education to young people. Significantly, nine out of 10 people polled agreed that "greater funding of youth services is likely to help prevent social challenges, such as anti-social behaviour and crime, in communities". We know the transformative impact that youth work can have on a child or young person's life and if we are serious about investing in and delivering on prevention and early intervention then we do need to take a step back and ensure greater levels of investment in youth work alongside the record levels of investment in youth diversion.

IPRT notes that the Youth Justice Strategy extends or proposes to extend the age range of children and young people that engage with YDPs. At the lower end of the age range, we know that YDPs now work with younger children aged 8-11 as a prevention and early intervention measure. While we recognise the intention of the measure, IPRT would sound a note of caution that it could have unintended consequences and could run the risk of stigmatising very young children as they cannot engage in youth work services at the same age. While some children that young may have engaged in behaviour that could be described as offending, or they are at risk of engaging in this type of behaviour, given the criminal age of responsibility is 12, we want to ensure that we don't end up widening the youth justice net unnecessarily. Very often this age cohort is the one that falls between the cracks given that they are too old for early years services and too young for youth services yet providing the appropriate supports for children of this age can have positive lifelong consequences. I think this could be where the no wrong door approach has real impact.

I would also take this opportunity to reiterate IPRT's position that the minimum age of criminal responsibility should be increased to 14 as originally established in the Children Act 2001 and subsequently and regularly recommended by the UN Committee on the Rights of the Child.

On the other hand, IPRT welcomes that the Strategy proposes to extend diversion for 18-24 year olds and which has not yet taken place despite a Programme for Government commitment made in 2020 to 'examine increasing the age limit for the application of the Garda Youth Diversion Programme to 24 years old.' 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 2018 Joint Committee on Justice and Equality Report on Penal Reform and Sentencing recommended that Garda diversion and community projects should be expanded to offer alternatives to imprisonment. The importance of extending diversion for this cohort cannot be understated as it would impact a sizeable proportion of people in the criminal justice system. These alternatives should include greater use of community service, restorative justice and the option to engage in relevant health-led treatment.

According to the latest available data, in October 2024 young people aged 18-24 made up 10 per cent of the prison population serving a sentence although we do not have the corresponding number held in pre-trial detention. We also know that during 2023, they made up 15 per cent of all committals. While not every young person who was convicted may have been eligible for diversion, IPRT welcomes that the Department of Justice has engaged in consultation with the wider sector to explore how this could best be done and it is disappointing that the consultation due to take place this month has had to be postponed but we look forward to contributing to the rescheduled consultation, hopefully in early 2025.

We also hope that these discussions will inform further plans to consider separate provision for young people aged 18+ so that they can be accommodated separately from the adult population and avoid the cliff-edge many of them face when they turn 18 in the criminal justice system and "lose access to age-appropriate interventions, entitlements and supports overnight – both in the criminal justice system, and in services provided in the community". We also note that the Irish Prison Service has recently supported a research project to ascertain the prevalence of neurodiversity amongst the 18-24 year old cohort in prison.

The important steps forward to recognise this group are welcome as they reflect the emerging neuroscience on adolescent brain development and maturity levels of young adults. 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 have consistently been for young adults, demonstrating that prison is not an appropriate response for many of these young people and we could serve them better through promoting, expanding and investing in alternatives to custody.

A distinct approach that responds to the special circumstances of young people transitioning into adulthood will promote better outcomes and reduce crime. There is also an economic argument to be made for young adults to access diversion programmes. The average annual cost of an available, staffed prison space during 2023 was almost €90,000. 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.

IPRT would also welcome the development of sentencing guidelines for judges by the Sentencing Guidelines Information Committee (SGIC) when faced with a sentencing decision about a young person under 25. 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 reflected 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. 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 including in Germany, Croatia and the Netherlands which 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. A further amendment to the Children Act 2001 or other relevant legislation could allow for maturity assessments to be carried out when sentencing a young adult. This would facilitate the judge to consider if a young adult aged 18 or over should be sentenced in the youth justice system.

I think we can learn a lot from the youth justice system and very often we in IPRT look to it as a model of good practice when we are advocating for wider reform in the adult system. For example, I mentioned earlier that our vision is that prison would always be a sanction of last resort. Unfortunately, this is not the case in the adult system currently with a record number of people in prison right across the country with almost 300 people sleeping on mattresses on the floor. Despite commitments in the Review of Penal Policy Options for Prison and Penal Reform 2022-2024 that consideration would be given to placing the principle of imprisonment as a last resort on a statutory footing, we are nearing the end of that policy so we will have to wait a little longer for that to become a reality. However, we only have to look to the youth justice system to see the positive impact that legislating for this principle could have. We have seen a fall in numbers being admitted to Oberstown even in the last decade or more - in 2012, 218 people were admitted to Oberstown Child Detention Campus whereas in 2023, there were 129 young people accommodated in Oberstown over the course of the year.

Of course, we know that amending legislation alone cannot achieve this, it is just one component – albeit an important one – and that there are many other aspects of the youth justice system that have helped to achieve this fall in numbers of children and young people in detention. Investment in youth diversion is at record levels. In fact, another model of best practice in the youth justice system that IPRT has looked to in recent years and recommended should be adapted and replicated in the adult system is the bail supervision scheme. First introduced in Ireland in 2016, the Scheme offers courts an alternative to remand detention for children and young people by offering the court the possibility of granting bail with intensive supervision. It enables young people at high risk of bail denial to adhere to bail conditions and helps reduce potential reoffending through provision of wraparound 24/7 supports, including support to caregivers. The 2019 evaluation found there was a 72 per cent decrease in reoffending six months after a young person has completed the Bail Supervision Scheme and of those who completed the Scheme, 85 per cent received a non-custodial sentencing option. While it is welcome that the Scheme has been extended to Dublin, Limerick and Cork, it is important to consider how it could be made available to children in other parts of the country.

This is particularly important given the proportionately high number of children being held in pre-trial detention in Oberstown. According to the 2023 Oberstown annual report, it is notable that the number of remand orders (70 in 2023) continue to be higher than detention orders (59 in 2023)

particularly in light of the success of the Bail Supervision Scheme. Like in our adult system, the youth detention system is now regularly at capacity and has been exceeded for boys at times as outlined in the report where the girl's unit had to be repurposed temporarily. IPRT is concerned at this situation and would question why remand is being used so frequently given the provisions in the Children's Act 2001. IPRT's clear position is that detention should only ever be as a last resort, when all other avenues have been exhausted, and never for welfare reasons. This also aligns with the most recent recommendations of the UN Committee on the Rights of the Child which also states that detention should be for the shortest period of time and reviewed on a regular basis.

The proposals in the Youth Justice Strategy to review and amend the Children Act 2001 are welcome. We know from implementation statements that the Department has been working away on this and we hope that it will be a priority for the next Government. On this note, IPRT welcomes the recent change in the law to amend section 2 of the Criminal Justice Act 1990 to dis-apply the mandatory life sentence for murder for young people who commit murder when they were under 18 but subsequently turn 18 before or during the trial or sentencing process, or as it is commonly known, to 'age out'. However, we note this happened in response to legal action and we believe that the provisions of the Children Act 2001 (or similar) should apply to the processing of all offences with reference to the young person's age at the time an offence is committed, irrespective of the age of the young person when the case proceeds to trial, not just in cases of murder. As such, IPRT looks forward to engaging with related proposals being brought forward to amend the Children Act 2001 through the [Children \(Amendment\) Bill 2024](#).

While I've referred to a number of priority areas and impacts that have already happened, I want to finish by focusing on some of the nuts and bolts of ensuring the Youth Justice Strategy is as effective as possible. Already we know that a huge amount of data and research is being conducted and this is both necessary and welcome. I do want to highlight though that one area we really need more data is to know the connection between the youth justice system and the adult system. Many years ago I met Frances Fitzgerald when she was Minister for Children, alongside my colleagues in IPRT and we all agreed how important this data would be. I know this is an area the Department wants to explore further because ultimately it will be the litmus test to know how impactful the Strategy has been.

Finally in terms of oversight and accountability, it is welcome that there are structures in place to support the implementation of the Strategy that involve multi-agency and cross-departmental structures as well as academics and civil society actors like ourselves. However, I note that when the Strategy was developed we had a dedicated youth justice agency, co-located between Department of Justice and the Department of Children. Unfortunately, this is no longer the case and the areas of policy and support for youth diversion are completely separate from child detention. We need a joined up approach to counter this and ensure that the State's actions when it comes to youth justice are cohesive. For many years, people have called for a dedicated Youth Justice Agency and I would urge the Department and the next Minister to consider putting this in place.

We also need to consider how we can strengthen oversight. The Strategy refers a number of times to the successor framework to Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People. Young Ireland was published in 2023 and while it references the Youth Justice Strategy as a complementary strategy there is a ready-made infrastructure there in terms of the Advisory Council and the policy consortium that could potentially play a bigger role in overseeing this Strategy. Certainly, many of its priorities including child poverty, child mental health and discrimination against certain groups of children are extremely relevant in this context.

And lastly, on a more international level the State is now the only EU Member State not to have ratified the Optional Protocol to the Convention against Torture (OPCAT). We have a longstanding commitment for this to happen and we finally have draft legislation in place. We hope to see the legislation enacted and the Protocol ratified as a matter of urgency.