

## Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Republic of Ireland

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This international profile presents information and evidence on the minimum age of criminal responsibility in the Republic of Ireland. It specifically focuses on policies and practices about investigating offences committed by children/young people.

### Key Findings:

- MACR is 12
- Prosecution & imprisonment of children should be a last resort
- System more lenient when children are involved in criminal proceedings than when adults are
- Reforms in law and practice and establishment of Irish Youth Justice Service
- Police to refer children to health board, if they believe they are endangering their health, safety, welfare or they do not receive satisfactory care/support
- Child-specific provisions on confidentiality
- No specialised training provided to members of the police force dealing with children
- Gaps in decision making processes and services for children

## Background

In Ireland, the age of criminal responsibility was raised from seven to 12 in October 2006; however any person under 18 is considered a child according to law. Children 10 or 11 can be charged with murder, manslaughter and certain sexual offences (rape, aggravated sexual assault); however, when a child under 14 is charged, the consent of the Director of Public Prosecutions (DPP) is needed for the case to proceed. Moreover, children under 12 could go through the Health Service Executive (HSE) rather than the Criminal Justice System (CJS).

A Children Court was established to separate criminal court proceedings involving children from those of adults and has the power to deal with most criminal offences committed by children. All minor and most serious offences are held there. Under certain circumstances, when a child is charged with a serious offence, the Children Court may decide to deal with the charge in a summary manner. This way limited penalties may be imposed, if he/she is found guilty. When deciding on whether to waive the right to jury trial or not, the child can request the help of his/her parents/guardians.

When a child is accused of any offence, the court may suspend the trial and refer the case to HSE to pinpoint the appropriate support for the child. After HSE informs the court, the court can dismiss the charges. Children may be subject to corrective measures such as fines, community sanctions, detention and supervision orders. However, no maximum period of detention has been set for children.

Police (Garda), prosecution and court service do not receive specialised training on dealing with children; however, there is specialist training on victim interviewing to some members of the police and specialist training to judges who deal with children who have offended. There is an informal multidisciplinary cooperation among practitioners, however there is a need for the agencies involved in youth justice to co-ordinate and ensure they have relevant capability and knowledge to deal with children and ensure their best interests. The number of convictions for 2010 was 1,706.

## Findings

In general, as stated by the law, children under 12 will not be charged and convicted of an offence. However, it is on Garda's discretion to take a child under 12 to his/her parents/guardians, when the child is believed to have offended, but cannot be charged because of his/her age. If taking the child to the parents/guardians is not possible, he/she will be handed over to HSE by the Garda.

The court may impose a detention period on a child. If the child is under 16, he/she will be detained in a child detention school, if a place is available. If 16/17, he/she will be detained in a child detention centre. However, this is only if the court believes it is the only suitable way to deal with the child.

When a child over 12 is arrested and suspected of an offence, the member of the police in charge at the particular station must ensure the child is informed without delays on: the offence he/she is suspected of, his/her right to consult a lawyer and

how to do this, and inform his/her parents/guardians of the arrest and request their presence at the station. This information must be in a language appropriate to child's age and mental capacity. However, it seems there are not specific provisions with regard to preparation of children for interviews/court sessions, as there are no provisions ensuring the information gathered is admissible in court. Moreover, there is no maximum time limit regarding pre-trial detention of children.

Moreover, the member in charge at the particular station must inform the parents/guardians of the child's arrest, the offence he/she is suspected of, his/her right to consult a lawyer and request their presence at the station. If not possible to contact the parents/guardians of the child, or if they cannot be present within reasonable time, the member in charge must inform the child of this and of his/her right to name another adult and request their presence at the station. Furthermore, the member in charge should make sure the child's parents/guardians at the police station receive a copy of the charge sheet and a written notification with the details of the child's appearance at the court (time, date, location) and the consequences of not appearing. If no parents/guardians are present or the child's address is unknown, the member in charge must make sure the parents/guardians receive these documents.

There are no legal time limits to arrest a child. However, for minor offences, the police must issue a summons within six months of the date the offence. In all investigations relating to a child, members of the police must consider his/her rights, age, maturity, needs, dignity and vulnerability.

When a child over 12 in custody has requested the presence of a lawyer, the police must call the named lawyer as soon as possible or provide the child with the name(s) of lawyer(s) able to be present as soon as possible. When a lawyer cannot be reached or is unable to be present, the child can ask for another. The same apply when the request has been made by parents/guardians, adult named by child etc.

Interviewing of a child suspected of committing a crime should take place in a private room. He/she can be questioned or write a statement, only if parents/guardians or another nominated adult (not a member of the police) are/is present. The police may ask questions or take written statements in the absence of parents/guardians, if delaying the questioning means a serious risk to people, property or collection of evidence. However, there are no guidelines and it is at the discretion of the police to allow the adult named by the child to be present for the interview. If parents/guardians are part of the investigation in any way (e.g. victims, suspects, etc.) or if they are believed to obstruct the investigation, the police can exclude them from the interviewing procedure (or the writing of the statement) of/by the child. When the presence of a lawyer has been requested, the child may not make a statement without allowing reasonable time for the lawyer to appear. The lawyer is not required to sign the statement.

When a child is charged with an offence, he/she may remain in custody until the following morning, if the member in charge of the particular police station asks for the child to appear before the next Children Court. In such a case, the member in charge should make sure the child will not associate with any adult detainees and will only be kept in a cell, if other suitable accommodation cannot be found. However, there is no prohibition on separating children from adults in police custody. The Children Court can remand a child in custody, if the child is charged or found guilty of one or

more offences, if the case continues to trial or if the Court has postponed a decision. If the Court remands a child in custody, it should justify the reasons for its decision in language appropriate to the child's age and understanding in open court.

With regard to confidentiality for cases appearing before the Children Court there should be no mention of the name, address, school or any other information (including photographs and videos) that could lead to the identification of the child, if published or broadcasted. Such publication is a criminal offence punishable by fine and/or imprisonment. However, the Court may allow publication of such information if it believes there is a legitimate reason for doing so.

Garda Juvenile Diversion Programme aims to help any child who accepts responsibility for his/her behaviour abstain from further offending and further anti-social behavior. Each police district has a liaison office (member of the police specially trained to deal with children), responsible for administering the Programme. Any child engaging with the Programme will not be prosecuted for the offence which resulted in his/her engagement with it. However, acceptance of responsibility may be used when considering sentence for an offence committed after engaging with the Programme. The identity of any child engaging or potentially engaging should not be published.

A child's criminal record shall be cleared if: the offence committed was before the child turned 18, the offence is not to be tried by the Central Criminal Court, not less than three years have passed since the child was found guilty and he/she has not offended during that period. However, there are no provisions to ensure criminal records are not disclosed to the public when the child reaches maturity.

## Evidence

The information presented was based on data collected and collated through policy and evaluation documents and academic literature on the criminal justice system, human rights and rights of the child in the Republic of Ireland. Further contacts have been made (Ministry of Justice and Equality, Garda) to collect relevant information, however, no information has been received so far.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

## Bibliography

Council of Europe (2010) *Answers to the questionnaires on principles of public prosecution as regards juvenile justice – Ireland* [online]. Strasbourg: Council of Europe. Available from: [http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/OP\\_5\\_Question\\_Irlande.pdf](http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/OP_5_Question_Irlande.pdf) [Accessed 24/11/2015]

European Commission (2015) *Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU*. Brussels: European Commission

European Commission (2014) *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union*. Brussels: European Commission

European Commission (2013) *Study on children's involvement in judicial proceedings: Contextual overview for the criminal justice phase – Ireland*. Brussels: European Commission

Irish Youth Justice Service. *Irish Youth Justice Service Legislation* [online] Dublin: Ministry for Justice and Equality. Available from: <http://www.iyjs.ie/en/IYJS/Pages/WP08000067> [Accessed 24/11/2015]

Kilkelly, U. (2014) Diverging or Emerging from Law?: The Practice of Youth Justice in Ireland, *Youth Justice*, 14 (3) pp212-225

Office of the United Nations High Commissioner for Human Rights (2013) *Consideration of reports submitted by States parties under article 44 of the Convention: Third and Fourth periodic reports of States parties due in 2009 – Ireland*. Geneva: Office of the High Commissioner for Human Rights

Seymour, M. (2004). *Juvenile Justice in the Republic of Ireland. Prepared for the Thematic Working Group on Juvenile Justice, European Society of Criminology* [online] Dublin: Dublin Institute of Technology. Available from: [www.esc-eurocrim.org/files/juvenile\\_justice\\_in\\_the\\_republic\\_of\\_ireland.doc](http://www.esc-eurocrim.org/files/juvenile_justice_in_the_republic_of_ireland.doc) [Accessed 23/11/2015]