The role of the youth lawyer in the juvenile justice system in Ireland

National report
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Child Law Clinic
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Children’s Right of Access to and Assistance by a Lawyer

National Report: Ireland

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1.0 INTRODUCTION

1.1 List of Abbreviations

CFA: Child and Family Agency
CRC: United Nations Committee on the Rights of the Child
CJEU: the Court of Justice of the European Union
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
EU: European Union
GYDP: Garda Youth Diversion Programme
HIQA: Health Information and Quality Authority
ICCL: Irish Council for Civil Liberties

1.2 Organisation and Team in charge of the Research
The research was undertaken by researchers Sarah Jane Judge, BL, Naomi Kennan, and Deirdre Kelleher under the supervision of project leader Professor Ursula Kilkelly, School of Law, University College Cork.

1.3 Methodology

1.3.1 Desk Research
Desk research included the examination and inclusion of the existing reports, publications and sources regarding the youth justice system in Ireland

1.3.2 Field Research

Interviews with Professionals
- Interviews were administered by an instructed researcher with four youth lawyers currently representing children in the youth justice system.
- Qualitative, semi-structured interviews were undertaken using a standardised questionnaire which combines both open and closed questions.
- An overview of the answers given in these interviewed is contained in Appendix A.

Interviews with Children
- Interviews were due to be conducted with five children who have been involved in the youth justice system. Due to a tragedy in the relevant organisation, these interviews had to be postponed and time constraints have not allowed these interviews to be held yet. Two interviews were completed with two children. However, these interviews should be viewed in tandem with the three outstanding interviews.
- When possible, they will be administered by experienced researchers in the coming weeks.
• The information from children will be obtained through qualitative, semi-structured interviews using a standardised and child-friendly questionnaire which combines both open and closed questions.

• Participants will be offered the choice of an individual interview or a paired interview with another child of their choice. The value of such an approach and its popularity among young people themselves is well documented in the literature (Highet, 2003).

• All interviews will be conducted in an environment which is appropriate to the individual child’s needs.

1.3.3 The Limitations of this Research

• At this time, the research is limited by the lack of interviews with children. However, this will be remedied in due course.

• The lack of a centralised and objective account of the trajectory and experience of children through the criminal justice system in Ireland provided significant difficulties. This resulted in a number of sources having to be consulted each of which contained their own inherent agency/organisational biases.

• The sample size was very small. However, this was unavoidable due to the lack of those specialising in the representation of children in the criminal justice system in Ireland. Nevertheless, the impact of this was the similarities in the experiences of those legal representatives interviewed and therefore the answers provided.
2.0 – THE INTERNATIONAL FRAMEWORK

2.1 Ratified Conventions

Ireland has signed and ratified the following international Conventions, relevant to children’s right of access to and assistance by legal counsel and representation:

- **The United Nations Convention on the Rights of the Child:**
  The UNCRC was signed by Ireland in September 1990 and ratified in September 1992. The UNCRC cannot be directly enforced in Irish courts as it has not been incorporated into domestic law. This makes it very difficult to rely directly on the provisions of the Convention before the courts. In 2016, the Committee reiterated its recommendation that the State should undertake further action to incorporate the Convention into domestic law. In recent years, elements of the Convention have been given limited legal effect through law reform measures such as the constitutional amendment on children (Article 42A of the Irish Constitution) in 2012, through the Child and Family Agency Act, 2013, and the Children and Family Relationships Act, 2015.

- **Third Optional Protocol to the United Nations Convention on the Rights of the Child:**
  Ireland signed and ratified the Third Optional Protocol to the United Nations Convention on the Rights of the Child (OP3) on 24 September 2014. The Protocol establishes a complaints procedure, a quasi-judicial mechanism, which allows children and their representatives to submit a complaint to the UN Committee on the Rights of the Child (CRC) regarding specific violations of their rights under the UNCRC.

- **The International Covenant on Civil and Political Rights.**
  The International Covenant on Civil and Political Rights was signed by Ireland in 1973 and ratified on 8 December 1989.

- **The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**
  The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed by Ireland in September 1992 and ratified on 11 April 2002.

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2 In *Olaniran & Others v Minister for Justice, Equality and Law Reform* [2010] IEHC 83 Clarke J clearly stated that ratification of the UNCR is of no effect in Irish courts.
Some aspects of the Convention, such as definition of torture are incorporated into domestic law in Criminal Justice (United Nations Convention Against Torture) Act 2000

Also, as observed in Concluding Observations of UNCAT in August 2017, the UNCAT committee has called for the commencement of Section 9 of 2011 Criminal Justice Act which concerns access to legal representation and that no questioning will take place until a person in custody has had an opportunity to consult with a legal advisor.7

2.2 Measures taken to promote soft international law

A range of other standards and guidelines have been set out over the years.8 These include but are not limited to:

- UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’);
- UN Guidelines for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’);
- UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).

These instruments establish a comprehensive framework for the care, protection and treatment of children who come into conflict with, or are at risk of coming into conflict with, the law. They are non-binding in nature.

Reform of youth justice law and policy in Ireland increasingly reflects the principles of these international standards and guidelines. The Children Act 2001 (the 2001 Act), as amended, recognises the rights of the child in conflict with the law. That said, there are a number of reoccurring concerns regarding the effective implementation of the rights of the child in the youth justice system. These include: a lack of transparency; delays in court lists; lack of case management; a failure to provide specialist training for legal personnel and significant limitations in interagency communication.9

In 2016, the CRC issued its Concluding Observations on Ireland’s Third and Fourth Periodic Reports.10 The CRC urged Ireland to bring its juvenile justice

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7United Nations Committee against Torture, Concluding observations on the second periodic report of Ireland, CAT/C/IRL/CO/2 para 10(a): “State party should: (a) Expedite the commencement of section 9 of the Criminal Justice Act 2011 to ensure that all persons deprived of their liberty by the police have the right of access to a lawyer, including during the initial interview and interrogations, from the time of their apprehension, and ensure that this right is respected in law as well as in practice”
system fully into line with the UNCRC and other relevant standards. The recommended changes included:

(a) Reinstate the provisions setting the age of criminal responsibility at 14 years, as established in the Children Act 2001;11

(b) In cases where detention is unavoidable, ensure that the detention is for the shortest possible period and that children are not detained with adults. Detention conditions must also be compliant with international standards. This includes the child’s right to access education and health-care services.

3.0 - THE REGIONAL FRAMEWORK

3.1 Ratified Conventions and Charters
Ireland has ratified the following regional instruments, relevant to children’s right of access to and assistance by legal counsel and representation:

• The European Convention on Human Rights, was signed and ratified by Ireland in 1953. It was given further effect in Irish law in the ECHR Act 2003;
• The European Social Charter (Revised) was signed and ratified by Ireland in November 2000.
• In December 2009, the European Union Charter of Fundamental Rights become binding on the EU, with the entry into force of the Treaty of Lisbon.

3.2 European Directives
Having adopted a number of Directives containing specific provisions in relation to the rights of child victims, EU institutions are currently focused on strengthening the procedural safeguards for children suspected or accused in criminal proceedings.12

The Directives relevant to this research project are:

• Dir. 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings.
  o This has been transposed into Irish law.

• Dir. 2012/13/EU on the Right to Information in Criminal Proceedings.
  o The Directive has been transposed, with its measures incorporated in a number of domestic instruments as outlined in the summary of transposition measures recorded on the EUR-LEX database.13

11 Ibid at para.71(a).
European Directives provide States with a set of agreed principles relevant to children’s rights of access to and assistance by a lawyer. Furthermore, in cases where States have not opted into a particular Directive, the Directives can remain an important source of advocacy for civil society groups who can use their provisions to campaign for law reform. For example, although Ireland has not opted into the Access to a Lawyer Directive (Dir. 2013/48/EU), the Irish Council for Civil Liberties has been proactive in producing a comprehensive document on how the Directive should be implemented.17 Furthermore, the Irish Penal Reform Trust has made reference to several of the Directives cited above in its study on pre-trial detention.18

**Measures taken to promote soft regional law**

In 2010, the Council of Europe adopted the Guidelines on Child-Friendly Justice (the Guidelines) to direct European governments in their efforts to enhance children’s access to justice.19 The Guidelines define child-friendly as justice 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 participate in and to understand the proceedings; respecting the right to private and family life and respecting the right to integrity and dignity.20

The Guidelines address children’s role in legal proceedings, as well as their views, rights and needs within those proceedings. In particular, they advocate for the removal of any obstacles preventing equitable access to justice, such as the cost of court proceedings, delays in decision-making and the lack of legal representation.21 The Guidelines outline that the right to legal advice should be guaranteed for children, as it is for adults. This should not be minimised or denied under the pretext of the child’s best interests.22

Civil society groups and national human rights institutions regularly cite these Guidelines as a source of guidance and authority. For example, the Office of the Ombudsman for Children, in recommending that An Garda Síochána (the police) consult with children and young people, stated that the Guidelines should also be reflected in the Garda Code of Ethics.23

“…child-friendly justice states that the police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties... This applies to all situations where children might come in contact with the police, and it is of particular importance when dealing with vulnerable children.”

The Ombudsman for Children emphasised that the Guidelines require urgency in proceedings involving children. This aims to provide a speedy response and protect the best interests of the child.24 The Guidelines outline that cases in which children are involved need to be dealt with expeditiously and a system of prioritising them should be considered.25 It should be borne in mind that children have a different perception of time than adults and that the time element is very important to them.26 Furthermore, the rules of court should provide for a system of prioritising serious and urgent cases, or where irreversible consequences could arise if no immediate action is taken.27

http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20childfriendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf

21 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies) at p. 3.
22 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies) at p. 4.
See also: Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, 2010, para. 27.
24 Ibid at 7
26 Ibid.
27 Ibid.
The Ombudsman for Children also highlighted, as per the Guidelines, that all professionals working with children should receive necessary interdisciplinary training on the rights and needs of children of different age groups.\(^28\)

The Ombudsman for Children had previously advised the Government on the importance of complying with regional and international human rights standards on juvenile justice. In 2006, the Government referred proposed changes to the Children Act 2001 to the Ombudsman for comment. The issues raised included: the introduction of anti-social behaviour orders (ASBOs); lowering the minimum age for criminal prosecution in certain cases and the gradual extension of the children detention school system to all children under the age of 18 years. The Ombudsman for Children was of the opinion that these legislative changes could have major implications for the lives of children and young people and stated that:

> Interventions are required to deal appropriately with 'at risk' children and children involved in criminal activity in order to protect the best interests of children and to protect the rights of all members of society to the peaceful enjoyment of life and property. However, the interventions set out in the proposed amendments are not the means to achieving this end.\(^29\)

Regardless of this advice, the proposed changes were implemented. The Ombudsman for Children cannot investigate complaints regarding ongoing criminal investigations or against members of the legal profession.

In 2014, the Irish Youth Justice Service published *Tackling Youth Crime: Youth Justice Action Plan 2014-2018*.\(^30\) The Action Plan indicates a number of strategic goals regarding youth justice policy in Ireland. These are:

- To work together to ensure public confidence in dealing with young people in trouble with the law;
- To strengthen and develop our evidence base to support more effective policies and services, having regard to the voice of young people;
- To review and strengthen targeted interventions to reduce offending and divert young people from the criminal justice system;
- To promote and increase the use of community measures, including restorative justice, for young people who offend;
- To provide a safe, secure environment and necessary support for detained young people to assist their re-integration into the community.

\(^{28}\) ibid.


Also in 2014, the Department of Children and Youth Affairs in Ireland, published Better Lives Better Futures: The National Policy Framework for Children and Young People. The Policy makes reference to the provisions of the UNCRC and a number of European Commission recommendations regarding investing in children and tackling the disadvantage experienced by children.

Oberstown Children Detention Campus has adopted a Strategic Plan 2017-2020 which reflecting a number of the provisions of the Guidelines on Child Friendly Justice including the provision of the best possible care for young people and to develop a motivated, cohesive and skilled workforce who will provide this care. Oberstown has also recently adopted a strategy to promote the participation of young people in decision-making, in line with the National Strategy on the Participation of Children and Young People in decision-making, with a view to advancing the operation of the Campus in line with the norms of child-friendly justice.

3.4 Jurisprudence of the ECHR and of the CJEU
Ireland took action in 2003 to give further effect in Irish law to the European Convention on Human Rights (ECHR) through the European Convention on Human Rights Act, 2003 (the 2003 Act). Section 4 of the 2003 Act requires Irish courts to take judicial notice of the Convention and its institutions and to ‘take due account of the principles laid down by...decisions’ of those institutions. Section 2 obliges national courts to interpret national law ‘in so far as is possible’ in a manner which is compatible with the state’s obligations under the Convention.

While the ECHR does not contain child-specific standards, the rights contained are applicable to children and adults. There is a growing recognition that the ECHR has the potential to significantly promote and protect children’s rights. The European Court of Human Rights (ECtHR) has made a number of significant judgments regarding Ireland.

Article 5 of the ECHR
Regarding proceedings involving children, Article 5 of the ECHR is particularly relevant. It requires that in order to be lawful, the detention of minors for the purpose of educational supervision must have an educational regime in place. In D.G. v. Ireland, the European Court of Human Rights held that the detention of a 16-year-old boy with serious behavioural problems in St. Patrick’s Institution (a penal institution) was in breach of Article 5 of the ECHR because it did not make education available to him.

36 D.G. v. Ireland Application No. 39474/98
European case law has also resulted in reforms regarding the access of (adult) suspects to a lawyer while in Garda custody. The Supreme Court rulings of People (DPP) v. Gormley and People (DPP) v. White\(^\text{37}\) cite European case law and international best practice in concluding that a suspect must first have access to legal advice before being interviewed by An Garda Síochána.

In *DPP v Gormley*\(^\text{38}\), the Supreme Court declared that "the entitlement not to self-incriminate incorporates an entitlement to legal advice in advance of mandatory questioning of a suspect in custody" and that "the right to a trial in due course of law encompasses a right to have early access to a lawyer after arrest and the right not be interrogated without having had an opportunity to obtain such advice.

The Supreme Court noted that the Government should have identified the need for this reform in light of the case law of the European Court of Human Rights and other international standards. As noted by the Irish Council for Civil Liberties (ICCL), the judgment "charts a path towards future reforms",\(^\text{39}\) including making provision for the presence of a lawyer during Garda questioning, in line with case law of the European Court of Human Rights.\(^\text{40}\)

The ruling led to the publication of the Code of Practice on Access to a Solicitor by Persons in Garda Custody.\(^\text{41}\) The standards are “to ensure that members of An Garda Síochána develop constructive, professional and courteous relationships with lawyers while engaging with an arrested/detained person.”\(^\text{42}\)

Citizens can also access the Court of Justice of the European Union (CJEU), the highest court of the European Union (EU). The CJEU interprets EU law in such a manner as to ensure it is applied in the same way in all EU countries. This helps to settle any legal disputes between national governments and EU institutions. In 2015, the CJEU issued its first preliminary ruling concerning the above-cited EU Directives on procedural safeguards in criminal proceedings including the right to language assistance.\(^\text{43}\) The ruling appears to indicate that “the CJEU, together with national courts, will lead to more effective rights of defence throughout the EU.”\(^\text{44}\)

\(^{38}\) *DPP v Gormley* [2014] IESC 17  
\(^{40}\) In the case of Salduz and drawing upon the interpretation placed upon that case by the UK Supreme Court in the case of Cadder v the Scottish Ministers.  
\(^{42}\) Ibid.  
\(^{43}\) See Covaci, C-216/14.  
4.0 – THE NATIONAL FRAMEWORK

Please note that the term lawyer is used as an overarching term for solicitors and barristers. Both solicitors and barristers are involved in the representation of children in Ireland. The regulatory body for solicitors is the Law Society of Ireland. The regulatory body for barristers is the Bar Council of Ireland.

4.1 Children suspected or accused in criminal proceedings in Ireland

In Ireland, youth crime constitutes up to 15% of all crime. The typical offences with which young people are charged include those associated with public order and alcohol and drug misuse. Approximately 3,500 young people come before the Children Court each year. In 2015, 9,807 young people were referred to the Garda Diversion Programme (the police diversion programme) with 7282 admitted to the programme.

Several studies have detailed the difficult backgrounds of the children involved in the youth justice system in Ireland. Many come from poor socio-economic backgrounds, with a significant numbers having lived out-of-home or been in care. Weak attachment to family, a lack of familiar support and drug and/or alcohol abuse are also common. A lack of interaction with mainstream education, illiteracy, mental health, cognitive and behaviour problems are also prevalent among this group.

Unfortunately, there are serious gaps in the data on youth justice and historical weaknesses and inconsistencies in information gathering in Ireland. There is no central source of information regarding young offenders with a particular dearth of information concerning the trajectory of children through the criminal justice system. As highlighted by the CRC, this information is essential to identify problems and to inform all policy development for children, to establish effective systems for data collection and to ensure that the data

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46ibid.
48 When children get into trouble with the law, the Gardaí may decide divert them from Court. This programme, operated by the Garda Youth Diversion Office, provides that in certain circumstances a young person under 18 years of age who freely accepts responsibility for a criminal incident can be cautioned and supervised as an alternative to prosecution. The Garda Diversion Programme exists across the country and operates on a statutory basis under Part 4 of the Children Act, 2001. Available at http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html
51 ibid.
collected is evaluated and used to assess progress in implementation.53

4.2 The legal and regulatory framework for the Irish youth justice system

4.2.1 Legal Framework

Youth justice in Ireland is governed by the Children Act 2001 as amended (the 2001 Act), which makes provision for police cautioning, a specialist Children Court and a range of emphasises community based non-custodial measures for dealing with young offenders.

The Children Court has extensive jurisdiction to try children over 12 years in respect of minor offences although more serious offences might be referred to the Circuit Criminal Court. The only offences that cannot be tried in the Children Court are offences of murder, manslaughter and certain sexual offences which must be tried in the (adult) Central Criminal Court. The Children Act 2001 provides that a child over 10 years can be charged with such offences.54 The approval of the Director of Public Prosecutions is required to charge any child under the age of 14 years.

The Children Court

The Children Court (the Court) is governed by the provisions of the Children Act 200155 and provides a number of safeguards for children who are charged with criminal offences. These safeguards include privacy protections56 and an emphasis on the child’s right to participate and be heard throughout the court process.57 Parents or guardians are mandated to attend Children Court proceedings with the child.58

Some protections also apply to the higher courts, including the requirement to prevent publication of the child’s identity.59 All courts are also bound by the requirement that detention must be a measure of last resort.60

4.2.2 Policy Framework

Since January 2012, the Irish Youth Justice Service (IYJS) operates as an executive office of the Department of Children and Youth Affairs (DCYA) and has responsibility for leading and driving reform in the youth justice system. Under national policy, its focus is on diversion and rehabilitation, including greater use of community-based interventions, promotion of initiatives to deal with young people who offend, providing a safe and secure environment for detained young people and supporting their early re-integration into the community.

_Tackling Youth Crime: Youth Justice Action Plan 2014-2018_61 does not address issues related

53 Ibid.
54 Children Act 2001 s. 52, as amended.
56 Ibid. at ss. 93 and 94.
57 Ibid. at s. 96(1).
58 Ibid, s. 91.
59 Ibid, at 2. 93, as amended.
60 Ibid. at s. 96(2).
61 See: Irish Youth Justice Service (2013), _Tackling Youth Crime_, available at:
to the child’s access to justice or the more specific issue of the child’s access to a lawyer.

4.3  

**Children’s right of access to and assistance by a lawyer in criminal proceedings**

4.3.1  

**Before judicial proceedings**

Part 6 of the Children Act, 2001 deals with the treatment of child suspects during police questioning and/or when in Garda (police) custody. This relates to notification of parents/guardians; the notification of a lawyer and interviewing a child and contains provisions relating to the personal rights of the child, the requirement to take into account their vulnerability owing to their age and level of maturity the responsibility on the police to act with due respect for the personal rights and dignity of the children.\(^62\)

In line with the Act, the child’s parents or guardians must be notified that the child is in Garda (police) custody\(^63\) and a child must be interviewed in the presence of his/her parents or guardian. If the parents or guardian cannot attend the interview, then a ‘responsible adult’ may be identified to attend the interview with the child. There are no regulations as to what qualifications or experience such a person should have.

Section 57 of the Act requires that the child be informed of the offence for which he/she is being detained, and that he/she is entitled to consult with a lawyer. The child must also be facilitated in obtaining a lawyer.\(^64\) Where the child or parent or guardian have asked for a lawyer, the child shall not be interviewed until a reasonable time for the attendance of the lawyer has elapsed.\(^65\) The Act sets out that this information must be given to the child in language that is appropriate to the age and level of understanding of the child.

4.3.2  

**During Judicial Proceedings**

**Access to Legal Aid**

The **Criminal Justice (Legal Aid) Act 1962**\(^66\) provides the legislative basis for the criminal legal aid scheme in Ireland. To qualify for criminal aid, the accused person must be charged with an offence or summonsed to court. A person must then complete a statement of means with their legal representative which is then submitted to the presiding Judge. The criteria upon which legal aid should be granted was clarified by the Supreme Court in **Joyce v, Brady & Anor.**\(^67\) An application for legal aid is usually made on the first court appearance. As children are of limited, if any, means, they are always granted legal aid, upon application.

A legal aid certificate awarded within the jurisdiction of the Children Court provides for representation by a solicitor only. Fees are outlined on a set schedule (for court...
appearances) and are not calculated on an hourly basis. The criminal legal aid scheme does not provide for solicitor client consultations or attendance at voluntary interviews between the child and An Garda Síochána. Legal aid in the Circuit and Central Criminal Court extends to a solicitor and one junior counsel (barrister). Legal aid for a senior counsel may be awarded in serious or complex cases.

**The Children Court**

The 2001 Act provides a Children Court to hear minor offences against children. It contains some regulation regarding the organization of court hearings, but does not provide in any detailed way for how the child is to be treated within the court process. In response to this, the President of District Court issued a Practice Direction pertaining to the operation of the Children Court 68 to ‘ensure compliance with a young defendants’ Constitutional rights as well as international standards for juvenile justice set out in the European Charter, the European Convention on Human Rights, the Convention on the Rights of the Child, the Concluding Observations of the Committee on the Rights on the Child, and the United Nations "Beijing Rules" on the administration of juvenile justice.”69 This Practice Direction only applies to Dublin Metropolitan Children Court. It does not apply to any regional courts.

The Practice Direction sets out the Court’s expectation of legal practitioners, namely that:

- Robes and wigs should not be worn in court.
- Where a young defendant has a particular vulnerability requiring special arrangements, or requires translation of advocacy facilities in order to meaningfully participate in the proceedings it is the duty of the legal practitioner to bring this to the attention of the court as soon as practicable.
- Legal representatives for both prosecution and defence should, where appropriate, discuss bail conditions prior to court and ensure that bail conditions proposed to the Court can be complied with by the young defendant.

Furthermore, the Direction requires that legal representatives should also take all necessary steps necessary to ensure that young defendants are fully aware of what is in involved in complying with bail conditions and understands the consequences which flow from breach of bail conditions.70 Previous studies have illustrated the issues that children in Ireland face while on bail. This is particular manifest in the accumulation of additional offences by many children while they are on bail. The Children Court Bench Book used in Dublin Metropolitan Children Court echoes the difficulties in setting bail conditions and the importance of involving all key stakeholders in their formulation:

> “It is a real challenge for a judge of the Children Court to set appropriate bail conditions and the co-operation of the child’s lawyers in drafting and explaining the terms is very important.”71

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68 Dublin Metropolitan Children Court Practice Direction, DC04. http://www.courts.ie/courts.ie/library3.nsf/0/DE214012BF4C001580257C7800515BB1
69 *ibid.*
70 Section 90 of the Act of 2001 outlines the conditions which may be attached by the court when granting bail
71 District Court, Children Court Bench Book, at 74.
4.3.3 After Judicial Proceedings
No specific measures are in place in Ireland to ensure that a child effectively receives relevant information after judicial proceedings in age-appropriate language. In practice, it appears that information on the right to appeal is provided by the child’s lawyer although no rules or guidelines provide for a specific procedure in this regard.
5.0 – FROM THEORY TO PRACTICE: ANALYSIS

Representing children within the criminal justice system can be difficult. The child may lack any form of familial support such as fixed accommodation or the presence of a parent or guardian in the Garda Station or in Court. Furthermore, the child may be reluctant to comply with the criminal justice process due to learning and emotional difficulties, communications challenges, involvement with a negative peer group or the presence of intergenerational crime within the child’s family. Children also have limited understanding and levels of concentration compared to adult clients. This necessitates that solicitors engage with children in age appropriate language and in a manner that ensures that the child understands the court process before and during the court proceedings, and the outcome of each case. Furthermore, specific international and domestic law applies to the trial of children in Ireland. A lawyer, as the child’s legal representative, must have a detailed knowledge of these instruments to effectively represent the child within the court system. Oftentimes, the lawyer is the primary link between the criminal justice process and the child. They have the ability to influence the court procedures and the process of individual cases. In this regard the lawyer is fundamental to the vindication of the fair trial rights of the child throughout the Court process. According to Weijers, legal representatives also have an important role to play in conveying information to young people about the consequences of offending behaviour.

This section examines the various areas components affecting the child’s access to a lawyer and the subsequent relationship between the accused child and his/her legal representative. This is done by drawing on the material provided above regarding the youth justice system in Ireland and also the views of a number of youth lawyers interviewed as part of this Report.

5.1 Information Regarding the Child’s Access to Justice

Existing research at both the international and domestic level confirms that children and young people require legal information, advice, advocacy and representation but face barriers in accessing this support and having their legal needs met. This information must be in a child-friendly format and language. In HIQA’s report on the Oberstown Children Detention Campus in 2017 it stated:

Children were provided with legal aid and had access to legal representation. There was evidence that children spoke to their solicitors by telephone and that solicitors could visit the

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72 Section 91 of the Children Act 2001 states that the parents or guardian of a child shall attend at all stages of any proceedings against the child unless the Court is of opinion that the interests of justice would not be served by such attendance.
74 Health Information and Quality Authority, Monitoring Inspection Report, Detention School Services under the Children Act 2001 (as amended by Section 152 of the Criminal Justice Act 2006 p.22. Available at: www.hiqa.ie
campus when necessary, that solicitors contacted the service for information about children and also that children were facilitated to take legal proceedings themselves when they wished to.

One child’s file contained records of key-working sessions where there was discussion about reasons why they were in detention and future court dates.

In 2017, Oberstown adopted a Participation Strategy designed to promote the participation of children in decision-making at individual, unit and campus levels. This also aims to ensure that children have access to accessible information and complaints mechanisms. More generally, however, children in conflict with the law in Ireland enter a justice system which is not especially child-sensitive in nature. While some adaptations are made to the process in the Children Court, there is little specialist training to ensure that professionals are specially trained to work in this environment.

5.2 The Youth Lawyer in Ireland

There is no requirement for lawyers involved in the representation of children in criminal proceedings to undertake any specialised training. Furthermore, there is no official government advice or information for young people or their families on how, or where to access a lawyer. It appears that the lawyers interviewed as part of this Report became involved in youth justice as a result of personal interest or as a result of the portfolio of cases of the law firm to which they are attached. Appointment of a lawyer by the court immediately prior to court proceedings are also common.

5.3 Training for lawyers in the youth justice system

The CRC Committee has stated that the training of the child’s legal representative is paramount and should take place in a systematic and ongoing manner. Paragraph 9 of the Riyadh Guidelines requires specialised personnel at all levels in the youth justice system, while paragraph 58 recommends that personnel be trained to respond to the special needs of young persons and be familiar with dedicated programmes and referral possibilities for the diversion of young people from the justice system.

Rule 1.6 of the Beijing Rules states that juvenile justice services must be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes, professional education, in-service training, refresher courses and any other appropriate modes of instruction.

A number of training projects for professionals working with and on behalf of children have been initiated at a European level, with some of these being piloted in Ireland by the Child

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Law Clinic at the School of Law, University College Cork among others. These projects have involved the development of a number of training modules and manuals focused on promoting the further implementation of the international and European children’s rights standards, including children’s right to legal or other assistance. These projects have resulted in the development of tailored, online training packages accessible to legal and other professional groups. An Advanced Diploma in Juvenile Justice is also offered by The Honourable Society of Kings Inns and a Certificate in Juvenile Justice is being offered by the Law Society of Ireland. Juvenile Justice has been taught on the LLM programme at the School of Law, University College Cork for nearly 20 years. Any such programme of study or training undertaken by lawyers are taken on the lawyer’s own initiative, as opposed to a mandatory requirement from their regulatory body.

While some of the lawyers interviewed for this report have undertaken a qualification in youth justice, an equal number had not, instead relying on practical experience. Furthermore, the vocational training received by the interviewees did not include any specific module or elective on representing children in the criminal justice system.

All of those interviewed recognised the importance of specialist training in youth justice when representing children within the youth justice system. A unanimous recommendation included the establishment of a specialist, accredited legal aid panel for all those seeking to represent children in any children court. Membership of the panel would necessitate lawyers to undertake specialist training in youth justice on a systematic basis. It was suggested that this panel should be directly linked with the legal aid system in that only panel members could seek legal aid for the child. Enhanced legal aid payments in juvenile cases was suggested as an incentive for lawyers to support and join the accredited panel. Reference was also made to the importance of such training for all professionals working in the juvenile justice system, including training for judges in higher courts who may not have experience in dealing with accused children.

5.4 Interpretation and translation

The legal aid scheme provides for the payment of interpreters and the translation of evidence where this is required. The criminal legal aid scheme does not extend to the translation of the summons in writing. This has necessitated one of the lawyers interviewed having the interpreter translate the summoned directly to the child. Furthermore, one solicitor interviewed expressed concern about the ability of translators to effectively communicate and translate to children. There does not appear to be any child friendly justice training for interpreters working within the youth justice system in Ireland.

79 JUST/2013/FRAC/AG/6319: “Improving juvenile justice systems in Europe: Training for professionals”. See also, JUST/2013/ACTION GRANTS: Unlocking Children’s Rights: Strengthening the capacity of professionals in the EU to fulfil the rights of vulnerable children.
81 See Appendix A, Interviews 1 – 4.
82 Appendix to training
5.5 Legal aid system for children

Children are always granted legal aid in criminal justice proceedings. Issues arise in relation to the scope of the scheme and the quantum of payments. Solicitors interviewed outlined that payments are not provided for any solicitor-client consultations regardless of the age of the child. Previous studies of the children court illustrated the importance of such consultations to ensure adequate case preparation and to ensure the expediency of the court process for the child. They also provide the solicitor with valuable information that may be needed to advocate effectively on behalf of the child. A lack of case preparation and consultation with children was observed among solicitors in the Children Court in 2010. A number of solicitors appeared before the Court without any information as to the charges faced by their clients. Solicitors also observed requesting the court summons from the individual child or his/her parent or guardian at the beginning of the hearing. This demonstrated that a pre-court consultation may be needed with children to clarify the nature and circumstances of the offence.

Furthermore, the criminal legal aid scheme does not provide funding for solicitors to attend at voluntary interviews between an accused child and the police (An Garda Síochána). As highlighted by a lawyer interviewed, such interviews are an invaluable means of diverting the child from the judicial process as they can mean that interaction with the court system is avoided. A lack of legal aid funding for the attendance of a lawyer at such interviews acts as a disincentive for lawyers to attend and is thus not in the best interests of the child. One lawyer interviewed referred to his/her own desire to be in frequent attendance at children court proceedings. However, due to the impecunious amount of legal aid payments, this is not favoured by his/her law firm as it is viewed as an ineffective use of the firms resources in light of the limited financial gain for the firm.

5.6 The Youth lawyer-child relationship

All of the lawyers interviewed stated that they change their communication style when interacting with a juvenile client. This includes engaging in greater explanation, maintaining eye contact, repeating information and asking the child to explain their understanding of proceedings. One lawyer outlined that he/she tends to give greater weight to the child’s right to be heard as the child often feels that having his/her story heard is in his/her best interest.

All of the lawyers interviewed believed that they had a positive relationship with their clients and that their clients trusted them. None of those interviewed had been removed from a case involving a juvenile accused and none had refused a case concerning an accused child. When asked about how a child could instruct a new lawyer, one lawyer stated that while

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84 Ibid. at Observed Case 39, 43. Solicitors were often observed as reading directly from the case file or probation reports that were given to them immediately before the Court hearing.
85 See Appendix A, Solicitor Interview 4.
he/she had not experienced this, he/she would facilitate the child’s transition to a new lawyer.86

If a child wishes to make a complaint about their lawyer, this complaint is made to the relevant regulatory body; the Law Society of Ireland or the Bar Council of Ireland. It does not appear that there is any dedicated function within the complaints unit of either regulatory body to deal specifically with complaints from accused children. Such matters are outside the scope of the complaints function of the Ombudsman for Children.87

5.7 Collaboration with Other Professionals
All lawyers interviewed described a close working relationship with a number of stakeholders in the youth justice process. These include An Garda Síochána, judges, the Court Service of Ireland, probation officers, staff from Oberstown Children Detention Campus and the Child and Family Agency (Tusla). It appears, however, that issues arise in relation to the interactions between the justice system and the care system and this is manifest in the perception some of those interviewed had regarding the interaction between Tusla and the youth justice system. One lawyer interviewed detailed a reoccurring reluctance on the part of Tusla to become involved in any form with children in the criminal justice system.88 This is despite the fact that many of the children involved with the youth justice system may have had previous or continuing involvement with the care system. This is also manifest in the lack of involvement of lawyers in the compilation or review of assessment reports. Another lawyer detailed how assessment reports often have to be redacted by lawyers prior to court proceedings in order to remove incriminating statements made by the child. This, along with ongoing concerns regarding data protection and confidentiality, demonstrate the need for a multiagency approach and case management system to ensure that all stakeholders in the youth justice system effectively communicate with each other regarding the trajectory of the child through the criminal justice process. Such a system does not exist in this jurisdiction. This results in the lawyer and oftentimes the judge coordinating the efforts of a myriad of stakeholders who may be working with a child.

5.8 Collaboration with the Child’s Parents or Guardians
Parents and guardians are key to ensuring that young people are supported throughout the court process. Parents also play a vital role in the post-disposition stage of the criminal process for young offenders as parents can monitor and supervise the young person’s activities and adherence to probation conditions.89 Parents may also be required to facilitate assessments and treatment that may be deemed necessary during the detention or release of the young offender from custody.90

International Standards recognise the importance of the child’s parents or guardians in the criminal justice process. The UNCRC requires that parents or guardians of the child are

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86 See Appendix A, Solicitor Interview 1.
88 Appendix A, See Solicitor Interview 1.
89 Ibid. at 8.
90 Ibid. at 8.
present during any judicial hearing.\textsuperscript{91} Rule 15.2 of the Beijing Rules\textsuperscript{92} require that parents or guardians shall be entitled to participate in the proceedings against the child.\textsuperscript{93} This involvement should be viewed as general psychological and emotional assistance to the child throughout the proceedings. The Beijing Rules also highlights the importance of the family unit to the child.\textsuperscript{94} Rule 18.2 requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this.\textsuperscript{95}

The Children Act 2001 requires the attendance of the child’s parent or guardian in the Children Court and family participation is also important at different stages of the youth justice process. This involvement is required from the child’s arrest,\textsuperscript{96} to the instigation of criminal proceedings and the appearance of the child in the Children Court.\textsuperscript{97} Parents or guardians are also obliged to attend the cautioning of their child as part of the Garda Diversion Programme.\textsuperscript{98} The involvement of parents and guardians is fundamental to family conferencing.\textsuperscript{99} An alliance between the Court and the primary care giver is a co-operation in the best interests of the child, in line with the implementation of international standards of best practice.\textsuperscript{100}

Lawyers interviewed reported a positive relationship with the parents of the accused children they represent. All of those interviewed described instances of communicating with the child via parents or guardians in explaining proceedings and the outcome of same to the child. However, a lack of support for parents of accused children was also outlined. This was particularly manifest in the difficulties that many parents or guardians have in ensuring that the child attends court. The Extern bail support scheme being piloted in the Dublin Metropolitan Children Court appears to be addressing this to some extent in providing additional personal to support the child and their families(s) in ensuring the child complies with his/her bail conditions such as attending at court dates.\textsuperscript{101}


\textsuperscript{93} \textit{Ibid.}


\textsuperscript{96} \textit{Children Act} 2001, s.58.

\textsuperscript{97} \textit{Ibid.} at s. 91.

\textsuperscript{98} \textit{Children Act} 2001, s. 24.

\textsuperscript{99} \textit{Ibid.} at s. 29(a)(ii).


\textsuperscript{101} Extern: Changing Lives Every Day: \url{http://www.extern.org/what-we-do}
5.9 The Best Interests of the Child

Although the Children Act 2001 Act establishes a justice system for children that has a broad welfare orientation, the Act does not make the goals of the justice system explicit. Instead, the requirement to have regard to the best interests principle and the right of the child to be heard are referenced in section 96, dealing with the exercise of criminal jurisdiction by the courts rather than as broad principles. Similarly, the privacy protections afforded to the child in criminal proceedings may be dispensed with in the public interest, although in reality this rarely happens. While the thirty-first Amendment of the Irish Constitution in 2012 requires legislative provision to be given to the child’s best interests in matters of family law, this does not apply to criminal law or youth justice proceedings.

6.0 CONCLUSION

The age and immaturity of children require that certain protections are implemented in the Court process. Children’s capacities are influenced by a lack of future-orientation, a lack of risk-aversion, impulsivity and suggestibility. Children have difficulty in understanding the legal process and comprehending the significance and consequence of their legal circumstances. Fair trial rights and access to justice, implemented, seek to account for these excepted limitations and vulnerabilities. International instruments and the Children Act 2001 mandate that the child has the right to participate and be heard in the Court proceedings, that the privacy of the child is protected to limit any adverse media attention and that the case is heard without delay to minimise any interaction of the child with the criminal justice process. These rights, if implemented, mitigate the alienating effects of an adult adversarial court environment and can provide a space that places the child at the centre of the Children Court process rather than the periphery of the proceedings. It is usually falls to the child’s lawyer to ensure the effective implementation of these rights.

The Children Act 2001 as a legal document is progressive and welfare focused. However, the lack of procedural guidelines for the provision of information regarding the child’s access to justice, a specially trained lawyer and a robust legal aid scheme has resulted in structural and administrative inefficiencies and a lack of clear recognition of the importance of effective legal representation. While the Practice Direction seeks to reflect child-friendly standards and helps to outline the expectations and role of the youth lawyer, this Directive only applies in the Dublin Metropolitan Children Court and not nationally. This results in a lack of consistency in the content and application of practice and procedure across children courts in Ireland. Nationwide application of the Practice Direction is needed as a matter of urgency.

103 Ibid. at 139.
105 Ibid.
106 Children Act 2001, s. 96(1)(a).
107 Ibid. at s. 53(1)(a), s 53(1)(b), s. 71(2)
108 Ibid. at s.73(1), s. 73(2).
Lawyers who choose to represent children should be obligated to undertake a course of specific training to facilitate the effective representation of young offenders. Following the practice in other jurisdictions specialised panels should be established consisting of legal representatives with adequate skills and qualifications needed to provide effective representation to children. However, the Children Act, 2001 makes minimal reference to the necessity of the specialist training of those working with children within the youth justice system in Ireland. Irish legal professionals do not receive adequate training to ensure that they are sufficiently specialised to carry out this work. For example, there is an absence of pre-service training for legal professionals on children’s rights, child development and the communication skills required to work with children and young people with limited in-service training available for solicitors and barristers. Although some of the judiciary working in youth justice and family law specialise through experience, in-service judicial training can be described as ad-hoc and optional. Research has found that “Overall, the absence of an accreditation system to ensure specialisation among legal professionals working with children and young people ... is a key issue.”

Overall, the education and training available for legal professionals is limited in that it tends to be optional, infrequent and likely to attract those already interested and motivated. This can result in practitioners who work with children in legal settings having little or no understanding of their clients as rights holders. Although some academic legal courses provide law students and professionals with a knowledge base of children’s rights as elective or core components, there is a noted absence of skill-based modules. In particular, there is little training on how legal professionals can communicate with children at all ages and stages of development and with children who are particularly vulnerable. Furthermore, in practice few legal professionals have received training on child development and psychology.

Lawyers interviewed referred to the need for specialist training of all those working within the youth justice system. A solicitor interviewed referred to the need for training of Judges who preside in the higher courts such as the Circuit and Central Criminal Court who may not be familiar with the rights of the child as he/she may not regularly preside in cases concerning Judges. As required in international legislation, this training should be adopted on a systematic and ongoing basis to ensure consistency in the application of juvenile justice throughout the jurisdiction.

109 This will help to ensure consistency in the level of advocacy provided to children and develop areas of specialisation and expertise in the profession.
112 Ibid.
113 Ibid.
114 Recent audit by the Child Law Clinic at the School of Law, UCC, into children’s rights education for professionals, unpublished report.
115 Professional support should also be available to judges. Bench books can offer direction and assistance to judges in a number of areas. These include the granting and duration of adjournments, the use of age appropriate language and the implementation of sentencing principles.
The law and policy in Ireland regarding the child’s access to justice is inadequate in its current form. It fails to establish clearly defined structures, protocols and procedures necessary to ensure the effective representation of the child. What is absent is a clear requirement for specialised training, an accredited legal aid panel, case management, interagency communication and the allocation of adequate resources for an effective and robust legal aid scheme. Implementations of these measures will help to ensure that best practice, complying with international standards, is attained.

7.0 RECOMMENDATIONS

7.1 National Recommendations for Policy Makers
Policy Makers need to address issues such as: the lack of up to date data, the lack of case management, failure to provide specialist training for relevant personnel and failure to provide accessible information to children and their families on all aspects of the system.

In addition, policy makers should consider the following:

- Provide child-friendly information to children and their families on the criminal process;
- Apply the Practice Direction to enable the adaptation of the Children Courts nationally, extending it to all courts;
- Put in place a system of specially trained lawyers, with an accreditation system for legal aid;
- Make a robust legal aid scheme available, with allocation of adequate resources;
- Provide adequate training to the police, the judiciary and all relevant court personnel;
- Put specialist complaints mechanisms in place for all aspects of the justice system.

7.2 National Recommendations for Youth Lawyers
In ensuring the effective representation of children and the access of children to justice, youth lawyers in Ireland should consider the following:

- Undertake an accredited programme of education and training to improve the quality of legal representation to children in criminal proceedings;
- Establish a compulsory, specialist panel of legal representatives to provide effective representation to all children;
- Ensure the effective implementation of the child’s rights in juvenile justice.
### Participant Identification: Solicitor 1

#### General Questions

<table>
<thead>
<tr>
<th></th>
<th>What is your academic and professional background?</th>
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<tbody>
<tr>
<td>1</td>
<td>• Bachelor of Law - Trinity College Dublin, 2002</td>
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<td></td>
<td>• Professional Practice Course 1 &amp; 2, Law Society of Ireland</td>
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<td></td>
<td>• Practical Experience as partner in law firm</td>
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<th>What is the motivation that brought you to work in youth justice</th>
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<td>2</td>
<td>• Parents both teachers</td>
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<td></td>
<td>• Always interested in lives of young people</td>
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<thead>
<tr>
<th></th>
<th>How long are you working as a youth lawyer?</th>
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<td>3</td>
<td>• Since 2008</td>
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<th>What are the potential obstacles to working in the area?</th>
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<td>4</td>
<td>• The biggest bar is the lack of cross over between welfare and juvenile justice issues and lack of clarity regarding the Child and Family Agency.</td>
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<tr>
<th></th>
<th>Is there a difference between an adult lawyer and a youth lawyer? If yes, what is the main difference?</th>
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<tr>
<td>5</td>
<td>• Yes. The main difference is that when dealing with a child you have to adopt a more holistic approach with children.</td>
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<th>What guides your actions with young people? (Is the best interest of the child? What does it mean for you?)</th>
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<td>6</td>
<td>• For me, it means that I follow the child’s instructions but have a good discussions with them regarding how the child’s view should be communicated. This also helps to build rapport.</td>
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<tr>
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<th>Do you represent child clients for different types of procedures?</th>
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<td>7</td>
<td>• Yes.</td>
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<th>Do you take the views of the child into consideration, even when you think they are ‘not reasonable’ or counterproductive?</th>
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<td>8</td>
<td>• The child’s instructions have to be followed but I have a good discussions with them regarding how the child’s view should be communicated. This also helps to build rapport.</td>
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<th>What do you do when you see a conflict between your position and the position of the child regarding his/her interests?</th>
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<td>9</td>
<td>• All children benefit from the legal aid system in Ireland</td>
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<th></th>
<th>What do you think about the legal aid system? What impact does this system have on the practice of your profession?</th>
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<td>10</td>
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<th>Does the appointment process influence the mandate of the lawyer? Was he/she selected by the legal aid system or an adult?</th>
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<tr>
<td>11</td>
<td>• How selected does not affect mandate. Usually refers come from the parents of the child, neighbours, friends or members of the Gardaí.</td>
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<th>Have you experienced these situations: e.g. The child doesn’t agree with you or the</th>
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child wants a different lawyer or a situation where the right of access to
counsel/assistance by a lawyer was violated? How? What as your reaction?

Yes.

13. Do you ever face difficulties in the contacts you have with your child clients? Specify how you solve them

No,

14. When your client is deprived of liberty, how do you contact him or her? Does it work well and how would you improve it?

- I visit the child in detention.

15. When your client is deprived of liberty and you are contacting him/her by phone, are you aware of the kind of conditions he/she is facing?

- Phone contact.
- I also liaise with the family

16. What are the obstacles for an effective defence? What do you need to support you in your work (time, money, skills)?

- Lack of educational and background assessments.

17. When your client is deprived of liberty and you are contacting him/her by phone, are you aware of the kind of conditions he/she is facing?

- The 2001 Act requires that the Judge involve the CFA when child protection is a concern.

**Youth Lawyer**

2.1 Training

1. What is your training? Did you have specific training regarding children’s rights (theoretical/practical)?

- No theoretical experience.
- Practical experience of practising in the area.
- Completed a number of modules and CPD lectures and conference on the area.

2. Is it important to have specific training? Why?

- Yes, it is essential.

3. How many cases have you dealt with involving children who have been suspected or accused in criminal proceedings?

- 100+

2.2 Appointment – First Contact


- Type of appointment varies. Sometimes it can be from the Garda Station, the court, clients come to the office.
- This very much depends on the parent.

2. How, when, where was your first contact/meeting with the child? What information do you give him/her regarding his/her rights, procedural rights and proceeding itself? Are there guardians present?

- Give them a general understanding of the process
<table>
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<th>Do you feel that you get enough of an understanding of the individual circumstances of the child? From whom?</th>
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<td></td>
<td>• Yes,</td>
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<tr>
<td>4.</td>
<td>How does that help you in the case (in terms of judicial adapted processes, defence, and sentence)?</td>
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<td></td>
<td>• Yes</td>
</tr>
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### 2.3 Legal Aid System

1. Do you work within the legal aid system?
   - Yes

2. Is there a specific section for youth lawyers in the national legal system (bar associations)? How does it work?
   - No

### 2.4 Contacts

1. How do you contact the child (phone, SMS, emails, etc.)?
   - Phone

2. Is it any different when the child is deprived of his/her liberty?
   - Phone but also can go and see him/her

3. In general, where do you meet the child? How often? How long are the meetings?

4. Have you encountered difficulties in contacting children? During meetings? In court? When deprived of liberty?
   - No.

### 2.5 Presence and Role

1. When and which stages of the proceedings are you present to assist the child? During those stages, what is your role? Are you allowed to effectively participate? When is your present mandatory?
   - All stages. Yes. Court.

2. Before the hearing, do you have enough time to meet with the client and access the file?
   - There is never enough time but in general yes.

3. What happens if you are not present? (late etc.)
   - Never occurred.

4. Do you assist the child through the whole proceedings or do you generally assist him/her at a specific stage of procedure?
   - All stages.

5. Can you support the child during the whole procedure? (Is it feasible, is there enough time, etc.)
   - Yes

6. How do you work? (Alone or with internal/external collaborators?) (e.g. Psychologist)
   - Work with social workers, probation officers, key workers, Gardaí etc.
### 2.6 Language Used

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<tr>
<td><strong>1.</strong></td>
<td>Do you have a specific way to talk to children (language of the child)? Do you ask him/her for his/her opinion?</td>
</tr>
<tr>
<td></td>
<td>• Use eye contact</td>
</tr>
<tr>
<td></td>
<td>• Ensure that he child feels that they are in a safe space</td>
</tr>
<tr>
<td></td>
<td>• If the child wants to talk to the solicitor alone, I give the child my email address.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>Do you do anything non-verbal? (remove jacket, sit close to the child…)</td>
</tr>
<tr>
<td></td>
<td>• Child sits beside him in court</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>How do you make sure that he/she understood what you said to him/her?</td>
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<tr>
<td></td>
<td>• Use language the child understands</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>Do you have young client who don’t speak the same language as you&gt; if so, do you work with an interpreter&gt; Do you use translated version of certain documents?</td>
</tr>
<tr>
<td></td>
<td>• Yes, Issues have arising with interpreters in that the interpreters have a lack of interest and there is a lack of adopting their interpretation when communicating with the child.</td>
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### 2.7 Lawyer - Client Relations

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<tbody>
<tr>
<td><strong>1.</strong></td>
<td>How do you feel towards your young clients?</td>
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<tr>
<td></td>
<td>• I feel that they are the most important person in the proceedings.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>How do your relationship with your young clients? Do you feel that they trust you?</td>
</tr>
<tr>
<td></td>
<td>• Relationship is very positive</td>
</tr>
<tr>
<td></td>
<td>• Yes I feel that they trust me</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Do they confide in you?</td>
</tr>
<tr>
<td></td>
<td>• Yes</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>What do you do if the child does not want to collaborate /talk to you?</td>
</tr>
<tr>
<td></td>
<td>• Give them space and try to engage in conversation about other subjects such as football</td>
</tr>
<tr>
<td></td>
<td>• Try to build the relationship</td>
</tr>
<tr>
<td></td>
<td>• It is important to identify when a child does not want to communicate through verbal and non-verbal signals</td>
</tr>
<tr>
<td></td>
<td>• Some children are willing to communicate and some are not. For those children you need to give them more name.</td>
</tr>
<tr>
<td><strong>5.</strong></td>
<td>Did you ever drop/refuse a case? Why? What happened them?</td>
</tr>
<tr>
<td></td>
<td>• No</td>
</tr>
</tbody>
</table>

### 2.8 Lawyer – parent relationship

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong></td>
<td>Are parents/guardians involved in the process? Is there any support provided to them?</td>
</tr>
<tr>
<td></td>
<td>• Yes parents are involved</td>
</tr>
<tr>
<td></td>
<td>• Extern bail support scheme does provide good support to parents</td>
</tr>
</tbody>
</table>

### 2.9 Lawyer – Other Actors Relationship

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1.</strong></td>
<td>Who are the other actors you have contact with? For what and how?</td>
</tr>
<tr>
<td></td>
<td>• Social workers</td>
</tr>
</tbody>
</table>
• Probations officers
• Key workers
• Youth club leaders
• Mentors and the Le Cheile service
• Schools

2. How do lawyers work with other actors to address any concerns which arise regarding the child’s situation?

• Very collaborative working relationship
• Confidentiality is an issue e.g. Data protection concerns
• Need to build relationships with those actors/

3. How does the lawyer work with the judge/prosecutor to adapt the procedure?

• Has very good relationship with current presiding Judge in the Children Court.
• Judge knows my values and how I work
• Judge also very good at augmenting the procedure

2.10 Individual Assessment (regarding Article 7 of the Directive 2016/800)
1. Do you have access to the individual assessment file of the child (or perhaps more limited information gathering around the circumstances of the child)?

• No

2. Do you work with any other actors in this regard?

• No

3. Do you use individual assessments in your pleadings if they are available?

• Yes

2.11 Funding
1. How are your fees paid? By whom?

• Legal aid. Department of Justice.

3. Recommendations
1. Ideally, what would you improve regarding the right of children to access a lawyer and regarding the legal aid system and/or youth lawyers system in general? (explore a scenario)

• Panel of lawyers needs to be established of lawyers with specialist training.
• Could incentivise this by enhancing the legal aid payments in juvenile cases.
• Has to be robust training provided to all actors.
• Also really need to look at relationship between the criminal justice system and the cognitive impairments and disabilities that many juveniles present
• Also should be a protocol for the sharing of information between actors working in juvenile justice system.
• Also greater interagency communication needed.
• TUSLA are steadfast in lack of involvement in the criminal justice system with juveniles. This is mainly a budget issue, in that once juveniles are in Oberstown they are no longer the responsibility of the TUSLA for the amount of time that they are there.

2. How to change the system in response to that? (facing for example ethical or procedural problems?)
<p>| | |</p>
<table>
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<tbody>
<tr>
<td>3.</td>
<td>Would you like to give concrete examples of encountered difficulties and practical recommendations to support change?</td>
</tr>
<tr>
<td></td>
<td>See above</td>
</tr>
<tr>
<td>4.</td>
<td>Would you like to be involved in the continuation of this project?</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>5.</td>
<td>Is there anything you wish to add?</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

Participant Identification: Solicitor 2

<table>
<thead>
<tr>
<th>General Questions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>What is your academic and professional background?</td>
</tr>
<tr>
<td></td>
<td>Arts degree from NUIG</td>
</tr>
<tr>
<td></td>
<td>PPC I &amp; II, Law Society of Ireland</td>
</tr>
<tr>
<td></td>
<td>Advanced Diploma in Juvenile Justice</td>
</tr>
<tr>
<td>2.</td>
<td>What is the motivation that brought you to work in youth justice</td>
</tr>
<tr>
<td></td>
<td>Identified niche in the local area for skilled representation of children</td>
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<tr>
<td></td>
<td>Realised that there was a lack of experience in the courts in this area and a lack of awareness among local practitioners in juvenile justice issues and the law.</td>
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<tr>
<td>3.</td>
<td>How long are you working as a youth lawyer?</td>
</tr>
<tr>
<td></td>
<td>6 years</td>
</tr>
<tr>
<td>4.</td>
<td>What are the potential obstacles to working in the area?</td>
</tr>
<tr>
<td></td>
<td>Lack of knowledge among all parties regarding the rights of the child etc.</td>
</tr>
<tr>
<td>5.</td>
<td>Is there a difference between an adult lawyer and a youth lawyer? If yes, what is the main difference?</td>
</tr>
<tr>
<td></td>
<td>Yes. You need to be much more casual with children. A certain personality and approach is needed. You need to be on the same wavelength.</td>
</tr>
<tr>
<td></td>
<td>Need to change the way you communicate and use their language.</td>
</tr>
<tr>
<td>6.</td>
<td>What guides your actions with young people? (Is the best interest of the child? What does it mean for you?)</td>
</tr>
<tr>
<td></td>
<td>Best interest of the child definitely guides me but also keeping the child out of detention.</td>
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<tr>
<td></td>
<td>There have been times when I have had to literally beg a judge not to send a child forward as this would serve no interest. I had to tell the Judge that the only thing that was going to happen in the Circuit Court as opposed to the District Court was longer time in detention or jail for the child.</td>
</tr>
<tr>
<td>7.</td>
<td>Do you represent child clients for different types of procedures?</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>8.</td>
<td>Do you take the views of the child into consideration, even when you think they are 'not reasonable' or counterproductive?</td>
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<tr>
<td>Question</td>
<td>Response</td>
</tr>
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</tr>
<tr>
<td>9. What do you do when you see a conflict between your position and the position of the child regarding his/her interests?</td>
<td>I advise the child regarding both sides. Both sides being the outcome of taking the route that the child wants and the potential outcome of the route that I advise.</td>
</tr>
<tr>
<td>10. What do you think about the legal aid system? What impact does this system have on the practice of your profession?</td>
<td>Need more access to more than just legal aid for lawyers. Also need legal aid for counselling and supports for day to day life. The underlying difficulties that are leading to the offending behaviour needs to be addressed.</td>
</tr>
<tr>
<td>11. Does the appointment process influence the mandate of the lawyer? Was he/she selected by the legal aid system or an adult?</td>
<td>No.</td>
</tr>
<tr>
<td>12. Have you experienced these situations: e.g. The child doesn’t agree with you or the child wants a different lawyer or a situation where the right of access to counsel/assistance by a lawyer was violated? How? What as your reaction?</td>
<td>No.</td>
</tr>
<tr>
<td>13. Do you ever face difficulties in the contacts you have with your child clients? Specify how you solve them</td>
<td>No. If there are any difficulties in contacting the child, I contact the parents.</td>
</tr>
<tr>
<td>14. When your client is deprived of liberty, how do you contact him or her? Does it work well and how would you improve it?</td>
<td>I go and visit the child. I also have a 24 hour on-call service so the child can contact me at any time including after 5.30pm.</td>
</tr>
<tr>
<td>15. When your client is deprived of liberty and you are contacting him/her by phone, are you aware of the kind of conditions he/she is facing?</td>
<td>Yes. I ask the child are they on their own and the can they speak freely.</td>
</tr>
<tr>
<td>16. What are the obstacles for an effective defence? What do you need to support you in your work (time, money, skills)?</td>
<td>I have not experiences any difficulties. However, there is very little knowledge amount the Gardai of the system. For example, that the child has to referred to the JLO first.</td>
</tr>
<tr>
<td>17. What would a lawyer do when he/she confronted with a child protection issue? A clinical issue/parental issues?</td>
<td>Follow the provision under the legislation to notify the Judge who has the discretion to bring in the CFA or HSE.</td>
</tr>
</tbody>
</table>

**Youth Lawyer**

**2.1 Training**

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What is your training? Did you have specific training regarding children’s rights (theoretical/practical)?</td>
<td>See above</td>
</tr>
<tr>
<td>2. Is it important to have specific training? Why?</td>
<td></td>
</tr>
</tbody>
</table>
Yes. Juvenile justice is one area that is not touched on at all in professional training. Therefore, if you have not studied the area of attending training then you will not know how it operates.

3. How many cases have you dealt with involving children who have been suspected or accused in criminal proceedings?
   - 100+

### 2.3 Appointment – First Contact

   - Through existing clients, the Gardaí, appointed from the bench

2. How, when, where was your first contact/meeting with the child? What information do you give him/her regarding his/her rights, procedural rights and proceeding itself? Are there guardians present?
   - Depends on the circumstances of the case. I would meet them first in my office or in the Garda Station or court. Give them an overview of the process and procedure.

3. Do you feel that you get enough of an understanding of the individual circumstances of the child? From whom?
   - Yes but this happens overtime. Might not necessarily happen at the first meeting.

4. How does that help you in the case (in terms of judicial adapted processes, defence, and sentence)
   - It helps me to become aware of the child’s background and that usually has significant relevance.

### 2.3 Legal Aid System

1. Do you work within the legal aid system?
   - Yes.

2. Is there a specific section for youth lawyers in the national legal system (bar associations)? How does it work?
   - No.

### 2.4 Contacts

1. How do you contact the child (phone, SMS, emails, etc.?)
   - Phone.

2. Is it any different when the child is deprived of his/her liberty?
   - No, but the child rings me from detention.

3. In general, where do you meet the child? How often? How long are the meeting? Are the meetings confidential? Is someone else present? Can the child ask for someone to be present? Are the meetings recorded? Is there any difference when the child is deprived of his/her liberty?
   - Generally I meet them in the office. The amount of times I meet them depends on the case. Each meeting usually lasts about 30 minutes. Someone always present with the child. Yes, the child can ask for someone to be present. I do not record meetings other than take a note for my file. No difference when the child is deprived of his/her liberty.
| 4. | Have you encountered difficulties in contacting children? During meetings? In court? When deprived of liberty?  
   |   | • No. |
|---|---|---|
| 2.6 Presence and Role | 1. | When and which stages of the proceedings are you present to assist the child? During those stages, what is your role? Are you allowed to effectively participate? When is your present mandatory?  
   |   | • All stages. |
|   | 2. | Before the hearing, do you have enough time to meet with the client and access the file?  
   |   | • Yes |
|   | 3. | What happens if you are not present? (late etc.)  
   |   | • Always present or have someone standing in |
|   | 4. | Do you assist the child through the whole proceedings or do you generally assist him/her at a specific stage of procedure?  
   |   | • Yes |
|   | 5. | Can you support the child during the whole procedure? (Is it feasible, is there enough time, etc.)  
   |   | Yes. But this also depends on the Judge. |
|   | 6. | How do you work? (Alone or with internal/external collaborators?) (e.g. Psychologist)  
   |   | • Generally I work on my own unless I feel that there is a concern for the child.  
   |   | • I also make sure that I get a psychological report if I need one. |
| 2.6 Language Used | 1. | Do you have a specific way to talk to children (language of the child)? Do you ask him/her for his/her opinion?  
   |   | • Yes, I speak to them like I one of them. |
|   | 2. | Do you do anything non-verbal? (remove jacket, sit close to the child...)  
   |   | • I sit beside them. |
|   | 3. | How do you make sure that he/she understood what you said to him/her?  
   |   | • I check back with them as to whether they understand what has been said/what has happened. |
|   | 4. | Do you have young client who don’t speak the same language as you? If so, do you work with an interpreter? Do you use translated version of certain documents?  
   |   | • Yes. Yes. Yes. |
| 2.7 Lawyer-Client Relations | 1. | How do you feel towards your young clients?  
   |   | • I feel sorry for them and wish I could provide a safe environment for them. |
|   | 2. | How do your relationship with your young clients? Do you feel that they trust you?  
   |   | • Positive relationship. Yes. |
|   | 3. | Do they confide in you?  
   |   | • Yes. |
|   | 4. | What do you do if the child does not want to collaborate/talk to you?  
   |   | • I give them time. I get to know them better and get a general feel for them. |
5. Did you ever drop/refuse a case? Why? What happened them?
   • No.

2.8 Lawyer – parent relationship
1. Are parents/guardians involved in the process? Is there any support provided to them?
   • No. Parents need more support.

2.9 Lawyer – Other Actors Relationship
1. Who are the other actors you have contact with? For what and how?
   • Probation workers
   • Social workers
   • Psychologists
   • Care home workers
   • Key workers
   • GALS

2. How do lawyers work with other actors to address any concerns which arise regarding the child’s situation?
   • I work with them and have a conversation with as to their recommendations.

3. How does the lawyer work with the judge/prosecutor to adapt the procedure?
   • I call the child by their first name in the presence of the Judge.
   • Speak in ordinary language.
   • Ask that court be cleared.
   • Ask the child to sit beside me.
   • Make sure that the child is in the eye line of the judge.
   • Sometimes call the parents as witnesses.

2.10 Individual Assessment (regarding Article 7 of the Directive 2016/800)
1. Do you have access to the individual assessment file of the child (or perhaps more limited information gathering around the circumstances of the child)?
   • No.

2. Do you work with any other actors in this regard?
   • No.

3. Do you use individual assessments in your pleadings if they are available?
   • Yes.

2.11 Funding
1. How are your fees paid? By whom?
   • Legal aid.

3. Recommendations
1. Ideally, what would you improve regarding the right of children to access a lawyer and regarding the legal aid system and/or youth lawyers system in general? (explore a scenario)
   • A panel needs to be established to ensure that only qualified people can represent children. They need to be specifically trained.

2. How to change the system in response to that? (facing for example ethical or procedural problems?)
3. Would you like to give concrete examples of encountered difficulties and practical recommendations to support change?

- See above.

4. Would you like to be involved in the continuation of this project?

- Yes.

5. Is there anything you wish to add?

- No.

Participant Identification: Solicitor 3

<table>
<thead>
<tr>
<th>General Questions</th>
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</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>What is your academic and professional background?</td>
</tr>
<tr>
<td></td>
<td>- LLB, Griffith College Dublin</td>
</tr>
<tr>
<td></td>
<td>- Degree in Management</td>
</tr>
<tr>
<td></td>
<td>- Advanced Diploma in Juvenile Justice, Honorable Society of Kings Inns</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>What is the motivation that brought you to work in youth justice</td>
</tr>
<tr>
<td></td>
<td>- I have a particular interest in children and their problems.</td>
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<tr>
<td></td>
<td>- Opportunity came up in juvenile justice the legal firm I work in so I took the opportunity.</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>How long are you working as a youth lawyer?</td>
</tr>
<tr>
<td></td>
<td>- 2 years.</td>
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<tr>
<td><strong>4.</strong></td>
<td>What are the potential obstacles to working in the area?</td>
</tr>
<tr>
<td></td>
<td>- Conflicting instructions</td>
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<td></td>
<td>- Dealing with children re: comprehension, ADHD, etc.</td>
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<td></td>
<td>- Legal aid system is not adequate – no funding for voluntary interviews.</td>
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<tr>
<td><strong>5.</strong></td>
<td>Is there a difference between an adult lawyer and a youth lawyer? If yes, what is the main difference?</td>
</tr>
<tr>
<td></td>
<td>- Yes</td>
</tr>
<tr>
<td></td>
<td>- A different skill set is required. For examples when dealing with adult you would cite cases etc. however with children do not do this. Also do not do this with the parents or the Judge.</td>
</tr>
<tr>
<td><strong>6.</strong></td>
<td>What guides your actions with young people? (Is the best interest of the child? What does it mean for you?</td>
</tr>
<tr>
<td></td>
<td>- Regarding the best interests there can be conflicting instructions</td>
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<tr>
<td></td>
<td>- I usually get their instructions and when their instructions are contrary to their best interests, I always outline what the child wants to the Judge.</td>
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</tbody>
</table>
7. Do you represent child clients for different types of procedures?
   - Only represent children in criminal proceedings.

8. Do you take the views of the child into consideration, even when you think they are ‘not reasonable’ or counterproductive?
   - Yes.
   - I listen to the child’s view.
   - There are some occasions where there are counterproductive instructions. In these circumstances I speak to the child and bring them to a level of understanding.

9. What do you do when you see a conflict between your position and the position of the child regarding his/her interests?
   - I have a good relationship with the children and I will have known them for quite some time.
   - I also take time to speak to the children.

10. What do you think about the legal aid system? What impact does this system have on the practice of your profession?
    - In so far as children are always granted legal aid, the legal aid system is very good.
    - However, specific provision is needed for children’s cases.
    - With children, longer consultations are required however there is no payment under the legal aid system for interviews.
    - Also no provision in the legal aid scheme for the solicitor’s attendance at voluntary interviews. To me, it seems completely counterintuitive that the child only gets legal aid if they come to court when a voluntary interview could limit all of that but there is no payment for the solicitor to attend those interviews.

11. Does the appointment process influence the mandate of the lawyer? Was he/she selected by the legal aid system or an adult?
    - No.

12. Have you experienced these situations: e.g. The child doesn’t agree with you or the child wants a different lawyer or a situation where the right of access to counsel/assistance by a lawyer was violated? How? What as your reaction?
    - Yes. Often the parent will want to change solicitor. Regarding the child wanting to change, I have not had this but I have had a situation where the child does not want a particular solicitor who works in my office, in the office when the child came in. I organised this and the child was happy with that.

13. Do you ever face difficulties in the contacts you have with your child clients? Specify how you solve them
    - Yes, in some circumstances. It the child is living at home then there are no real difficulties with contact. However, in the care system, contact can be difficult as the child is moved around.

14. When your client is deprived of liberty, how do you contact him or her? Does it work well and how would you improve it?
    - When in Oberstown, the child can make and take call as long as it is not
<table>
<thead>
<tr>
<th>15.</th>
<th>When your client is deprived of liberty and you are contacting him/her by phone, are you aware of the kind of conditions he/she is facing?</th>
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<tbody>
<tr>
<td></td>
<td>• I ask the child if there is anyone in earshot around them and if they say that there is I ask the child to ask them to step aware. This is especially the case in Oberstown. However, if Wheatfield it is much more formalised access to a call.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>16.</th>
<th>What are the obstacles for an effective defence? What do you need to support you in your work (time, money, skills)?</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• At the moment in the Children Court, weight is given to pleading on the first date. The impression is given not to be seeking disclosure. A lot of weight seems to be given to the child accepting their behaviour straight off the bat. It is clear that there is a reluctance to believe the child. A child’s word will never win over that of a Garda.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17.</th>
<th>What would a lawyer do when he/she confronted with a child protection issue? A clinical issue/parental issues?</th>
</tr>
</thead>
</table>
|     | • There are reporting obligations under the 2001 Act.  
• There are supports that are available within the system that the child can be referred to  
• However, the Judge will tend to pick up on child protection issues. This usually occurs where the child is unaccompanied in court /homeless/ showing difficulties in court. |

**Youth Lawyer**

**2.1 Training**

<table>
<thead>
<tr>
<th>1.</th>
<th>What is your training? Did you have specific training regarding children’s rights (theoretical/practical)?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Advanced Diploma in Juvenile Justice</td>
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<table>
<thead>
<tr>
<th>2.</th>
<th>Is it important to have specific training? Why?</th>
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<tr>
<td></td>
<td>• This is very important. It is not something to enter into as a ‘soft way’ into criminal law. You need to be aware of all the provisions of the Children Act 2001.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>3.</th>
<th>How many cases have you dealt with involving children who have been suspected or accused in criminal proceedings?</th>
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<tbody>
<tr>
<td></td>
<td>• 100+</td>
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**2.4 Appointment – First Contact**

|-----|----------------------------------------------------------------------------------------------------------------------------------|
|     | • Occasionally I am appointed from the bench.  
• However, a lot of referrals are familial – often members of the family are former/current clients. |
- Also can be referrals from social workers and TUSLA.

2. How, when, where was your first contact/meeting with the child? What information do you give him/her regarding his/her rights, procedural rights and proceeding itself? Are there guardians present?

- Regarding their procedural rights, I tell them about disclosure
- However, I generally tell them about how the court works etc.

3. Do you feel that you get enough of an understanding of the individual circumstances of the child? From whom?

- This depends on the child in question. Some children are quite detailed in their instructions. Some find communicating very difficult.
- I also make an appointment for them to come and see me in my office.

4. How does that help you in the case (in terms of judicial adapted processes, defence, and sentence)

- Yes it allows you to make a good impression on the Judge who will ask questions about the child and shows that you know what you are doing.

2.3 Legal Aid System

1. Do you work within the legal aid system?

- Yes.

2. Is there a specific section for youth lawyers in the national legal system (bar associations)? How does it work?

- No.

2.4 Contacts

1. How do you contact the child (phone, SMS, emails, etc.)?

- Phone. We call the child the day before court and on the morning of court. Many of these children are from a chaotic background. Therefore, a call helps to get the parents up and ready for court.

2. Is it any different when the child is deprived of his/her liberty?

- I tend to go and see the child if he/she was in detention as phone calls may not be adequate especially if disclosure has to be reviewed etc.

3. In general, where do you meet the child? How often? How long are the meeting(s)? Are the meetings confidential? Is someone else present? Can the child ask for someone to be present? Are the meetings Recorded? Is there any difference when the child is deprived of his/her liberty?

- Consultations usually happen in my office. These consultations usually last about 40 minutes – 1 hour. All meetings are confidential. Guardian always present. However, sometimes the child can come into the office without arrangement on their own to talk to me. For example, I recently had a client who is due to turn 18 in a number of weeks and he called in to simply reconfirm what had been discussed in an earlier consultation.

4. Have you encountered difficulties in contacting children? During meetings? In court? When deprived of liberty?

- There can sometimes be difficulties with the child turning off his/her phone but other than that there are rarely any difficulties.
- Some difficulties can arise however on the morning of court. You are under pressure to get the child and their parent to court and they come one hour late. At this times, it is common for phones to be turned off or unanswered.
- If the child is coming in from detention or care, the child is usually always produced on time.

2.7 Presence and Role

1. When and which stages of the proceedings are you present to assist the child? During those stages, what is your role? Are you allows to effectively participate? When is your present mandatory?

- All stages. I am allowed to effectively participate. Even in the Garda Station I insist on being allowed to participate in the interview. I have no problem it stating to my client ‘I advise you not to answer that’.
- I have to be present in court. The presence of the solicitor at the Garda Station is not mandatory but it is starting to move towards that approach.

2. Before the hearing, do you have enough time to meet with the client and access the file?

- Yes. I would never go to a hearing without consultation with the child. If the child is in custody, I make sure that I get to see him/her in detention. It is up to you to get to see the child.
- However, sometimes, especially with s. 2 bail objections, you are only given the objections in writing immediately before the hearing and in these circumstances you do not always have enough time to speak to the child.
- This is made even more difficult by the fact that you can only speak to a child in custody in the Children Court in Dublin through the cell door where the Gardaí can hear. The setup is inadequate.

3. What happens if you are not present? (late etc.)

- Never occurred.

4. Do you assist the child through the whole proceedings or do you generally assist him/her at a specific stage of procedure?

- All stages.

5. Can you support the child during the whole procedure? (Is it feasible, is there enough time, etc.)

- Yes.

6. How do you work? (Alone or with internal/external collaborators?) (e.g. Psychologist)

- I do not have a huge amount of contact with probation. However, I would have significant contact with the advocate system and I have had contact with the bail support scheme ‘Extern’.

2.6 Language Used

1. Do you have a specific way to talk to children (language of the child)? Do you ask him/her for his/her opinion?

- Yes. I make sure that I communicate with the child on a level that is comprehensible to them. I keep breaking down what I am saying and repeating what I am saying. If the child is in the Garda Station I will run mock interviews with the child as some adults do not even understand the process.
<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. How do you feel towards your young clients?</td>
<td>I really enjoy working with these children. However, I feel that I want to protect their best interests. It is a type of maternal relationship but with obvious detachment.</td>
</tr>
<tr>
<td>2. How do your relationship with your young clients? Do you feel that they trust you?</td>
<td>Yes. I am proud of my relationship with them.</td>
</tr>
<tr>
<td>3. Do they confide in you?</td>
<td>Yes, to a certain extent.</td>
</tr>
<tr>
<td>4. What do you do if the child does not want to collaborate /talk to you?</td>
<td>I would ask the court for an adjournment of the case if there is significant difficulty. If the child is very entrenched in their views, I will inform the court that it may be best for someone else to become involved in the case.</td>
</tr>
<tr>
<td>5. Did you ever drop/refuse a case? Why? What happened them?</td>
<td>I have never refused a case however I would refuse a case if there is a conflict: conflict in instructions from a client with instructions from another client.</td>
</tr>
<tr>
<td>2.7 Lawyer - Client Relations</td>
<td></td>
</tr>
<tr>
<td>1. How do you make sure that he/she understood what you said to him/her?</td>
<td>In the Garda Station I get to check whether the child understand through the use of mock interviews. I also get the child to repeat back what they understand me to mean.</td>
</tr>
<tr>
<td>2. Do you do anything non-verbal? (remove jacket, sit close to the child…)</td>
<td>I relax my demeanour a lot but I am careful not to become informal in the sense of becoming the child’s buddy. I have to make sure that the child understands me.</td>
</tr>
<tr>
<td>3. Do you have young client who don’t speak the same language as you&gt; if so, do you work with an interpreter? Di you use translated version of certain documents?</td>
<td>Yes however there is no provision for translating summons however I get the translator to go through the contents of the summons with the child</td>
</tr>
<tr>
<td>2.8 Lawyer – parent relationship</td>
<td></td>
</tr>
<tr>
<td>1. Are parents/guardians involved in the process? Is there any support provided to them?</td>
<td>Not really. Extern is very helpful in getting children and parents up out bed and out to court therefore not take any warrants. I had a case where the child’s mother was brilliant to deal with. But when the child’s father was released from custody, all hell would break loose. The father would interfere in court proceedings, interrupt the proceedings, give conflicting instructions. He was told to refrain from talking in court and in consultations.</td>
</tr>
<tr>
<td>2.9 Lawyer – Other Actors Relationship</td>
<td></td>
</tr>
<tr>
<td>1. Who are the other actors you have contact with? For what and how?</td>
<td>Social workers.</td>
</tr>
<tr>
<td></td>
<td>Care workers.</td>
</tr>
</tbody>
</table>
- Probation officers.
- Bail support workers.
- Juvenile liaison officers.

2. How do lawyers work with other actors to address any concerns which arise regarding the child’s situation?

- This is slightly less formal than if you were dealing with an adult because the supports are there and the case manager can also give a heads up as to whether there are other charges coming down the line.

3. How does the lawyer work with the judge/prosecutor to adapt the procedure?

- The Judge tends to do this himself in the Children Court in Dublin.
- In Court 55 everyone is on the same level.
- The Judge is also very involved in the construction of the new court and has suggested a horse shoe shaped courtroom.

2.10 Individual Assessment (regarding Article 7 of the Directive 2016/800)

1. Do you have access to the individual assessment file of the child (or perhaps more limited information gathering around the circumstances of the child)?

- Every child that enters the juvenile justice system should be assessed. However, there is a reluctance by the Judge to order these reports.

2. Do you work with any other actors in this regard?

- No.

3. Do you use individual assessments in your pleadings if they are available?

- I do use individual assessments. However, in some circumstances certain information has to be excised especially where there may be inculpatory comments. For example if the child spoke about their offending to the person completing the report.

2.11 Funding

1. How are your fees paid? By whom?

- Legal aid.

3. Recommendations

1. Ideally, what would you improve regarding the right of children to access a lawyer and regarding the legal aid system and/or youth lawyers system in general? (explore a scenario)

- I would extend the legal aid scheme to voluntary interviews in care homes and at the child’s house.
- There should also be a facility within the legal aid scheme for payment to a solicitor for one consultation with the child.

2. How to change the system in response to that? (facing for example ethical or procedural problems?)

- See above. But I would also change the juvenile liaison programme in circumstances in which is the child makes admissions they should benefit from the programme. The Children Act 2001 needs to be amended.

3. Would you like to give concrete examples of encountered difficulties and practical recommendations to support change?
<p>| | |</p>
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<tbody>
<tr>
<td><strong>Participant Identification:</strong> Solicitor 4</td>
<td></td>
</tr>
</tbody>
</table>

### General Questions

1. **What is your academic and professional background?**
   - BA in Civil Law International, NUI Galway
   - Post-graduate certificate in human rights
   - PPC I & II, Law Society of Ireland

2. **What is the motivation that brought you to work in youth justice?**
   - When I worked in Malawi with the Rule of Law I focused on child justice issues and when I returned to Ireland I wanted to work in that area.

3. **How long are you working as a youth lawyer?**
   - 1 year

4. **What are the potential obstacles to working in the area?**
   - Funding issues: This is the biggest issue. I love going to court but it is not financially viable for the firm that I work for to have me in court in light of the limited amount of legal aid fees.

5. **Is there a difference between an adult lawyer and a youth lawyer? If yes, what is the main difference?**
   - Yes. I have to change the way I deal with the client when he/she is a juvenile. There is no specific training in Ireland for representing children so anyone can deal with children. But the Children Court is a completely different ball game.

6. **What guides your actions with young people? (Is the best interest of the child? What does it mean for you?)**
   - The best interest of the child is important but the right to be heard is very important because in Ireland there is no intermediary for the child. I need to make sure that the child is heard. I had one juvenile client who left their previous solicitor as they did not feel that they were being listened to.

7. **Do you represent child clients for different types of procedures?**
   - Yes. I represent children, in the main, in criminal proceedings in the Circuit Criminal Court. I also attend the Children Court.

8. **Do you take the views of the child into consideration, even when you think they are ‘not reasonable’ or counterproductive?**
   - Yes. It is important for the child to see that you are listening to them and that he/she can say what he/she thinks has to be said and that you are putting across their point.

9. **What do you do when you see a conflict between your position and the position of the child regarding his/her interests?**

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<tr>
<td>10. What do you think about the legal aid system? What impact does this system have on the practice of your profession?</td>
<td>• The legal aid system is terrible for children. Cases involving children take a lot more time and work. The money paid by the legal aid system does not reflect the amount of work that these cases require. Therefore there are a number of practitioners that don’t have an interest in these cases as there is no motivation to take them.</td>
</tr>
<tr>
<td>11. Does the appointment process influence the mandate of the lawyer? Was he/she selected by the legal aid system or an adult?</td>
<td>• No.</td>
</tr>
<tr>
<td>12. Have you experienced these situations: e.g. The child doesn’t agree with you or the child wants a different lawyer or a situation where the right of access to counsel/assistance by a lawyer was violated? How? What as your reaction?</td>
<td>• I have one client who is very troubled and has anger outbursts. I deal with this by working with his social worker to calm him down. I can explain things to him to a greater extent when I have more time with him.</td>
</tr>
<tr>
<td>13. Do you ever face difficulties in the contacts you have with your child clients? Specify how you solve them</td>
<td>• In the Circuit Criminal Court I have juvenile clients and sometimes I do not know where they are when their matter is called. They find it difficult to sit in court for long periods and go for coffees and a cigarette. This makes it difficult to contact them.</td>
</tr>
<tr>
<td>14. When your client is deprived of liberty, how do you contact him or her? Does it work well and how would you improve it?</td>
<td>• See below. One to one meeting at Oberstown are difficult as it is so far away.</td>
</tr>
<tr>
<td>15. When your client is deprived of liberty and you are contacting him/her by phone, are you aware of the kind of conditions he/she is facing?</td>
<td>• Generally, there is no issue with contact in Oberstown. However, I had a client who was involved in a fire at the detention centre and was on lock down in his room. The phone had to be brought into the room so he could talk to me and he informed me that there were staff outside his door.</td>
</tr>
<tr>
<td>16. What are the obstacles for an effective defence? What do you need to support you in your work (time, money, skills)?</td>
<td>• In the Circuit Court adjournments are a massive issue. I had a case where all the key actors were present in court for a plea hearing and because the Gardaí did not have the injured party in court the matter was adjourned. The child became hysterical as he had accepted that he was going into detention on that day. It did not appear that the Judge was aware of the impact of this adjournment. This indicates that there needs to be more training of the higher level judges. • Another problem is ‘aging out’ of the Circuit Court. There is great difficulty</td>
</tr>
</tbody>
</table>
the DPP to get the child into court and pleaded. This ridiculous dichotomy exists between before and after the child turns 18.

<table>
<thead>
<tr>
<th>17.</th>
<th>What would a lawyer do when he/she confronted with a child protection issue? A clinical issue/parental issues?</th>
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<td></td>
<td>• There is a lack of clarity around this issue. I had a client whose father was a client but he was not the child’s official guardian. He wanted to get into the Garda Station to see the child and he also asked me to attend for the child. However the Gardaí would not let the father in as he was not the official guardian of the child. The Gardaí also would not allow me into see the child as the father had appointed me, the child said they did not want a solicitor and the peace commissioner was already in attendance. It was clear from this that clarity was needed in child care issues such as this.</td>
</tr>
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</table>

**Youth Lawyer**

2.1 Training

<table>
<thead>
<tr>
<th>1.</th>
<th>What is your training? Did you have specific training regarding children’s rights (theoretical/practical)?</th>
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<tbody>
<tr>
<td></td>
<td>• Advanced Diploma in Juvenile Justice</td>
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<tr>
<td></td>
<td>• When I worked in Malawi I undertook a number of courses in child protection</td>
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<td></td>
<td>• I also have practice experience of youth detentions and in representing children in court</td>
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<thead>
<tr>
<th>2.</th>
<th>Is it important to have specific training? Why?</th>
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<tbody>
<tr>
<td></td>
<td>• Most definitely. There is a total lack of knowledge across the system</td>
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</table>

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<tr>
<th>3.</th>
<th>How many cases have you dealt with involving children who have been suspected or accused in criminal proceedings?</th>
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<tbody>
<tr>
<td></td>
<td>• 10 - 15</td>
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2.5 Appointment – First Contact

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<tbody>
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<td></td>
<td>• Usually as a result of a Garda detention. Parents may also contact my office. Referral could also come from social workers.</td>
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</table>

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<tr>
<th>2.</th>
<th>How, when, where was your first contact/meeting with the child? What information do you give him/her regarding his/her rights, procedural rights and proceeding itself? Are there guardians present?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• As most of the children I have represented have already been given bail by the time I enter the case, most of my first meetings are in my office. At this meeting I give an overview of the rights of the child but mostly of the practicalities of the procedure.</td>
</tr>
<tr>
<td></td>
<td>• The children don’t usually have any interest in children’s rights. I advise them regarding the offence. Parents are present most of the time but sometimes the child wants to speak to me alone.</td>
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</table>

<table>
<thead>
<tr>
<th>3.</th>
<th>Do you feel that you get enough of an understanding of the individual circumstances of the child? From whom?</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>• Not from the initial meeting but I can get information at each meeting and</td>
</tr>
</tbody>
</table>
also from psychological assessments.

4. How does that help you in the case (in terms of judicial adapted processes, defence, and sentence)
   - I feel more comfortable going into court as I have a lot more knowledge of the individual child. I am a lot more prepared.

2.3 Legal Aid System
1. Do you work within the legal aid system?
   - Yes.
2. Is there a specific section for youth lawyers in the national legal system (bar associations)? How does it work?
   - No.

2.4 Contacts
1. How do you contact the child (phone, SMS, emails, etc.)?
   - Mostly we contact the child by phone, we also send letters to the child about every court date, although I think that this is not effective.
2. Is it any different when the child is deprived of his/her liberty?
   - I call the child if he/she is in Oberstown.
3. In general, where do you meet the child? How often? How long are the meeting? Are the meetings confidential? Is someone else present? Can the child ask for someone to be present? Are the meetings Recorded? Is there any difference when the child is deprived of his/her liberty?
   - In the office and in court. At least 5/6 meetings. Times of meetings vary but usually around 40 mins. All meetings are confidential. Mostly a guardian is present. 80% of consultations are with the child present, 20% are consultations where the child is alone. Meetings are not recorded however I do take a note. If the child is in Oberstown, I go out to see him/her.
4. Have you encountered difficulties in contacting children? During meetings? In court? When deprived of liberty?
   - No.

2.8 Presence and Role
1. When and which stages of the proceedings are you present to assist the child? During those stages, what is your role? Are you allowed to effectively participate? When is your present mandatory?
   - All Stages. Sometimes I do not get to assist the child at the detention stage as the Gardaí contact another solicitor. Yes, I am allowed to effectively participate. My presence is mandatory in court.
2. Before the hearing, do you have enough time to meet with the client and access the file?
   - It is mayhem in the Circuit Court so I do not have enough time to talk to the client when in court. This is why it is important for me to meet the client beforehand.
3. What happens if you are not present? (late etc.)
   - If the matter is in the Circuit Court, the barrister stands in.
I am never late for the Children Court.

4. Do you assist the child through the whole proceedings or do you generally assist him/her at a specific stage of procedure?
   - All stages.

5. Can you support the child during the whole procedure? (Is it feasible, is there enough time, etc.)
   - Yes. I find that the problem is that I have to act like a social worker for children in care.

6. How do you work? (Alone or with internal/external collaborators?) (e.g. Psychologist)
   - Work closely with social workers and key workers.

### 2.6 Language Used

1. Do you have a specific way to talk to children (language of the child)? Do you ask him/her for his/her opinion?
   - Yes. Language is much more child-friendly.

2. Do you do anything non-verbal? (remove jacket, sit close to the child...)
   - Take off my jacket.

3. How do you make sure that he/she understood what you said to him/her?
   - Yes. I use the social worker and the parents to help the children understand.

4. Do you have young client who don't speak the same language as you? If so, do you work with an interpreter? Do you use translated version of certain documents?
   - No.

### 2.7 Lawyer - Client Relations

1. How do you feel towards your young clients?
   - Some of my client’s keep me awake at night.
   - I am aware of their rights, they have had the most horrific lives and it helps to understand them if you understand that.

2. How do your relationship with your young clients? Do you feel that they trust you?
   - Yes.

3. Do they confide in you?
   - Yes. Sometimes they confide too much on all aspects of their lives.

4. What do you do if the child does not want to collaborate/talk to you?
   - I have never had a situation like this but if I did I would involve the parents.

5. Did you ever drop/refuse a case? Why? What happened then?
   - No.

### 2.8 Lawyer – Parent relationship

1. Are parents/guardians involved in the process? Is there any support provided to them?
   - Yes they are involved in the process.
   - They need more support. I had one parent who was devastated by her child’s actions, she would have benefitted from counselling for this.

### 2.9 Lawyer – Other Actors Relationship
<table>
<thead>
<tr>
<th>1.</th>
<th>Who are the other actors you have contact with? For what and how?</th>
</tr>
</thead>
</table>
| • Social Workers  
• Key workers  
• Barristers  
• Family members  
• Extended family members  
• Gardaí |
| 2. | How do lawyers work with other actors to address any concerns which arise regarding the child’s situation? |
| • I keep in touch with them.  
• I have one client who is particularly troublesome who is constantly at different addresses. I keep the Gardaí informed of his addresses. |
| 3. | How does the lawyer work with the judge/prosecutor to adapt the procedure? |
| • Garda case managers are quite good. They show empathy and sympathy.  
• This is not the case at DPP level. |
| 2.10 Individual Assessment (regarding Article 7 of the Directive 2016/800) |
| 1. | Do you have access to the individual assessment file of the child (or perhaps more limited information gathering around the circumstances of the child)? |
| • No access. In a case where an assessment was ordered, I didn’t get to see the report as the previous solicitor had been involved and I didn’t get to see it.  
• I do gather school assessments and give the book of evidence for the psychological assessment to be completed. |
| 2. | Do you work with any other actors in this regard? |
| • Yes. |
| 3. | Do you use individual assessments in your pleadings if they are available? |
| • Yes. |
| 2.11 Funding |
| 1. | How are your fees paid? By whom? |
| • Legal aid. |
| 3. Recommendations |
| 1. | Ideally, what would you improve regarding the right of children to access a lawyer and regarding the legal aid system and/or youth lawyers system in general? (explore a scenario) |
| • We need to have training for solicitors in dealing with children.  
• Training also needs to be given to the higher judges. |
<p>| 2. | How to change the system in response to that? (facing for example ethical or procedural problems?) |
| • Need to set up a panel and requires some sort of specific training and re-examine the legal aid scheme. |
| 3. | Would you like to give concrete examples of encountered difficulties and practical recommendations to support change? |
| • See above, |
| 4. | Would you like to be involved in the continuation of this project? |</p>
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<tr>
<td>5.</td>
<td>Is there anything you wish to add?</td>
</tr>
<tr>
<td></td>
<td>• No.</td>
</tr>
<tr>
<td></td>
<td>• Yes.</td>
</tr>
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</table>
# International Framework

<table>
<thead>
<tr>
<th>Name and reference of the law(s)?</th>
<th>Date of promulgation?</th>
<th>What does the law provide for? (briefly)</th>
<th>Derogations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third Optional Protocol to the United Nations Convention on the Rights of the Child (OP3)</td>
<td>Ireland signed and ratified OP3 on 24th September 2014</td>
<td>Establishes a complaints procedure, a quasi-judicial mechanism, which allows children and their representatives to submit a complaint to the UN Committee on the Rights of the Child (CRC) regarding specific violations of their rights under the UNCRC.</td>
<td>Similarly to the UNCRC, OP3 cannot be directly enforced in Irish courts as it has not been incorporated into domestic law. See National Report.</td>
</tr>
<tr>
<td>The International Covenant on Civil and Political Rights (ICCPR)</td>
<td>Ireland signed and ratified the ICCPR 1973 and ratified it on 8th December 1989.</td>
<td>Enshrined a number of child-specific fair trial provisions. These related to trial procedure and the logistical location of the courtroom. These included the separation of accused juveniles from adults; the speedy adjudication of cases involving juveniles; reporting restrictions regarding the trial of children and the requirement that the child’s age and desirability of promoting the child’s rehabilitation to be taken into account.</td>
<td>The ICCPR cannot be directly enforced in Irish courts as it has not been incorporated into domestic law.</td>
</tr>
<tr>
<td>United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against torture)</td>
<td>Ireland signed Convention against Torture in September 1992 and ratified on 11 April 2002.</td>
<td>The most notable contribution of the Convention Against Torture to Ireland in the context of youth justice is the UN Committee Against Torture. The Committee visited Ireland and its concerns regarding the detention of children at St. Patrick’s institution arguably contributed to the change in this practice.</td>
<td>The Convention against Torture cannot be directly enforced in Irish courts as it has not been incorporated into domestic law. Some aspects of the Convention, such as definition of torture are incorporated into domestic law in Criminal Justice (United Nations Convention Against Torture) Act 2000. Also, as observed in Concluding Observations of UNCAT in August 2017, the UNCAT committee has called for the commencement of Section 9 of 2011 Criminal Justice Act which concerns access to legal representation and that no questioning will take place until a person in custody has had an opportunity to consult with a legal advisor. While this does not relate specifically to children or young people, it would equally apply to them.</td>
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</table>
## Regional Framework

<table>
<thead>
<tr>
<th>Name and reference of the law(s)?</th>
<th>Date of promulgation?</th>
<th>What does the law provide for? (briefly)</th>
<th>Derogations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The European Convention on Human Rights</td>
<td>Signed and ratified by Ireland in 1953. Further effect has been given in Irish law by the ECHR Act 2003.</td>
<td>This is the fundamental document of the Council of Europe, setting out the civil, political and human rights of all those who are citizens of countries that are member states of the CoE. These include <em>inter alia</em> the right to life, the right to a fair trial, and the right to freedom of expression. Does not provide child-specific entitlements but is to be viewed as a <em>living instrument</em>.</td>
<td>No.</td>
</tr>
<tr>
<td>The European Social Charter (Revised)</td>
<td>Signed and ratified by Ireland in November 2000.</td>
<td>This is a companion instrument of the ECHR, also a treaty of the Council of Europe, and it enshrines the social and economic rights of citizens of CoE member states. Examples of rights under the ESC are the right to work, the right to bargain collectively, the right of children and young persons to protection, the right to housing. Article 17 provides for the right of young persons to social, legal and economic protection</td>
<td>No.</td>
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</table>

**European Directives:** Having adopted a number of Directives containing specific provisions in relation to the rights of child victims, EU institutions are currently focused on strengthening the procedural safeguards for children suspected or accused in criminal proceedings.

<table>
<thead>
<tr>
<th>European Directives</th>
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<tbody>
<tr>
<td>Dir. 2010/64/EU on the Right to Interpretation and Translation in</td>
<td>This has been transposed into Irish Law</td>
<td>Lays down rules concerning the right to Interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.</td>
<td>No</td>
</tr>
<tr>
<td>Directive</td>
<td>Summary of Measures</td>
<td>Notes</td>
<td></td>
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</tr>
<tr>
<td><strong>Dir. 2012/13/EU on the Right to Information in Criminal Proceedings</strong></td>
<td>The Directive has been transposed, with its measures incorporated in a number of domestic instruments as outlined in the summary of transposition measures recorded on the EUR./LEX database.</td>
<td><strong>No</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Dir. 2016/800/EU on Procedural Safeguards for Children who are Suspects or Accused Persons in Criminal Proceedings.</strong></td>
<td>Not adopted by Ireland. In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU.</td>
<td><strong>NA</strong></td>
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</table>

Lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

Establishes procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.
without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application” para 69

### Domestic Framework

**Legal and regulatory framework on the right of access to a lawyer/assistance by a lawyer for children suspected or accused in criminal proceedings at the national level**

<table>
<thead>
<tr>
<th>Is there a law?</th>
<th>Name and reference of the law(s)?</th>
<th>Date of promulgation?</th>
<th>What does the law provide for? (briefly)</th>
<th>Derogations</th>
</tr>
</thead>
</table>
| **1.1 Juvenile Justice system** | Yes | Children Act 2001 (as amended) | 2001 | Placed the Garda Diversion Programme on a statutory footing  
Children have rights and freedoms before the law equal to those enjoyed by adults and a right to be heard and to participate in any proceedings affecting them. | Criminal Justice Act 2006 amended a number of provisions of the 2001 Act:  
Lowered the age of criminal responsibility |
| **It is desirable to allow the education etc. of children to proceed without interruption.** |
| **It is desirable to preserve and strengthen the relationship between children and their parents/family members.** |
| **It is desirable to foster the ability of families to develop their own means of dealing with offending by their children.** |
| **It is desirable to allow children to reside in their own homes.** |
| **Any penalty imposed on a child should cause as little interference as possible with the child’s legitimate activities, should promote the development of the child and should take the least restrictive form, as appropriate.** |
| **Detention should be imposed as a last resort and may only be imposed if it is the only suitable way of dealing with the child.** |
| **Due regard to the interests of the victim.** |

| **Expanded the scope of the Garda Diversion Programme to children of ten** |
| **Introduced anti-social behaviour orders** |
A child’s age and level of maturity may be taken into consideration as mitigating factors in determining a penalty.

A child’s privacy should be protected in any proceedings against him/ her.

| 1.1(b) The Age of criminal responsibility | Yes | Children Act 2001 as amended by s. 129 of the Criminal Justice Act 2006 | 2006 | Reduced age of criminal responsibility from 12 years to 10 years for murder, manslaughter, rape and aggravated sexual assault. Removal of *doli incapax* | No |
| 1.2 Right of access to a lawyer | Yes | Children Act 2001, s. 57 & s.60 | 2001 | Right of child to a solicitor in Garda custody and obligation of An Garda Síochána to notify the solicitor | No |
| 1.3 Right of assistance by a lawyer | Yes | Children Act 2001, s. 57 & s.60 | 2001 | Right of child to a solicitor in Garda custody and obligation of An Garda Síochána to notify the solicitor | No |
| 1.4 Legal aid system | Yes | | | | |
| 1.5 Appointment of a lawyer | No | Children Act 2001, s. 57 & s.60 | 2001 | A child must be advised of their right to consult with a solicitor but a Garda is not required to request a solicitor unless the child requests one. | |
| 1.6 Socio-legal defence centers | No | | | | |
The Irish Youth Justice Service has responsibility for leading and driving reform in the area of youth justice. However there is no national monitoring mechanism for youth justice in Ireland.

Please note that the United Nations Convention on the Rights of the Child does not have any binding effect in Irish Law. The European Convention on Human Rights was incorporated into Irish law by the ECHR Act 2003, however, there are no child-specific entitlements contained therein.
Coordination:

Défense des Enfants
DEI-BELGIQUE