Irish Association for the Study of Delinquency Ltd

Conference 2002

Youth Justice – Human rights / needs

The fifth annual conference of IASD took place in the
Killiney Court Hotel, Co. Dublin
on 3 & 4 October 2002.

The Council wishes to record its appreciation to
Dr. Ian O'Donnell, Institute of Criminology, University College Dublin,
for his assistance in the production of the conference report.

Contents

What is the Irish Association for the Study of Delinquency?

The Irish Association for the Study of Delinquency Ltd. (IASD) promotes reform, development and effective operation of the criminal justice system.

It does so by:

- providing a forum where experienced personnel can discuss problems and ways of working
- promoting study and research in the field of criminal justice
- promoting the highest standards of practice by professionals working in, and associated with, the criminal justice system
- representing the collective views of its members
- building links with similar professional organisations at home at abroad

IASD activities are designed to lead to increased mutual understanding and provide insights into the challenges posed by crime. By opening informal channels of communication, the Association improves coordination between the different parts of the criminal justice system. It is not a pressure group for change, nor is it aligned politically.

Activities include an annual conference, seminars on issues of current concern, dedicated working groups, and study tours. Publications include: *Preventing Offending – A Stake in Civic Society* (Proceedings of 1998 Conference); *Keeping Offenders in the Community – Electronic Tagging and Voice Tracking* (Proceedings of 1999 Conference); *Perspectives on Juvenile Justice* (Proceedings of 2000 Conference); and *Drugs, Alcohol and Youth Crime* (Proceedings of 2001 Conference).

Membership

A member is a person who supports the objectives of IASD and has been admitted to membership by its Directors. Membership ceases on resignation by the member or on notice of cessation of membership received by the Secretary. Members may be retired or serving

personnel. They participate in a private, individual capacity and do not represent their organisations in any way. The annual subscription currently stands at €25.

The Association is a company limited by guarantee. Officers are elected at the Annual General Meeting and the organisation is currently structured as follows:

Patron	The Hon Mr Justice Michael Moriarty
Chairperson	Martin N Tansey
Secretary	Seán Aylward
Treasurer	Mary Ellen Ring SC
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Executive Summary

I. Keynote Addresses

Martin Tansey (Chairperson, IASD) outlined the rationale behind the choice of theme for this year's conference. He emphasised the important role that members of the Association play in setting its agenda. He reviewed recent legislative developments and described the extent to which the State had left it to the courts to decide how the most challenging young people should be dealt with. Mr Tansey commented on the huge disparity between the resources made available to build penal institutions compared with those allocated for community-based services. He stressed the importance of taking remedial action otherwise Ireland may fail to meet the standards set out in international treaties to which it is a party.

Brian Lenihan TD (Minister of State with Responsibility for Children) charted the development of current models of youth justice. He noted the shift from approaches that emphasised individualised treatment and training for offenders, to more offence-based approaches, which focused on making the penalty fit the crime, with little regard for personal characteristics. The latter approach, which has taken hold in many countries, has provided the impetus for a number of international human rights standards. However, it is usually tempered by a strong concern for the welfare of the child. Mr Lenihan set out the criteria that underpin an effective and humane youth justice system, including diversion, prompt action and minimum use of custody.

Ursula Kilkelly (Lecturer in Law, University College Cork) reviewed the legal context in which the youth justice system operates. The European Convention on Human Rights and the UN Convention on the Rights of the Child represent binding international law, while the Beijing Rules and the Riyadh Guidelines are merely persuasive: the courts may take their provisions into account but do not have to. Dr Kilkelly outlined the key principles that should guide the development and implementation of policy. Of particular importance are non-discrimination, acting in the best interests of the child and ensuring that children have an opportunity to contribute to decisions being taken about them.

Kate Akester (Criminal Justice Consultant, London) described the legal challenges that followed the sentencing of Venables and Thompson, the two ten year old boys who killed toddler James Bulger in Liverpool in 1993. The trial judge in their case specified that they serve eight years before being considered for parole. The Home Secretary raised this to 15 years. The European Court ruled that the Home Secretary was not an independent and impartial tribunal and should have no role in determining release dates. There were other implications for modifying the trial process so that children could better understand and participate in the proceedings. Ms Akester highlighted further reforms that have been ushered in by the Human Rights Act.

Padraic White (Chairman, National Crime Council) took a developmental approach to the problem of youth crime. He traced the progress through the system of the young person 'at risk' and identified the factors that emerge as critical at a number of stages, including early school leaving, drug misuse, and release from custody. He emphasised the importance of education and employment and the need to design interventions so that they meet the identified needs of individuals. He called for a reorientation of the system so that it became 'person centred' rather than 'scheme focused.'

II. Main Themes from Workshops

- Contrasts in ethos
- Shifting political priorities
- The problem of delay
- Justice by geography
- The young person's perspective
- Residential treatment for substance abuse
- Poor communication
- Combating early school leaving
- What works?
- The problem of homelessness
- Sexual development and homophobia

III. Main Themes from Plenary Discussion

- Incarceration
- Gender
- The role of the criminal justice system
- Family conferences
- Controlling public space
- Building bridges
- Increasing representativeness

Opening Address

Mr Martin N Tansey Chairperson – IASD

In deciding on the theme and title for our annual conference the IASD Council was strongly influenced by the feedback from members who made a number of study visits to residential facilities for young people. The title we have chosen is a shortened version, the full one being, *Youth Justice – Human Rights/Needs/Obligations/Responsibilities.*

In the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, the language of rights is instructive. They are 'fundamental,' 'inalienable,' 'universal.' This is a language of certainty – rights are presented as obvious and absolute. In principle at least, human rights extend beyond the borders of sovereign States. They are universally declared and shared, internationally assembled and agreed. How this country measures up to these international standards, and how well we protect the rights of young people, are key areas of debate.

This evening and tomorrow our speakers will address some of the issues that IASD members expressed concern about during their study visits. These include:

- Crime is perceived to be a problem of the young, with four in every ten recorded crimes committed by people under twenty one years of age.
- It is a fact often forgotten that young people are the main victims of crime, especially violent crime, which is committed primarily by young males against young males.
- Crime is committed disproportionately by young people living in inner cities or large urban areas characterised by serious social, economic, educational and environmental disadvantage.
- Young people who are strongly attached to their school are less likely to engage in crime, particularly those who have high educational and occupational aspirations.

- Young people who perform poorly at school and who for one reason or another become detached from education, are often in the high risk category of engaging in alcohol abuse and/or serious anti-social behaviour. The question arises why they become detached and why education has failed them.
- Young people strongly attached to their parents are much less likely to become involved in deviant or delinquent behaviour, than those whose parents, for one reason or another, are unable or unwilling to provide the necessary support or guidance.

Feckless and reckless 'gatherings' of young people with one or two 'leaders' are often the forerunner or catalyst for riotous behaviour and outbreaks of lawlessness. In the past this was largely confined to some disadvantaged communities, but it occurs more frequently nowadays, in the form of public disorder on the streets, with the young people involved from a wide social mix. Such behaviour results from the absence of integrated and challenging sets of policies focusing on the needs of young people.

Public and political pressures coupled with media demands sometimes result in policies which lead to fragmented initiatives. The concern with youth crime prevention is but one example. Crime prevention as currently defined is about reducing or rectifying troublesome behaviour. It has, I suggest by default, the disturbing tendency to establish the boundaries of policy for all young people.

Little or no change took place for decades in the legislation which governed development of services for young people. It was until recently left to the superior courts to decide how to deal with young people who were troublesome or at serious risk. Quite simply, the State failed in its responsibility. The enactment of the Child Care Act 1991 was meant to rectify this position. The reality, however, is that it brought the judiciary to the forefront, some becoming protectors of the vulnerable young. They recognised that Government, failing to provide the resources and facilities, required action to be taken, on a variety of fronts, including the provision of high secure support units. This approach, even in an era of corporatism and managerialism, prevents planning and development of policies and services in a coherent and

pro-active manner. In some instances I believe that this results in a bad situation being made worse.

More recently legislation on a number of fronts has been enacted including the Education Welfare Act, the Children Act and the Youth Work Act. These are all very positive, and to a certain extent radical, additions to the statute book. If implemented in full they will bring significant improvements in services and support for young people.

I want to emphasise the conditional nature of these arrangements. Their success is dependent on the resources being provided so that those charged with the responsibility for implementation can do so effectively and within a reasonable time span.

The Education Welfare Act came into effect in August 2002 and the obligations and responsibilities placed on School Boards and Principals in regard to attendance, detention, suspension and expulsion are very positive. However, no supports are yet in place to assist teachers dealing with young people incapable or unwilling to attain these educational requirements. There is concern, that while the Education Welfare Board has been established to implement this Act, no staff are in place to undertake the work. Some Boards of Management are worried that, perhaps unknowingly, they may be in breach of the Act.

Agencies dealing with young people who are aged sixteen, have not achieved a certain level of educational attainment and are out of school, would need to acquaint themselves with their obligations.

The Children Act 2001 places new responsibilities on Health Boards, Gardaí, the Probation and Welfare Service, Department of Education and Science and the Prison Service. Will the services concerned be able to deliver what is required of them, or more importantly will they be given the necessary resources to do so?

IASD members who visited young people's residential facilities, while recognising and acknowledging the excellent work that staff and management are undertaking, asked time and time again: *Is there a need to lock up so many young people?*

Experience and research demonstrates that preventive measures and community-based sanctions can be the most effective interventions for a significant majority of young offenders. The resources required are significant, but minuscule when compared to what is required to manage young people in custody.

Knowledge and experience shows that funding for new penal institutions has never presented a problem, even during difficult economic periods, though it was acknowledged and accepted that the provision of such facilities cost many, many millions. The provision of funding for, and approval of, a small number of probation service personnel at the same time was either denied or approved in single figures. Community sanctions as provided for in the Children Act will be meaningless unless a progressive approach is adopted, and the necessary resources are provided, for the Probation and Welfare Service.

If the Children Act is to be implemented in a planned and coherent way, then the National Children's Office will, in my opinion, need to be given statutory powers similar to the Residential Services Board.

Coordination is wonderful, but without a legislative base it weakens authority and role; becoming a forum for agencies on the one hand to vent their feelings about the lack of resources and on the other hand to disregard its existence when it may seek action.

Youth Justice agencies in the decade ahead must respond to the rights and needs of young people in a progressive manner. Otherwise this country may find itself having to give explanations to UN for failing to meet its obligations.

Keynote Address

Mr Brian Lenihan TD

Brian Lenihan was appointed Minister of State with responsibility for Children at the Departments of Health and Children; Justice, Equality and Law Reform; and Education and Science in June 2002. He was first elected to the Dáil in April 1996 in the by-election caused by the death of his father, Brian who had been a deputy in Dublin West since 1977. During the 28th Dáil he was Chairperson of the All-Party Oireachtas Committee on the Constitution which considered changes in the abortion laws. He was also a member of the Committee on Procedure and Privileges and is a Senior Counsel.

I am delighted to be here this evening to deliver the keynote address at this year's annual conference. The Irish Association for the Study of Delinquency has, in the few years of its existence, established itself as something of a leading forum for the exchange of information and views on criminal justice matters. I expect this conference to be no different, and if my address tonight manages to provide even some small crumbs of food for thought for your deliberations tomorrow, then it will have served its purpose.

In Ireland, we have been very good at producing reports on, or touching upon, youth justice issues, going back more than thirty years. The names will be familiar to you: the Kennedy Report in 1970; the Henchy Report in 1974; the Whitaker Report in 1985; and the Report of the Dáil Select Committee on Crime in 1992. All have called for reform of the youth justice system in one way or another, not always it must be said, in harmony. They have, however, agreed on one thing: the State could and should do more for young offenders and those at serious risk of offending. The chief complaint invariably centred on the perceived archaic nature of the Children Act 1908, which, for nearly a century has formed the basis of our treatment of young offenders.

Strangely, except in recent years, relatively little attention has been paid to youth crime –- as distinct from youth justice – and the processes which produce and shape that crime, the profile of young offenders and what happens to them once they have been released from detention or secure accommodation. This is all the more puzzling when one considers that it is youth crime which continues to be a remarkably consistent and sensitive touchstone for our society's image of the young offender. In fact, few areas of public policy are so readily given to demands for knee-jerk reactions by sections of the community. I make these comments because it is precisely these kinds of responses that can determine the youth justice system we chose to operate within.

For example, I note that one of your guest speakers worked on the Venables and Thompson case in England. That tragic case, which we are all familiar with, was, in many ways, a defining moment in that jurisdiction's youth justice system. Among many other consequences, it led to a key decision in the European Court of Human Rights on court procedures for young offenders, but it also undoubtedly contributed to the abolition of the *doli incapax* principle in that jurisdiction.

If, therefore, I sought to find any good in the longevity of most of the provisions of our Children Act 1908, it is that we have had the benefit of observing the shifting terrain of youth justice internationally in recent decades and of putting those observations to good use, hopefully, in the Children Act 2001. I will return to this matter shortly, but I think it might be instructive at this stage to map out just how we have arrived at our present understanding of youth justice.

The so-called 'welfare model' of youth justice – which has a very long pedigree – focuses on the personality of the offender, who is considered to be in need of re-education and rehabilitation. To achieve these ends, sanctions are imposed 'for the sake of the offender' and, in its most abstract form, are implemented without taking into account the kind of offence committed. The duration and the criteria for imposing a sanction need not be precisely fixed in advance, as this will depend on the particular deficits of the offender, and better chances of improvement are to be expected if he remains within an institution or detention centre, where a complete programme of rehabilitation can be delivered. Finally, in

this model, the offender need not enjoy an abundance of legal rights and guarantees, because such entitlements may put at risk the success of rehabilitation programmes.

On the other hand, the 'justice model' is conceptually at variance with the welfare model as it focuses on the offence itself and not so much on the personality of the offender, whose acts during adolescence need not be the subject of treatment. The main objective of the justice model is not rehabilitation at any cost, but reintegration of the juvenile into a society which respects his rights as a citizen. Hence, sanctions must be proportionate to the offence committed, the duration of the sanction must be fixed, incarceration must always remain the option of last resort and legal rights and guarantees must be a prerequisite for conducting prosecution.

The first of these models, the welfare model, was preponderant in legislation and jurisprudence in Europe and still prevails in some countries. Since the 1970s, however, it was heavily attacked as paternalistic, arbitrary and –- most damning of all – ineffective, culminating in the misguided claim that 'nothing works'. In its place, the justice model has gradually gained ground, much to the dismay of many who see 'just deserts' sentencing as an abomination.

It is ironic, then, that while the welfare model is perceived in popular discourse as being the 'caring' approach to young offenders, it has been more the justice model – with its emphasis on rights and safeguards – that has provided the impetus for important international instruments, such as the 1989 UN Convention on the Rights of the Child and, particularly, the 1985 Beijing Rules on the administration of juvenile justice, the 1990 Riyadh Guidelines on the prevention of juvenile delinquency and the 1990 Havana Rules on protections for juveniles deprived of their liberty.

Many people here may be surprised that I characterise the justice model so, but this is only because, in some jurisdictions, it is applied in practice not so much with the view of attaining the objective of social reintegration but, rather, in a spirit of retribution, often in order to assuage public opinion that crime is not 'out of control'.

I do not wish my address tonight to be unduly theoretical. But if there is one lesson to be learned from these competing models of youth justice, it is that no matter how well-intentioned we may be in trying to repair the damage of an abusive childhood or a socio-economically deprived upbringing, we should never allow ourselves to be blinded to the fundamental rights and freedoms attaching to young offenders – those same rights and freedoms that may all too often be conveniently 'overlooked' because the person possesses two qualities much disfavoured: being young and being an offender.

In reality, of course, differences between youth justice systems and practices are often not particularly deep, since most, if not all, are currently evolving towards a model combining both rehabilitative objectives and due process guarantees.

So, for the modern State intent on doing its best by its young offenders, what are the key issues that emerge from competing models of youth justice and international standards?

Well, the UN Committee on the Rights of the Child, the treaty body charged with monitoring the implementation of the UN Convention on the Rights of the Child, has consistently indicated that it regards the UN rules and guidelines to which I made reference earlier as providing the detailed standards for the implementation of Article 40 of the Convention, which deals with specific due process guarantees.

In the European context, although Article 6 of the European Convention on Human Rights, which deals with criminal trials, makes no specific provision for the trial of juveniles, the leading decision of the European Court of Human Rights – made in the Venables and Thompson case – sets certain standards in this regard.

So, combining all the above, I would suggest that the following youth justice issues emerge as critical for any State:

(1) The principle that the promotion of the welfare and best interests of the young person accused of an offence is treated as a primary consideration in all stages of the criminal justice system.

(2) The need to adopt and implement alternatives to formal criminal prosecution, wherever possible, in order to divert young people away from the criminal justice system.

(3) The need to ensure that pre-trial detention of the young person is kept to an absolute minimum, reserved for the most serious offences and subject to appropriate safeguards.

(4) The need to ensure that where formal criminal proceedings are instituted, they are pursued with special expedition, suitable for the age of the alleged offender.

(5) The need to ensure that the young person who is formally accused of an offence is afforded the same measure of due process guarantees as adult defendants are entitled to.

(6) The need to ensure that procedures for the trial of young people are adapted to avoid unnecessary distress, humiliation and stigmatisation, to ensure their ability to participate effectively in the proceedings, and to respect their privacy.

(7) The need to ensure that parents or legal guardians are closely involved in all stages of the proceedings in order to promote the best interests of the young person, except where there are grounds for believing that their involvement would be harmful.

(8) The need to ensure that custodial sentencing is regarded as a measure of last resort, to be ordered only in respect of serious offences of violence or the repeated commission of other serious offences.

(9) The need for effective avenues of appeal and review in respect of conviction of the young offender and in respect of any measure of disposal following conviction.

I should add that another critical issue is, of course, the rights of victims. Although this is a matter of great importance, I consider that this conference has a somewhat different focus.

So how has Ireland responded to the challenges of the international norms as listed above? I would like to think quite well; or, at least, potentially quite well. My confidence rests in the Children Act 2001 which, running to 145 pages of the statute book, constitutes by any standards a major piece of legislation.

When this legislation was being drafted, more or less from scratch some years ago, we sought to understand why, after so many years and so much effort in other jurisdictions, youth justice policies and legislation were continually changing, not just around the edges but at their core.

Our primary interest was in identifying what, if anything, was wrong with the legislative approaches and policies adopted elsewhere. We concluded that a lack of consistency had bedevilled the formulation of youth justice policies in some of the countries we looked at. Policies were sometimes based on one view of how society should cope with young offenders and were often introduced at the expense of existing policies which were prematurely discarded before their worth within the overall system had been realised.

Applying that understanding of what went before elsewhere underpinned our own legislation. Thus, the Children Act 2001 champions neither a welfare nor justice model of youth justice but seeks to supplement rather than supplant existing provisions, except, of course, the clearly archaic or unacceptable.

Two general observations can be made about the structure of the Act. First, it is long and detailed. When one considers that youth justice legislation is largely about procedures – procedures that are different from those affecting adults – that is hardly surprising. Second and of more importance to the conference theme, many parts of the Act are supported explicitly by a set of principles or objectives, borrowed in large measure from international imperatives. This rights-based approach to legislation is unusual in this jurisdiction and should not be underestimated for its potential impact.

To give an example, section 55 of the Act dictates how the Garda Síochána should treat juvenile suspects while in custody. Specifically, the section requires that Gardaí shall act with

due respect for the personal rights of juveniles and their dignity as human persons, for their vulnerability owing to their age and for their level of maturity, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime. Subsequent sections of that part of the Act go on to set out how these over-riding principles are to be realised in practice.

This is not the time or place to delve further into the specifics of the Act, how its provisions have been tied to basic rights and how they measure up to my list of issues for youth justice systems. I would, rather, wish to emphasise that while the Act holds out enormous promise to be a genuinely reforming piece of legislation, that potential will only be realised with effective implementation.

The first commencement order, signed by the former Minister for Justice, Equality and Law Reform on 23 April 2002, brought into operation a number of provisions, mainly relating to the Garda Síochána, including that part of the Act dealing with the aforementioned treatment of juvenile suspects in custody. However, it must be admitted that most of the Act remains inoperative for the present, a situation which I hope to see change as soon as possible.

In this regard, the National Children's Office, established under the Government's National Children's Strategy, has been charged with coordinating the implementation of the Act between the relevant Departments of State. That office has already submitted to Government a detailed plan of action on implementation tasks for 2003.

Before I end tonight, I would like to make two further points in relation to the State's human rights agenda generally, as distinct from that applying specifically to juveniles.

You will be aware that, arising from commitments in the Good Friday Agreement, the Government formally established an independent Human Rights Commission in July 2001, with responsibility for the promotion, protection and development of human rights and, through its work, for the creation and fostering of a human rights culture in this jurisdiction.

The Commission has wide-ranging functions. Among others matters, its main purposes are to keep under review the adequacy of law and practice for the protection of human rights; to examine on request legislative proposals for their human rights implications; to institute legal proceedings for alleged violations of human rights; and to make recommendations to the Government to strengthen, protect and uphold human rights. It is hoped that the Commission will become fully operational later this year with the appointment of all its administrative staff.

Finally, although Ireland was one of the first countries to sign and ratify the European Convention on Human Rights, which I have already spoken about, it does not form part of our domestic law. In essence, while the Convention applies to Ireland and is binding as an international treaty, its provisions do not apply within Ireland. This is because Article 29.6 of the Constitution provides that no international agreement shall be part of the law of the State, save as may be determined by the Oireachtas. At present, rights under the Convention can only be vindicated by the exhaustion of all domestic legal remedies first and then taking the case to the European Court of Human Rights, a process that is both lengthy and costly. I am pleased to report that a Bill that will give better effect in Irish law to certain provisions of the Convention – the European Convention on Human Rights Bill 2001 – is currently awaiting Committee Stage in the Dáil.

With that, ladies and gentlemen, all that remains for me to do is to thank the IASD for its kind invitation to attend tonight and to wish all of you a successful and informative conference tomorrow.

The Rights of Children in Conflict with the Law

Dr Ursula Kilkelly

Ursula Kilkelly is a lecturer in law at University College Cork where she teaches domestic and international aspects of child law and children's rights. In 2001 her handbook on Article 8 of the European Convention on Human Rights was published by the Council of Europe. She has provided training on the ECHR to judges and lawyers in the Russian Federation, Albania and the former Yugoslavia. She has been involved in the drafting of the proposed Bill of Rights for Northern Ireland and is the principal author of *In Our Care: Promoting the Rights of Children in Custody*, published by the Northern Ireland Human Rights Commission in April 2002.

It is my great pleasure to address this year's conference on the rights of children in conflict with the law. In a conference designed to address youth justice and rights issues, it is, in my view, hugely important that we start proceedings by identifying what rights are involved. I would also like to welcome the partnership which my invitation represents between people like myself who work in the academic side of children's rights and youth justice and you who work hands-on in the area. It is my view that this is an important and a mutually beneficial relationship and I look forward to building on it in the months and years ahead.

SOURCES AND STATUS OF CHILDREN'S RIGHTS

The source of many children's rights standards is international law, that is the body of law drafted by States mainly under the auspices of the United Nations. Whether international law has any status in a national legal system depends on a State's constitutional arrangements and for our purposes, it is significant that Article 29.6 of the Irish Constitution states that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas. Consequently, international treaties ratified by Ireland must be brought into domestic law by means of legislation before they will become binding law in the State. Those that have not enjoyed this fate – and they are in the majority – exist in the Irish

legal system as what is described as persuasive rather than binding authority. The courts may take their provisions into account, but they do not have to.

Binding International Law

The fact that the two treaties of most relevance to today's conference, i.e. the UN Convention on the Rights of the Child and the European Convention on Human Rights (ECHR), have not been given the effect or status of domestic law by the Oireachtas means that their provisions remain international in character and as such, do not bind either the courts or administrative authorities. (The European Convention on Human Rights Bill 2002 does not incorporate the ECHR into Irish law, but rather gives further effect to its provisions.) However, that is not to say that the standards which these treaties contain can have no effect or meaning here. In particular, the Convention on the Rights of the Child and the European Convention on Human Rights represent binding international law. As such, they bind the State which has undertaken to abide by their standards and to guarantee the rights which they contain to everyone.

Failure to do so may result in humiliation by the UN Committee on the Rights of the Child or a finding by the European Court of Human Rights that Ireland has violated the rights of one or more of its citizens. Ireland has already been subjected to both penalties. For example in 1998, following its examination of Ireland's first report on implementation of the Convention, the Committee on the Rights of the Child criticised the Government for failing to implement Convention standards in the area of youth justice and detention. It went on to recommend that the Government:

> … take all available measures to ensure the prompt enactment of the Children Bill 1996, especially in relation to the administration of the juvenile justice system, with due regard to the principles and provisions of the Convention, and other relevant international standards such as the Beijing Rules, the Riyadh Guidelines and the UN Rules for the Protection of Juveniles Deprived of their Liberty.[1]

[1] UN Doc CRC/C/15/Add.85 Concluding Observations of the Committee on the Rights of the Child: Ireland, 23 January 1998, para 40.

Although the Children Act 2001 has now been passed – and the amendments made to the Bill subsequent to the UN hearing were welcome – the fact that not all its provisions are in force will attract further criticism from the Committee when it examines Ireland's second report, which is now long overdue.

Ireland's record before the European Court of Human Rights is also cause for concern and in May 2002, Ireland was found in violation of Article 5 of the Convention in the case of DG *v* Ireland with respect to the detention in St. Patrick's Institution of a young person in need of secure care.

Non-Binding International Standards

Whether international standards have the effect of domestic law becomes less significant with regard to the other relevant human rights instruments. Three principal UN documents set out the rights of children in conflict with the law:

- Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules), 1985
- Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990
- Rules for the Protection of Juveniles Deprived of their Liberty (PJDL Rules), 1990

These are non-binding in nature as they do not create legal obligations on States at international or any other level. Instead, their value lies in the extent to which they identify internationally accepted best practice in the area of youth justice, detention and the prevention of delinquency and in this regard, they can be used to inform both reform and implementation of legislative approaches, like the Children Act 2001, and they can also be used effectively to act as a benchmark against which law, policy and practice in these areas can be measured.[2]

INTERNATIONAL STANDARDS

[2] See Kilkelly and Moore, *In Our Care: Promoting the Rights of Children in Custody*, published by the Northern Ireland Human Rights Commission, Belfast, 2002.

Convention on the Rights of the Child, 1989

General principles

Before looking at the content of the Convention specific to children in conflict with the law, it is important to note that the Convention has there fundamental principles, which the Committee on the Rights of the Child has held must be set out in all legislation and policy regarding children **and** used to guide their implementation. These are:

- That there shall be no discrimination between children in the enjoyment of Convention rights on any grounds (Article 2)
- That the best interests of the child shall be a primary consideration in all actions taken concerning children (Article 3)
- That the child has a right to have his/her views considered in accordance with his/her age and maturity and the right to representation to that end (Article 12).

With respect to non-discrimination, there are clear arguments to be made here that children in the justice system are not treated equally or are discriminated against on a variety of grounds, including disability (consider, for example, the number of children in the system with special needs?)[3] or with reference to socio-economic background. Can we say when the Act is implemented, for example, that the range of community sanctions available to judges in Mayo or Galway will match those available to the Dublin courts? The same question can be asked in relation to places of detention.

Questions must also be asked about the extent to which the second and third principles – the best interests principle and the child's right to be heard – permeate the treatment of children in conflict with the law in Ireland. In particular, the best interests principle is not set out in the Children Act 2001 as a fundamental principle or aim of the juvenile justice system and there is no acknowledgment that the system must work in the best interests of children if it is to be effective.

[3] In a study of the (former) Northern Ireland Training School system, Horgan and Sinclair found that nearly one third of all young people in training schools had a learning or physical disability and all but two had emotional or behavioural problems (see *Planning for Children in Care in Northern Ireland*, London: National Children's Bureau, 1997, p. 131.)

More specifically, there is no requirement that the probation board or the children's court use the Article 3 standard as a primary consideration when making decisions regarding children who offend. Similarly, while the legislation contains a number of mechanisms designed to enhance the participation of children in choosing their own destiny, this is frequently not set out as a matter of the child's right to be heard and to participate effectively in decisions taken.

Children in conflict with the law

The Convention sets out the measures required to provide minimum protection for the rights of children in all areas of their lives, including the rights of the group that it describes as 'children in conflict with the law' as well as children in custody. This term is used in the Convention (and consequently here) to describe children who are alleged as, accused of or recognised as having infringed the penal law. Interestingly, despite the fact that the Riyadh Guidelines for the prevention of juvenile delinquency were drawn up and adopted at around the same time as the Convention, the latter makes no reference to the rights of 'delinquents' or the concept of 'delinquency'. This is significant given that the Convention is the only document of the two that is binding in nature.

Although it makes express reference in its preamble to the Beijing Rules on the administration of juvenile justice the Convention is actually informed by all three non-binding instruments relevant to the area of youth justice – the Beijing rules, the Riyadh guidelines, and the rules for the protection of juveniles deprived of their liberty. In this regard, it establishes under Article 37 the basic standard that children should be detained as a measure of last resort and for the shortest appropriate period of time and should be separated from adults in detention.[4] It also requires that every child deprived of liberty shall be treated with humanity and respect and in a manner which takes into account the needs of persons of his/her age. According to Article 40, all children in conflict with the law have the right to be treated

> … in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

[4] *The Irish Times* reported on 3 October 2002 the decision by Judge Garavan of the Galway District Court to send a 15 year old girl to Mountjoy prison for one week. While made in the absence of more suitable places of detention for young people, the decision nonetheless contravenes the basic principle set out in Article 37.

To this end, the provision goes on to require States to develop and promote measures designed to divert children from the criminal process, and from custody, but only insofar as such measures are compatible with the child's rights, particularly to due process. Article 40 (2) sets out in detail the rights of children charged with and accused of having infringed the criminal law. In particular, the State must ensure that such children enjoy, as a minimum, all of the rights of due process. Such children also have the right to further protection including the right to have charges explained to them in language which they understand, the right to have access to a lawyer as well as an appropriate adult, and the right to have their privacy respected at all stages of the proceedings.

European Convention on Human Rights

While it was clearly not written with children or their rights in mind, the European Convention on Human Rights is nonetheless important in the context of youth justice. Interestingly, the two references to children occur in Article 5, which deals with the right to liberty, and Article 6, which sets out the right to a fair trial.

Right to a fair trial

After producing many volumes of case law on the constituent elements of a fair trial, the Court had to wait until 1999 for the opportunity to set out what constitutes a fair trial for children. The applicants in the cases of *T* and *V* against the UK were the two 11 year old boys who had been convicted by a Crown Court of murdering the toddler James Bulger.[5] The question before the European Court of Human Rights was whether their trial in an adult court with the attendant publicity was compatible with the requirements of a fair trial set out in Article 6 of the ECHR. In the circumstances, the Court concluded that it was not and held that what was fundamental was that

> … a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.[6]

[5] Eur Court HR T v UK, V v UK, judgments of 16 December 1999. The judgments can be found on the Court's website: www.echr.coe.int

[6] T judgment, *ibid*, at para 84.

This is a strongly worded principle that requires that the ability of children to understand and participate in their own criminal proceedings be encouraged and facilitated by the authorities. Moreover, the application of this principle is not confined to children charged with murder or serious crime, to which it admittedly has most relevance, but it has a more important, general application to the way in which the criminal justice system deals with child offenders.

In the light of the specific circumstances of *T* and *V*, the Court went on to note that where a child is charged with a grave offence which attracts high levels of media and public interest, it is necessary to conduct the hearing in a way that reduces his/her feelings of intimidation and inhibition as far as possible. According to the facts, the trial of *T* and *V* took place over three weeks in public in the Crown Court, although special measures were taken in view of their young age and to promote their understanding of the proceedings. For example, the hearing times were shortened and the procedures were explained to the children in advance.

Nevertheless, the Court observed that the formality and ritual of the Crown Court must, at times, have seemed incomprehensible to a child of eleven. There was also evidence that certain modifications to the courtroom – such as the raised dock which was designed to enable them to see what was going on – had the effect of increasing their sense of discomfort during the trial and their sense of exposure to the scrutiny of the press and the public. Moreover, considerable psychiatric evidence showed that the boys suffered from post-traumatic stress disorder which made it difficult if not impossible for them to instruct their lawyers and follow the trial.

In such circumstances, the Court held that it was insufficient for the purposes of Article 6 that the applicants were represented by skilled and experienced lawyers because it was highly unlikely that they would have felt sufficiently uninhibited, in the tense courtroom and in the glare of public scrutiny, to have consulted with them during the trial. Indeed, given their immaturity and disturbed emotional state, it considered it unlikely that they were capable of cooperating with their lawyers even outside the courtroom in order to give them information for their defence. In essence, then, the Court concluded that neither applicant was able to participate effectively in the criminal proceedings against them and they were, as a consequence, denied a fair hearing.

The Lord Chief Justices of Northern Ireland and of England and Wales both issued Practice Directions on the trial of children and young persons in the crown court following the judgment. The Directions require that the 'trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress' and recommend that young defendants be brought into the court out of hours in order to familiarise them with the surroundings. They require that the court should explain the course of proceedings to the young defendant in terms s/he can understand and that the court should be prepared to make an order restricting reporting of the trial.[7]

It remains to be seen, however, whether the Practice Direction will in itself be sufficient to implement the *T* and *V* judgments in full and more important, for our purposes, whether the procedures in the children court and the circuit court where children are tried for more serious crimes are compatible with the judgment's principles. Interestingly, the Scottish Parliament's new proposals for raising the age of criminal responsibility from 8 to 12 have focussed on the concept that it is not possible to guarantee that children under 12 will be able to participate in their criminal trial. In this regard, it is welcome that s. 52 of the Children Act 2001 not only raises the age of criminal responsibility from 7 to 12, but also places on a statutory footing the *doli incapax* rule – welcome when England has just abolished it and shows no commitment at all to raising its age from 10.

Right to liberty

The other reference to children in the ECHR is in Article 5, which guarantees the right to liberty. Article 5 (1)(d) provides for the detention of minors for the purposes of educational supervision. While it is not clear what objective the drafters pursued with this provision, it is appears that its background was a recognition of the need to prevent vulnerable young people from sliding into a life of criminality, to prevent delinquency, in other words. The Court's interpretation and application of the provision has clarified the provision's purpose a little and we now know from the case of Bouamar *v* Belgium[8] and more recently from DG *v* Ireland that the provision requires States who choose a system of educational supervision to

[7] See Gillespie, 'Practice direction on child defendants and the case of T v UK' (3 March 2000) NLJ 320.
[8] Eur Court HR Bouamar v Belgium, judgment of 29 Feb 1988.

deal with juvenile delinquency are obliged to put in place appropriate institutional facilities which meet the security and educational demands of that system.[9]

What that meant in *DG* (and indeed in *Bouamar*) was that the detention of the applicant, who had not been convicted of any criminal offence, in St. Patrick's Institution violated the Convention because, although it was secure, it did not meet the educational objective necessary to bring it within Article 5(1)(d). Unfortunately, the Court has provided little guidance as to what level of care and education is necessary for this purpose. What is relevant here is that St. Patrick's Institution was a penal institution where the applicant was subject to a disciplinary regime and did not avail himself of the educational facilities, access to which was voluntary. No entries had been made in his prison file, or in medical or psychiatric reports detailing any instruction received by him during his detention and indeed the High Court was itself convinced that St. Patrick's could not guarantee his constitutional educational rights or provide the special care he required.

In the light of firm commitments to implement the Children Act 2001 and put in place the resources, facilities and places needed to make it work, the question must be asked as to whether children will need to be in the justice system to get adequate care and protection. The decision to invest in the Children Act 2001, while welcome, serves to highlight the prolonged inadequacy of arrangements for children who are at risk or out of control.

UN Rules and Guidelines

The UN standards provide considerable detail about the rights of children in conflict with the law and how they should be treated, from reducing criminal behaviour in the first instance, to diverting such children from the criminal process when it does occur and finally, setting out the rights children must enjoy when in custody. They provide a positive framework within which the needs and rights of such children can be addressed and because they contain a considerable amount of good practice they are relevant and useful for drawing up legislation and policy in this area as well as its successful implementation. They also provide important direction for the implementation of this legislation and policy and can be used as indicators -

[9] Eur Court HR *DG v Ireland*, judgment of 16 May 2002, para 79.

to measure the extent to which law policy and practice meets the requirements of international law.

In *In our Care: Promoting the Rights of Children in Custody*, published by the Northern Irleand Human Rights Commission in April this year, I conducted an audit of the extent to which law, policy and practice relating to the rights of children in custody in Northern Ireland met these international standards. The standards can thus act as a very useful barometer of the extent to which law, policy and practice in this area is meeting international expectations.

Given how accessible these sets of rules are – they are easily found and downloaded from the UN High Commissioner's website at www.unhchr.ch - the remainder of this paper is spent setting out the principles, which form the backbone of the Rules:

Procedures must be child-specific and child-sensitive

The Rules all emphasise the need for child-specific and child-sensitive procedures throughout the youth justice system. At its most basic, this means that a child must not be tried in an adult court. However, this principle also demands that States must develop child-appropriate systems and procedures for dealing with children accused as or convicted of having infringed the criminal law, including the use of child-friendly and child-appropriate language being used to communicate with children. Devices for re-routing children away from the criminal process and from detention must be developed, but only insofar as they provide protection for the child's rights, particularly to due process.

Similarly, children should not be placed in adult prisons and the deprivation of liberty must only take place in conditions that ensure respect for their rights. Moreover, while in custody, *all* children must be guaranteed the benefit of meaningful activities and programmes, which would serve to promote and sustain their health, self-respect and foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society. Children in conflict with the law must thus be treated as children first, and accused or convicted persons second, and the protection of their rights must be fundamental to any approach taken;

Best interests principle

A fundamental principle of all international standards in this area is that the best interests of the child must be at the heart of all laws, policies and systems designed to provide for the care and treatment of children in conflict with the law. Thus the principle must be expressly set out and inform the drafting and implementation of legislation, policy and practice throughout the system. It must be set out clearly in the aims of the youth justice system and any system relating to the detention of young people. It is also clear from international standards that proceedings shall be conducive to the best interests of the child and shall be conducted in an atmosphere of understanding.

Child's right to be heard

International standards recognise the fundamental importance of enabling children to participate, be consulted and listened to with respect to their involvement in the criminal process or any alternatives to it. They provide that children's effective participation must be facilitated and undertaken by the authorities involved both with regard to their criminal trial, any alternatives to it and in the choice and application of any sanction imposed, including detention. This requires their involvement in any conferences, and their participation in the drawing up, implementation and review of their care, treatment or action plan.

In addition, the Rules require that children have the right to access independent complaints and child protection procedures (the Ombudsman for Children Act 2002 is one resource that is relevant here), the right to an appropriate induction programme on reception into custody and the right to access reading materials and other useful information while in custody. Consultation with and involvement of the family is also central here and it is important that the exclusion of parents should only occur where it is in the child's best interests.

Overall, the challenge of ensuring the child's full and effective participation should not be underestimated. Even in the much applauded Scottish hearing system where children are present at the hearings, the level of their participation is recognised to be low. The challenge is thus to bring about participation of a meaningful nature.

Multi-agency approach

The guidelines stress the need for a multi-agency, highly skilled and coordinated approach to the care and treatment of children who offend. Thus, while they recognise the importance of a competent judicial authority taking decisions regarding the child's guilt of an offence, they place considerable emphasis on further decisions being made in consultation with all responsible and relevant agencies including education, health, probation and social services. Coordination must be meaningful therefore and must include action of a pre-emptive nature. Emphasis is also placed on the need for staff to be highly qualified and experienced and for them to receive regular in-service training.

The Rules set standards regarding the management of juvenile facilities – record keeping, standards to govern their admission and transfer, stipulating the physical environment and accommodation, education and vocational training, disciplinary procedures, medical, education and leisure facilities and rules regarding the inspection of the centres and complaints procedures. So, as well as recognising the right of children to detention as a last resort and for the shortest appropriate period of time, they also set out the rights of children in custody to education, health, privacy, family contact, work on their offending behaviour, as well as their right to dignity and protection and their right to leisure time and facilities.

Youth justice and offending is a hugely complex and difficult area, and the attempt to reform it comprehensively in the Children Act 2001 is ambitious. Although the Act contains many initiatives and positive elements, which are consistent with the international standards outlined, it can be said to lack a children's rights basis. In particular, the legislation fails to place the international guiding principles, particularly the best interests principle and the child's right to be heard, at the heart of the legislation in a way which would ensure that they inform the many procedures and rules which apply to children in conflict with the law. Thus, while many of the initiatives in the Act are positive, there is a lack of a genuine children's rights approach to the whole area of juvenile justice and a failure to acknowledge that it is in everyone's interests that children in conflict with the law have their rights respected.

It is well recognised that the success of the Act in truly reforming this area depends largely on putting the necessary resources in place to achieve its effective implementation. Training is

also vital given the new challenges which implementation of the Act poses. However, also vital to its success – and in this way implementation may attempt to address some of the Act's inadequacies – is that the international children's rights standards outlined inform the manner of its implementation both in terms of the drafting of regulations and other policy and practice standards under the legislation and in the approaches taken by those with a hands-on, professional role. To that extent at least, the effective implementation of the legislation and success in the prevention and treatment of juvenile delinquency is in your hands.

Young People, Homicide and General Implications

Ms Kate Akester

Kate Akester worked as a solicitor in B.M. Birnberg & Co. from 1981 to 1992, specialising in prisoner litigation and criminal work, and taking many of the landmark cases in prisoners' rights in the 1980s. In 1994 she moved to JUSTICE where she became criminal justice director. One of her early cases at the European Court was Hussain *v.* UK. She intervened in the Venables and Thompson case both in the House of Lords and at the European Court; and subsequently worked on its implications. Ms Akester left JUSTICE in 2002 and now works freelance within the criminal justice arena.

I want to talk about the case of Venables and Thompson, its context and its aftermath, because in the long history of this litigation we as a society had a chance to learn a lot about ourselves and our attitudes to young people. It was a perfect test case: two ten-year old boys, only just criminally responsible, committing one of the most serious offences; and in doing so highlighting the fault lines inherent in our thinking about child development, punishment, and emerging international standards. It is worth remembering that the European Convention was written with Holocaust victims, rather than children, in mind. The European Court decision in the *V* and *T* case does something to fill the gaps in the Convention.

I am not going to dwell on the facts; save to remind you that it was in early 1993 that Venables and Thompson killed James Bulger, a small child who had momentarily become separated from his mother. They led him some distance across Liverpool, maltreating him on the way; and ended up leaving him badly injured on a railway line. They were tried in an adult court in a blaze of publicity, and were convicted of his murder.

Normally, 10 to 18-year-olds would be tried in youth courts in private, by a bench of specially trained magistrates, or possibly a district judge. Youth courts are relatively informal: young people sit with their lawyers, and there is no jury. However, there is an exception for homicide cases as well as a number of other serious alleged offences: these must be tried in

the Crown Court with a jury, in circumstances that are recognised as likely to be intimidating, and are much more formal. These trials are public, and the press has, until recently, been allowed in.

The sentence for 10 to 18-year-olds convicted of murder is mandatory: detention during her Majesty's Pleasure. This is the sentence introduced by the Children Act of 1908, and was originally intended to be indeterminate but flexible, and to allow for release when the child was thought to be rehabilitated. These principles derived from the Lunacy Act of 1800, following the acquittal by reason of insanity of a peninsular war veteran (suffering from post traumatic stress disorder?) called James Hadfield who had shot at George III in the Drury Lane Theatre. The Act provided for his detention at his Majesty's pleasure, recognising that the condition of lunacy might be temporary, and that it might be safe to release him at a time that would be unpredictable. The parallel here is that youth was thought to be more amenable to change and development than adulthood, so that optimum release times were, similarly, difficult to predict. The first child convicted of murder following the Act, Sidney Clements, was detained in a borstal for only two years, before being released on licence.

Since 1983, when there were some major changes in parole policy, HMP detainees have been treated in the same way as adults. That is, the trial judge was asked to recommend a tariff period (to satisfy the requirements of retribution and deterrence) before parole could be considered. The Lord Chief Justice would also be asked to make a recommendation, and then the Home Secretary would set the tariff. It is well known that in the Venables and Thompson case the trial judge recommended eight years, the Lord Chief Justice 10 years, and the Home Secretary set their tariffs at 15 years. The Home Secretary had explicitly taken into account an opinion poll organised by the *Sun* newspaper, which had openly campaigned for whole life detention.

In tandem with these developments was the progress through the European Court of another HMP detainee, Abed Hussain. He succeeded in 1996 in his efforts to abolish the Home Secretary's right to veto release decisions made by the Parole Board; so that oral Parole Board hearings were introduced by legislation in 1997 for 10 to 18-year-olds convicted of murder.

These developments paved the way for the Thompson and Venables litigation, challenging tariff setting, the other aspect of the Home Secretary's role. The logic of the decision was clear: executive decision making in this area breached the ECHR. The *Hussain* judgment also established that the rationale of the sentence was preventive and rehabilitative, as well as punitive.

On the day of the European Court judgment, JUSTICE published a report, *Children and Homicide*, looking at appropriate procedures for children charged with murder or manslaughter. We recommended that children be tried in youth courts by a judge and two experienced and specially trained magistrates. We were reluctant to advocate the end of jury trial. But in the circumstances of these cases where juries and publicity were likely to be disabling to defendants; and where psychology nearly always needed to be investigated (because children charged with these offences have been shown to have psychological problems, and to have suffered adverse social conditions), it was justified, at least for 10 to 14-year-olds. We also recommended the abolition of the mandatory sentence, and the retention of an indeterminate sentence as one option. This was the context of the *V* and *T* litigation.

TARIFF SETTING

The tariff decision was challenged as legally defective in the domestic courts, ending up with a powerful judgment in the House of Lords in June 1997. The subsequent European Court decision rather eclipsed what the Lords had had to say. They quashed the process of tariff setting, deciding that it was unlawful both because Michael Howard had taken account of the *Sun* opinion poll and because of the legislative history of the sentence. The Lords decided that tariffs should be provisional, rather than fixed, and that regular and continuous review was necessary. Lord Browne Wilkinson observed that:

> … in the face of the clear statutory provision it seems to me inescapable that, in adopting a sentence of Detention during her Majesty's Pleasure, the legislature have in mind a flexible approach to child murderers which, whilst requiring regard to be had to punishment, deterrence and risk, adds an additional factor which has to be taken into account, the welfare of the child.

He went on to refer to the Convention on the Rights of the Child of 1989 (as well as section 44 of the UK Children and Young Persons Act 1933), which provides that the best interests of the child be a primary consideration.

The House of Lords could not take away the Home Secretary's decision-making powers because they did not have the jurisdiction to do so (they are enshrined in the 1967 Criminal Justice Act). That was a matter that had to be reserved for Strasbourg. But their antipathy to the system was clear; and their judgment not only paved the way for the European Court decision, but also led to fundamental changes in tariff procedures for young people. In November 1997, the government announced that there would be halfway reviews of all such tariffs, in order to provide the flexibility that the Lords' judgment required. Following the European Court decision this procedure was abandoned, despite the fact that lengthy fixed tariffs had been shown to offend against both domestic and international law.

The European Court decision will be well known to you. In relation to tariff setting it was decided that the Home Secretary was not an independent and impartial tribunal and therefore his involvement in what was accepted by this time (explicitly in a 1997 Lords decision in the case of an adult mandatory lifer called Pierson) as a sentencing exercise was in breach of Article 6.

MODE OF TRIAL

The other question that the European Court had had to consider was mode of trial. It was argued that children could not have a fair trial in an adult court; and the Court, in accepting this argument, identified 'effective participation' as an essential requirement of Article 6. They found that 'it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities,' in order to make such participation possible. The limitations recognized in Thompson and Venables included the inability:

- to instruct lawyers
- to testify adequately in one's own defence

- to follow the trial
- To take decisions in one's own best interests

And these may be present in a high percentage of cases involving young defendants in the Crown Court. Thomas Grisso's research in America shows that limitations on effective participation are likely to be present in a high percentage of cases involving young defendants in the Crown Court. He says that 80 to 100 per cent of defendants under 13 are not competent to stand adult trial; and that best 50 per cent of those over 13 are competent. The failure of English law to consider capacity is in direct conflict with the European Court ruling.

The government's first response was a practice direction of the 16th of February 2000 stating that the trial process should be adapted to assist young defendants to understand and participate in the proceedings. Courtrooms should be flat; young defendants should be able to sit with their families and where they can easily speak to their lawyers; comprehensible language should be used; frequent and regular breaks should be given; robes and wigs should not be worn; attendance should be restricted; and the proceedings relayed audibly in another room.

This was never going to be enough: and there have been a number of challenges to trial venue since the decision. Some trials have been abandoned, and others have gone ahead in controversial circumstances. I am thinking particularly of one rape trial at the Old Bailey involving five or six young defendants. Following defence submissions, several of the younger ones were not proceeded against at all, whereas the older ones were tried, convicted, and sentenced. The public was not impressed.

Home Secretary Jack Straw announced on the 13th of March 2000 that he accepted the European Court judgment and that Lord Justice Auld would consider how to achieve its implementation in his ongoing review of the criminal justice system. (This was a review established to try to tackle the perceived lack of public confidence in the system. Auld reported in October 2001, dealing with management issues and selected areas of reform). Auld duly suggested, reminiscent of our arguments in *Children and Homicide* that there should be specialist courts for young people charged with all criminal offences; and by this he meant

youth courts with specially trained personnel, to include a High Court or Circuit Court judge sitting with magistrates.

The White Paper, *Justice for All* – out for consultation in the UK at present – picks up with this suggestion: recommending that serious offences should be tried in strengthened youth courts (i.e. a judge and two experienced lay magistrates). But views are invited on whether the Crown Court should have the discretion to retain 16 and 17-year-olds charged with serious offences. It also asks whether, where young defendants are tried with adults, it should be in the Crown Court, in the youth courts, or at the discretion of the Crown Court. The government prefers the last option.

We should remember that not only rapes and robberies, but also burglaries and some sex offences have regularly been tried in Crown Courts; and that the numbers involved in this reform are likely to be large. It is also a question that opens the door to a much more psychological approach in the way we view young defendants going to trial.

FURTHER DEVELOPMENTS

All HMP detainees, including Venables and Thompson, had to have their tariffs reviewed by Lord Chief Justice Woolf following the European Court decision. By this time the Human Rights Act had been implemented, and Lord Woolf, in a skillful and reasoned judgment delivered only weeks after implementation, pulled together the principles that had emerged, and looked at them in the light of the representations from all those affected. His judgment takes us through the balancing act that is at the core of human rights thinking. He dealt with the importance of the effect on the victims, and how this is taken into account in the tariff period; although he accepts that no length of time will ever be perceived as enough by them. He puts in the balance the exceptional progress the young men have made together with considerations of the welfare – both of which House of Lords decisions oblige him to have regard to. Most significant, perhaps, is the public interest in their rehabilitation and release at the optimum moment. This protects society, and, as Woolf points out, society had invested heavily in them over the past seven years. That investment should not be wasted.

The Human Rights Act requires sentences to be the least restrictive possible, and the sentencer must state his/her purpose and how it is to be achieved. Simply locking people up is unacceptable. All the research (as well as common sense) shows that this only makes things worse. Given that these young men had to be released, if and when the Parole Board regarded them as no risk, Lord Woolf did well to remind us that their detention must have a constructive purpose. The reports before him showed that this had been achieved, and that a change of institution – to a Young Offender Institution, because they were nearly 18 –would be likely to be corrupting and negative, particularly in view of the availability of drugs in such institutions.

Venables and Thompson have since been released, but the progress sparked by their challenges is still slow. Although the Criminal Justice and Court Services Act 2000 took the Home Secretary out of the decision-making process, the questions identified by the House of Lords seem to have been conveniently swept aside by the government. The Woolf /Blunkett (current Home Secretary) interpretation of Article 6 now seems to be that a final, fixed tariff (as opposed to the provisional one mooted by the Lords) is permissible, and that welfare – contrary to their conclusions – does not need to be taken into account.

Lord Woolf asked the Sentencing Advisory Panel (set up by the Crime and Disorder Act 1998 to advise the Court of Appeal) to look at the question of tariffs generally, and with reference to young people. The panel recommended that the starting point for tariffs for 16-year-olds should be ten years, for 14-year-olds eight years, for 12-year-olds six years, and for ten-year-olds four years. These could be adjusted up and down according to circumstances. However, there is currently a judicial review challenge on the basis that the new policy conflicts with the House of Lords judgment. The argument is that the Lords ruling should be regarded as complementary with that of the European Court, rather than oppositional.

CONCLUSIONS

This litigation has opened up fundamental questions about fair trials for young people; and there is no doubt that it has affected the thinking about Article 6 in relation to other criminal cases, and indeed in relation to adult mandatory life sentence prisoners. There is a case listed

in the House of Lords on 24 October 2002 (Anderson and Taylor) that will seek to apply the Venables and Thompson ruling on tariffs to adults, an argument that has so far failed, despite its obvious human rights credentials. A linked appeal (Pyrah and Lichniak) attacks the arbitrary imposition of the mandatory life sentence, and this has obvious implications for HMP detainees.

It has also sparked a great deal of interest among psychiatrists and psychologists, who have been quick to see the inadequacies in the current system. There is growing awareness of the emotional and psychological dimensions and as well as the intellectual capacities of young people in this context. The European Court judgment, research in America and experience in other countries is pushing this forward. Regrettably, there is no move to reform sentence, and this must be regarded as an important missed opportunity.

The Path of a 'Child at Risk' to a 'Teenager in Trouble.'
An Outsider's View of Ireland Inc.'s Response

Mr Padraic White

Padraic White is chairperson of the National Crime Council, which was established by the Minister for Justice, Equality and Law Reform to act as an independent centre of policy advice and analysis on crime issues. He is also chairperson of the Northside Partnership in Dublin, recognised as a pioneer in developing personalised services for the long term unemployed and promoting the educational advancement of children at risk of early school leaving. Mr White is former Managing Director of the Industrial Development Authority. This paper sets out his personal views and does not necessarily represent the views of the National Crime Council or the Northside Partnership or their members.

Why do so many children end up 'in trouble' with the law and their lives blighted when so much is known about those children 'at risk' of such a fate? Why do so many State interventions apparently fail to give these children a better outcome? If we focus on the path of children from school to detention centre to prison rather than on the plethora of State schemes, what can we learn about the effectiveness of the combined State interventions?

For example, we can trace the path of many children from being a truant at school, to a school drop out, to coming to the attention of the Gardaí, to arriving at the Children's Court, to probation, to detention in a Special School, to release, to the Court again and then to St. Patrick's Institution at the age, say, of 18 years with a five year prison sentence.

The one individual weaves between many State institutions and schemes in the course of this teenage odyssey. It is well established that the official system has found great difficulty because of departmental boundaries and unrelated schemes in acting coherently and in the best interests of the boy or girl who has taken this path from a child 'at risk' to a teenager 'in trouble'. In this paper I will endeavour to highlight some key intervention points and deficiencies along this teenage path to trouble.

It is self evident that the younger the age of intervention, the more beneficial the effect and therefore the greater the urgency of extending the lessons of proven pilot schemes to the great majority of young children 'at risk'. I would argue that at every point up to and including prison, there is the prospect of imaginative rehabilitation for most of the young people and for participation in gainful employment in society.

MY PERSONAL PERSPECTIVE

I have sub-titled this paper 'An Outsider's View' since I am not professionally involved in the education, health or criminal justice systems. My perspective is strongly influenced by my experience in two different arenas.

First of all, the Northside Partnership which I have chaired since its foundation in 1991. The Partnership revolutionised the approach to assisting long term unemployed persons by focusing on the individual's career development needs and fitting the schemes to the person or tailoring special training programmes to the needs of the individual. It has assisted almost 10,000 people overcome the barriers to employment and either find a job or set up their own business.

The Partnership's original two Contact Points provided the model, in conjunction with FÁS, for the nationwide Local Employment Service with the focus on the progression of the individual to employment. I would advocate the advantages of finding a similar person centred approach to the children 'at risk'; an approach which involves all the State's interventions and agencies acting in collaboration with community based organisations.

I also saw at first hand the benefits of imaginative area based interventions to prevent early school leaving and extend the horizon of children 'at risk' to completing their second level education and contemplating third level education. In my opinion, such educational interventions are the most efficacious ways of preventing crime.

Secondly, my perspective has also been shaped by my experience as chairperson since 1999 of the State's first National Crime Council. The Council has a mandate to advise the Minister for

Justice on policies for crime prevention with particular emphasis on the underlying causes of crime and effective responses at community level. A Council committee under Judge Michael Reilly has devoted an outstanding effort to examining the role of the key official agencies which impinge on crime prevention, to consulting with a sample of urban and rural communities in Ireland and to examining best practice abroad.

Because of the elusive nature of the quest for an effective crime prevention approach and in order to test our initial conclusions in the public arena, the National Crime Council will publish later this month (October 2002) its consultation paper, *Tackling the Underlying Causes of Crime: A Partnership Approach*.

WE KNOW THE KEY RISK FACTORS

Study after study has identified the risk factors likely to make a child or youth more prone to early school leaving, substance abuse, teenage pregnancy and possibly trouble with the law. The life chances of any child are guided by the family they are born into, the area in which they are raised and the educational opportunities they are presented with. When poverty and family distress dominate, the opportunities for the child are severely hindered. But we are far from using the knowledge of known risk factors to achieve effective intervention in the interests of the majority of children 'at risk.'

Since the underlying factors that leave children and young people prone to offending are multiple, complex and interrelated, it follows that any programme or strategy that aims to tackle these issues must be multifaceted in terms of the organisations and agencies involved in the response and in terms of the type of response.

Early intervention should be fundamental to any response to working with children and young people 'at risk'. The earlier a targeted intervention is made, the more likely it is to be successful and to have a longer lasting effect. We have all heard it said that from the first day of school, a teacher can identify the children who will underachieve academically and who will cause problems in terms of behaviour. If children can be identified this early, we should be providing the necessary supports for these children and their families. In fact it is my

belief that other professionals, who interact with these children and their families from day one, could also identify them as 'at risk'. In an ideal world, all of the different agencies and organisations would work together to ensure that the best service and support possible is provided to families who need it, from the first day a baby is born; indeed, even before birth in many cases where a young mother or a family live in difficult circumstances.

A BETTER IRELAND INC RESPONSE TO THE RISK FACTORS

I now examine some of the key intervention points along the path from child to teenager. There are many other schemes (e.g. Springboard, Neighbourhood Youth Projects) which in the time available I cannot review but which make a noteworthy contribution to youth welfare.

The pre-school era

If a child doesn't have somebody who plays with them or talks to them, development is retarded and may be manifested as a difficulty when they go to school. There is little or no monitoring of progress or identification of difficulties in pre-school years. When a child goes to school, then emotional, behavioural, nutritional needs will become obvious. The child may have experienced four or five years of not having basic needs being met and subsequent interventions during life are attempts to cure problems. There is discontinuity between home and school experiences. Many of the difficulties that arise later both in terms of education and crime could be prevented if parents had the capacity to parent effectively or could avail of help in doing so. Possible responses include:

- Parent training and support programmes
- Parent networks sharing the skills and wisdom of other parents
- Parent and toddler groups or preschools
- Parent training as part of ante-natal programmes

Educational disadvantage

There has been a most welcome burst of innovative programmes promoted and funded by the Department of Education and Science with the clear objective of making real improvements in the retention of pupils in primary and second level schools in areas of disadvantage. The School Completion Programme calls for a contract between the participating primary and secondary schools in a particular area and an integrated local area approach funded by the Department of Education and Science. Other programmes such as Breaking the Cycle and more recently, Giving children an Even Break, put additional financial and teaching resources into primary schools in areas of disadvantage leading for example, to low pupil–teacher ratios, such as maximum of 20 students in junior classes.

I have seen at first hand the tangible benefits of these interventions in the Northside Partnership area in terms of improvements in school retention, nurturing of the talents of young people and involvement of parents and teachers in a cooperative process.

Tangible benefits of early school leaving initiative in Dublin 17

This initiative involves five primary and one second level school in the D17 Postal district (Darndale, Moatview, Priorswood and Bonnybrook, Belcamp) and it commenced in 1998. It is a collaborative exercise involving, for example, teachers, parents, Northside Partnership, North Area health board, Gardaí, St. Vincent de Paul. It is supported by the Schools Completion Programme of the Department of Education and Science while the school meals component is financed by the Department of Social, Community and Family Affairs. The Northside Partnership, through its Educational Coordinator Noel Kelly, provides continuous technical support and office accommodation for the Early School Leaving project.

Initially, 100 children were identified as at risk of dropping out across the six schools and the project has maintained continuity with these 100 children even if they moved to a different school. Its main features and outcomes to date are as follows:

- 100 per cent transfer from primary to post primary school for all the children who so far have faced that transition. Continuity between primary and post primary schooling has been established. Project personnel follow and maintain contact with 'at

risk' students as they move from primary to post primary. This helps to avoid the discontinuity which 'at risk' students can experience when making the transition to second level schooling.

- 'At risk' students have remained in school as a direct result of the supports provided.
- School attendance has improved.
- There are opportunities for personal and social learning as a result of the programme activities.
- There is engagement with the family since family issues often determine a student's education chances.
- At least 10 students included in the D17 educational initiative, whose extended family and older siblings have all dropped out early, have completed the Junior or Leaving Certificate courses.
- The first Traveller child in the project completed his Junior Certificate last year and three more Traveller children are due to sit the Junior Certificate in this school year.
- There have been consequential changes in school practices as a result of learning from new/alternative approaches to supporting 'at risk' students, e.g. provision of breakfast and lunches for 1600 children per day in the schools; after school supports; greater teacher training/awareness of disadvantage; more flexibility when dealing with 'at risk' students.

As I indicated at the outset, these educational disadvantage programmes are probably the most effective 'crime prevention' measures even though their primary purpose is educational. What is needed now is to roll out the proven approaches to the vast majority of children at risk now of dropping out of school.

The Drop Out Danger Zone

Garda special projects

Since 1991, the Garda Síochána have operated Special Projects targeting young people in the 10-18 age group who are 'at risk' of becoming involved in drugs and crime, are already involved in crime or likely to drop out of the educational system prematurely. The stated

objective is to help these young people into employment or at least prevent them becoming unemployable.

A valuable research study published in October 2001 by the Centre for Social and Educational Research in the DIT of a sample of participants found they had low educational aspirations, half of them had previously been suspended from school and some 60 per cent had previously been in trouble with the Gardaí mainly for stealing cars, vans or bikes. It confirmed many of the 'at risk' factors already known. Even where complementary youth services existed in an area, the providers of those services regarded them as unsuitable for dealing with young people 'at risk'. All the providers of these services felt there was a definite need for additional services and for 'services to work together and pool resources where services did already exist.'

In other words, the young people seriously 'at risk' of a life dominated by crime and drugs can be identified at community level from as early as 10 or 11 years, but we have not yet found an effective response to avoid or minimise the fate beckoning the vast majority of them. It is only proper to recognise the invaluable work of the Garda Juvenile Liaison Officers who caution and advise young offenders under 18 years of age as an alternative to Court proceedings and in an endeavour to divert them from a criminal lifestyle.

Youthreach centres

These centres provide alternative programmes for children after the official earliest school leaving age, currently 15 years. This threshold disbars many young people who drop out of school as early as 12 years of age from attending. Flexibility in the age of entry to Youthreach would accommodate many of the teenagers who fall out of education altogether. But a Youthreach centre deserves to be accepted as an appropriate place where 'drop outs' from the normal school and standard curriculum can receive alternative education. Youthreach can now offer accredited courses (FETAC approved) equivalent to Junior and Leaving Certificate standards. They do so on a modular basis which suits the participants better.

There is a powerful and urgent case for recognition of the Youthreach programme as a credible alternative route to education and personal progress for school 'drop outs,' for

lowering the age of entry to give access to younger 'drop outs' and for giving Youthreach the resources to take on the numbers of children wanting to attend.

Local drugs task forces

One nationally inspired but locally implemented initiative has been that of the Local Drugs Task Forces. They have involved both statutory agencies and local communities in winning agreement for the location of drug treatment and rehabilitation centres within the communities whose sons and daughters have been sucked into the drug world. It is a much better option than the suburban youth having no alternative but to find their way to Trinity Court in Pearse St., Dublin which for years was the only place of treatment available to them.

For example, within the Northside Partnership area, the local drugs task force has now 6 local drug treatment centres in operation (Donnycarney, Kilmore, Kilbarrack, Darndale, Edenmore, Bonnybrook) treating about 300 people, mostly youths, in their own communities.

A pilot programme of the Northside Partnership (The LIP – Labour Inclusion Programme) is now providing training, work experience and counselling to 12 former drug addicts with the specific aim of getting them into employment. It is supported by IBEC and the Partnership's local business network. In addition, the Local Employment Service has now committed itself to firm targets for finding jobs for those who have reached an agreed level of drug rehabilitation.

Probation service

At any one time, the Probation Service has about 6,000 persons under supervision, of whom 30 per cent or about 2,000 are under the age of 18 years. The indications are that young offenders are referred to the Probation Service when their offending and troublesome behaviour has become entrenched and difficult to redress. The evidence available to the Service also indicates that there is a failure to identify young people 'at risk' of serious offending early enough and then intervene appropriately. This is another 'system failure' even though we know all about the risk factors. Indeed, the experience of the Probation

Service suggests that some referrals of young people from the courts for pre-sanction reports are for the purpose of securing a place in Oberstown Boys/Girls Centre.

The Probation Service could be linked in much more effectively with community based services in the interests of a preventive approach to youths 'at risk' of crime. In the Northside area, the regional manager of the Probation Service, Marie Dooley has been a member of the Partnership Board since September 2001 and this linkage has been of immense benefit in working out a unified approach to the training and employment placement of offenders and to our thinking on crime prevention measures. The Probation Service is engaging with communities in the Northside area to reduce re-offending behaviour and to prevent young people getting into trouble.

Entering the Criminal Justice System

Children's court

The most recent Court Service statistics showed that 133 cases were struck out by the Children's Court in Dublin in 2001 due to the fact that no custodial places were available for young offenders. Some 12,629 criminal matters were dealt with by that court. We were not told the number of individuals involved but we can assume that the figure is such as to give cause for concern. Day in day out we hear judges talking about the lack of places. The response seems always to be the same: places are on the way; staff can't be recruited. But the reality is that these young people need help and Ireland Inc. is failing them. I recall from last year's IASD conference the pleas for better out-of-office hour's services and help for troubled children. Indeed, much of what was said about out-of-office hours here last year, was repeated to the National Crime Council earlier this year in the meetings leading up to its forthcoming consultation paper.

Lest I sound unfair, I should say that I do recognise the difficulties in recruiting suitable people to work with this type of troubled child. I further recognise that those young people who need help and support are the most difficult to engage.

Custodial care

To the outsider like myself, there is a confusing array of different custodial centres, for different age groups and under the auspices of different Departments of State. For example, there are the special schools for young offenders under 16 years of age at Lusk (Department of Education and Science). There are Special Care Units for children needing intensive therapeutic support in specially designed residential units operated by the Health Boards; the children are detained by order of a Court for their own protection. In the prison service there are remand and detention places for young offenders such as St. Patrick's Institution.

Provision of custodial services has been haphazard and inadequate. Although the primary focus of services is on prevention, the lack of custodial places where the courts can refer young offenders has undermined credibility in the justice system, allowed known offenders back on the streets and induced cynicism in young offenders and their peers that they will ever pay a price. The striking out of 133 offences last year in the Children's Court, Dublin because of lack of places is adequate proof of the deficiency.

The lack of detention places came to public attention most forcibly following the tragic deaths of two Gardaí in Stillorgan earlier this year by so called 'joyriders', one of whom had apparently been before the courts and was released as there was no detention place available. The public outrage led to the announcement in April 2002 by the Minister for Justice of a new unit for 20 young offenders in the age range 12 to 16 years in St. Patrick's Institution with a supporting therapeutic team of professionals.

It is true that the Health Boards have increased places in Special Care /High Support Units from a miniscule 17 in 1997 to 93 this year and that another 41 places are planned to yield an expected total of 134.

The Special Residential Services Board provided for in the Children Act is to coordinate the delivery of services to persons on whom detention orders have been served or special care orders made. It has been operating on an administrative basis since April 2000 including the roles of the five special schools for young offenders and the Special Care units of the health boards. The Minister for Children, Brian Lenihan TD has stated his intention of putting the

Board on a statutory basis by the end of this year. Such a Statutory Board is badly needed to provide coherence and to fight for funds for the places needed.

Exiting the Criminal Justice System

My assessment is that that a much larger proportion of young offenders could exit the criminal justice system and have gainful occupations in our society, if there was better personal and vocational preparation backed up by post-release links between prisons and community-based services.

The pilot Connect Project in Mountjoy prison in 1998-2000 demonstrated a strong interest among prisoners in preparing themselves for a job in society and considerable scope for placing them in jobs with understanding employers. I am a member of the National Steering Committee for the extension of the Connect approach to prisons generally in the period to 2006. The speed of rolling this out to prisons has been disappointing but in all prisons the expressed interest of prisoners in participating has been high.

We can do much better than ever before in assisting offenders into a wide range of occupations in society. The new Prison Service under the leadership of its Director General Seán Aylward is bringing a positive and professional philosophy of care and rehabilitation to its activities.

Area based partnerships, such as the Northside Partnership, are firmly committed to using their placement services and relationships with employers to help exiting prisoners from their catchment areas to secure jobs. For example, the Northside Partnership is developing protocols to govern its prisoner placement work and its liaison arrangements with the Probation Service, the PACE organisation and prisons themselves. The Northside Partnership has assisted 18 ex-prisoners so far this year in overcoming barriers to their employability and has guided four of them into jobs.

Our society must also be prepared to give former prisoners, found guilty of an agreed range of offences, fair access to a job where they have prepared themselves for it and all the evidence is that they wish to lead a normal occupation.

The National Economic and Social Forum (NESF) has recommended in its report (No. 22, January 2002) that the bar on employment in the civil and public services of ex-prisoners should be lifted depending on the seriousness of the offence, its compatibility with the requirements of a particular job, the length of time since the offence and no re-offending in the meantime. The legislative removal of such barriers in the public sector would also provide an example for the private sector to follow in the employment of ex-offenders. The Northside Partnership actively supports the removal of such discrimination and is committed to cooperating with employers and supporting those who are prepared to give the reformed ex-prisoner a fair chance.

INSTITUTIONAL AND LEGISLATIVE ASPECTS

A Local Area based Approach to Crime Prevention

My personal belief is that a local area based approach to crime prevention would be very effective. Such a partnership approach could be modelled on the successful features of the local partnership approach to long term unemployment. It would involve community based organisations, the schools, the Gardaí, Probation Service, health boards and local authorities.

The results of the public debate on the forthcoming consultation paper of the National Crime Council will indicate if there is general support for such a locally based approach, and if so, how it could be organised to achieve a crime prevention focus while working productively with existing area based organisations.

The Children Act 2001

The Children Act 2001 is a reforming piece of legislation which, when fully implemented, will I believe, deal with children and young people who get into trouble in a much more caring and holistic way.

The Children Act 2001, introduced a statutory obligation for an interagency response to children 'at risk', from the Department of Justice, Equality and Law Reform, the Department of Health and Children and the Department of Education and Science. The Act emphasises the important role of early intervention and diversion from the criminal justice system. The

National Children's Office is responsible for coordinating the implementation of the Act between these three key Departments and it is developing a provisional time frame for the full implementation of the Act. A commencement order was signed in May 2002, implementing a number of sections of the Act (see Appendix). It is expected that a number of other sections of the Act will be commenced later in 2002. It will take some years to develop the services and facilities that are required to implement the Act in full. Minister Brian Lenihan TD has stated that because of the substantial resources needed, the Act will have to be phased in over a five-year period ending in 2006. Whilst I recognise that Departments need time to develop structures to implement the provisions of the Act, the Government must prioritise the implementation of the Act - otherwise the vision of a reformed juvenile justice system, so needed today, may only become a reality in the distant future.

Keeping Track of the 'Big Picture'

There is a myriad of excellent initiatives aimed at removing educational disadvantage and helping young people 'at risk' avoid getting on a path to crime. Even if some initiatives, such as those aimed at educational disadvantage, are not labelled as 'crime prevention' measures, they can have that positive result.

But there is no agency looking at the 'big picture' and at the scale and location of the children 'at risk' and assessing the adequacy of the initiatives in relation to the numbers involved. There are many administrative rules in relation to the age of eligibility of children for preventive services. Often, children who have dropped out of school or are not involved in the work place fall into administrative black holes. There should be some agency or office in officialdom evaluating the adequacy of the services and the gaps as the child 'at risk' moves along the path from education to trouble with the law.

CONCLUDING REMARKS

From this review of the path of a child 'at risk' to a teenager 'in trouble', I offer the following conclusions. First, the 'system' comprising education, drop-out and justice provisions has to be re-oriented to be person-centred and not scheme-focused. The child 'at risk' gets lost in the different criteria such as the eligible age for entry.

Education supports are directed at schools and areas but not directly linked to the 'at risk' young person. If the supports were linked to the young person and moved with them when they moved school, it would guarantee the supports go where they should. There is a practical example in the Dublin 17 educational completion initiative where the project personnel follow and maintain continuity with 'at risk' students as they move from primary to post-primary schools or move to schools not in the programme.

The philosophy underpinning so many parts of the education and justice system is one of supporting children to fit into the system without ever challenging the system to fit the needs of the young person. A goal of equality of outcome rather than equality of access is needed.

Second, decisive action must be sought at earlier and earlier stages and risk indicators acted on. This has to be done in a way that is respectful of the individual rights of families.

Third, the scale of provision for children 'at risk' to teenagers 'in trouble' should be adequate to meet the needs of the great majority if we are serious about giving them a fair chance in life and, *inter alia*, preventing the crime which brings distress to so many in our society.

Thematic Review of Workshop Discussions

Delegates were allocated to workshop groups that met for a single closed session. The workshop facilitators were:

Sr Veronica (Aislinn Centre, Ballyragget)
Mr Dermot Stokes (Youthreach)
Ms Mary Brannigan (Youth Justice - Northern Ireland)
Ms Mary Higgins (Homeless Agency)
Mr Mick Quinlan (Gay Men's Health Project)

The main themes that emerged during the workshops are outlined next.

Contrasts in ethos

The Probation Service in Northern Ireland is no longer motivated by the desire to advise, assist and befriend. Its emphasis is now on public protection and crime reduction. Enforcement and risk assessment are central to this work, whether the clients are adults or young people.

It was felt that in the Republic of Ireland, there had been no public debate about the purposes of probation although there was wide sympathy for welfarist approaches. This is reflected in the Children Act 2001 which sets out custody as a sanction of last resort and provides a range of opportunities for group conferencing.

It would be overstating the case however to suggest that welfare concerns are paramount. The mission statement of the Probation and Welfare Service is: *to foster public safety and promote the common good by advancing the recognition and use of community based sanctions, thereby reducing the level of re-offending.* This embraces notions of punishment, rehabilitation and re-integration. Indeed it could be said that the aim of the service is to facilitate integration, with the balance between punishment and welfare adjusted according to the characteristics of the individual offender.

Shifting political priorities

Young people make the headlines when they are involved in particularly heinous crimes. In their desire to be seen as decisive and effective, politicians may make decisions that have unfortunate consequences. It has been suggested that the killing of the toddler James Bulger in England resulted in a surge in the prison population, that has been sustained for over a decade. In a similar vein the deaths of two Gardaí when their car was hit by teenage 'joyriders' resulted in a sudden commitment to construct, at great expense, a new secure facility in the grounds of St. Patrick's Institution.

There was doubt expressed about whether this facility was the most appropriate use of resources and a feeling of resigned pessimism about the likelihood that the best-laid plans could be rent asunder by events.

The problem of delay

There is a great deal of truth in the old aphorism that justice delayed is justice denied. There are dangers associated with the period of remand, whether in custody or on bail. If the accused is not guilty as charged it is crucial to get them out of the system as quickly as possible, to minimise the stigma and the corrupting effects of associating with offenders. If they are guilty it is important to deal with them swiftly so that their needs can be addressed through the selection of an appropriate programme. If a custodial sentence is imposed the question of pre-release preparation and re-integration must be addressed at the outset.

It was suggested that some judges used remands in custody to give troublesome children a 'taste' of prison. This was considered inappropriate and potentially damaging.

Justice by geography

The disposal of the court can depend on what services are available locally rather than what is in the interests of the child or the community. This may result in differential treatment for children who are being dealt with in rural as opposed to urban areas. For example in regions of the country where few probation and welfare type options are open to the judge, custody may be resorted to more readily than in Dublin where choices are more plentiful. In the interests of justice it is important to have a fair distribution of opportunities and sanctions.

The young person's perspective

The wider variety of community penalties, and the range of conferences provided for in the Children Act 2001, will bring young people into contact with more adults than before. Even adults find these new provisions confusing and it is not yet clear how they will operate in practice. In this context sight must not be lost of the young person's perspective. Careful monitoring is required to ensure that they know what is being done to them and for them. If an intervention is to have any hope of success it must be clearly understood by those to whom it is applied.

There is also variation in the extent to which judges request probation reports. This means that in some cases sentences are awarded without a full understanding of the child's current circumstances.

The necessity of residential treatment for substance abuse

A period of time out for young people to reflect on their situation can be an important element of the recovery process. They need to be listened to in an environment where they feel protected and where specialist support is available. Parents and families can also benefit from a break if a situation has become difficult to endure. Addiction is a problem for the family, not just for the affected individual. Families need support and education. It is important not to neglect other children in the understandable desire to concentrate resources on the one with the identified problem. This may send out a message that behaving well is not an effective way of getting parental attention.

Training needs must be kept under constant review and continuing professional development must be built into the career path of every practitioner, no matter how senior.

Poor communication

There have been encouraging developments in recent years in the level and quality of cooperation between agencies, but scope for improvement remains. Sometimes a lack of communication leads to duplication of effort. Other times it allows the shirking of responsibility as each party assumes that what is required is being provided by the other. The net must be cast wide. For example town planners have an important, but often neglected

role, to play. When housing estates are being designed, treatment centres, community facilities and so forth should all be integral features.

The answer is not always additional resources. Sometimes better coordination is all that is required. Lateral thinking is needed along with an acceptance that people will resist moving outside of their own bailiwick.

Combating early school leaving

Most initiatives tend to be provided between 09.00 and 17.00 hours. No doubt this suits the work routines of adult staff. But this is not the time when children tend to get into trouble. Their needs do not overlap neatly with the availability of programmes. This important issue needs to be addressed.

A developmental perspective must be taken on early school leaving. Some have even suggested that the time to act is when the child is in the womb! Early warning signs can be evident early and support is needed in areas as wide-ranging as nutrition, parenting, pre-school support and household budgeting.

What works?

There is a burgeoning literature about effective approaches with young people at risk and in trouble. At this stage the emphasis should not be on further exploration of why young people become involved in crime, but on implementing preventive and ameliorative strategies that we know to be effective. The ingredients of the so-called 'Magic' model may be a good place to start: Mentoring, Advocacy, Guidance, Information and Counselling.

The problem of homelessness

As with so many areas of social policy, it is difficult to appreciate the extent of youth homelessness given the paucity of available data. The lack of fundamental information persists despite the requirement for local authorities to draw up three year plans to deal with homelessness. Social housing for single people (with the exception of the elderly) barely exists. This is an area of acute need.

There is a particular problem for young people emerging from custody, on account of the lack of statutory aftercare services. It is not just a question of providing accommodation. Support services are required also to ensure continuity of care. The immediate post-release period is a time of high risk and support services must be deployed accordingly.

Sexual development and homophobia

It is important to acknowledge that adolescence is a time of sexual development, experimentation and confusion. Heterosexism can compound problems of adjustment for gay or lesbian young people, who face issues of prejudice, fear and a need for acceptance. Quite apart from any criminal activity they may be involved in, their sexual behaviour itself may be against the law.

These issues have not yet been addressed by those in the statutory or voluntary sector. A number of practical steps could be taken at once, such as advertising local helpline numbers and support groups. Even if nothing more is done this might be enough to indicate a safe and caring environment. There are issues around discrimination also for gay and lesbian staff and the equality legislation provides a guide to what is acceptable in this regard.

Sex has other consequences for young people including unplanned pregnancies and the possibility of infection with HIV, hepatitis and other sexually transmitted diseases. Finally young people can be involved in perpetrating sex crimes and this is an area where understanding needs to be developed. It is difficult, but essential, for adults to discuss sexual matters openly with the young people under their supervision or in their care.

Plenary Discussion

Delegates were given an opportunity to raise matters of concern to them. They were encouraged not to limit their contributions to the issues raised by the conference speakers, but to consider more generally the themes around human rights and individual needs.

Incarceration

IASD members who have visited our sister organisation in Scotland are often struck by a common problem, namely the high level of incarceration of young people. How can we challenge this? What are the options?

One possibility is to encourage judges to raise their awareness of what the sanctions they impose mean in practice. Some members of the bench visit prisons, but few have visited community projects. If judges are to use detention less it is crucial that they are aware of alternative disposals and the kinds of cases in which they are likely to be most effective. Community penalties should be seen as central to the system of punishment with prison as an alternative to be reserved for exceptional circumstances. This shift in perspective will take time and effort to achieve, but it is a task too important to shirk.

Gender

Conference discussions have been silent on the question of gender. But crime is largely the preserve of boys and young men. This can influence the nature of the response. For example, policing can be problematic when it involves young men dealing with other young men. Issues of masculinity interact with the priorities of law enforcement. Similarly it has been argued that levels of violence in prisons drop when female staff are introduced, whether as prison officers, teachers or Probation and Welfare staff.

The risk factors are different for males and females and this has implications for the design of preventive strategies. We need to ensure that the gender dimension is taken into account when considering early school leaving, employment training and delinquency. Few girls receive custodial sentences, but those that do may have more complex needs than their male

counterparts and can pose particular challenges to professionals attempting to work with them.

Role of criminal justice system

If the primary aim is to get services to needy children, is the criminal justice system the best way to attempt this? We must ensure that children do not have to offend in order to get the help to which they should be entitled. If we create a top quality juvenile justice system there is a very real danger that children will be sent to court to get access to services. This would be an unfortunate consequence of progress and must be guarded against. There is a need to ensure that services are not uniquely available to those who break the law.

Family conferences

Three types of conference are instituted under the Children Act 2001: family welfare conferences (convened by the Health Board); family conferences (convened by the Probation and Welfare Service) and Garda conferences. The process of making the conference happen can be as important as any formal recommendations that might be made. Indeed the clarification of issues and identification of potential solutions that accompanies the activity around preparing for a conference can obviate the need for any court appearance.

Controlling public space

Why are we trying to stop young people congregating in public places? By designing out opportunities for young people to get together where they can be supervised, even if informally, we are driving their pursuits underground. There is evidence that problem drinking has its roots not in the age that a child begins drinking but the age that a child begins to drink unsupervised. By encouraging a culture where young people are kept out of sight we are neglecting our duty to them and increasing the risk that their behaviour will have damaging consequences.

Building bridges

When one considers the panoply of international standards, European and domestic legislation, and the multifaceted nature of youth crime, it is clear that any effective response will require determination and coordination. One of the strengths of the annual IASD

conference is that it allows bridges to be built and confidences to be shared. It is a time when new ideas can be developed and tested in a supportive environment. Some of the best exchanges occur outside the formal sessions, at the dinner table and in the queue for coffee. These discussions share one thing in common: a preparedness to 'think outside the box.' This creates an energy that confirms the value of the Association as an effective forum in Irish civil society.

Increasing representativeness

The IASD annual conference is moving from strength to strength. The range of agencies represented is impressive and growing. This year the Department of Justice, Equality and Law Reform, The National Children's Office, the Probation and Welfare Service, the Chief State Solicitor's Office and Special Schools all took their full allocation of places. They deserve plaudits for this.

However a number of other agencies continue to be poorly represented. There was a single representative from An Garda Síochána, and personnel from the Department of Education and Science, The Prison Service and the Health Boards were few and far between, with no representation from other significant agencies e.g. Court Service. If the Association is to achieve its potential we must work to ensure that all of the relevant agencies take up the places put aside for them. This is an important task for all of us in the coming year.

Appendix – The Changing Legislative Context

The Children Act 2001 sets out a new framework for youth justice. It is a lengthy and complex piece of legislation, and its likely impact and potential pitfalls were regularly discussed by conference participants. The National Children's Office has produced a series of briefing papers on aspects of the Act. These include the introduction of conferencing, the renewed emphasis on punishment in the community, and the likely timetable for implementation. Some of the key points from the NCO publications are summarised in this appendix. For further information, visit www.nco.ie

CONFERENCING

Three types of conference are specified in the Act.

(i) **Family Welfare Conferences** provide a mechanism for early intervention at an inter-agency level for children at risk. They are to be convened by Health Boards. The function of the conference is to decide if a child is in need of special care and protection, and if so, to recommend the appropriate order to be sought by the Health Board from the court. The court will be enabled to direct a Health Board to convene a Family Welfare Conference where it considers that a child before it on a criminal charge may be in need of care and protection.

(ii) **Garda Conferences** are an addition to the Diversion Programme. The aim is to formulate an action plan that will seek to repair the harm caused to the victim, identify the issues which led to the incident, and prevent further offending. The typical child in respect of whom a conference will be convened will have accepted responsibility for their offending, been formally cautioned, and be under supervision. They will not have been prosecuted and will not be prosecuted in respect of their criminal behaviour.

(iii) **Family Conferences** will be similar in may ways to Garda conferences. The main differences are that they will be convened by the Probation and Welfare Service and the convening will be directed by the court where it considers that the preparation of an action plan would be desirable. The conference will remain under court supervision and its decisions will be enforceable.

PUNISHMENT IN THE COMMUNITY

Part 9 of the Act sets out the powers of the courts in relation to child offenders from the time of a finding of guilt to the decision on how best to deal with the child. Those powers are to be exercised in accordance with the principles set out in section 96 relating to the exercise of criminal jurisdiction over children, one of which is that detention should be a last resort and used for as short a period as possible.

Part 9 is a core part of the Act in so far as juvenile justice issues are concerned. Eight new community sanctions are created. These are:

1. Day Centre Order
2. Probation (Training or Activities) Order
3. Probation (Intensive Supervision) Order
4. Probation (Residential Supervision) Order
5. Suitable Person (Care and Supervision) Order
6. Mentor (Family Support) Order
7. Restriction on Movement Order
8. Dual Order

Two pre-existing sanctions continue as options for the courts. These are the regular Probation Order and the Community Service Order (for 16 and 17 year olds only).

The Act also gives courts the power to order payment of fines, costs and compensation by child offenders. Parents or guardians can be ordered to pay compensation instead of their child and they can be bound over to exercise proper and adequate control over their child.

IMPLEMENTATION SCHEDULE

The Act will be introduced in a phased way. According to the National Children's Office the following sections came into force, or were scheduled for implementation, in 2002.

Part 1	Preliminary	Sections 3, 4 and 6 commenced 1 May
Part 2	Family Welfare Conference	All sections except 7(1)(a)
Part 3	Amendment of Child Care Act 1991	All sections except 23(d)
Part 4	Diversion Programme	Commenced 1 May
Part 6	Treatment of Child Suspects in Garda stations	Commenced 1 May, except 59 and 61(1)(b)
Part 7	Children Court	Commenced 1 May
Part 8	Proceedings in Court	Sections 89-94 commenced 1 May
Part 9	Powers of Courts	Sections 108-110, 113-114, 133-136 commenced 1 May

Part 10	Children Detention Schools	All
Part 11	Special Residential Services Board	All
Part 12	Protection of Children	Commenced 1 May
Part 13	Miscellaneous	Commenced 1 May, except sections 259, 262, 263, 265

Information and Display Exhibition

This year saw a new development by the Association – Information and Display Exhibition by services and organisation.

Irish Association for the Study of Delinquency

Mr Martin N Tansey, Chairperson IASD and Minister of State Brian Lenihan TD

National Children's Office

Ms Eimear Fisher and Ms Frances Spillane

Probation and Welfare Service

Mr Ciaran Kennedy, Mr David O'Donovan and Minister of State Brian Lenihan TD

Claymon Laboratories

Mr John O'Sullivan and Minister of State Brian Lenihan TD

On-Guard Plus Limited

Mr. Stephen Freathy, Mr Mark Griffiths and Minister of State Brian Lenihan TD

We are indebted to those who exhibited, to their representatives on the stands, for their courtesy, availability and above all the valuable information they distributed to the delegates.

Conference Participants

Ms Kate Akester	Youth Justice - London
Ms Gemma Anslow	Victim / Offender Mediation Service
Mr Seán Aylward	Irish Prison Service
Councillor Cathal Boland	Fingal County Council
Mr Ronan Boylan	Chief State Solicitor's Office
Ms Katherine Boyle	Education Centre Shanganagh Castle
Ms Mary Brannigan	Youth Justice Northern Ireland
The Hon Mr Justice Declan Budd	Law Reform Commission
Mr John Buttery	PAUL Partnership
Ms Fiona Campbell	Probation and Welfare Service
Dr Emma Clare	Institute of Criminology UCD
Mr John Cole	Department of Education and Science
Ms Annette Collins	The Village Project
Ms Geraldine Comerford	IASD Ltd
Ms Clara Connolly	
Ms Maura Connolly	Ruhama Women's Project
Mr Tony Corcoran	Tivoli Training Centre
Ms Marieva Coughlan	Irish Prison Service
Chief Supt. Pat Cregg	An Garda Siochana
Ms Patricia Cullen	Laois Youthreach
Ms Una Doyle	Probation and Welfare Service
Ms Helen Egan	WEB Project
Mr Tony Fagan	Chief State Solicitor's Office
Ms Maura Finnegan	National Crime Council
Ms Eimear Fisher	National Children's Office
Ms Nicola Flanagan	Probation and Welfare Service
Ms Patricia Flynn	Oberstown Girls Centre
Ms Rose Forrest	Barnardos
Mr Stephen Freathy	On Guard Plus Limited

Ms Bridget Gormley	Copping On
Mr Mark Griffiths	On Guard Plus Limited
Mr Derek Hanway	Blanchardstown Partnership
Ms Bernadette Hickey	Probation and Welfare Service
Mr Liam Hickey	St Josephs School
Mr Patrick Hickey	Partnership Tra Li
Ms Mary Higgins	Homeless Agency
Mr Brian Hogan	Oberstown Boys Centre
Dr Ursula Kilkelly	Faculty of Law UCC
Mr Roger Killeen	Special Residential Services Board
Mr Alan King	Department of Justice, Equality and Law Reform
Mr Jim King	Probation and Welfare Service
Mr Michael Kelly	National Children's Office
Mr Ciaran Kennedy	Probation and Welfare Service
Mr Pat Lane	Fingal County Council
Ms Stephanie Leahy	Galway Youthreach
Mr Brian Lenihan	Minister of State with Responsibility for Children
Governor Seán Lennon	Irish Prison Service
Mr Seán Lowry	Probation and Welfare Service
Mr Damien Lynam	Chief State Solicitor's Office
Mr Dermot McCarthy	Department of the Taoiseach
Ms Edel McCarthy	Mount St Vincent's Child Care Centre
Mr Jarlath McDonagh	The Haverty Adult Education Centre
Dr Liz McLoughlin	The Village Project
Deputy Governor Kathleen McMahon	Irish Prison Service
Mr Tom O'Donoghue	Wexford Area Partnership
Mr David O'Donovan	Probation and Welfare Service
Mr Tony O'Donovan	Department of Education and Science
Mr Dermot O'Connell	Probation and Welfare Service
Ms Edel O'Kennedy	Ruhama Women's Project

Ms Marie O'Sullivan	The Village Project
Mr Pól O'Murchú	Pól O'Murchú Soliciitors
Dr Ian O'Donnell	Institute of Criminology UCD
Mr John O'Sullivan	Claymon Laboratories
Mr Mick Quinlan	Gay Men's Health Project
Mr Odran Reid	Northside Partnership
Judge Bridget Reilly	District Court
Ms Mary Ellen Ring SC	IASD Ltd
Ms Michelle Shannon	Department of Justice, Equality and Law Reform
Ms Elaine Slattery	Céim ar Céim Moyross Probation Project
Mr Jarlath Spellman	Office of the Director of Public Prosecutions
Ms Frances Spillane	National Children's Office
Mr Dermot Stokes	Youthreach
Mr Martin Tansey	IASD Chairperson
Mr Robert Templeton	Ballydowd Special Care Unit
Sr Veronica	Aislinn Adolescent Treatment Centre
Mr David Walker	Department of Justice, Equality and Law Reform
Mr Charles Wallace	Chief State Solicitor's Office
Governor Edward Whelan	Irish Prison Service
Mr Padraic White	National Crime Council
Ms Gisela Whyte	Tivoli Training Centre
Mr Michael Woodlock	Oberstown Boys Centre
Ms Delores Young	Probation and Welfare Service
Dr Peter Young	Institute of Criminology UCD