

**The International Society for the Reform of Criminal Law
22nd International Conference**

**Codifying the Criminal Law: Modern Initiatives
11-15 July 2008, Dublin Castle**

Diversion and Rehabilitation: A New Approach to Youth Justice

Rachel Sheehan, Irish Youth Justice Service

There tend to be two views of young offenders and in parallel two views as to how they should be treated by society. One view is that they are vulnerable children, failed by society, coming from disadvantaged backgrounds who cannot reasonably be expected to bear full responsibility for their offending behaviour. This view maintains that their environment has contributed to their behaviour and addressing their needs, welfare, education, health and mental health needs is the most appropriate, just and effective way of responding to their behaviour.

This view is supported by many research reports into the backgrounds of young offenders which consistently show that such young people come from economically disadvantaged areas, have very poor educational attainment and come from families with histories of criminal involvement. Many of these young people also suffer from mental health and drug and alcohol problems. I could site many examples of such reports. I will mention just two: “The Children Court: A national Study by Jennifer Carroll and Eimer Meehan and Dr. Jennifer Hayes’ research

“Emotional Intelligence, Mental Health and Juvenile Delinquency” into mental health problems of young people in detention.

The other view is that young offenders lack discipline, are out of control and need to be held accountable and understand that there are consequences for their actions. This is a view held by many members of the public and quite naturally many victims.

This view of young offenders is not confined to more serious crimes of violence and murder. It also arises where consistent and petty violence causes daily harassment, fear, intimidation and expense to communities and which often appear to the public and to victims to be without consequence for the young person involved. It is this view of young offenders which leads to calls for a harsher more justice oriented response, more focused on punishment than rehabilitation and which suggests young offenders need to suffer consequences and “be taught a lesson”.

The first of these views advocates a welfare response to youth offending, the latter a justice response. Which of these views holds sway at any given time in a society tends to determine whether the justice system in general and the youth justice system in particular is focused on a welfare or justice oriented approach. Youth justice systems the world over struggle with the same questions: to deal with young offenders as a welfare issue or a justice issue.

The Irish system is no different. The law in relation to young offenders, and some aspects of the law dealing with troubled but non-offending young people is provided for in the Children Act 2001. This Act attempts

to draw together and update the law around what are sometimes known as troubled and troublesome children, in a single, comprehensive Act. It was more than ten years in the drafting and took a further six years to bring into force.

The reason for the delay and difficulties in agreeing the legislation had a lot to do with whether a welfare or justice response was to take the lead. The children we are talking about generally have a complex set of problems which inevitably cross the sectors of health and social services, education and justice. No one Government Department has sole responsibility for the complexity of problems that young offenders tend to have and which clearly require input from many sectors. Ultimately, the Act split responsibilities between the three Departments involved, each retaining their traditional responsibilities and requiring a complex range of interactions between them. No one Department had a lead role and no one Department took lead responsibility for the matter. This was certainly a factor in the time it took to bring the whole Act into force.

In late 2004, a Task Force was established in the Department of Justice, Equality and Law Reform to examine the structures in place for dealing with young offenders, which the Chair of this working group, Sylva Langford, headed up. This Group reported in December 2005 and the main difficulty identified was the lack of leadership, the absence of any area of Government with central responsibility for youth justice. The Irish Youth Justice Service was established to meet this need.

In a way I think this illustrates that codifying the law itself may achieve little if the necessary political and administrative systems do not facilitate a coherent implementation of the law through coordinated policies and

procedures. However, I provide this background primarily as context for the system of youth justice that has now developed.

The Irish system takes something of a hybrid approach to the welfare / justice question. Youth offending is largely addressed by the criminal justice institutions: the Gardaí, the Probation Service and the Irish Youth Justice Service, a part of the Department of Justice, Equality and Law Reform. However, while it is justice institutions which take the lead role, the approach taken is largely a welfare focused one. The Irish Youth Justice Service operates within the wider context of the Office of the Minister for Children and Youth Affairs. This Office brings together aspects of the Department of Justice, Education and Health, as they relate to children and young people.

The Children Act focuses first and foremost on Diversion. The Garda Diversion Programme is the first step for almost every child who comes into contact with the law. Every child who comes to the attention of the Gardaí for an offence is referred to the Diversion Programme. Only in circumstances where the young person refuses to accept responsibility for the offence, is a persistent offender or has committed a very serious offence will he or she be refused admission to the Programme.

In 2005, of the 17,567 young people referred to the Diversion Programme, 75% were dealt with through the Programme. Those young people who do re-offend may receive several chances in the Diversion Programme. These young people are assigned a Juvenile Liaison Officer, a Garda specially trained to work with young people, and they receive a caution instead of being prosecuted for the offence. The vast majority of young people admitted to the Programme did not come to the attention of

the Gardaí again before they reached the age of 18. There are currently 101 Juvenile Liaison Officers and the Garda Commissioner has given a commitment to appoint a further 21 JLOs over the next two years.

The Programme is supported by 100 Garda Diversion Projects across the country. These projects provide activities for young people, improve relationships with Gardaí and work to address the young person's behaviour. The number of projects has increased by over 35% in the past two years and is set to increase by a further almost 70% over the next 5 years. The desire to keep young people out of the Courts and the formal criminal justice system is the cornerstone of the State's approach to youth justice. As I have said, this is how we deal with approximately three-quarters of young people who offend.

Those young people who continue to offend or are not admitted to the Diversion Programme, generally end up in the Children Court. The other speakers here today have far more experience and expertise in the Children Court than I do. I would not disagree with much that have said. The young people do mix with other often more serious young offenders in the vicinity of the Court; our adversarial system is not easily accessible to them and the formalities, however softened, undoubtedly make it difficult for them to understand what is going on.

I believe we do need to see changes in the system. Judges trained in dealing specifically with young people, better arrangements in the administration of the Court, more information provided in ways children can understand and more appropriate buildings would all be of benefit. The legislation already provides for some of these changes and the Irish Youth Justice Service will be encouraging these positive changes to

become a reality in every Courtroom dealing with young people. A good start is the approval by Government of three new District Court Judges for the Children Court.

What we are seeing already is a new range of community based sanctions becoming available to Judges in responding to youth offending. The Probation Service has established a dedicated Young People's Probation service and YPP teams are now in place all over the country. These YPP teams are rolling out the new community sanctions which include mentoring, training and activities orders, day centre, intensive supervision and parenting programmes among others. The community sanctions were introduced in legislation in the Children Act 2001 but only came into force last year. Admittedly they are taking time to come on-stream but they are gradually coming into effect. The Probation Service also offers a family conference as a restorative justice option for young people which avoids a conviction and empowers the young person and his or her family to agree an action plan to address the behaviour. I am optimistic that the resources and alternatives, which are admittedly slow in coming, will greatly enhance our ability to work with and rehabilitate young people within their communities and I fully agree that this is the only effective place to rehabilitate them.

Detention is a last resort. This is the law, this is Government policy; it is the right thing to do but it is not always the practice. There are many reasons why detention is imposed on a young person. Sometimes the gravity of the offence requires detention, sometimes community services are not available, sometimes the family will not have the young person back in the home, sometimes the young person will not cooperate with any service and runs away from any non-secure placement, and

sometimes he or she is a danger to him or herself or others. Not all of these are appropriate reasons for a young person to be detained but it is the reality.

The additional resources allocated to the Diversion Programme, the new community sanctions I have spoken about and better interactions between social services and criminal justice services are all tools to help us achieve the goal of detention truly as a last resort. The Probation service are developing bail information and bail fostering services so that young people will not be remanded in custody because they have nowhere else to go. Much closer relationships are being developed between the IYJS and the HSE to identify the gaps between our two systems and ways of filling these gaps.

I work primarily in the children detention system. The objectives of these schools are very much focused on education and rehabilitation. Young people detained are very well cared for and are provided with all of the services and programmes they need. But I fully accept that detention is not an effective way of rehabilitating young offenders.

I have no doubt that there are still many further improvements that are needed within our youth justice system. Early intervention is the key to reducing the level of offending and the number of children who will ultimately end up in children detention schools and most likely in the prison system in later years. Aftercare is another area which the IYJS is committed to developing and improving on to support young people returning to their communities after a period in detention.

The Irish youth justice system emphasises diverting the young person from the criminal justice system and rehabilitating them in the community and we are working hard to make sure these objectives are a reality for every young person who comes into the system. While I know there are many more challenges to be faced I genuinely believe the steps already taken will result in better outcomes for young offenders, their families and communities and I hope that we can continue to make progress.