



**Submission of the Ombudsman for Children's Office to the Policing Authority  
on the Draft Code of Ethics for the Garda Síochána**

**23 September 2016**

The following are the Ombudsman for Children's recommendations in relation to the draft Code of Ethics for the Garda Síochána as it is currently drafted:

**Special Protection of children**

The OCO recommends that the Garda Code of Ethics includes specific provisions that take into account the special needs of children and young people in conflict with the law.

Gardaí are frequently the first point of contact that young people have with the criminal justice system and they play a key role in youth justice. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. This is not appropriately reflected in the draft code as it is currently drafted.

In the context of the administration of justice and conflict with the law, children benefit from all of the human rights guarantees available to adults. In addition to that, specific national and international human rights standards and norms on children's rights<sup>1</sup> and on the administration of juvenile justice<sup>2</sup> apply to children given their special status.

The European Code of Police Ethics (Council of Europe) clearly states that police investigations shall be objective and fair and that they shall be sensitive and adaptable to the special needs of persons, such as children and juveniles.<sup>3</sup> More recently, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice state that

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<sup>1</sup> See the UN Convention on the Rights of the Child (Articles 37 and 40); and General Comment N. 10 (2007) on Children's rights in juvenile justice, CRC/C/GC/10.

<sup>2</sup> See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), and the Guidelines for Action on Children in the Criminal Justice System ("Vienna Guidelines"). See also, "10 Basic human rights standards for law enforcement officials", Amnesty International, 1998.

<sup>3</sup> The European Code of Police Ethics, Recommendation Rec (2001)10 adopted by the Committee of Ministers of the Council of Europe, 19 September 2001, para. 49.

the police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may have a physical or mental disability or communication difficulties.<sup>4</sup>

It is also emphasized that the police should apply the Guidelines. This applies to all situations where children might come in contact with the police, and it is of particular importance when dealing with vulnerable children.<sup>5</sup>

The OCO recommends the inclusion of the following commitments in the Draft Code:

- To regard the best interests of the child as a primary consideration in all police action, intervention or decision, in line with Article 3 of the UNCRC.
- To divert children away from the criminal justice system where appropriate in line with the provisions of the Children's Act 2001 and Article 40(3) of the UNCRC.
- To use deprivation of liberty as a measure of last resort and for the shortest appropriate period of time in line with Article 37 of the UNCRC.
- Not to use prohibited forms of cruel, inhuman or degrading treatment or punishment including the use of solitary confinement, the use of pain techniques to restrain children, corporal punishment, deprivation of food, deprivation of contact with the family and any other measure that may compromise the physical and mental health of the juvenile concerned.<sup>6</sup>
- To apply the urgency principle, in all proceedings involving children, to provide a speedy response and protect the best interests of the child, while respecting the rule of law.<sup>7</sup>
- To use language that is appropriate to the child's level of understanding when taking children into custody and to ensure that access to a lawyer, the opportunity to contact their parents or a person whom they trust is provided.<sup>8</sup>
- To ensure, as far as possible, that no child in police custody is detained with adults, that children in police custody are kept in conditions that are safe and appropriate to their needs, and that child-friendly approaches are used throughout the investigation process.<sup>9</sup>

### Other Comments

Our Office welcomes the inclusion of examples in the Draft Code, however, as it is currently drafted, the Draft Code contains no examples relating to children or young people in conflict

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<sup>4</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, 2010, para. 27.

<sup>5</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Council of Europe, 2010, para. 86.

<sup>6</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the "Havana Rules", Rule 67.

<sup>7</sup> Ibid, Guideline 50

<sup>8</sup> Ibid, Guideline 28

<sup>9</sup> Ibid, Guidelines 30-33

with the law. The OCO strongly recommends the inclusion of examples involving children and young people in conflict with the law.

The Garda Code of Ethics presents an opportunity to reflect the key fundamental principles of children's rights to influence Garda Practice when interacting with children. International Children's Rights instruments and Guidelines from the Council of Europe provide useful guidance in this regard and should be referenced in the Draft Code as appropriate.

We note with disappointment that the Policing Authority did not consult with children and young people who are or have been involved in the youth justice system as part of this consultation process, as recommended by the OCO in its Preliminary Views on the preparation of the Code of Ethics for the Garda Síochána.