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do leanaí
for children**

Policing Authority: Draft Policing Priorities for 2019

Submission by the Ombudsman for Children's Office

September 2018

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Recommendations

Development of the draft Policing Priorities for 2019

The Policing Authority should encourage AGS to further extend the scope of the Public Attitudes Survey in the future to facilitate the participation of children under the age of 16.

The UNCRC, the guidance provided by the Committee on the Rights of the Child and other human rights standards of relevance to the area of children and policing should expressly inform and be appropriately reflected in the Policing Priorities.

Data quality

The Policing Authority and AGS should take the opportunity presented by the development of Policing Priorities and a new Policing Plan for 2019 to set out specific actions and targets to address the documented gaps in the availability of quality data relating to children's involvement in the justice system.

Specialised training for members of An Garda Síochána

To support the implementation of existing recommendations and to address gaps in the training delivered to members of AGS, including with regard to children and children's rights, 'Specialist Training' should be expressly included as a Policing Priority under the heading 'Organisational Development and Capacity Improvement'.

Garda Youth Diversion Programme

The Policing Authority and AGS should take steps to ensure that the necessary reform of the Diversion Programme remains a priority issue, with the inclusion of specific actions and targets in the Policing Plan for 2019 as appropriate. Ongoing reviews should be completed without delay and particular consideration should be given to the importance of transparency with regard to the operation of the Programme.

A successor to the Youth Justice Action Plan 2014-2018 should be developed in a timely manner, to ensure that progress to date is measured and specific commitments, actions and targets are further developed or initiated to progress the policy goal to deliver better outcomes for children in conflict with the law.

Interagency cooperation

Interagency cooperation should be expressly incorporated as a standalone Policing Priority for 2019. Serious consideration should also be given by the Policing Authority and AGS to

developing specific actions and targets relating to the co-location of child protection services under this Priority Heading.

Particularly vulnerable groups of children

As part of the finalisation of the Policing Priorities for 2019, the specific measures that need to be adopted by AGS to address the over-representation of particularly vulnerable groups of children in the youth justice system should be identified. Full consideration should also be given to any recommendations arising from research and reviews conducted in this area.

1. Introduction

The Ombudsman for Children's Office (OCO) welcomes the invitation from the Policing Authority to prepare a submission on the draft Policing Priorities for 2019. This submission has been prepared in accordance with Section 7(1)(b) of the Ombudsman for Children Act, 2002 (as amended), which provides the Ombudsman for Children with the statutory duty to encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children.

The OCO welcomes the draft Policing Priorities for 2019, including the focus on organisation development, data quality, cybercrime, human trafficking, sexual offences, domestic violence, vulnerable victims, hate crime, community policing and crime prevention. As highlighted by the Policing Authority, these Priorities are important because they influence the annual Policing Plan which sets out the actions, commitments and targets to be achieved by An Garda Síochána (AGS) in 2019.

The OCO recognises that the Policing Priorities relate to the full breadth of activities carried out by AGS and their engagement with all members of the public. However, in light of the OCO's statutory function to promote the rights and welfare of children up to the age of 18 years, this submission focuses on highlighting issues of particular relevance to children's engagement with AGS.

Our submission is guided by the international and European children's rights framework, including the UN Convention on the Rights of the Child (UNCRC). It is informed by the OCO's work on child-friendly justice, including our advice to Government on the Domestic Violence Bill 2017¹ and our submission to the Department of Children and Youth Affairs on its review of the Child Care Act 1991.² This submission is also informed by our direct engagement with the Policing Authority and AGS about issues relating to children and policing.

2. Development of the draft Policing Priorities for 2019

The draft Policing Priorities for 2019 set out the rationale or source of information which influenced the inclusion of each specific principle, including third party reports, consultation with the Joint Policing Committees, engagement with stakeholders and the AGS's Public Attitudes Survey.

¹ Ombudsman for Children's Office, *Advice of the Ombudsman for Children's Office on the Domestic Violence Bill 2017* (2017). Available at: https://www.oco.ie/app/uploads/2018/07/OCO_Advice_Domestic-Violence-Bill-2017_FINAL.pdf.

² Ombudsman for Children's Office, *Review of the Child Care Act 1991: Submission by the Ombudsman for Children's Office* (2018). Available at: https://www.oco.ie/app/uploads/2018/06/OmbudsmanforChildren_Submission_ReviewChildCareAct1991_23_Feb2018.pdf.

The OCO warmly welcomes that the Public Attitudes Survey was increased in scope in 2017 to facilitate the participation of 16 and 17 year olds.³ This measure reflects Article 12 of the UNCRC, which provides that children have a right to express their views freely in all matters affecting them and for these views to be given due weight in line with their age and maturity. The Committee on the Rights of the Child has emphasised that Article 12 imposes no age limit on the right of the child to express their views. It discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in matters affecting them.⁴ Children under the age of 16 engage directly with members of AGS in a variety of ways, including in their communities and at different stages of the justice system. Therefore, it is vital that their views and ideas for change also inform the future development and delivery of policing services in Ireland.

Recommendation: The Policing Authority should encourage AGS to further extend the scope of the Public Attitudes Survey in the future to facilitate the participation of children under the age of 16.

The OCO notes that the UNCRC, the guidance provided by the Committee on the Rights of the Child⁵ and other human rights standards of relevance to the area of children and policing are not referenced as sources that inform or provide a rationale for the draft Priorities. We set out the core principles enshrined in these standards in our submission on the Draft Policing Priorities for 2018, including the need for members of AGS to respect the personal rights and dignity of all children and to have regard for their particular vulnerability and special needs.⁶ Express reference to these standards in the Priorities would increase the visibility of, and help to give further effect to, the rights of children in the national framework for the delivery of policing services by AGS. It would also support the inclusion of rights-based actions, commitments and targets in the annual Policing Plan.

Recommendation: The UNCRC, the guidance provided by the Committee on the Rights of the Child and other human rights standards of relevance to the area of children and policing should expressly inform and be appropriately reflected in the Policing Priorities.

³ An Garda Síochána, *Public Attitudes Survey 2017* (2017) at p. 50. Available at: <https://www.garda.ie/en/about-us/publications/research-publications/an-garda-siochana-public-attitudes-survey-2017.pdf>.

⁴ UN Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard* (2009) UN Doc. CRC/C/GC/12 at p. 9. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en.

⁵ To see the guidance provided to Ireland by other UN treaty bodies of relevance to the area of policing, see <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/IEIndex.aspx>.

⁶ Ombudsman for Children's Office, *Submission of the Ombudsman for Children's Office to the Policing Authority on the Draft 2018 Policing Priorities* (2017).

3. Data quality

In its guidance to States, the Committee on the Rights of the Child has emphasised that the *“collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation”* of the UNCRC.⁷

The OCO welcomes the inclusion of data quality as a potential Policing Priority for 2019, in light of our ongoing concerns about the quality of data available relating to children in the justice system in Ireland. For example, the need for further data development relating to child victims of crime is highlighted in the Indicator Set for Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020.⁸

Furthermore, a review by the Garda Inspectorate on responding to child sexual abuse, published in 2017, found *“very little”* available data to identify how many children in Ireland are victims of child sexual exploitation or are at greater risk of exploitation, such as children in care who are frequently reported missing and children engaging with strangers on the internet. The review also concluded that there are a number of crimes relating to children that are not recorded on PULSE as sexual offences or offences against the person, including female genital mutilation, honour based violence, forced marriage and child trafficking.⁹ In this regard, the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, recently made the following statement in relation to Ireland: *“As it stands, a lack of appropriate statistics on incidents of child sexual abuse and exploitation leaves policymakers with little guidance on where best to direct resources.”*¹⁰

In our submission on the draft Policing Priorities for 2018, the OCO also highlighted the absence of comprehensive, reliable and disaggregated data relating to the Garda Youth Diversion Programme, including the application of criteria for admission to the Programme and the outcome of interventions. This is an ongoing issue, as demonstrated by the recent

⁷ UN Committee on the Rights of the Child, *General Comment No 5: General measures of implementation of the Convention on the Rights of the Child* (2003) UN Doc. CRC/GC/2003/5 at pp. 11-12. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en.

⁸ Department of Children and Youth Affairs, *An Indicator Set for Better Outcomes, Brighter Futures: The National Policy Framework for Children & Young People 2014-2020* (2017) at p. 27. Available at: <https://www.dcy.gov.ie/documents/ReportIndicatorSetBOBFNatlPolFrmewrkChildrenYoungPeople2014-2020.pdf>.

⁹ Garda Síochána Inspectorate, *Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate* (2017) at p. 17. Available at: http://www.gsinsp.ie/en/gsinsp/pages/published_reports.

¹⁰ UN Special Rapporteur on the sale and sexual exploitation of children, *Ireland: UN human rights expert calls for national strategy to protect children from sexual violence* (2018). Available at: https://ec.europa.eu/ireland/news/ireland-un-human-rights-expert-calls-for-national-strategy-to-protect-children-from-sexual-violence_en.

discussions between the Policing Authority and AGS on data gathering to support evidence based decision-making and justify further investment in diversion programmes.¹¹

Recommendation: The Policing Authority and AGS should take the opportunity presented by the development of Policing Priorities and a new Policing Plan for 2019 to set out specific actions and targets to address the documented gaps in the availability of quality data relating to children’s involvement in the justice system.

4. Specialised training for members of An Garda Síochána

In 2016, the Committee on the Rights of the Child published its Concluding Observations on progress made by Ireland as regards fulfilling its obligations to children under the UNCRC. It recommended that the State strengthen its efforts to provide adequate and systematic training and/or sensitisation of professionals working with and for children.¹² Similarly, in its 2017 Concluding Observations on Ireland, the Committee on the Elimination of Discrimination against Women called on the State to ensure that the police are properly trained to identify, investigate and prosecute cases of gender-based violence, particularly targeting Traveller, Roma and migrant women and girls.¹³ Both the United Nations and the Council of Europe have emphasised that such training and capacity-building measures should be:

- systematic and ongoing, including initial training and re-training
- interdisciplinary and focused on the rights and needs of children of different age groups, as well as how to communicate with them at all stages of development
- periodically evaluated to review the knowledge gained and the extent to which this knowledge has contributed to developing attitudes and practices which actively promote enjoyment by children of their rights.¹⁴

There are also a number of recent legislative developments at a domestic level that directly affect the delivery of policing services and place obligations on members of AGS to engage with children in a child-sensitive manner and to respect their rights. These include the

¹¹ Policing Authority, *Minutes of Meeting of the Policing Authority*, 26 April 2018. Available at: [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/AGEH-AZUKQ21653718-en/\\$File/26-04-2018%20-%20Minutes%20of%20Policing%20Authority%20meeting%20on%2026%20April%202018.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/AGEH-AZUKQ21653718-en/$File/26-04-2018%20-%20Minutes%20of%20Policing%20Authority%20meeting%20on%2026%20April%202018.pdf).

¹² UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland* (2016) UN Doc. CRC/C/IRL/CO/3-4 at p. 5. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5.

¹³ UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined sixth and seventh periodic reports of Ireland* (2017) UN Doc. CEDAW/C/IRL/CO/6-7 at p. 7. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IRL/CO/6-7&Lang=En.

¹⁴ Committee on the Rights of the Child, *supra* note 7 at pp. 12-13. See also, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies).

recently enacted Domestic Violence Act 2018, the Criminal Justice (Victims of Crime) Act 2017 and the Children First Act 2015. As recognised in the Modernisation and Renewal Programme 2016-2021, *“it is critical that all personnel are kept up to date on relevant policies and changes in the law and that continuous professional development must be a constant within An Garda Síochána.”*¹⁵

However, the Assessment on Policing Performance, published by the Policing Authority in July 2018, sets out that the absence of an integrated strategy for training undermines desired performance improvements.¹⁶ The 2017 report of the Garda Inspectorate also identified a number of gaps in the training available for members of AGS. In particular, the Inspectorate raised concerns that *“inexperienced and untrained gardaí are still involved in all stages of child sexual abuse investigations, in taking initial accounts for victims, obtaining victim and witness statements and dealing with suspects.”* The review also established that *“children who are victims of abuse in Ireland are not always asked the right questions to establish if abuse has taken place.”* The Inspectorate recommended the development of a joint training course on child interviews for social workers and Garda members, as well as a programme of refresher training for specialist interviewers.¹⁷

Recommendation: To support the implementation of existing recommendations and to address gaps in the training delivered to members of AGS, including with regard to children and children’s rights, ‘Specialist Training’ should be expressly included as a Policing Priority under the heading ‘Organisational Development and Capacity Improvement’.

5. Garda Youth Diversion Programme

According to the Committee on the Rights of the Child, a wide range of measures must be developed and implemented to ensure that children in conflict with the law are dealt with in a manner appropriate to their well-being and proportionate to both their circumstances and the offence committed.¹⁸ This is reflected at a national level in the Youth Justice Action Plan 2014-2018, which commits to giving special emphasis to alternative programmes for young

¹⁵ An Garda Síochána, *Modernisation and Renewal Programme 2016-2021* (2016) at p. 81. Available at: <https://www.garda.ie/en/About-Us/Publications/Policing-Plans/Strategy/Modernisation-and-Renewal-Programme/Modernisation-and-Renewal-Programme-2016-2021.pdf>.

¹⁶ Policing Authority, *Policing Authority Assessment on Policing Performance* (2018) at p. 4. Available at [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/IAHD-B3FGGD1319468-en/\\$File/July%202018%20Final%20Policing%20Performance%20Report.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/IAHD-B3FGGD1319468-en/$File/July%202018%20Final%20Policing%20Performance%20Report.pdf).

¹⁷ Garda Síochána Inspectorate, *supra* note 9 at pp. 8, 34-35, 92.

¹⁸ UN Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice* (2007) UN Doc. CRC/C/GC/10 at p. 8. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en.

offenders through extensions to the Juvenile Liaison Officer Scheme and the Diversion Programme.¹⁹

However, despite the standards in place, a number of issues relating to the Diversion Programme in Ireland have been documented over recent years. Firstly, a Garda Inspectorate report in 2014 raised concerns about the operation of the Programme, including inconsistencies with regard to record-keeping, referral procedures, the processing of offences, and the delivery of cautions. This report made a number of significant recommendations, including the development of a co-located and fully integrated youth offender service and the application of a suitable engagement or diversionary scheme for those aged under 12 who come to the notice of AGS.²⁰ In 2016, the Committee to Monitor the Effectiveness of the Diversion Programme noted that the issue of capacity continues to present a significant challenge to the effectiveness of the Programme.²¹

Subsequently, in October 2017, the Minister for Justice and Equality confirmed that an examination of the Diversion Programme by the Garda Professional Standards Unit (GPSU) identified a number of issues impacting on its effective administration, including: *“Some Pulse incident Youth Referral records not being updated in a timely manner thereby preventing the Garda Youth Diversion Office from processing these cases; youth referral cases not being assigned to a Juvenile Liaison Officer Garda in accordance with policy; [and] a lack of follow through to prosecution in cases where young persons were deemed unsuitable for inclusion in the Diversion Programme.”*²² According to the Minister, AGS has commenced a comprehensive review of all youth referrals between 2010 and 2017 on foot of these findings, and a report on the matter is being prepared for the Commissioner.²³

The OCO is also aware of the following recent developments:

- The Policing Plan for 2018 established a target for the development of specific actions and an implementation plan, arising from the GPSU’s report on the Diversion Programme.²⁴

¹⁹ Minister for Justice and Equality, *Youth Justice Action Plan 2014-2018: Tackling Youth Crime* (2013) at p. 3. Available at: <http://www.justice.ie/en/JELR/Tackling%20Youth%20Crime%20-%20Youth%20Justice%20Action%20Plan.pdf/Files/Tackling%20Youth%20Crime%20-%20Youth%20Justice%20Action%20Plan.pdf>.

²⁰ Garda Síochána Inspectorate, *Crime Investigation* (2014) at pp. 36, 74. Available at: <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>.

²¹ Garda Bureau of Community Engagement, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* (2016) at p. 26. Available at: [http://www.iyjs.ie/en/IYJS/Annual%20Report%20of%20the%20Monitoring%20Committee%202016%20\(English\).pdf/Files/Annual%20Report%20of%20the%20Monitoring%20Committee%202016%20\(English\).pdf](http://www.iyjs.ie/en/IYJS/Annual%20Report%20of%20the%20Monitoring%20Committee%202016%20(English).pdf/Files/Annual%20Report%20of%20the%20Monitoring%20Committee%202016%20(English).pdf).

²² Dáil Éireann Debate, Written Answers - Garda Youth Diversion Projects (Thursday 19 October 2017). Available at: <https://www.oireachtas.ie/en/debates/question/2017-10-19/43/>.

²³ *Ibid.*

²⁴ An Garda Síochána, *Annual Policing Plan* (2018) at p. 24. Available at: [http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/AGEH-AXBMA617254529-en/\\$File/Final%20PolicingPlan2018_FinanceAppendixIncluded.pdf](http://www.policingauthority.ie/Website/PA/PolicingAuthorityWeb.nsf/page/AGEH-AXBMA617254529-en/$File/Final%20PolicingPlan2018_FinanceAppendixIncluded.pdf).

- At a public meeting with AGS in April 2018, the Policing Authority raised a number of issues with regard to the Programme, including whether a swifter and more focused response to the Garda Inspectorate report would have avoided current issues with the Programme; how high risk offences and offenders are dealt with; the timelines for the finalisation of the review into the Programme; and how consistency in service delivery, supervision and ethics is ensured across the Juvenile Liaison Offices.²⁵
- In July 2018, the Assessment on Policing Performance confirmed that there is an ongoing review of the management of the Diversion Programme and IT fixes to improve controls are being put in place, with the aim of addressing the serious issues raised by the GPSU regarding youth referrals.²⁶

Overall, the OCO is of the view that the issues raised with regard to the Diversion Programme should be appropriately and fully resolved without delay, to guarantee that it is an effective and rights-respecting intervention for children in conflict with the law.

Recommendation: The Policing Authority and AGS should take steps to ensure that the necessary reform of the Diversion Programme remains a priority issue, with the inclusion of specific actions and targets in the Policing Plan for 2019 as appropriate. Ongoing reviews should be completed without delay and particular consideration should be given to the importance of transparency with regard to the operation of the Programme.

Recommendation: A successor to the Youth Justice Action Plan 2014-2018 should be developed in a timely manner, to ensure that progress to date is measured and specific commitments, actions and targets are further developed or initiated to progress the policy goal to deliver better outcomes for children in conflict with the law.

6. Interagency cooperation

The Council of Europe has emphasised that the development of a child-friendly justice system requires close cooperation between the different professionals involved, in order to ensure that they obtain a comprehensive understanding of the child and an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation. In particular, a common assessment framework should be established for professionals (such as the police) who are working in proceedings or interventions that involve or affect children, to provide them with any necessary support in taking decisions and to enable them to best serve children's interests.²⁷

The OCO acknowledges the commitment to implementing third party reports in the draft Policing Priorities for 2019, as set out under the Priority Heading 'Organisation

²⁵ Policing Authority, *supra* note 11.

²⁶ Policing Authority, *supra* note 16 at p. 28.

²⁷ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, *supra* note 14.

Development’. We hope that this commitment will support the full implementation of the recommendations in Dr Geoffrey Shannon’s Audit of the exercise by AGS of the provisions of Section 12 of the Child Care Act 1991. A common finding throughout this Audit was the lack of information-sharing between the agencies involved in child protection. While it was recognised that notification systems between the Child and Family Agency (Tusla) and AGS do exist, they were described as superficial, ineffective and under-resourced. Overall, the report found “*clear evidence of a professional silo mentality in protecting vulnerable children.*” Dr Shannon concluded that clear guidelines on how cooperation should work in practice between AGS and other State agencies should be drafted.²⁸

The OCO has also consistently emphasised that real and constructive reform is needed with regard to interagency cooperation in this area, including through the development of an initiative for co-located working by Tusla and AGS on child protection matters. On the basis of the experience in other jurisdictions, we are of the view that such an initiative could facilitate the adoption of a child-centred approach in both the child protection and criminal justice systems, and result in improved criminal procedures and therapeutic outcomes for children.²⁹

Although the implementation of the recommendations in third party reports, including the Audit, is an important focus, it is clear that improved interagency cooperation between the AGS and other agencies should be an ongoing priority across all policing services. For example, the Annual Policing Plan 2018 included a number of commitments to interagency working and partnerships across the areas of youth offender management, supporting victims of domestic violence and implementing national policies.³⁰ Furthermore, in order to ensure that the commitments made by AGS can be implemented effectively, any legal and practical barriers to collaborative working and information sharing should be addressed at a senior and national level.

Recommendation: Interagency cooperation should be expressly incorporated as a standalone Policing Priority for 2019. Serious consideration should also be given by the Policing Authority and AGS to developing specific actions and targets relating to the co-location of child protection services under this Priority Heading.

²⁸ Dr Geoffrey Shannon, *Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991* (2017) at pp. 245, 272. Available at: <https://www.drugsandalcohol.ie/27362/1/Audit%20of%20Section%2012%20Child%20Care%20Act%201991.pdf>.

²⁹ Ombudsman for Children’s Office, *Annual Report 2017* (2017) at p. 5. Available at: https://www.oco.ie/Annual_17_English.pdf.

³⁰ An Garda Síochána, *supra* note 24.

7. Particularly vulnerable groups of children

The Council of Europe’s Guidelines on child-friendly justice set out that specific protection and assistance may need to be granted to more vulnerable children in contact with the justice system, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.³¹ With regard to the administration of juvenile justice in State parties, the Committee on the Rights of the Child has emphasised that there should be a focus on preventative policies that extend special care and attention to young persons at risk.³²

The over-representation of particularly vulnerable groups of children in the Irish youth justice system has been highlighted as an issue for a number of years. Recent figures from Oberstown demonstrate that in the 1st Quarter of 2018, a total of 92 young people were detained on Campus. Of these young people, 22% were members of the Traveller community; 40% were either in care or had significant involvement with Tusla prior to detention; 52% had a mental health need; 72% were considered to have substance misuse problems; and 20% were considered to be at risk of abuse or neglect.³³

It has been documented that some young people are accruing criminal charges during their time in care placements.³⁴ In one particular case reported by the Child Care Law Reporting Project in 2014, a teenage boy required a special care placement but there was no bed available. The court discussed the situation whereby the child had to show more severe behaviour in order to move up the waiting list for an appropriate placement, but that this exposed him to further criminal prosecution. With regard to the child’s placement at the time in a residential centre, the Guardian *ad litem* involved made the following statement: “*We are essentially criminalising the child by the nature of the placement he is being put in. We agree it is not a facility that can cope with his behaviour, it’s a recipe for criminal behaviour.*”³⁵ Similar issues have been raised in Northern Ireland, where a “*policy to prosecute rather than to parent*” has resulted in a significant proportion of young people in residential care having a criminal record.³⁶

In 2016, the Committee to Monitor the Effectiveness of the Diversion Programme also highlighted the issue of children in the care of the State being referred to the Diversion

³¹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, *supra* note 14.

³² Committee on the Rights of the Child, *supra* note 18 at p. 7.

³³ Oberstown Children Detention Campus, *Key characteristics of young people in detention: A snapshot* (Q1, 2018). Available at: <https://www.oberstown.com/wp-content/uploads/2018/06/Key-Characteristics-2018.pdf>.

³⁴ See for example, J. Hough, “Teens being ‘criminalised’ while in care of the State” *Irish Examiner* (7 March 2016).

³⁵ Child Care Law Reporting Project, *No secure care bed for troubled boy* (Case Reports 2014 Volume 1). Available at: <https://www.childlawproject.ie/publications/no-secure-care-bed-for-troubled-boy/>.

³⁶ Northern Ireland Human Rights Commission, *Alternative Care and Children’s Rights in Northern Ireland*. Available at: http://www.nihrc.org/uploads/publications/Alternative_Care_and_Children_final.pdf.

Programme for offences committed whilst in the care home. It set out the plans for the Youth Justice Action Plan 2014-2018 Implementation Team to conduct an examination to review appropriate responses to these children by the relevant state agencies.³⁷ While the OCO is not aware of any further developments with regard to this planned examination, we have been informed that the Irish Penal Reform Trust has commissioned research on the over-representation of children in care or with care experience in the Irish criminal justice system.³⁸

Recommendation: As part of the finalisation of the Policing Priorities for 2019, the specific measures that need to be adopted by AGS to address the over-representation of particularly vulnerable groups of children in the youth justice system should be identified. Full consideration should also be given to any recommendations arising from research and reviews conducted in this area.

³⁷ Garda Bureau of Community Engagement, *supra* note 21 at p. 24.

³⁸ See <http://www.iprt.ie/contents/3257>.