

Child Centred Justice

Support for child defendants
in the Irish court system

April 2025



ombudsman
do leanaí
for children

Executive Summary

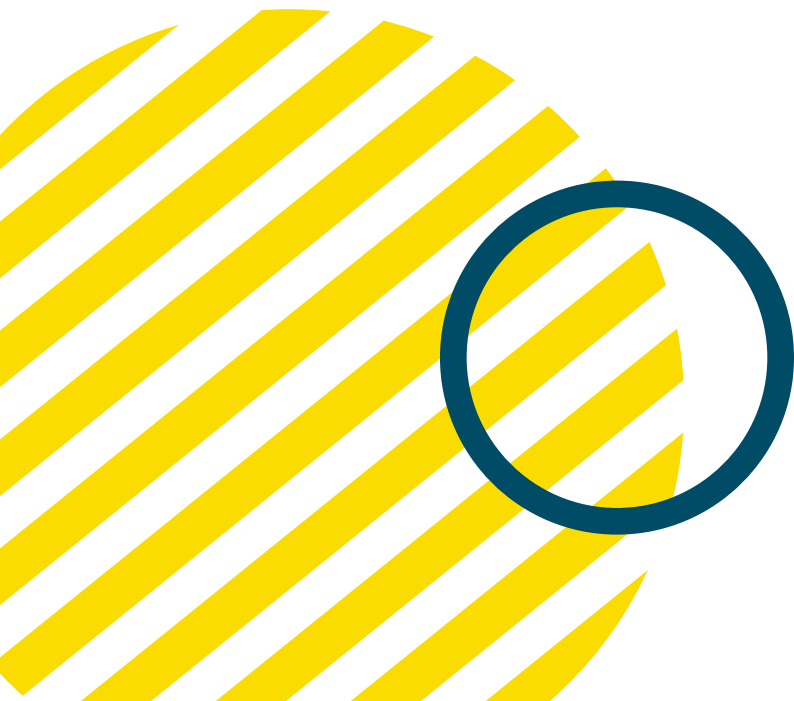
The Ombudsman for Children's Office (OCO) welcomes the introduction of a new court accompaniment for child defendants, which is being rolled out across the 100+ youth diversion projects nationwide throughout 2025. The OCO has pushed for a more child-centred justice system to guarantee the effective implementation of children's rights at the highest attainable level. This is essential to upholding the principles of informed understanding, participation and, to ensure the right to a fair trial.

The change will mean that every young person before the courts (District/Circuit/Children's Court) will be offered access to this support. It will also have a presence in the Criminal Court and has been included in the new protocol to expediate rape and murder cases involving victims and defendants under 18 years of age.

Through our outreach work to Oberstown Children Detention Campus, it became clear to us that some children did not always understand what was being asked of them, or said about them, in court. Advocates working with children shared with us similar concerns and warned that this lack of understanding can lead to increased rates of reoffending.

Child-centred justice systems ensure child-friendly court proceedings, where proceedings take explicit consideration of a child's age, special needs, level of understanding and any communication difficulties they may have, alongside ensuring that the pace and structure of the court sessions consider the cognitive capacity of the child.

The OCO welcomes the positive and child-centred response from the Department of Justice in our engagement with them



1. Rationale for this report

*pseudonyms have been used for the children's names

The Ombudsman for Children's Office (OCO) meet with children in Oberstown Children Detention Campus monthly. Over the past number of years, some children have told us that they did not always understand what was being asked of them, or said about them, in court. They did not know what was going to happen when they went to court or what their rights were as part of those proceedings.

We spoke with John* who told us he had extra supports in primary school to help him understand the different subjects he was being taught, but in court, without additional supports, he could not fully understand what was being said, particularly the legal terminology.

We also spoke with Tara* who told us that she felt anxious when it came to communicating with the legal professionals and with members of An Garda Síochána and so just agreed to bail conditions which she didn't fully understand.

These concerns were also shared with us by advocates working with these children in Oberstown. They gave us examples of instances where children did not understand the conditions of their bail and could not communicate to the Court or their legal representatives why they may be unable to meet the conditions of their bail e.g. stay away from specific areas, but the route was on their way to the school. They told us that they believed this lack of understanding can lead to increased rates of reoffending.

This is not beneficial for the children, nor for society as a key purpose of Oberstown is to help and support young people re-integrate successfully back into their communities.

We are also aware from research into children detained in Oberstown, that children involved in criminal activity may have significant additional vulnerabilities including learning difficulties, mental health issues and substance misuse.¹ This research also found that 19% of the children in Oberstown were from the Traveller community and 41% were in the care of Tusla or had significant involvement with Tusla prior to detention. Therefore, this places a significant responsibility on the State to ensure special measures are taken to ensure their right to meaningful participation are met with due regard to this vulnerability.

While the children in Oberstown represent only some of the on average 1,000 children before the courts each year, we had concerns that the experience of the children in Oberstown may be replicated throughout Ireland and that the rights of these children to informed understanding, and participation in the court and legal process are not being vindicated.

2. Children's Rights and Child Centred Justice

We know that children's rights can be violated in accessing justice systems because of indirect discrimination that comes about because the procedures can be complex and not child-friendly.² Child defendants, by virtue of their age, are vulnerable in the context of court and legal proceedings, and we note that this vulnerability is acknowledged in other circumstances where children are witness to court proceedings, such as through the Guardian ad Litem and Accompaniment Support Services for Children.

Justice systems should be child-centred to guarantee the effective implementation of children's rights at the highest attainable level. This is essential to uphold the principles of informed understanding, participation and, to ensure the right to a fair trial. Child-centred justice systems ensure child-friendly court proceedings, where proceedings take explicit consideration of a child's age, special needs, level of understanding and any communication difficulties they may have, alongside ensuring that the pace and structure of the court sessions consider the cognitive capacity of the child.

Ireland has specific obligations in this regard under the UN Convention on the Rights of the Child, under the EU Directive on Procedural Safeguards for children who are suspects or are accused within criminal proceedings and under our own domestic legislation, Section 96(1a) of the Children Act (2001), which states that children have 'rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participation in any proceedings of the court that can affect them'.

The principle of participation encompasses the right of all children to be informed about their rights and to be consulted and heard in proceedings involving or affecting them.

Furthermore, for this participation to be meaningful, due weight should be placed on the children's views bearing in mind their maturity and communication difficulties they may have. We were concerned about whether this right is being upheld for child defendants before the courts in Ireland, especially those that may have specific vulnerabilities.

3. What we did

In March 2024 we wrote to the Department of Justice to outline our concerns for these children. We held a series of meetings with senior officials in charge of the Youth Justice Strategy who were eager to bring about a resolution. We acknowledged that children are legally represented and that their representatives must discharge their legal duty to inform them of what is happening in court. However, we highlighted that this cohort of children may have difficulty engaging or asserting themselves in these situations to professionals and communication issues may follow. We also sought support from the President of the District Court and with members of the Law Library and Bar Council who deliver training to solicitors and barristers.

3.1 Response from the Department of Justice: The introduction of a new court accompaniment for child defendants

The Department of Justice responded in a positive and practical manner. They immediately recognised the importance of the matters raised and quickly proposed introducing a new court accompaniment for child defendants through their national Youth Diversion Projects. The statutory Garda Youth Diversion Programme is provided for in the Children Act 2001 and is supported by a network of Youth Diversion Projects (YDPs) funded by the Department of Justice. This service is available throughout the State except for two areas (east Clare and Thurles) where new projects will be established in early 2025.

The YDPs work with young people who have been diverted under the statutory Garda Youth Diversion Programme and are under Juvenile Liaison Officer (JLO) supervision, or have been otherwise referred including from Community Gardai, Tusla, schools, or other community-based agencies. The Department extended this mandate to include YDP staff (Youth Justice Workers (YJWs)) to provide a court accompaniment service for young defendants by accompanying them and providing informal support and explanations of court procedures as necessary during the trial process.

A further important aspect of this new support is that the presence of the youth justice workers may provide the court, where appropriate, with an alternative to proceeding to hear the case. The court will have the option of asking the young person to work with the youth justice worker for a period and later finalising the case in the light of how that participation worked out.

The new scheme is first being piloted in two areas but will be rolled out to the over 100 youth diversion projects nationwide throughout 2025. It will mean that every young person before the courts (District/Circuit/Children's Court) will be offered access to this support, it will also have a presence in the Criminal Court and has been included in the new protocol to expediate rape and murder cases involving victims and defendants under 18 years of age.

We warmly welcomed this child centred response by the Department and sincerely hope it will bring about positive improvements for children.

3.2 Support from the Judiciary

The President of the District Court provided helpful insights advising that all child defendants are entitled to free legal aid, which is automatically granted on the application of the parent/guardian on the first appearance in court. He also noted that the child's solicitor would have been instructed prior to the first appearance in court and will frequently have attended the Garda station following the arrest, detention or questioning of the child. In the small number of cases where the child and parent/guardian appear without representation, the judge will always offer them the opportunity to seek legal advice, recommend that they do so, and adjourn/remand the case if necessary to enable them to do so. This is critical as no child would ever be forced to proceed with any issue of substance in a case without the benefit of legal advice, and sufficient time to avail of same in a meaningful way.

However, he also advised that even where a child has the benefit of professional advice and support, and where the judge has explained matters to the child, the child still may not be capable of fully understanding or assimilating what he/she has been told and indeed this is also frequently the case with adult defendants. With that in mind the President highlighted to all judges of the District Court the matters raised by the OCO and also:

- » Requested the Judicial Studies Committee of the Judicial Council, and the Director of Judicial Education to provide ongoing training to District Court judges in dealing with child defendants in the Children Court.
- » Amplify the induction training already provided to newly appointed judges of the District Court to include the issues identified by the OCO.

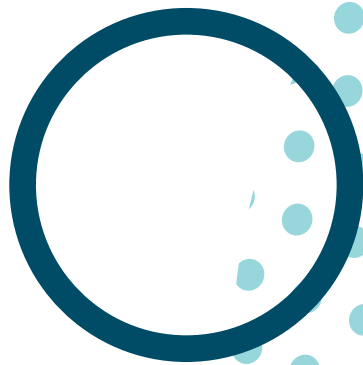
Critically he offered to engage with the OCO and with the Department of Justice and this support was invaluable in progressing change.

3.3. Supporting education and training of legal professions on engaging with children

On the advice of the President of the District Court we reached out to both the Law Society and the Bar Council to ask about how legal professionals are currently trained to be able to effectively engage with the children they interact with as well as their understanding of the principles of child friendly justice. Both organisations warmly welcomed our engagement and provided details of current content. There is agreement that the OCO will become involved in providing child friendly content in the future. The Ombudsman for Children also delivered an information session to members of the judiciary on how to engage with children.

Conclusion

There is no question that everyone we engaged with as part of this work were completely committed to ensuring children fully participate in a meaningful way with court proceedings. This will not only benefit the children but also society as the focus must be on diverting children away from crime to support them to reach their potential but also to ensure safer communities.



Endnotes

- 1 Advancing Children's Rights in Detention; A Model for International Reform (U. Kilkelly & P. Bergin, 2022)
- 2 Childs Rights International Network, Discrimination and the CRC. Available at: <https://archive.crin.org/en/guides/introduction/discrimination-and-crc.html#top>.

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