



Údarás Náisiúnta Míchumais  
National Disability Authority

30 June 2020

Department of Justice and Equality,  
51 St Stephen's Green,  
Dublin 2  
D02 HK52

## **Subject: Youth Justice Strategy Public Consultation**

Dear Sir/Madam,

The National Disability Authority (NDA) is the independent statutory body that provides information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and promotes Universal Design. The NDA welcomes the opportunity to comment on the new Youth Justice Strategy 2020-2026. The input provided is based on the NDA's particular areas of competency and expertise.

### **Guiding Principles of the Youth Justice Strategy**

The guiding principles underpinning the draft Strategy are intended to reflect Ireland's international obligations under the UN Convention on the Rights of the Child. The NDA advises that the Department ensures that the guiding principles, as well as the final Strategy as a whole, also reflect Ireland's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which was ratified by the State in 2018. Article 13 of the UNCRPD addresses the right to access justice on an equal basis with others and Article 7 of the UNCRPD affirms the fundamental rights of all children with disabilities to the entire range of human rights inherent to all children, including the right to access justice.

### **Coherency with existing legislation**

Article 13 of the UNCRPD calls for age-appropriate accommodations that will facilitate the effective participation of people with disability in the justice system. The **Criminal Evidence Act 1992** provides for special measures for children and persons with disabilities when giving evidence, including video links, intermediaries and recorded testimony. These special measures are reinforced by the **Criminal Justice (Victims of Crime) Act 2017** and should be reflected in the Youth Justice Strategy.

### **Intermediaries**

In 2019, the NDA hosted a rounded for several key stakeholders, including An Garda Síochána, the DPP, the Bar Council, the Law Society, the Courts Service, the Judiciary and the Department of Justice and Equality to discuss the use of intermediaries in the

criminal justice system. All participants agreed that the special measure of intermediaries, provided for by the Criminal Evidence Act 1992 (and reiterated in the Criminal Justice (Victims of Crime) Act 2017) was not yet implemented in a standardised way in an Irish context, although learning from other jurisdictions indicates that this special measure leads to better evidence being provided by individuals with communication difficulties, including children, who can often encounter barriers in accessing justice. Other jurisdictions (Northern Ireland, New Zealand) often avail of the service of an intermediary in cases where a child is giving evidence. It is similar to the role of a Guardian ad Litem (GAL), however there are a number of differences. While a GAL represents the voice of the child, they also give an opinion on what they believe to be in the child's best interest. An intermediary does not; they work to ensure that questions being put to a child giving evidence are put in such a way that will allow the child to answer as accurately as possible. An intermediary is also involved from a very early stage (for example, in a Garda station when a child or young person is being questioned) while a GAL becomes involved at the court stage.

Following this roundtable, the NDA developed an advice paper on the topic, which will shortly be sent to the Minister for Justice and Equality. The NDA will continue to offer its expertise and advice to the Department regarding the establishment and development of an intermediaries scheme that can have application both in situations relevant to youth justice and access to justice for persons with disabilities.

### **Coherency with existing strategies**

There are a number of 'access to justice' actions detailed in the **National Disability Inclusion Strategy 2017-2021** (NDIS). The NDA therefore advises that it will be important to ensure consistency and coherency between the NDIS and the new Youth Justice Strategy. For instance, the NDIS and the Mid-Term Review of the NDIS commit the Department of Justice and Equality to the following actions:

- Action 15: We will ensure that the needs of people with disabilities are central to our review of the Prohibition of Incitement to Hatred Act 1989 and in our development of legislation on hate crime. This will include the development and implementation of guidelines for Gardaí and other relevant personnel in relation to engagement with people with disabilities.
- Action 18A: We will ask the Policing Authority to monitor the actions taken by An Garda Síochána to make its services and information accessible to, and supportive of, people with disabilities
- Action 18B: We will integrate a focus on the needs of people with disabilities in our initiatives to enhance access to justice

The NDA advises that the aforementioned actions also require a particular youth justice focus on children with disabilities and this could be explicitly recognised within the new Youth Justice Strategy, informing regular monitoring and reporting activities relevant to the NDIS.

### **Consultation with Children and Young People**

The NDA advises that, irrespective of the model the Department adopts, to ensure the participation of children and young people in the process of developing policies and

support systems related to the youth justice system it must also be inclusive of children and young people with disabilities in line with the UNCRPD. Evidence shows that persons with disabilities are over-represented in the criminal justice system<sup>1</sup> and it is evident from the report entitled “Oberstown Children Detention Campus, Key characteristics of young people in detention: A snapshot (Q1, 2019)” that a similar over-representation is seen amongst young people sentenced or remanded by the courts. 23% of young people residing in Oberstown have a diagnosed learning disability, while 41% have mental health difficulties.

Children and young people with disabilities are themselves best placed to express their own requirements and experiences, which are necessary in developing appropriate policies and support systems related to the youth justice system. While recognising the challenges which can be involved in ensuring the participation and engagement of some children and young people with disabilities, the NDA recommends that the Department supports such engagement and participation by:

- maximising the accessibility of consultation and participation exercises through the adoption of a universal design approach, for example, by holding such exercises in accessible venues, providing easy-to-use information, and by ensuring that those engaging and consulting with children possess the necessary skills to include the views of those with communication difficulties
- building the capacity of children and young people with disabilities, for example, by supporting peer advocacy that would enable and empower young people with disabilities, including intellectual disabilities, to engage with the Department’s participation and consultation efforts in a way that is appropriate to them
- publishing information on the nature and level of consultation with children and young people with disabilities, including how such consultations are undertaken and how the spectrum of disabilities are included

The NDA notes that the Ombudsman for Children’s Office have developed good practice guidance on Children’s Participation in Decision-making (Ombudsman for Children’s Office, **Children’s Participation in Decision-making Good Practice Guidance from the Ombudsman for Children’s Office, 2018**). The guidance document underlines that all children without exception have the right to have their views heard without discrimination on the disability. The document highlights considerations for including a wide diversity of children in decision-making, including whether the meeting space is accessible to children with disabilities.

In addition to the direct participation of children and young people with disabilities in the process of developing policies and support systems related to the youth justice system, the NDA advises that the Department should also consider engagement with organisations of children with disabilities or supporting children with disabilities. There are several organisations that support children with disabilities and their families, however there are not as many organisations of family members who facilitate, promote and secure the interests and support the active participation of their children

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<sup>1</sup> National Disability Authority (2019) **Submission to the Garda Inspectorate on Custody Arrangements.**

with disabilities. The Committee on the Rights of Persons with Disabilities classifies this latter type of organisation as a representative organisation, and encourages their involvement.<sup>2</sup> The NDA advises that the Department of Justice and Equality carry out a mapping exercise to identify existing organisations with whom to engage. In respect of this, the Youth Justice Strategy team could link in with its Disability unit who are currently working to establish a consultation and participation network (explained below).

Article 4(3) of the UNCRPD acknowledges the importance of systematically “including children with disabilities” in the development and implementation of legislation and policies to give effect to the Convention, and in other decision-making processes, through organisations of children with disabilities or supporting children with disabilities. According to the UN Committee’s General Comment No.7, these organisations are key in facilitating, promoting and securing the individual autonomy and active participation of children with disabilities. The NDA is currently progressing research on Disabled Persons Organisations (DPOs) and their participation in implementing and monitoring the UNCRPD.

The NDA notes that the Department of Justice and Equality is currently preparing an Expression of Interest to find an ‘Organising Member’, the role of whom will be to establish and facilitate a network of organisations of and for persons with disabilities, which will carry out the specific participation and consultation activities. The Expression of Interest stipulates that the Organising Member should ensure the views and opinions of children and young people be heard directly. The Expression of Interest guidelines states that one of the tasks of the Organising Member will be to carry out a meaningful consultation on Ireland’s initial State Report to the UNCRPD, and that this consultation should include engagement with children and young people.

The NDA also advises that families of children with disabilities who are involved in the youth justice system, as well as those who may be “on the fringes” of the system, should be consulted as part of the development of this strategy, as well as the development of other policies and support systems related to the youth justice system. The perspective of such families is an important consideration in the development of a holistic approach to youth justice policy.

## **Supports and Transitions**

The Oberstown programme is designed to promote rehabilitation through practical skills to support young people’s return to the community and reduce their likelihood of relapse. The Oberstown care model, CEHOP, has five strands - Care, Education, Health, Offending Behaviour and Preparation for leaving. “Preparation for leaving” involves practical programmes that cover all aspects of a young person’s care including accommodation, living skills, finances, work, education and health. All relevant parties are included in the planning, such as the young person themselves as well as the key people in their lives such as parents/family, carers, as well as representatives from care, education, health and other relevant external agencies. The NDA advises the

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<sup>2</sup> Committee on the Rights of Persons with Disabilities (2018) General Comment No. 7  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkGld%2fPPRiCAqhKb7yhnsbHatvuFkZ%2bt93Y3D%2baa2pjFYzWLBuOvA%2bBr7QovZhbuyqzjDN0plweYI46WXrjJ6aB3Mx4y%2fspT%2bOrY5K2mKse5zjo%2bfvBDVu%2b42R9iKlp>

importance of the “Preparation for leaving” strand and underlines that young persons with disabilities must be supported to make a seamless transition from the youth detention system back to the community and away from the youth justice system.

The NDA notes that in Quarter 1, 2019, of the 75 young people in detention, 17 (23%) had some form of diagnosed learning disability (**Oberstown Children Detention Campus, Key characteristics of young people in detention: A snapshot (Q1, 2019), 2019**). The NDA therefore underscores the importance of ensuring that education and training courses offered to children and young people after their release from detention are accessible and relevant to children and young people with disabilities, including those with learning disabilities who are disproportionately represented in the youth detention system.

The NDA notes that one of the actions in the draft Strategy is to undertake a scoping report which will map the likely number of children who are disengaged from education with a view to describing the supports they need and developing pilot examples of such services. The NDA advises that this report consider the particular needs of those with disabilities, and the particular supports they may require to return to or take up education or training opportunities. The NDA advises that this report be undertaken in collaboration with other stakeholders, for example the Department of Education and Skills and the National Council for Special Education.

The NDA notes that of the 75 young people on campus in Quarter 1, 2019, 31 (41%) had mental health issues, while 46 (61%) were referred to the Assessment Consultation Therapy Services upon admission to Oberstown. In addition, 23 (31%) had been involved with the Child and Adolescent Mental Health Services (CAMHS) at one stage of their lives. After their release from detention, these young people may need to re-access CAMHS services or, if they are aged 18 or over, access to general adult mental health services in the community. The NDA advises that it is important that such services are provided to children and young people with mental health issues after their release, in particular to reduce the risk of recidivism.

The NDA notes that of the 17 children with a diagnosed learning disability in Oberstown Detention Centre in Quarter 1, 2019, 10 of them were not engaging in education prior to their admission to Oberstown. The NDA therefore notes that there may not always be an identifiable school or education facility to work with after a young person’s release from Oberstown and this should be taken into consideration when planning for the provision of necessary supports to children with disabilities after a period of detention.

The NDA emphasises the importance of strengthening the family unit and the role of Family Resource Centres in helping to prevent children ending up in detention centres through family supports, building family capacity and also supporting reintegration with families. The NDA has seen how wraparound support from multi-disciplinary teams (involving the family, school, local police, home support and other community supports) has achieved substantial behaviour improvements and engagement by people in other jurisdictions, for example the US.

## Disability Awareness Training

While welcoming the attention placed on training in the draft Youth Justice Strategy, including training for front-line staff on neurodiversity, trauma, and mental health, the NDA advises that such training should incorporate the spectrum of disabilities.

In its Concluding Observations to a number of countries, the UN Committee on the Rights of Persons with Disabilities has underlined the need to provide effective training of personnel in the justice, police and prison systems on the rights of persons with disabilities under the Convention and working with persons with disabilities. The UN Committee has recommended that standard and compulsory modules on working with persons with disabilities be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel.

A number of domestic reports have echoed the views of the UN Committee. One of the key proposals for better practice arising from an access to justice report commissioned by the NDA was the need for disability awareness training for key agencies in the criminal justice system (University College Cork, **Access to Justice for People with Disabilities as Victims of Crime in Ireland, 2012**).<sup>3</sup> Furthermore, a 2015 report on **Access to Justice for Children with Mental Disabilities** recommended that Gardaí be better trained on interacting with children with cognitive disabilities (NUIG Centre for Disability Law & Policy, **Access to Justice for Children with Mental Disabilities, 2015**).<sup>4</sup> The NDA notes that within its Human Rights Framework, An Garda Síochána identifies the need to ensure sensitivity when dealing with vulnerable children and emphasises the focus of ‘best interests’, which includes affording children the right to be heard and promoting the child’s reintegration into society. Through its Strategic Human Rights Advisory Committee, An Garda Síochána is building disability awareness capacity and the NDA looks forward to it having due regard to children and young people with disabilities.

## Data Collection

The NDA welcomes the focus in the draft Youth Justice Strategy on maximising the use of data and research to inform Youth Justice Policy and the broader development of preventative and early intervention and approaches to support desistance from offending behaviour. The NDA underlines that data is key to understanding the experiences of children and young people with disabilities in many areas related to access to justice. The NDA notes that this focus is in line with the Department of Justice and Equality’s commitment to more evidence-informed policy making, an initiative which is being spearheaded by the Department’s Research and Data Analytics Unit and evidenced by its 2018-2020 Data and Research Strategy.

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<sup>3</sup> Edwards, Claire; Harold, Gillian; Kilcommins Shane (2012) **Access to Justice for People with Disabilities as Victims of Crime in Ireland** <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

<sup>4</sup> Kline, Jennifer and Flynn, Dr Eilinoir (2015) **Access to Justice for Children with Mental Disabilities** <https://www.nuigalway.ie/centre-disability-law-policy/research/projects/completed/accesstojusticeforchildrenwithmentaldisabilities/>

The NDA notes that some disability-related data is publicly available, including the Oberstown Children Detention Campus publication on Key Characteristics of young people in detention, which provides rich disability and mental health data on children in detention.<sup>5</sup> However, disability disaggregated data is lacking in other areas. For example, the **Children Act 2001** formally established Ireland's Youth Diversion Programme, the aim of which is to prevent young offenders and children involved in anti-social behaviour in Ireland from entering into the full criminal justice system by offering them a second chance. The 2001 Act also provided for the appointment of a Committee to monitor the effectiveness of the Diversion Programme, and one of the Committee's functions is to present an annual report to the Commissioner of An Garda Síochána on its activities during the year. The Committee's 2017 Annual Report states that there were 20,006 youth referrals to the Diversion Programme in 2017.<sup>6</sup> However while the data is disaggregated by age, the NDA notes that it is not disaggregated by disability.

The NDA advises that data collection on children that involves disaggregation based on disability be increased in order to ensure effective monitoring of access to justice for all children in Ireland.

## Research

One of the actions in the draft Youth Justice Strategy 2020-2026 is to prioritise research and pilot initiatives on those who may be disproportionately represented in the youth justice system, including children with disabilities. The NDA notes that there is an absence of research exploring the particular experiences of children and young people with disabilities in the youth justice system, including the youth detention system, and would advise that research on same be carried out over the lifetime of the strategy. Given the importance attached to prevention and early intervention in the draft Strategy, the research, could also examine what is most effective in the disability context.

## Summary

To summarise, the NDA advises that:

- The guiding principles underpinning the draft Strategy reflect Ireland's international obligations under the UN Convention on the Rights of Persons with Disabilities, as well as the obligations under the UN Convention on the Rights of the Child.
- The Youth Justice Strategy has due regard to existing legislation, policy and practice that relates to the rights and lives of persons with disabilities, in a way that allows for coherency and collaboration.
- The effective participation of children and young people is at the centre of developing appropriate policies and support systems related to the youth justice

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<sup>5</sup> Oberstown Detention Campus (2018) **Key Characteristics of Young People in Detention: A Snapshot (Q1, 2018)** <https://www.oberstown.com/wp-content/uploads/2018/06/Key-Characteristics-2018.pdf>

<sup>6</sup> Garda Youth Division and Crime Prevention Bureau (2017) **Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme** [http://www.iyjs.ie/en/IYJS/2017%20Annual%20Report%20of%20Monitoring%20Committee%20\(English\).pdf/Files/2017%20Annual%20Report%20of%20Monitoring%20Committee%20\(English\).pdf](http://www.iyjs.ie/en/IYJS/2017%20Annual%20Report%20of%20Monitoring%20Committee%20(English).pdf/Files/2017%20Annual%20Report%20of%20Monitoring%20Committee%20(English).pdf)

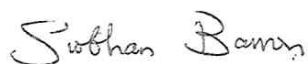
system, and that any participation model developed is inclusive of, and accessible to, children and young people with disabilities.

- Any education and training supports offered to children and young people in, and emerging from, detention are fully accessible and inclusive.
- Modules on working with persons with disabilities be incorporated as standard into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel.
- Cross agency working to support children and families, both in respect of prevention of crime and reintegration of the child or young person following detention
- The collection of data (and the disaggregation of that data by disability) and the carrying out of relevant research be promoted in the Youth Justice Strategy.

Finally, we would also like to bring to your attention our Annual Conference 2020, which is entitled “Facilitating the effective and equal participation of persons with disabilities in the Irish criminal justice system (Article 13 UNCRPD)”. It is hoped that the Conference will assist participants to gain a better understanding of the considerations in meeting the Convention’s obligations for all the stakeholders involved in the criminal justice system in Ireland, the current initiatives that are underway that are designed to meet the requirements of Article 13 of the UNCRPD and areas requiring further attention. The conference will provide an opportunity to share valuable Irish and international experience and to learn from other countries who have explored different approaches to the implementation of Article 13. In particular, the conference will focus on how Article 13 can be used to drive policy development in order to ensure equal access to justice for people with disabilities within the criminal justice system. We hope to feature a breakout session focusing on Youth Justice.

The NDA is happy to continue to input and advise the Department of Justice and Equality as relevant and appropriate to assist in elaborating on any of the points raised above.

Yours sincerely,



**Siobhan Barron**  
**Director**  
**National Disability Authority**