



IPRT Submission to the Department of Justice Consultation on diversion paths for young adults aged 18–24

17 January 2023

About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for the rights of everyone in the penal system and the progressive reform of Irish penal policy, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system, and to reducing the use of imprisonment. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Contact details

Pamela Drumgoole
Policy and Research Coordinator
Irish Penal Reform Trust
MACRO Resource Centre,
1 Green Street,
Dublin 7
T: +353 1 874 1400
E: pdrumgoole@iprt.ie

1. Introduction

IPRT appreciates the opportunity to make this submission to the Department of Justice, as part of its public consultation on the topic of diversion paths for young adults aged 18–24.¹ The Department’s commitment in the *Youth Justice Strategy 2021 – 2027* to explore age-appropriate interventions for young adults is very welcome and represents an ambitious and progressive approach to responding to offending by young adults, while repairing harm.

The many evidenced benefits of diverting young adults from the formal adult justice system have been explored in the Department’s *Discussion Document*² and, as such, will not be repeated in detail here. However, IPRT would like to take this opportunity to briefly underscore its position on the diversion of young adults.³ Following almost a decade of research and advocacy in this area by IPRT, we know that while young adults are more responsive to rehabilitative measures than older adults, the wrong interventions can limit opportunities and deepen offending behaviour.⁴ As such, a distinct approach that responds to the special circumstances of young people transitioning into adulthood will promote better outcomes and reduce crime.

The highest rates of recidivism within three years of release from prison can be seen among young adults, at 82.3% for those aged 18–21 and 72.1% for those aged 21–25.⁵ These stark statistics – and many others, including those detailed in the Department’s *Discussion Document* – indicate that prison is not an effective response to young adult offending.

The ‘cliff-edge’ effect that can occur when a young person turns 18 in the criminal justice system was summarised in our 2015 research as the age when someone “loses access to age-appropriate interventions, entitlements and supports overnight – both in the criminal justice system, and in services provided in the community”.⁶ Young adults do not reach full maturity on their 18th birthday, and the introduction of age-appropriate diversionary measures for this cohort will go some way towards recognising this.

While young adults should be accountable for their actions and behaviours, exposure to the formal criminal justice system and/or a criminal conviction can harm a young person’s future life prospects. Where possible, appropriate diversionary options should be explored at all stages of contact with the criminal justice system.

¹ Department of Justice, ‘Public Consultation on diversion paths for young adults aged 18-24’ (November 2022) <www.gov.ie/en/consultation/bd086-consultation-on-diversion-paths-for-young-adults-aged-18-24/> accessed 13 January 2023.

² Department of Justice, *Discussion Document: Diversion for young adults ages 18-24 years* (Department of Justice 2022) <<https://assets.gov.ie/237234/3455763d-f97a-4e83-b79d-6665cfa4ac17.pdf>> accessed 13 January 2023.

³ For the purpose of this submission, the term ‘young adult’ is used in reference to people aged 18–24.

⁴ Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015) <www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf> accessed 11 January 2023.

⁵ Central Statistics Office, ‘Prison Re-offending Statistics 2019’ (21 June 2022) <www.cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2019/detailsof3-yearcustodialre-offending/> accessed 13 January 2023.

⁶ Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015) <www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf> accessed 11 January 2023.

Recommendation 1: The Department of Justice should develop a discrete strategy for young adults aged 18–24 who offend grounded in evidence of what works to promote and support desistance from offending behaviour among this age group. This strategy should cover areas including young adult diversion, sentencing, imprisonment and reintegration.

2. Imprisonment as a sanction of last resort

One of the guiding policy principles of youth justice in Ireland is that detention should be used as a last resort in responding to youth crime and only imposed for the most serious crimes and once all community-based sanctions have been exhausted.⁷ With the publication in late 2022 of the Department’s *Review of Policy Options for Prison and Penal Reform 2022-2024*, welcome work is ongoing to consider incorporating the principle of imprisonment as a last resort in statute for adults.⁸

While this submission primarily focuses on ‘first instance’ diversion – that is, diversion when a young adult comes to the attention of the Gardaí – diversion should be embedded at all stages of the criminal justice system to ensure proportionate responses that take the underlying causes of offending behaviour into account.

Recommendation 2: Enshrine the principle of imprisonment as a sanction of last resort for adults in legislation, with focus on the promotion and proportionate use of alternatives to custody.

3. Sentencing

Where first instance diversion is not possible, attempts to divert young adults from the formal adult system should not simply cease. Diversion should be available at all levels of the justice system.

Current sentencing practices in Ireland do not acknowledge or cater for the reality of the transition to adulthood. By contrast, other jurisdictions have already moved towards a distinct approach to young adult offending that recognises the ongoing development of young adults, with some such measures resulting in lower crime rates, lower imprisonment rates of young adults, and lower reoffending.⁹

For example, since 2011, ‘age and/or lack of maturity’ where it affects the responsibility of the offender has been included as a mitigating factor in the Sentencing Council for England and Wales’ sentencing guidelines for adults.¹⁰ A 2020 review by the Scottish Sentencing Council in turn found that the areas of the brain that govern emotion develop sooner than those which assist with

⁷ Children Act 2001, s 96.

⁸ Department of Justice, *Review of Policy Options for Prison and Penal Reform 2022-2024* (Department of Justice 2022) p.29 <www.gov.ie/en/collection/00924-review-of-policy-options-for-prison-and-penal-reform-2022-2024/> accessed 13 January 2023.

⁹ Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015) <www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf> accessed 9 January 2023.

¹⁰ Sentencing Council (UK), ‘General Guideline: overarching principles’ (October 2019) <www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/> accessed 13 January 2023.

cognitive abilities. As a result of this imbalance, young adults are more likely to partake in risk-taking behaviour. The review found that brain development may be delayed by factors such as adverse childhood experiences, traumatic brain injury, alcohol and substance use and mental disorders. It outlines the need to consider an individual’s culpability relative to their cognitive maturity during sentencing.¹¹

A different approach to sentencing young adults is reasonably common in other jurisdictions in Europe. In Germany, juvenile courts have had powers to deal with 18–20-year-olds since 1953 and can apply either juvenile or adult sanctions, based on the development of the young person and whether the motives and circumstances are those typical of juvenile crime. More than 90% of young adults who commit serious offences are sentenced under juvenile law.¹² A similar ‘dual track’ system is in place in Victoria, Australia, where the *Sentencing Act 1991* enables adult courts to sentence a person aged 18–20 years to a youth justice centre as a direct alternative to imprisonment, in recognition of the harms caused by adult justice.¹³

Recommendation 3: The Sentencing Guidelines and Information Committee should consider a potential guideline for young adults that takes into account that the brain does not fully mature when an offender reaches 18 years old.

Recommendation 4: Promised legislative reform of the *Children Act 2001* should be prioritised, particularly to allow the Children Court to hear cases of over-18s in relation to offences that occurred while they were under 18.

Recommendation 5: As part of any reform the *Children Act 2001*, consideration should be given to allowing for maturity assessments to be made when sentencing young adults aged 18–24. Maturity assessments would allow judges to consider whether the young person might be more appropriately dealt with in the youth justice system, a long-standing approach in other jurisdictions.

4. Suitability for diversion: Repeat offending, category of crime etc

The *Discussion Document* and public consultation survey both question whether a range of approaches to diversion will be necessary based on previous offending patterns.¹⁴ However, IPRT would have concerns about a graduated model of diversion that was based *solely* on previous offending behaviour i.e., those who have no previous offences are treated differently to those who have committed one previous minor offence, and those who have committed more than one previous offence who have a history of addiction, trauma or mental health difficulties are treated differently again.

¹¹ Suzanne O’Rourke et al., *The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts* (Scottish Sentencing Council 2020) <www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf> accessed 11 January 2023.

¹² Fair and Just Prosecution, *Young Adults in the Justice System* (Fair and Just Prosecution 2019) <fairandjustprosecution.org/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf> accessed 16 January 2023.

¹³ Australian Institute of Health and Welfare ‘Youth justice in Australia 2015–16’ (March 2017) <www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/youth-justice-supervision-in-the-states-and-territories/victoria> accessed 16 January 2023.

¹⁴ Department of Justice, *Discussion Document: Diversion for young adults ages 18-24 years* (Department of Justice 2022) <<https://assets.gov.ie/237234/3455763d-f97a-4e83-b79d-6665cfa4ac17.pdf>> accessed 13 January 2023.

While IPRT understands the need to graduate the levels of diversion, this should be done on the basis of assessed need and the circumstances of the young person, which could take into account factors such as: their educational background, employment status, housing situation, mental health, previous victimisation and substance misuse. Addiction, trauma or mental health difficulties can be the root cause of someone's first minor offence. Reserving different responses for those who have committed a first offence and those who have a history of offending related to addiction would risk not addressing the underlying causes of offending.

The widest approach possible should be taken for a young adult diversion pilot. Specific categories of offence or offender should only be ruled out as deemed appropriate, rather than adopting a specific schedule of offences that are eligible or ineligible for diversion.

Recommendation 6: Suitability for diversion should be based on an individual needs-, strengths- and risk-assessment, rather than on the nature of the offence or frequency of offending.

5. Potential diversion paths for young adults

5.1. Need for a range of approaches

Particular attention should be given to collaborative services and wrap-around supports, including for young adults with multiple needs such as: young adults from minority communities (including Travellers); young adults with care experience; young adults with disabilities; and young adults with multiple Adverse Childhood Experiences (ACEs). Approaches should be needs-based and person-centred (paired with victim-centred responses, see section 10 on page 13).

The individual approaches explored in this section (section 5) should not be seen as standalone responses in all cases; a combination of two or more of these approaches might be appropriate for many young adults who come into contact with the criminal justice system.

Of central importance in the *Youth Justice Strategy 2021 – 2027* is strategic objective 2.15.2, which supports a multiagency service framework designed around the needs and situation of young adults rather than being designed around Departmental responsibilities and funding streams. This objective should be respected in the piloting of any approach to young adults, and should be closely considered at all stages of service development for this cohort.

While potentially costly to develop a suite of options designed for this cohort, significant savings will be made in the long term by keeping this cohort of people out of prison and other formal adult justice responses, and also by minimising the number of people who receive a criminal conviction (who then might face future restrictions on accessing employment).

Recommendation 7: Assign a lead to coordinate inter-agency collaboration on responses to young adults.

Recommendation 8: The use of any diversionary approach will need to be monitored to ensure that young adult diversion options are being used as direct alternative to imprisonment and/or other traditional criminal justice responses and do not lead to net-widening.

5.2. Garda Youth Diversion Programme

The Garda Youth Diversion Programme provides an opportunity to divert juvenile offenders (under 18) from criminal activity. It is the first level of response, involving early intervention by a Garda Juvenile Liaison Officer for young people who admit their involvement in a criminal offence. The premise of the Programme is that any child admitted is protected from prosecution for the criminal behaviour which resulted in his/her admission to the programme.¹⁵

Whether diversion for young adults is administered through the existing Garda Youth Diversion Programme or whether this is administered through a new body will require detailed exploration of child protection, costs and international models that is beyond the scope of this submission.

A similar programme is already in operation for young adults in South Wales. The primary aim of the 18–25 Diversion Scheme is to steer young adults away from the formal criminal justice system and into support-based interventions, on an assessed individual need that effectively understands their offending and seeks to prevent re-offending.¹⁶ If a young adult is accepted onto the scheme they receive an Adult Community Resolution instead of being processed to a caution or court disposal, which results in a programme of intervention and the young person avoids receiving a criminal record. The requirements they have to complete are designed for their individual circumstances and normally contain three distinct parts including individual support, attendance at ‘Consequences of Crime’ workshops and a restorative element’.¹⁷ The scheme applies to young adults who have been arrested for offences that apply up to level 3 of the Home Office Gravity Score.¹⁸ An evaluation of the Scheme identified that one of the key benefits of the programme is that it presents an immediate challenge to the offending behaviour and requires engagement from the offender in a way that does not usually happen with a caution.¹⁹

¹⁵ Citizens Information, ‘Garda Youth Diversion Programme’ (August 2020) <www.citizensinformation.ie/en/justice/children_and_young_offenders/garda_juvenile_diversion_programme> accessed 16 January 2023.

¹⁶ Centre for Justice Innovation, ‘18-25 Diversion scheme’ (2018) <justiceinnovation.org/project/18-25-diversion-scheme> accessed 13 January 2023.

¹⁷ Keith Towler, *Prompt Positive Action: Interventions with offenders aged 18-25 in South Wales* (Police and Crime Commissioner for South Wales 2017) <www.gov.wales/sites/default/files/publications/2018-08/Submission-evidence-prompt-positive-action-report.pdf> accessed 13 January 2023.

¹⁸ These are offences for which adults (>25) would ‘normally be charged’, where a community resolution would rarely be suitable. See p.3, National Police Chiefs’ Council, ‘GRAVITY MATRIX (Adult) Two-Tier framework’ (NPCC 2019) <www.npcc.police.uk/2019%20FOI/Counter%20Terrorism/061%2019%20Gravity%20Matrix.pdf> accessed 11 January 2023.

¹⁹ Keith Towler, *Prompt Positive Action: Interventions with offenders aged 18-25 in South Wales* (Police and Crime Commissioner for South Wales 2017) <www.gov.wales/sites/default/files/publications/2018-08/Submission-evidence-prompt-positive-action-report.pdf> accessed 13 January 2023.

Recommendation 9: Careful consideration should be given to the most appropriate form of any diversion service for young adults aged 18-24, including whether such diversion should sit within an extended version of the current Garda Youth Diversion Programme or a new programme.

5.3. Adult Cautioning Scheme

The Department's *Discussion Document* suggests that the introduction of a caution scheme for young adults could be largely replicated by the existing non-statutory Adult Cautioning Scheme, which is currently based on non-statutory arrangements between An Garda Síochána and the DPP.

Cautions are given where prosecution is not in the public interest, with a specific schedule of offences which are eligible for the Adult Cautioning Scheme. It is not designed to include detailed consideration of personal characteristics which may affect behaviour, which in its current form presents a challenge to adopting this as a diversion approach to young adults, who we know often have multiple complex needs.

The existing Adult Cautioning Scheme also outlines that a caution can only be applied once to an offender, with certain exceptions. These exceptions include: where the subsequent offence is a very minor one; and where there has been an extended period of time since the first caution was given. Consideration should be given for adding another exception to cover the age and maturity of the offender. Where a caution is issued to a young person in this age group, further consideration should further be given to pairing the caution with additional supports to proactively address any identified issues such as employment, education and training, as well as other personal support needs.

Recommendation 10: Any expansion of the Adult Cautioning Scheme to young adults should be considered carefully. While the Adult Cautioning Scheme might be suitable for many adults, a caution accompanied with no tailored interventions is unlikely to address the underlying causes of offending behaviour by young adults and is accordingly unlikely to have the desired effect of reducing reoffending.

Recommendation 11: If the existing Adult Cautioning Scheme is adapted for young adults, consideration should be given to adding age and maturity to the exceptions for receiving a second and subsequent caution. Where this exception is used to issue a caution, consideration should be given to making it compulsory to pair the caution with a referral to needs-assessed supports.

5.4. Bail Supervision Scheme

Building on the success of the Bail Supervision Scheme (BSS) for children, designed to provide the courts with an alternative for children at risk of bail denial, an innovative and tailored supervised bail programme should be introduced for 18–24-year-olds. The complex needs that tend to feature in the lives of children who are at high risk of bail denial are also very likely to be present for young

adults; they may have experienced multiple adversities, be early school leavers and live in challenging environments.²⁰

An evaluation of the pilot BSS for children found that on average, young people on the BSS had a reduction in re-offending twice that of the control group, and the majority of young people who completed the BSS fully adhered to bail conditions on exiting the scheme. Additionally, 85% of children who had completed the BSS received a non-custodial sanction at the sentencing hearing.²¹

IPRT's research previously identified good models of non-custodial alternatives for young adults, such as supervised bail schemes in operation in the UK. An example of this is the Lanarkshire Supervised Bail Service in Scotland, which considers all those at risk of being remanded in custody as potential candidates for bail supervision, but gives particular consideration to specific groups, including those with mental health difficulties, people with sole childcare responsibilities, and young people aged 16–21.²² Additionally, in Victoria, Australia, the *Sentencing Act 1991* enables adult courts to request that the youth justice services provide bail supervision and progress reports for young adults aged 18–20 where diversion from a more intensive adult justice outcome is possible.²³

IPRT believes that a similar scheme to the existing BSS should be applied to adults more generally but in particular for young adults aged 18–24, in order to reduce the number of young adults remanded in custody. While the BSS would not be directly replicable for young adults, some of the key success factors attributed to this programme, including greater inter-agency collaboration and skill- and knowledge-sharing, should be replicated.²⁴ An alternative approach to working with a caregiver in the home, as currently operates in the BSS, is working with an identified person with whom the offender has an existing relationship. While not directly comparable (as it is not designed to prevent remand) the Intensive Community Order for 18–25-year-olds in Manchester builds up a good picture of the client's life and identifies the person who is closest to them, whether that is a parent or another individual.²⁵

²⁰ Department of Children, Equality, Disability, Integration and Youth, 'Evaluation of The Bail Supervision Scheme for Children (Pilot Scheme)' (20 December 2019) <www.gov.ie/en/publication/0a6bc8-evaluation-of-the-bail-supervision-scheme-for-children-pilot-scheme/> accessed 11 January 2023.

²¹ Ibid.

²² Scottish Government, *Bail Supervision: National Guidance* (Scottish Government 2022) p.36 <gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/05/bail-supervision-national-guidance/documents/> accessed 13 January 2023.

²³ Australian Institute of Health and Welfare 'Youth justice in Australia 2015–16' (March 2017) <www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/youth-justice-supervision-in-the-states-and-territories/victoria> accessed 16 January 2023.

²⁴ Department of Children, Equality, Disability, Integration and Youth, 'Evaluation of The Bail Supervision Scheme for Children (Pilot Scheme)' (20 December 2019) <www.gov.ie/en/publication/0a6bc8-evaluation-of-the-bail-supervision-scheme-for-children-pilot-scheme/> accessed 11 January 2023.

²⁵ Centre for Justice Innovation, 'The Intensive Community Order (ICO)' (2018) <justiceinnovation.org/project/intensive-community-order-ico> accessed 13 January 2023.

Recommendation 12: Any age-appropriate extension of the Bail Supervision Scheme should be developed on a pilot basis and should be subject to detailed external evaluation.

Recommendation 13: Where a young adult has an ongoing need for support or other services beyond the bail supervision period, continuation of support must be ensured where possible. This should involve signposting or referrals to statutory and/or community services.

5.5. Probation and community sanctions

While all of the features of the existing Probation (Intensive Supervision) Order for children²⁶ might not be appropriate for the 18–24 cohort, consideration should be given to an age-appropriate extension of this order. There is the potential to model aspects of a new diversion model for 18–24-year-olds on the Intensive Community Order (ICO) in Manchester²⁷, aimed at men aged 18–25 who are at risk of receiving a prison sentence of less than 12 months.

Recommendation 14: Research and evaluation into the operation of community sanctions for young adults should be undertaken to assess ‘what works’ for this cohort.

5.6. Restorative justice and mentoring

A key commitment contained in the Programme for Government 2020 is to ‘work with all criminal justice agencies to build capacity to deliver restorative justice, safely and effectively’,²⁸ which was reaffirmed in the Penal Policy Action Plan.²⁹ While the increased delivery of restorative justice for all ages should be rolled out, there are several identified issues to consider for delivering restorative justice to young adults. In using restorative justice with young adults, it may be necessary to determine the extent to which each individual offender (or victim) is mature, and to take this into account in the assessment, planning, delivery, and follow-up of the restorative process. Research by Dr Ian Marder has identified ways in which a lack of maturity might manifest in this cohort, including: chaotic lifestyles, dependence on family members, low levels of emotional literacy, difficulties in accepting responsibility for one’s actions, and lacking a sense of agency.³⁰

Case studies of how restorative justice is already being used to respond to a variety of offending behaviour are available on the *Restorative Justice Strategies for Change* website, and elements of these case studies should be used to inform service development of restorative justice for all ages, including the 18–24 cohort.³¹

²⁶ Children Act 2001, s 125.

²⁷ Centre for Justice Innovation, ‘The Intensive Community Order (ICO)’ (2018) <justiceinnovation.org/project/intensive-community-order-ico> accessed 13 January 2023.

²⁸ Department of the Taoiseach, *Programme for Government: Our Shared Future* (Department of the Taoiseach 2020) p.86 <assets.gov.ie/130911/fe93e24e-dfe0-40ff-9934-def2b44b7b52.pdf> accessed 16 January 2023.

²⁹ Department of Justice, *Review of Policy Options for Prison and Penal Reform 2022-2024* (Department of Justice 2022) p.49 <www.gov.ie/en/collection/00924-review-of-policy-options-for-prison-and-penal-reform-2022-2024/> accessed 13 January 2023.

³⁰ Ian Marder, *Restorative Justice for Young Adults: Factoring in Maturity and Facilitating Desistance* (Restorative Justice Council 2013) p.9 <restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20justice%20for%20young%20adults.pdf> accessed 13 January 2023.

³¹ Restorative Justice Strategies for Change, ‘Case Studies’ (2023) <restorativejustice.ie/case-studies/> accessed 12 January 2023.

As well as being a holistic and victim-sensitive response to offending, restorative justice is often also cost effective. An Evaluation and Social Return on Investment Study of the Le Chéile Restorative Justice Project in Limerick showed that for every €1 invested in the Restorative Justice Programme, the return was approximately €2.92 in social value.³² The Project was assessed as having significant benefits not only for young people but also for the families and the victims of crime.³³ Mentoring programmes can also help young people develop new interests and skills, and can also provide positive role models. This should be considered in light of recently published research by the Department of Justice that suggests that for less mature or younger males, it is likely that importance is placed on friendships as opposed to family relationships.³⁴

Recommendation 15: The Department should explore local and national projects here and in other jurisdictions for examples of how restorative justice can be better integrated into the criminal justice process at each stage. Mentoring services that offer supports to the 18–24 cohort (such as Le Chéile) should be provided with sufficient resourcing to meet any additional demand on services.

Recommendation 16: Restorative practitioners who work with young adults should be aware of the implications of a lack of maturity among this age group, as well as the methods which can be used to overcome any associated complications. This will require additional training and resources to ensure the linking of evidence on maturity to the practice of restorative justice.

5.7. Mental health and addiction support

As discussed in the *Discussion Document*, in addition to diversion for young adults, there are proposals in development relating to diversion for drugs possession (Health Diversion) and mental health diversion. Given these ongoing areas of work, the High Level Task Force to consider the mental health and addiction challenges of those who interact with the criminal justice system recently recommended that an appropriate interagency structure should be identified to oversee the development of a coherent and integrated approach to diversion.³⁵

As detailed in the *Mid-term Review of the National Drug Strategy*, the Minister for Justice is examining options for the operation of the Drug Treatment Court. The matter will be progressed alongside wider justice reforms that are also under consideration, such as the proposal to establish a Community Court.³⁶ These reviews and proposals should also consider the young adult cohort as a discrete group for service provision.

³² Martin Quigley et al., 'Building Bridges: An Independent Evaluation of Le Chéile's Restorative Justice Project. Research Findings' (2015) Irish Probation Journal 12 <[www.probation.ie/EN/PB/0/A7D64DC8214E9F6B8025802E004A1F18/\\$File/IPJ2015pages241to257.pdf](http://www.probation.ie/EN/PB/0/A7D64DC8214E9F6B8025802E004A1F18/$File/IPJ2015pages241to257.pdf)> accessed 13 January 2023.

³³ Ibid.

³⁴ Dennis Gough and Megan Coghlan, *Understanding Reoffending: Push factors and preventative responses* (Department of Justice 2022) p.21 <assets.gov.ie/239978/75a21996-0062-405b-8a45-366ac01e8306.pdf> accessed 13 January 2023.

³⁵ Department of Health and Department of Justice, *High Level Task Force to consider the mental health and addiction challenges of those who come into contact with the criminal justice sector: Final Report* (Stationery Office 2022) p.14 <assets.gov.ie/236035/0de04b4d-817a-41cf-9779-771ab57703ac.pdf> accessed 13 January 2023.

³⁶ Department of Health, *Mid-Term Review of the national drugs strategy, Reducing Harm, Supporting Recovery* (Stationery Office 2021) <drugsandalcohol.ie/35183/1/DOH_Mid_term_Review_of_the_National_Drug_Strategy.pdf> accessed 13 January 2023.

Recommendation 17: As recommended by the High Level Task Force to consider the mental health and addiction challenges of those who interact with the criminal justice system, an appropriate interagency structure should be identified to oversee the development of a coherent and integrated approach to diversion from the criminal justice system in relation to mental health, drugs possession, and young adults.

Recommendation 18: Consideration should be given to whether there is a need to increase funding and availability of Adolescent Residential Addiction Treatment Centres, such as Aiséirí's 'Aislínn' Centre, with programmes designed specifically for adolescents and young adults.

5.8. Education, employment and training programmes

Diversion schemes should be paired with programmes designed to address the socioeconomic facts that place young adults at higher risk of reoffending, include not being in employment, education or training.³⁷

Educational programmes included as part of diversion schemes might not always be linked to traditional education, but could consist of education designed to empower young people to make informed choices, enhance life skills, and improve health and wellbeing.³⁸ For example, recent research in Ireland has indicated that driving programmes that promote education, responsibility and access to legitimate driving could be a more effective response than interventions such as driving bans.³⁹

Programmes that feature an element of employment and training offer young adults the opportunity to learn new skills, as an alternative to facing criminal charges. An example of such a programme is YouthBuild, a US-based community alternative education programme that provides job training and educational opportunities for low-income offenders aged 16–24. They split their time between a construction site, where they develop construction skills, and the classroom, where they engage in a host of educational activities. Importantly, YouthBuild includes significant support systems, such as mentoring, follow-up education, employment, and personal counselling services.⁴⁰ Analysis of the programme has shown that offenders who enter and complete the programme are more likely to receive a high school degree and less likely to reoffend than those who don't complete the program. The programme also led to lower drug abuse, reduced recidivism and further education.⁴¹

³⁷ Irish Penal Reform Trust, *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System* (IPRT 2015) <www.iprt.ie/site/assets/files/6357/iprt-turnaround-web-optimised.pdf> accessed 11 January 2023.

³⁸ Centre for Justice Innovation, '18-25 Diversion scheme' (2018) <justiceinnovation.org/project/18-25-diversion-scheme> accessed 13 January 2023.

³⁹ Ashling Golden, 'Car Crime: A Young Man's Game' (2022) *Irish Probation Journal* 19 <[www.probaton.ie/EN/PB/0/837ECB13EDF592DE80258905005BF3B1/\\$File/10%20IPJ%20Vol%2019%20Car%20Crime%20.pdf](http://www.probaton.ie/EN/PB/0/837ECB13EDF592DE80258905005BF3B1/$File/10%20IPJ%20Vol%2019%20Car%20Crime%20.pdf)> accessed 10 January 2023.

⁴⁰ Mark A. Cohen and Alex R. Piquero, 'Benefits and Costs of a Targeted Intervention Program for Youthful Offenders: The YouthBuild USA Offender Project' (2015) 6 *Journal of Benefit-Cost Analysis* 603 <cambridge.org/core/journals/journal-of-benefit-cost-analysis/article/abs/benefits-and-costs-of-a-targeted-intervention-program-for-youthful-offenders> accessed 9 January 2023.

⁴¹ *Ibid.*

Recommendation 19: Where there is an assessed need, young adults should be able to access education and training employment as part of any diversion programme.

6. Staffing, training and resourcing

Any diversion model, regardless of what it looks like in practice, will require sufficient staffing, training and general resourcing in order to be successful. Providing new posts for young adult-specific workers needs to be paired with the necessary training to upskill youth justice workers, restorative justice practitioners, Gardaí and any other relevant stakeholders in order to manage new areas of work.

Recommendation 20: The Department should ensure sure that any additional funding for staff working in young adult diversion is paired with the provision of appropriate training. As part of any specialised training on the 18–24 cohort, the Department should consider employing young adults in this age group who have engaged in criminal activity to support the development and delivery of training.

7. Data and research

Strides have been taken to collect data on children (under 18) in recent years, to support assessments, and similar strides will have to be made for this 18–24 cohort.⁴²

To assess the outcomes of any diversion model introduced for young adults, robust data on this cohort will need to be collected. As well as collection of data for this cohort, efforts should be made to link criminal justice datasets to get an accurate picture of how many people under 18 engaged with youth justice services went on to offend as young adults. This would inform service delivery for both the under-18s cohort and young adults.

Recommendation 21: Pilot approaches to diversion for young adults – informed by the findings of this consultation and engagement with young adults – should be developed and evaluated accordingly.

8. Engagement with the diversion process

The voices of young adults, in particular those who have had contact with the justice system, should participate and inform the future development of policies, programmes and systems. It is welcome that the *Discussion Documents* states that the views of young adults will canvassed.

To truly participate in a criminal justice system, a young person must be able to communicate with the process. Speech, language and communication needs (SLCNs) are extremely common in youth

⁴² John Reddy and Sean Redmond, *Measuring Outcomes in Youth Justice Programmes: A Review of Literature and Practice Evidence*, (University of Limerick, 2022) <hdl.handle.net/10344/10976> accessed 10 January 2023, p.5.

justice populations. According to the Irish Association of Speech and Language Therapists (IASLT), an estimated 66-90% of young offenders have low language skills.⁴³ Currently, there is no official provision for Speech and Language Therapists specifically within the Irish criminal justice system.⁴⁴

Recommendation 22: The Department of Justice should establish of a panel of children and young adults who could act as advisors to the Expert Steering Group as part of the ongoing development and implementation of the strategy.

Recommendation 23: Specifically trained and experienced Speech and Language Therapists should be part of the inter-agency team working with young adults on diversion programmes.

9. Implementing an appropriate approach to records of diversion

A Bill set to reform the existing spent convictions regime contains a welcome proportionate scale for the disclosure of criminal convictions received by young adults.⁴⁵ However, another issue in need of reform in this area is that the diversion records of children (and young adults, should a diversionary system be devised for them) should expire in a similar way to convictions.

The Committee Appointed to Monitor the Effectiveness of the Diversion Programme observed legislative discrepancies between the provisions of the *Children Act 2001* and the *National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016*, whereby convictions of children under 18 should not generally be disclosed for vetting purposes, but a child's inclusion in the Diversion Programme can be made subject to disclosure as specified information.⁴⁶ If it is decided to extend the Garda Youth Diversion Programme to the young adult cohort, consideration will need to be given to appropriately aligning the provisions of the relevant spent convictions scheme with the disclosure of diversionary records, to ensure that nobody is at a disadvantage, from a disclosure perspective, for having engaged in diversion programmes.

Recommendation 24: Review existing anomalies in disclosure to ensure that no one is unfairly subject to excessive disclosure as a result of participating in diversion programmes.

Recommendation 25: The Department of Justice, in collaboration with other relevant Departments and agencies, should publish information resources which support young people, their families and professionals to understand criminal records and their implications.

⁴³ Irish Association of Speech and Language Therapists, *CONSULTATION ON THE DEVELOPMENT OF A YOUTH JUSTICE STRATEGY* (IASLT 2020) <www.iaslt.ie/media/5gzobeix/iaslt-submission-to-new-youth-justice-strategy-2020.pdf> accessed 16 January 2023.

⁴⁴ Ibid.

⁴⁵ Houses of the Oireachtas, 'Criminal Justice (Rehabilitative Periods) Bill 2018' (2023) <www.oireachtas.ie/en/bills/bill/2018/141/> accessed 16 January 2023.

⁴⁶ An Garda Síochána, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* (An Garda Síochána, 2017) p.29 <www.drugsandalcohol.ie/29995/1/Youth_diversion_Monitoring_Committee_Report_2017.pdf> accessed 13 January 2023.

10. Meeting the rights and needs of victims

A similar approach should be taken with victims as that taken with offenders – a personalised approach that aims to heal, repair harm and prevent future harm.

In 2019, the Department of Justice published a literature review that identified best practices in relation to victims' interaction with the criminal justice system, including: the need for effective communication and information sharing, victim-centred responses, clearly-defined victim participation schemes, tailored approaches for victims with specialist needs (such as victims of sexual violence), and equal access and enforcement of rights.⁴⁷ These practices can and should be met regardless of the approach taken to diversion.

In many cases, the views of the victim are sought (such as in the adult cautioning scheme) already, and this should continue for the 18–24 cohort. Another useful tool is Victim Impact Panels, which support the provision of restorative interventions even where there is no participation from direct victims of a particular offence committed by the young person.⁴⁸

Any diversionary approaches should also be cognisant of the fact that the 18–24-year-old cohort are also the cohort most likely to be the victim of a crime. Victimization statistics find that 14% of persons aged 18-29 said they had been a victim of a personal crime in the preceding 12 months, compared to 5% of people over 60.⁴⁹ Persons in the 18-29 age group also reported being the victims of assault (4%) considerably more than other age cohorts.⁵⁰

Recommendation 26: Consideration should be given to creating age-appropriate supports for victims of crime, particularly for the 18–24 cohort.

11. Conclusion

Diversion programmes can be a valuable resource for young adults who have come into contact with the criminal justice system. These programmes provide alternatives to traditional punishment and can help to address the underlying issues that may have contributed to offending behaviour. Diversion programmes can help to reduce recidivism and the burden on the criminal justice system, and can provide young adults with the support and resources they need to move forward in a positive direction.

When devising diversionary approaches for young adults, it must be noted that chronological age alone, however, is not a valid indicator of maturity, and there is an increasing understanding that the criminal justice system should take account of this.⁵¹ Children develop at a different pace,

⁴⁷ Deirdre Healy, *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review* (Department of Justice 2019) <assets.gov.ie/46819/b539aee36f4648a2832c812dbba01821.pdf> accessed 16 January 2023.

⁴⁸ Le Chéile, *BUILDING BRIDGES: An Evaluation and Social Return on Investment Study of the Le Chéile Restorative Justice Project in Limerick* (Le Chéile 2015) <lecheile.ie/wp-content/uploads/2021/04/Building-Bridges.pdf> accessed 12 January 2023.

⁴⁹ Central Statistics Office, 'Crime and Victimization 2019: Personal Crime' (July 2020) <www.cso.ie/en/releasesandpublications/ep/p-cv/crimeandvictimisation2019/personalcrime/> accessed 16 January 2023.

⁵⁰ Ibid.

⁵¹ Mairéad Seymour, *Youth justice in context: Community, compliance and young people* (4th edn, Routledge 2012) (as cited in John O'Connor, 'REFLECTIONS ON THE JUSTICE AND WELFARE DEBATE FOR CHILDREN IN THE IRISH CRIMINAL JUSTICE SYSTEM'

particularly during adolescence and early adulthood.⁵² Sentencing guidelines in England have implied that, for the purposes of sentencing, *“when considering a child or young person’s age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).”*⁵³

Ireland has made considerable progress in reforming the youth justice system as it applies to children aged under 18 years, including through the removal of children from the adult prison system and legislation that states that detention must be a sanction of last resort for those aged under 18. Considering all the evidence of what works internationally, IPRT is calling for similar age-appropriate approaches to be extended to young adults aged 18–24.

(2019) 3 *Irish Judicial Studies Journal* <www.ijsj.ie/assets/uploads/documents/2.%20John%20O'Connor.pdf> accessed 16 January 2023.)

⁵² Thomas O'Malley, *Sentencing law and practice* (3rd edn, Round Hall 2016) (as cited in John O'Connor, 'REFLECTIONS ON THE JUSTICE AND WELFARE DEBATE FOR CHILDREN IN THE IRISH CRIMINAL JUSTICE SYSTEM' (2019) 3 *Irish Judicial Studies Journal* <www.ijsj.ie/assets/uploads/documents/2.%20John%20O'Connor.pdf> accessed 16 January 2023.)

⁵³ Sentencing Council (UK), 'Sentencing Children and Young People: Definitive Guideline' (Sentencing Council 2017) 1.5 <www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf> accessed 13 January 2023.

Collated IPRT recommendations for the development of diversion paths for young adults aged 18–24

1. The Department of Justice should develop a discrete strategy for young adults aged 18–24 who offend grounded in evidence of what works to promote and support desistance from offending behaviour among this age group. This strategy should cover areas including young adult diversion, sentencing, imprisonment and reintegration.
2. Enshrine the principle of imprisonment as a sanction of last resort for adults in legislation, with focus on the promotion and proportionate use of alternatives to custody.
3. The Sentencing Guidelines and Information Committee should consider a potential guideline for young adults that takes into account that the brain does not fully mature when an offender reaches 18 years old.
4. Promised legislative reform of the *Children Act 2001* should be prioritised, particularly to allow the Children Court to hear cases of over-18s in relation to offences that occurred while they were under 18.
5. As part of any reform the *Children Act 2001*, consideration should be given to allowing for maturity assessments to be made when sentencing young adults aged 18–24. Maturity assessments would allow judges to consider whether the young person might be more appropriately dealt with in the youth justice system, a long-standing approach in other jurisdictions.
6. Suitability for diversion should be based on an individual needs-, strengths- and risk-assessment, rather than on the nature of the offence or frequency of offending.
7. Assign a lead to coordinate inter-agency collaboration on responses to young adults.
8. The use of any diversionary approach will need to be monitored to ensure that young adult diversion options are being used as direct alternative to imprisonment and/or other traditional criminal justice responses and do not lead to net-widening.
9. Careful consideration should be given to the most appropriate form of any diversion service for young adults aged 18–24, including whether such diversion should sit within an extended version of the current Garda Youth Diversion Programme or a new body.
10. Any expansion of the Adult Cautioning Scheme to young adults should be considered carefully. While the Adult Cautioning Scheme might be suitable for many adults, a caution accompanied with no tailored interventions is unlikely to address the underlying causes of offending behaviour by young adults and is accordingly unlikely to have the desired effect of reducing reoffending.
11. If the existing Adult Cautioning Scheme is adapted for young adults, consideration should be given to adding age and maturity to the exceptions for receiving a second and subsequent caution. Where this exception is used to issue a caution, consideration should be given to making it compulsory to pair the caution with a referral to needs-assessed supports.
12. Any age-appropriate extension of the Bail Supervision Scheme should be developed on a pilot basis and should be subject to detailed external evaluation.
13. Where a young adult has an ongoing need for support or other services beyond the bail supervision period, continuation of support must be ensured where possible. This should involve signposting or referrals to statutory and/or community services.

- 14.** Research and evaluation into the operation of community sanctions for young adults should be undertaken to assess ‘what works’ for this cohort.
- 15.** The Department should explore local and national projects here and in other jurisdictions for examples of how restorative justice can be better integrated into the criminal justice process at each stage. Mentoring services that offer supports to the 18–24 cohort (such as Le Chéile) should be provided with sufficient resourcing to meet any additional demand on services.
- 16.** Restorative practitioners who work with young adults should be aware of the implications of a lack of maturity among this age group, as well as the methods which can be used to overcome any associated complications. This will require additional training and resources to ensure the linking of evidence on maturity to the practice of restorative justice.
- 17.** As recommended by the High Level Task Force to consider the mental health and addiction challenges of those who interact with the criminal justice system, an appropriate interagency structure should be identified to oversee the development of a coherent and integrated approach to diversion from the criminal justice system in relation to mental health, drugs possession, and young adults.
- 18.** Consideration should be given to whether there is a need to increase funding and availability of Adolescent Residential Addiction Treatment Centres, such as Aiséiri’s ‘Aislinn’ Centre, with programmes designed specifically for adolescents and young adults.
- 19.** Where there is an assessed need, young adults should be able to access education and training employment as part of any diversion programme.
- 20.** The Department should ensure sure that any additional funding for staff working in young adult diversion is paired with the provision of appropriate training. As part of any specialised training on the 18–24 cohort, the Department should consider employing young adults in this age group who have engaged in criminal activity to support the development and delivery of training.
- 21.** Pilot approaches to diversion for young adults – informed by the findings of this consultation and engagement with young adults – should be developed and evaluated accordingly.
- 22.** The Department of Justice should establish of a panel of children and young adults who could act as advisors to the Expert Steering Group as part of the ongoing development and implementation of the strategy.
- 23.** Specifically trained and experienced Speech and Language Therapists should be part of the inter-agency team working with young adults on diversion programmes.
- 24.** Review existing anomalies in disclosure to ensure that no one is unfairly subject to excessive disclosure as a result of participating in diversion programmes.
- 25.** The Department of Justice, in collaboration with other relevant Departments and agencies, should publish information resources which support young people, their families and professionals to understand criminal records and their implications.
- 26.** Consideration should be given to creating age-appropriate supports for victims of crime, particularly for the 18–24 cohort.