**IPRT Briefing on**

**Expungement of Criminal Records for Crimes Committed under the Age of 18**

**Irish Penal Reform Trust**

The Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort.

IPRT is committed to reducing imprisonment and the progressive reform of the Irish penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building awareness and growing our organisation.

**Introduction**

The IPRT has been campaigning for several years for the introduction of Spent Convictions legislation for adults, whereby persons who may have committed a minor offence in the past would not be under an obligation to disclose that conviction once they have completed a conviction-free period of good behaviour. However, in the course of this campaign, it has come to our attention that many people do not realise that a scheme already exists for anyone who committed an offence before their eighteenth birthday. In this briefing we set out the legal position with regard to such offences and the options available to anyone seeking to benefit from it.

**Legislative Framework**

Section 258 of the *Children Act* *2001* provides that offences committed by those under eighteen years of age can be expunged from the record once certain conditions are met. Essentially, where a person has been found guilty of an offence and (i) the offence was committed before they reached the age of eighteen years, (ii) the offence is not one required to be tried by the Central Criminal Court (such as murder or rape), (iii) three years have elapsed since the finding of guilt and (iv) the person has not been dealt with for an offence in that three-year period, then that person will be treated as a person who has not committed or been charged with or prosecuted for or found guilty of or dealt with for that offence. Section 258 is fully retrospective so it applies whether the offence occurred before or after the coming into force of the *2001 Act*.

Individuals who come within the terms of section 258 are “treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or found guilty of or dealt with” for the offence(s) in question.[[1]](#footnote-1) As people meeting these conditions are no longer regarded under Irish Law as having committed an offence they essentially have a clean record and therefore, in the context of seeking employment or applying for an educational course or insurance, can truthfully claim to have a clean record.[[2]](#footnote-2) Situations where a person has been given a caution or has been dealt with under the *Probation of Offenders Act 1907* are also covered by section 258. People with convictions from their youth may still experience barriers to travel and emigration to countries such as the USA and Australia, where they are subject to the domestic immigration laws governing such countries and may be obliged to disclose prior criminal convictions on their passenger character cards when they land. Failure to disclose such convictions can affect their visa status.

**Excluded Category of Offenders**

Excluded from section 258 are offenders who are tried in the Central Criminal Court. This excludes a number of serious offences such as murder, manslaughter, rape and serious sexual assaults from being spent. However, there is a provision whereby the Minister may introduce further exclusions or conditions by way of a Ministerial Order which must first be put before the Oireachtas.

**How do I apply to have my record expunged?**

The expungement of criminal records for offences committed when under the age of eighteen operates on an automatic basis in this jurisdiction. There is no requirement that the individual make an application to the Court to have the conviction declared spent. Provided the conditions set out in section 258 of the *2001 Act* are met the conviction will automatically be expunged and will no longer need to be disclosed.

**Garda Vetting**

The Garda vetting application form must be completed in respect of some types of employment (including work involving children or vulnerable adults), a number of applications for FÁS programmes and educational courses such as social work, which include a work placement component FÁS programmes or by individuals who are involved in sports, youth clubs or charities. Although not expressly stated on the form, if the offence was committed prior to the age of 18 and the offender comes within the terms of section 258 then they are not required to disclose their conviction on the Garda vetting form. Therefore, in relation to the question ‘*Have you ever been convicted of an offence in the Republic of Ireland or elsewhere*’ that person can truthfully answer ‘*no*’.[[3]](#footnote-3)

Practice varies across organisations which require Garda vetting. Although the guidelines provided by organisations such as FÁS expressly state that details of prosecutions or convictions which occurred before the applicants eighteenth birthday do not need to be disclosed where section 258 applies, many sports clubs and organisations fail to inform applicants of their rights under section 258. Other organisations specifically state in their guidelines that all offences must be disclosed including juvenile offences.

Irrespective of the guidelines, a person covered by section 258 **does not** **have to disclose their criminal conviction** on the Garda vetting form and to ask that person to do so may be an infringement of their rights. The Garda Central Vetting Unit (GCVU) will disregard any information that might be provided to which section 258 applies and will not disclose information relating to that criminal conviction to the employer/organisation.

**Our Recommendations**

1. **With regard to the Garda vetting form,** **the provisions of section 258 should be identified on the form, stating clearly that where a person commits an offence while a child, that information does not have to be disclosed.**
2. **Guidelines provided for by organisations relating to the accurate completion of the Garda vetting form should specifically state that where section 258 applies, no disclosure is necessary.**
1. See section 258(4)(c) of the *Children Act 2001*. See also Law Reform Commission, *Report on Spent Convictions* (Dublin: LRC 84-2007, July 2007) p. 53. [↑](#footnote-ref-1)
2. See section 258(4)(c) of the *Children Act 2001*. [↑](#footnote-ref-2)
3. Under the *Children Act 2001* there is, for example, no requirement to disclose the existence of a criminal record when seeking employment in sensitive areas such healthcare or childcare. However, section 258(4)(d) of the Act provides that the Minister for Justice may, by Order, exclude or modify the application of the 2001 Act. To date, no such exclusions or modifications have been made. [↑](#footnote-ref-3)