



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

**Policing Authority Submission to the
Committee on the Rights of the Child on
Ireland's combined fifth and sixth periodic
reports**

8 August 2022

Background and Context

The Policing Authority (Authority) welcomes the opportunity to make this submission to the United Nations Committee on the Rights of the Child (the Committee). The Authority was established on 1 January 2016 by the enactment of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015, amending the Garda Síochána Act 2005 (the Act). Its primary remit is to oversee the performance by the Garda Síochána (Ireland's National Police and Security Service) of its functions relating to policing services.¹ A key function of the Garda Síochána is vindicating the human rights of each individual.²

In carrying out its statutory oversight role, the Authority places considerable emphasis on human rights and issues relating to children and young people including through regular engagement with the Garda Commissioner and senior colleagues and with organisations advocating for and representing children and young people.

The Authority recently published its Statement of Strategy 2022-2024, of which a key strategic objective is to improve the experience of policing, especially for children and young people.

It has also funded research on children and young people and policing in Ireland. For example, the Authority established a research bursary in 2019 and following a competitive application process, two inaugural bursaries to a total value of €35,000 were awarded to the following two studies:

- *Children's Rights and Police Questioning*³; and
- *The Garda Síochána and Child Mental Health: An investigation of pathways to crisis mental health care*⁴.

These two studies have been published and may be of interest to the Committee.

The submission is structured according to key areas of policing and aspects of the Authority's oversight applying the lens of the different Articles of the Convention. Brief reflections on the need for an overarching policy on children and policing, policing in the context of domestic, sexual and gender-based violence, oversight of the use of police powers, policing and mental health issues, and policing during the COVID-19 pandemic are also included.

Overarching Policy (Article 3)

The Authority is mindful that contact and interaction between children and the Garda Síochána is varied. This includes young people involved in crime, the process for diversion from the penal system, children who are victims of domestic and child sexual abuse, children removed from their home due to unfortunate familial circumstances and immediate risks to their safety, and children who are experiencing a mental health episode or crisis. Each type of contact presents unique and particular challenges for the Garda Síochána.

¹ Garda Síochána Act 2005, as amended, s.62H (a).

² Garda Síochána Act 2005, as amended, s.7. The Act also states that "Policing services are to be provided - (ii) in a manner that respects human rights..." Garda Síochána Act 2005, as amended, s.3B

³ Ursula Kilkelly and Louise Forde, [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#) (21 December 2020);

⁴ Louise Rooney, Deirdre Healy and Fiona McNicholas, [The Garda Síochána and Child Mental Health](#) (3 November 2021).

In practice, therefore, interactions with children fall across all operational areas of the Garda Síochána. There has been considerable success in relation to keeping children safe and specialist resources have been put in place that respond to children's particular needs. However, there is no overarching policy setting out a vision and strategy regarding children and policing. The Authority believes that it is important that the Garda Síochána now consider more strategically how it engages with children and young people.

The Authority has encouraged the Garda Síochána to develop an overarching policy on children and policing. Such a policy could be informed by and should be in keeping with key principles outlined in the Convention including the best interests of the child. This can better ensure coherency and consistency across all operational policies and procedures that vindicate the rights of the child as victim, witness and suspect. The Garda Síochána should also engage and consult with children and the organisations representing them in the development of this policy.

Domestic Sexual Gender Based Violence (DSGBV) and Child Sexual Abuse

(Articles 16, 19 and 34)

Domestic Abuse

A major area of focus for the Authority since its establishment has been the policing of domestic, sexual and gender based violence with a particular emphasis on sexual offences and domestic abuse. The Authority is mindful that exposure to domestic abuse is a form of mental violence⁵, and that children who are victims of domestic violence are particularly vulnerable and entitled to protection in the form of effective deterrence against serious breaches of their personal integrity.⁶ The Authority is pleased to report some positive developments in this area.

The Garda Síochána launched Operation Faoiseamh in 2020 in response to the increase in domestic abuse-related calls received during the COVID-19 pandemic to provide enhanced support and protection to victims, responding to more than 43,000 calls for assistance in respect of domestic abuse incidents. More than 11,600 criminal charges were created in 2020 for crimes involving an element of domestic abuse, including breaches of domestic violence orders.⁷

Divisional Protective Service Units (DPSUs) established in each of the geographical divisions of the Garda Síochána in 2020 seek to provide a consistent, dedicated and professional service to victims of specialised crime including sexual crime, human trafficking, child abuse and domestic abuse.

The ongoing roll-out and use of a Domestic Violence Risk-Assessment Tool is also a positive development.

The Authority has on a number of occasions highlighted the on-going capacity issues with DPSUs and evidence of inconsistency in enforcing domestic violence orders among ordinary members of the Garda

⁵ Committee on the Rights of the Child, General Comment Number 13: Article 19: the right of the child to freedom from all forms of violence (2011) CRC/C/GC/13.

⁶ Kurt v Austria App no 62903/15 (ECtHR Grand Chamber, 15 June 2021), para.163.

⁷ Figures provided by the Garda Commissioner to the Committee of Public Accounts (31 March 2022). Available [here](#).

Síochána. It has and continues to impress upon the Garda Commissioner the importance of ensuring consistency in the response of all Garda members to allegations and incidents domestic abuse.

The roll-out of training for DPSUs, including the human rights related aspects of DSGBV to all units, is also of fundamental importance.

Child Sexual Abuse

In March 2018, the Authority received a Ministerial request under section 117(a) (2) of the Act to monitor and oversee the measures taken by the Garda Síochána to implement the recommendations contained in Garda Inspectorate report *'Responding to Child Sexual Abuse'*.

The Garda Síochána has made some progress on implementation but issues remain.

The Authority is aware that full implementation of the report requires adequate planning, sufficient resourcing of Garda ICT, accommodation and training, as well the development and maintenance of strong and effective interagency working practices with TUSLA and other relevant agencies.

The Authority is also concerned by recent documented cases in which the response and service provided to victims of child sexual abuse was unsatisfactory. In May 2022, for example, the Garda Commissioner expressed regret for the failure to adequately investigate abuse allegations referred to the Garda Síochána by Greater Manchester Police in the United Kingdom.⁸

The Authority is also very concerned at the ongoing backlog of unexamined ICT devices in cases of suspected sexual abuse and exploitation. In 2017, the Inspectorate stated that the Garda Síochána needed to take urgent action to reduce the volume of devices seized and reduce the current backlog of examination of devices.⁹ However, despite investment, the Authority through its oversight activities with respect to the Garda National Cyber Crime Bureau (GNCCB¹⁰), has clarified that the backlog is now approximately three years.

The Authority is mindful of the implications of this backlog including potential harm to children and delayed prosecutions. The Authority recommends increased resources and strategic planning to reduce this backlog and will continue to engage with the Garda Síochána on this critical issue.

CAD 999

The Authority has been actively engaged in the oversight of the inappropriate closure of Computer Aided Dispatch (CAD¹¹) incidents/ emergency 999 calls by the Garda Síochána.¹²

⁸ This case was investigated by the Garda Síochána Ombudsman Commission (GSOC). Paul Reynolds, 'Harris accepts GSOC finding on failure to investigate sexual abuse allegations' (RTÉ, 19 May 2022). Available [here](#).

⁹ Garda Inspectorate, *Responding to Child Sexual Abuse A Follow Up Review* from the Garda Inspectorate (December 2017). Available [here](#).

¹⁰ The GNCCB is the national police unit in Ireland tasked with the forensic examination of computer material seized during the course of criminal investigations.

¹¹ This is a system that uses real-time data to prioritise, assign and dispatch Garda Síochána Members to incidents based on the categorisation and prioritisation of 999 calls.

¹² The Authority was first informed of this matter in December 2020 with more detailed and comprehensive information made available in May 2021. The Authority appointed Mr. Derek Penman to conduct an independent, external preliminary examination of the adequacy of the review being undertaken in response. Mr. Penman published an [interim update](#) in November 2021 and his work is on-going.

An invalid or incorrect closure can prevent a caller from receiving an appropriate service and it prevents both the proper recording of non-crime incidents and further mandatory steps in the investigation of crimes. The provision of an appropriate response to people who call 999 or their local Garda Station in a time of need is also a fundamental component of an adequate policing service.

Domestic abuse calls were closed in contravention of the Garda Síochána's domestic abuse policy.¹³

As a result of these closures, the Garda Síochána has acknowledged that some crime reports could not be progressed due to the statute of limitations, given the passage time between the original incident and engagement with the victim. There were incidents where a victim could not be identified and the extent of any harm or detriment is unknown. There is also a risk to preventing harm if a pattern of alleged crime is not recorded and responded to from both an evidential perspective and from the perspective of deterring an individual from engaging with the police service again. Children may have had calls cancelled inappropriately and suffered indirect and direct harm and different types of violence covered under the Convention as a consequence.¹⁴

Police Powers (Articles 37 and 40)

Anti-Spit Hoods

One problematic aspect of the policing of young people during the Covid-19 pandemic was the use of anti-spit hoods (also known as anti-spit guards) which were introduced as a use of force by the Garda Síochána in April 2020. As of December 2021, seven of the total 140 incidents of use were on children. The Authority expressed opposition at the time of their introduction noting the lack of adequate training and gaps in the human rights impact assessment conducted prior to their deployment.

According to the Garda Síochána at the time, their introduction was to be a temporary protective measure/precaution against the transmission of COVID-19. However, as will be seen from the COVID-19 Authority reports to the Minister, the Authority's view was that the evidence supporting the efficacy of anti-spit hoods as a means of preventing the spread of COVID-19 was lacking. The Authority has also emphasised the negative impact caused by their use on individuals' human rights, and the Garda Síochána should consider their withdrawal from use. Notwithstanding this, the Garda Síochána has decided to continue the use of the devices subject to appropriate training and ongoing review.

The recent review conducted by the Garda Síochána on their use stated that the devices should be used on children only in exceptional circumstances. However, it is not clear what constitutes an exceptional circumstance nor what arrangements would ensure the consistent application of the devices on children, and the Authority has requested more detail on this critical aspect of their use.

This is a matter on which the Authority continues to have engagement with the Garda Síochána. At a recent meeting with the Garda Commissioner in June 2022, the Authority noted the lack of clarity around the decision to continue using anti-spit hoods. The Authority also expressed its dissatisfaction with the

¹³ Mr. Penman recommended a review of the very high-risk Domestic Violence Sexual Assault (DVSA) incidents included in the CAD Review and an assessment of the effectiveness of current protocols and the consistency of response.

¹⁴ Committee on the Rights of the Child, General Comment Number 13: Article 19: the right of the child to freedom from all forms of violence (2011) CRC/C/GC/13.

decision of the Garda Síochána not to provide the advice of the human rights adviser to the Authority with regard to the decision to continue the deployment of anti-spit hoods.

Garda Síochána (Powers) Bill

The Authority has engaged with the Department of Justice on the rights of children during the passage of the Garda Síochána (Powers) Bill—legislation to codify police powers of arrest, search, seizure and detention—through the Irish Parliament (Oireachtas).

As part of this engagement, the Authority stressed the importance of enshrining appropriate and robust safeguards for children in the new Bill, and in any subsequent regulations and proposed Codes of Practice. This included the importance of access to legal advice prior to and during questioning.

The Authority has been vocal during the past number of years on the importance of the Garda Síochána collecting and publishing data on all uses of powers on children under the Bill disaggregated by ethnicity in compliance with human rights and equality standards. The Authority has recommended to the Department of Justice that legislative provision for the recording of race and ethnicity be incorporated in the forthcoming Bill.

Custody and Detention

The Authority is mindful that all persons who are detained in police custody or who are taken or summoned to a police station are vulnerable and the Garda Síochána are under a duty to protect them. Research funded by the Authority highlighted how being questioned by the police can be an intimidating and at times terrifying experience for children.¹⁵ While noting many examples of good, child-friendly practice by members of the Garda Síochána, the research concluded that improvements are needed to ensure that the rights of the child are fully and consistently protected during police questioning with a child's experience dependent on the approach of individual members of the Garda Síochána. In this context, the Authority wishes to draw the Committee's attention to the importance of addressing the report's recommendations, which include:

- the development of a clear policy on child interviewing;
- improving facilities in Garda Síochána stations;
- the detention of children in Garda custody as a last resort;
- augmenting the Garda Síochána Interview Model (GSIM) with training on children's needs and rights, and promoting children's exercising of their right to legal assistance; and
- the development of a law and policy framework to address problematic issues around the role of parents, guardians and "other" or "appropriate" adults.¹⁶

This last recommendation is echoed by the recent Garda Síochána Inspectorate ('Inspectorate') report *Delivering Custody Services*¹⁷. More broadly, the Authority is concerned by the findings of the

¹⁵ Ursula Kilkelly and Louise Forde, [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#) (21 December 2020).

¹⁶ *ibid*

¹⁷ See recommendation 16. Garda Inspectorate, '[Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations](#)' (24 February 2022).

Inspectorate's report which found that during the course of its inspection that the rights of children were not always safeguarded.¹⁸

The Authority will engage in oversight of the implementation of the report's recommendations including those pertaining to children. In particular, the Authority notes the recommendation to review and update Garda Síochána policies, procedures and practices on searching persons in custody, and that all incidents of use of force on children in custody should be comprehensively reviewed.¹⁹

The Authority also recommends that data on the use of force on children, including those in custody, is published as part of the Garda Síochána's use of force statistics.²⁰

Mental Health

The Authority recognises the demands that dealing with mental health related incidents and crises place on the Garda Síochána and is mindful of the need for greater interagency work and the availability of community based mental health services. The Commission on the Future of Policing in Ireland recommended that Multi-agency Crisis Intervention Teams should be established in all police divisions, with round the clock response capabilities.²¹ In this context, the Authority welcomes the pilot in the Limerick division of Community Access Support Teams (CAST), multi-agency crisis intervention teams, and is mindful of the potential of multi-agency approaches to responding to mental health.

The number of young people taken into garda custody under section 12 of the 2001 Mental Health Act is of concern, noting the current uncertainty as to whether this provision applies to children.²² Between 1 July 2018 and 30 June 2019, according to the recent report of the Inspectorate on custody, 2,091 adults and 61 children were taken into custody in this manner.²³

The current draft Heads of Bill to amend the Mental Health Act approved on 13 July 2021 gives the Garda Síochána the power to take a child into custody once the criteria for involuntary detention under the act are fulfilled, providing in such circumstances for a child to be brought into custody and to an approved inpatient facility or other hospital, as soon as possible for an examination by a consultant psychiatrist.²⁴

A garda station would not appear to be a suitable location for a child during a mental health crisis and alternative places of safety are more appropriate in such instances. The use of this power on children must be used as a last resort and in the absence of an alternative. The Authority recognises that legislative amendment is required to achieve this which is beyond the capacity of the Garda Síochána to enact.

¹⁸ Garda Inspectorate, '[Delivering Custody Services](#): A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations' (24 February 2022).

¹⁹ *ibid*

²⁰ Use of force statistics are published [here](#) on the Garda Síochána website.

²¹ Commission on the Future of Policing in Ireland, [The Future of Policing in Ireland](#) (September 2018).

²² [Report of the Expert Group on the Review of the Mental Health Act, 2001](#), (5 March 2015).

²³ Garda Inspectorate, '[Delivering Custody Services](#): A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations' (24 February 2022).

²⁴ *Head 110 – Section 90 – Powers of Garda Síochána to take a child believed to fulfil criteria for involuntary detention into custody*. Department of Health, (2021) Draft Heads of Bill to Amend the Mental Health Act. Available [here](#).

COVID-19 Pandemic (Article 15, 16 and 24)

The COVID-19 pandemic had far-reaching implications for society, young people, and policing.

Following a request by the Minister for Justice, the Authority monitored the use of extraordinary powers by the Garda Síochána during the pandemic producing 16 reports which addressed such matters as the distribution and frequency of the use of police powers, human rights, the lived experience of policing and the welfare and well-being of Garda members.

The COVID-19 measures and the extraordinary powers afforded to the Garda Síochána were introduced with the aim of protecting life, bodily integrity and health by preventing the spread of a contagious, often deadly virus. However, the Authority consistently held the view that emergency powers afforded to the Garda Síochána should be as limited and used as sparingly as possible, and was supportive of a balanced and graduated approach.

The Authority's overall assessment of policing during the pandemic was positive and welcomed the largely graduated and proportionate use of powers adopted by the Garda Síochána which was important for public confidence and trust. However, through engagement with communities, organisations and groups nationwide, including those representing children and young people throughout the period, young people emerged as a group that encountered particular difficulties in its engagement with the Garda Síochána.

For example, the Authority's 18 December 2020 report on policing performance by the Garda Síochána during Covid-19 noted that: "Inconsistency did arise in relation to the experience of policing by one cohort – young people who, irrespective of social class, ethnicity, sexuality or location within the country, perceived policing during this time as an instrument of control rather than care."²⁵

²⁵ Policing Authority, [Report on Policing Performance by the Garda Síochána during Covid-19](#) (18 December 2020), p.10.