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**BILLE NA LEANAÍ, 1999**  
**CHILDREN BILL, 1999**

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**EXPLANATORY MEMORANDUM**

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*Purpose of the Bill*

The primary purpose of the Bill is to replace the remaining provisions of the Children Act, 1908, and associated legislation, with a modern comprehensive statute. It covers three main areas of the law. First, and predominantly, it provides the framework for the development of the juvenile justice system. Second, it re-enacts and updates provisions in the 1908 Act protecting children against persons who have the custody, charge or care of them (*Part 12*). Third, it provides for a family welfare conference and other new provisions for dealing with out of control non-offending children (*Parts 2 and 3*).

In general, children are defined in the Bill as persons of or over the age of criminal responsibility, i.e., 12 years of age (juvenile justice aspects only) and under the age of 18 years.

**PART 1**

Preliminary (*sections 1 to 6*)

This Part defines terms used in the Bill and provides for other routine matters.

**PART 2**

Family Welfare Conference (*sections 7 to 16*)

This Part provides a mechanism for early intervention at an inter-agency level for children at risk; that mechanism is a family welfare conference. The conference can be triggered in two ways; first, on a direction from the Court where it considers that a child before it on a criminal charge may be in need of special care or protection and second, where it appears to a health board that a child in its area may require special care or protection.

*Section 7* establishes the circumstances in which a family welfare group conference may be convened. The health board will appoint a coordinator to convene and chair the conference.

*Section 8* sets out the functions of a family welfare conference. It can decide if a child is in need of special care or protection and, whether or not it so decides, make recommendations to the health board relating to the care and protection of the child.

*Section 9* lists the persons who can attend a conference. In general, attendance will include the child, the parents or guardian or guardian

*ad litem* and maybe other relatives of the child and any other persons who know the child or have a particular expertise in the matter to be discussed whose presence would benefit the conference.

*Section 10* allows a conference to regulate its own procedures.

*Section 11* obliges the health board that arranged for the convening of a conference to provide it with the necessary administrative services.

*Section 12* is a procedural provision listing the persons who are entitled to be notified of the recommendations of the family welfare conference.

*Section 13* sets out how the health board can give effect to the recommendations of a family welfare conference. Essentially it can apply for a special care order (provided for in *Part 3*), apply for an order under the Child Care Act, 1991, or provide the necessary services or assistance to the child and his or her family.

*Section 14* ensures that any information, statement or admission made at a family welfare conference will be privileged, i.e., cannot be admitted in evidence in any criminal proceedings. It also protects the identity of children in respect of whom family welfare conferences have been held.

*Section 15* empowers the Minister for Health and Children to make regulations to enable the conference to have full effect and for its administration.

### PART 3

#### Children in need of Special Care or Protection (*section 16*)

This Part amends and extends the Child Care Act, 1991, by the insertion of a new Part IVA into that Act to provide the health boards with an additional range of powers so as to ensure that non-offending children who are out of control receive special care, education and treatment.

*Section 16* provides for the amendment of the Child Care Act, 1991, by the insertion of the new Part IVA.

#### *New Part IVA inserted into Child Care Act, 1991*

Section 23A imposes a statutory duty on health boards to institute proceedings for a special care order or an interim special care order, as appropriate, in respect of a child who appears to the board to be in need of special care or protection which he or she is unlikely to receive unless a court makes such an order. Before applying for such an order the health board will arrange for the convening of a family welfare conference in respect of the child. A parent may request a health board to apply for a special care order in respect of his or her child. If a health board decides, following such a request, not to apply for such an order, the board must notify the parent of its reasons for so deciding.

Section 23B provides for the making of a special care order on the application of a health board where the court is satisfied that—

- (a) the behaviour of the child is such that it poses a real and

substantial risk to his or her health, safety, development or welfare, and

- (b) the child requires care or protection which he or she is unlikely to receive unless the court makes an order under this section.

A special care order would commit a child to the care of a health board and authorise a health board to arrange for appropriate care, education and treatment for the child and for this purpose to detain the child in a special care unit. A health board will have authority to take such steps as are reasonably necessary to prevent children from injuring themselves or other persons in such a unit or from absconding. The duration of a special care order will be between 6 and 12 months, but may be extended on application by a health board if the court is satisfied that the grounds for the making of such an order continue to exist. A health board may apply to the court for the discharge of such an order if it appears to the board that the circumstances which led to the making of the order no longer exist. A special care order will cease to have effect when the person to whom it relates reaches 18 years of age unless the court orders otherwise in the interests of the person concerned. Provision is also made to allow a health board place a child in a children's residential centre, with foster parents or give the child temporary release as part of a programme of treatment.

Section 23C enables a court to make an interim special care order where there is reasonable cause to believe that grounds exist for the making of a special care order and that it is necessary in the interests of the child that he or she be detained in a special care unit. The application can be made notwithstanding the fact that a family welfare conference is being arranged or an application for a special care order is or has been made.

Section 23D obliges a Garda to deliver a child to the custody of a health board where the behaviour of the child is such that it poses a real and substantial risk to the child's health, safety, development or welfare and it would not be sufficient for the protection of the child to await the making of an application for an interim special care order by a health board under section 23C.

Section 23E provides for the notification by a health board of a parent having custody of a child or a person acting in *loco parentis* of the placement of a child in a special care unit pursuant to an interim special care order.

Section 23F provides for the variation or discharge of special care orders by the court on its own motion or on the application of any person.

Sections 23G to 23I provide for the application of certain provisions of the Child Care Act, 1991, to proceedings in relation to a special care order or to an interim special care order.

Section 23J provides for the application of provisions in the Child Care Act, 1991, to children committed to the care of a health board pursuant to a special care order or an interim special care order, viz., those dealing with access to children in care, review of cases of children in care, aftercare and application to the District Court for directions.

Section 23K provides for special care units catering for children who are committed to the care of a health board pursuant to a special

care order or an interim special care order. Health boards may provide such units and will also be enabled to make arrangements with a voluntary body or other person to provide and operate a special care unit on their behalf. Approval of the Minister for Health and Children will be required for the provision of such a unit. The approval process will involve the unit being inspected by a person authorised by the Minister for Health and Children. Ministerial approval of a unit will apply for a period of 3 years. The Minister may make regulations governing the operation of special care units.

Section 23L enables a health board or the Gardaí to recover a child who absconds from a special care unit.

Section 23M adds Part IVA to the Parts of the 1991 Act to which section 4 (voluntary care) of that Act applies.

Section 23N ensures that children on being found guilty of offences cannot be placed or detained in special care units.

## PART 4

### Diversion Programme (*sections 17 to 51*)

The primary purpose of this Part is to place the Garda diversion programme (formerly known as the juvenile liaison office scheme) on a statutory basis. At present it operates on an administrative basis. The statutory scheme will operate similarly in many respects to the administrative scheme, but the incorporation of restorative cautioning and a conference into the scheme are new features.

*Section 18* provides a guiding principle underpinning this Part, i.e., that admission to the diversion programme should be considered as the way to deal with children who have committed offences (apart from certain serious offences to be prescribed in regulations), unless the interests of society require otherwise.

*Section 19* sets out the objective of the diversion programme, i.e., to divert children, who have accepted responsibility for their criminal behaviour, away from crime.

*Section 20* establishes that the diversion programme will be managed by a member of the Garda Síochána of at least superintendent rank, to be called the Director, and will be under the control and general superintendence of the Garda Commissioner.

*Section 21* gives the Commissioner power to appoint a substitute for the Director during the temporary incapacity of the Director. It also gives the Director power to delegate functions.

*Sections 22 to 24* set out the procedures to be followed when a child accepts responsibility for an offence and also the conditions for admission to the diversion programme. The views of any victim will be sought and considered before a child is admitted to the Programme, but the agreement of the victim to such admission is not essential.

*Section 25* deals with the administration of a caution, whether informal or formal. An informal caution can be administered where no previous caution has been administered or where any previous caution or cautions have also been informal. A formal caution can be administered where no previous caution has been administered or where any previous caution has been either informal or formal.

*Section 26* provides for what may be described as “restorative cautioning”. It means that the victim may be present at the administration of a formal caution. This will allow for a discussion during which the child will have to confront the effects of his or her behaviour. The child can also be invited to apologise and to make some form of reparation to the victim.

*Sections 27 and 28* deal with the supervision of children who have been cautioned (normally, but not exclusively, those who have received formal cautions) and the level of that supervision.

*Section 29* establishes the conference that may be held in respect of a child who has been formally cautioned and is being supervised by a juvenile liaison officer. It is an integral part of the diversion programme. It also sets out the functions of the conference. The conference will have a wide remit to examine the child’s problems, reasons for offending, etc., and will be able to discuss how the child might, through family support and community involvement, be diverted from crime. This could be done through the formulation of an action plan (*section 39*).

*Sections 30 to 50* deal with other aspects, some of which are procedural, of the conference. Any decision to convene a conference will be made by the Director on the basis of a report from the juvenile liaison officer (JLO) supervising a child. Attendance at a conference will consist of the child, his or her parents or guardian and/or other members of the child’s family or relatives, the facilitator (who will be the supervising JLO or another member of the Garda Síochána), and where the facilitator does not chair the conference, the chairperson (who need not be a member of the Garda Síochána). Other persons who could make a positive contribution to the conference can also be invited to attend. An important participant at a conference will be the victim, where the victim is willing to attend. The conference will be able to formulate an action plan for the child; the action plan reflects in this Part the concept of restorative justice. The plan may provide for such matters as an apology and reparation to the victim, participation by the child in appropriate sporting or recreational activities, attendance at school or work or participation in other training or educational courses that do not interfere with school or work. The conference will also be able to consider whether the child’s period or level of supervision should be varied (the final decision on that being a matter for the Director). A means under which the effectiveness of the diversion programme, in particular the conference aspect, can be monitored, is provided. The Minister will be able to appoint a committee of 3 persons, a member of the Garda Síochána of Chief Superintendent rank and 2 lay persons, chaired by an Assistant Commissioner, to undertake such monitoring (*sections 44 and 45*).

*Section 51* provides for the protection of the identity of any child admitted to the diversion programme or in relation to the proceedings of a conference.

## PART 5

### Criminal Responsibility (*sections 52 to 54*)

This Part sets a new age of criminal responsibility, places the *doli incapax* rule on a statutory basis, clarifies the duties of the Garda Síochána when dealing with an underage child, and creates a new offence of aiding or abetting, etc., an under-age child to “commit an offence”.

*Section 52* raises the age of criminal responsibility (i.e., the age which determines capacity to commit offences) from 7 years to 12 years. This section also places the common law *doli incapax* rule on a statutory basis. This rule states that there is a rebuttable presumption that a child between the age of criminal responsibility and 14 years is incapable of committing an offence by reason that the child did not have the capacity to know that the act or omission concerned was wrong.

*Section 53* provides an interface between this Bill and the child care legislation in respect of children under the age of criminal responsibility who have committed an act which, if committed by an older person, would constitute an offence.

*Section 54* makes it clear that when a person aids, abets, counsels or procures a child to be responsible for an act or omission which, but for the child's age would be an offence, that person can be indicted, tried and prosecuted as a principal offender.

## PART 6

### Treatment of Child Suspects in Garda Síochána Stations (sections 55 to 70)

This Part re-enacts, with additions and modifications, the relevant Regulations of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, as they apply to children.

*Section 55* establishes the principle governing the treatment of child suspects in Garda Síochána stations.

*Sections 56* and *57* are procedural relating to the separation of children from adults in Garda stations (where practicable) and the information that must be given to child suspects when arrested and brought to a Garda station.

*Sections 58* to *60* are concerned with notification of a child's arrest to his or her parent or guardian, in their absence an adult relative of the child or other suitable adult, and a solicitor. *Section 59* deals specifically with notification to a health board where the member in charge of the station has reasonable cause to believe that the child may be in need of care or protection.

*Section 61* is concerned with the persons (usually the parent or guardian) who should be present when a child is detained and being questioned in a Garda station under enabling legislation, and the very limited circumstances in which questioning can commence in the absence of those persons.

*Sections 62* and *63* deal with the notification of court proceedings involving a child to the parents or guardian of that child and the circumstances in which such notification can be given to an adult relative of the child or other adult.

*Sections 64* and *65* cover the same ground as in *sections 62* and *63* where proceedings against a child are to be commenced by the issuing of a summons.

*Section 66* sets down some provisions that are common to *sections 56* to *63* and *65*.

*Section 67* raises from 17 years to 18 years the age at which a person is to be regarded as a child for the purposes of detention under section 5 of the Criminal Justice Act, 1984, (which deals with access to a solicitor and notification of the detention to a parent, guardian or spouse).

*Section 68* establishes the conditions under which a child is released on bail by the member in charge of a Garda station.

*Section 69* applies certain of the provisions of this Part to married children. This brings the legislation into closer conformity with the Treatment Regulations.

## PART 7

### Children Court (*sections 71 to 76*)

This Part establishes the Children Court and provides its jurisdiction. It will be the District Court, i.e., a court of summary jurisdiction, when that court is sitting to deal with matters relating to children.

*Section 71* establishes the Children Court and its jurisdiction, which will include the jurisdiction conferred on it by this Act and the jurisdiction conferred on the District Court by Parts III, IV, IVA and V of the Child Care Act, 1991.

*Section 72* allows the President of the District Court to designate one or more judges to be a judge of the Children Court in district court districts to which more than one District Court judge is assigned. In other districts, i.e., those with one judge, the President will establish a panel of judges from which the President may designate judges to be a Children Court judge; this will not preclude the possibility of the assigned judge also being the Children Court judge in a particular case.

*Section 73* is aimed at preventing persons waiting around for long periods before a case in which they are involved is heard in the Children Court.

*Sections 74 to 76* deal with jurisdiction. Generally, a child charged with a summary offence jointly with an adult will be dealt with in the Children Court, as will the adult, but any sentence imposed on the adult will be one that could be imposed by the District Court. Most indictable offences by a child can be dealt with summarily in the Children Court, unless the child elects for trial by jury, or the Court is of the opinion that the offence is not a minor one fit to be dealt with summarily. Offences required to be tried by the Central Criminal Court (such as murder or rape) or manslaughter must go for trial. A child charged jointly with an adult with an indictable offence will be dealt with in accordance with *section 75*, i.e., jurisdiction to deal summarily with indictable offences.

## PART 8

### Proceedings in Children Court (*sections 77 to 94*)

This Part deals with proceedings in the Children Court, including the power to adjourn proceedings if it appears to the Court that a child may be in need of care or protection or could benefit from the convening of a family conference and the formulation of an action

plan; remand, and the attendance of a child's parents or guardian in court.

*Section 77* sets out the rights of children charged with offences when they are before the Court. This includes the principle that criminal proceedings shall not be used solely to provide any assistance or services needed to care for or protect a child.

*Section 78* provides the procedures to be followed where the Court adjourns the proceedings against a child and directs the health board to investigate the child's circumstances. It can do this where it considers that it may be appropriate for a care or supervision order to be made under the Child Care Act, 1991. Such consideration will give rise to the convening of a family welfare conference in respect of the child.

*Sections 79 to 88* introduce into the Bill a family conference under the direction and supervision of the Court.

*Section 79* empowers the court to direct the probation and welfare service to arrange for the convening of a family conference in respect of a child who has admitted to his or her criminal behaviour. In such a case it may adjourn the proceedings until the family conference has been held.

*Section 80* establishes that a probation and welfare officer will convene the family conference not later than 28 days after the direction from the Court.

*Section 81* provides that the main point of the family conference will be the formulation of an action plan for the child.

*Section 82* sets out the options available to the probation and welfare officer who convened the conference at the resumed sitting of the Court. Where it is possible to submit an action plan to the Court, the Court may agree to it or amend it and order the child to comply with it. Where it has not been possible to formulate a plan, the Court itself may formulate it or grant an extension of time for its formulation at a family conference. If the Court is satisfied that it would not be possible to formulate a plan it may resume the proceedings (*section 83*).

*Section 84* specifies that the Court may also resume the proceedings against a child where the child fails to comply with an action plan.

*Section 85* sets out the alternatives available to the Court at the resumed sitting to review compliance with the action plan. The Court can resume the proceedings but if it is satisfied that the child has complied with the plan, dismiss the charge on its merits.

*Sections 86 to 88* are routine provisions applying provisions of the action plan under *Part IV* to the action plan under this Part, giving the family conference power to regulate its procedures and obliging the principal probation and welfare officer to provide administrative services to the family conference.

*Sections 89 and 90* deal with remand, whether on bail or in custody. Children under 16 years of age remanded in custody will be remanded in junior remand centres (which may be children detention schools or part of such schools) operated by the Minister for Education and Science and children of or over the age of 16 years will be held in remand institutions (at present St Patrick's Institution)



under the aegis of the Minister for Justice, Equality and Law Reform. Where a child is admitted to bail, the release may be made subject to one or more of several conditions.

*Section 91* obliges parents (both) or a guardian to attend all stages of the proceedings in the Court when the case against their child is being heard. Failure to attend, unless excused by the Court, could be treated as a contempt of court. Where the parents or guardian do not so attend, the child may be accompanied by an adult relative or another adult.

*Section 92* states that a child, while being conveyed to or from the Court should, as far as practicable, be prevented from associating with an adult who has been charged with a separate offence.

*Section 93* deals with restrictions on reports of proceedings in which children are concerned. In general, the anonymity of the child must be respected unless the Court authorises, for stated reasons, that it can be dispensed with.

*Section 94* lists the persons who can be present in the Children Court while a case involving a child is in progress.

## PART 9

### Powers of Courts in relation to child offenders (sections 95 to 156)

This Part sets out the powers of the courts in relation to child offenders from the time of a finding of guilt to a decision on how best to deal with the child. Those powers will be exercised in accordance with the principles established by *section 96*.

*Section 98* lists the powers of the courts on the finding of guilt of a child. Most of these are provided for in the subsequent sections of *Part 9*.

*Sections 99 to 107* deal with the powers of the courts to request a report on a child on a finding of guilt. In most cases the court would be obliged to request a probation officer's report. One exception is for offences for which the court forms the opinion that the appropriate penalty would not be a community sanction, detention (whether or not deferred) or detention and supervision; in other words, the less serious end of the scale of offences. The court would also not be obliged to request such a report where the penalty is fixed by law or when material in a previous report is still up-to-date.

The courts also have the power to request any other report they consider appropriate in addition to the probation officer's report. Such a report could, for example, be a psychological report or a victim impact report.

In general, the purpose of any report is to assist the court in determining the most suitable way of dealing with a child it has found guilty of an offence.

*Sections 108 to 110* deal mainly with the powers of the courts to impose fines on children. Any fine so imposed can be no greater than half the fine that can be imposed on an adult convicted of the same offence. The court has to have regard to the child's ability to pay when determining the amount of the fine and, if the child defaults on payment, he or she cannot be detained for the default.

*Sections 111 and 112* give the courts power to make a parental supervision order. This can be imposed where the court is satisfied that a wilful failure on the part of the parents of a child before the court to take care of or to control the child contributed towards the behaviour which resulted in the child being found guilty of an offence. The effect of the order can include obliging the parents to undergo treatment for alcohol or other substance abuse or to participate in a parenting skills course.

*Section 113* gives the courts power to order the parent or guardian of a child found guilty of committing an offence to pay compensation. The court has to have regard to the present and future means of the parent or guardian.

*Section 114* gives the courts power to order the parent or guardian of a child offender to enter into a recognisance to exercise proper and adequate control over the child. If the parent or guardian does not consent to being bound over, and the court considers the refusal unreasonable, it may treat the refusal as a contempt of court. A recognisance can only be forfeited where the child is found guilty of another offence and the court is satisfied that the failure of the parent or guardian to exercise proper and adequate control over the child contributed to the child committing that other offence.

*Sections 115 to 117* introduce general provisions relating to community sanctions, which are dealt with in detail in subsequent sections. They give the meaning of community sanction (i.e., a community service order, a probation order or one of the new orders provided in this Part), the circumstances under which such a sanction can be imposed, the duties of the court when imposing a sanction and the conditions to which community sanctions may be subject.

*Sections 118 to 123* introduce the new day centre order. A day centre is a place a child offender will be obliged to attend, if the appropriate order is made by the court, for up to 90 hours in a six months period to be involved in activities or be given appropriate occupation or instruction while under the supervision of a probation and welfare officer. Activities can also take place outside of the day centre. Day centres can be operated by the probation and welfare service or another body with the assistance of the probation service. A place not normally regarded as a day centre could also be a day centre for the purposes of the legislation, with the agreement of the persons who run or manage it.

*Sections 124 to 127* deal primarily with various aspects of probation orders which are highlighted through being given the status of separate orders. These aspects are training or activities, intensive supervision and residential supervision.

*Section 128* gives additional powers to the courts where a child has failed to observe any condition of a recognisance under the Probation of Offenders Act, 1907.

*Sections 129 to 132* give the courts power to impose suitable person or mentor orders. The suitable person can be a person with whom the child offender can reside for a time to be determined by the court (with the consent of the child's parents or guardian) and a mentor may be a person who can be assigned by the court to assist and offer general support to child offenders and their families. In each case the child remains under the supervision of a probation and welfare officer for the duration of the order.

*Sections 133 to 136* deal with the power of the courts to impose restrictions on movement orders on child offenders. These orders can be used to restrict a child offender to a particular residence for a specified time between 7.00 p.m. and 6.00 a.m. or to require the child to stay away from a particular premises, place or locality for specified times, or both.

*Section 137* gives the courts power to combine a restriction on movement order with either a probation order or a day centre order. Such an order is called a dual order.

*Sections 138 to 141* provide measures that are, in general, common to the community sanctions, including the power to make regulations to enable them to have full effect or for their administration.

*Sections 142 to 154* deal with detention. Detention, which can only be imposed as a last resort, will be either in children detention schools provided by the Minister for Education and Science (dealt with in *Part 10*) for child offenders under 16 years of age or places of detention provided by the Minister for Justice, Equality and Law Reform for 16 and 17 year olds. Detention in a children detention school will be for a maximum of 3 years (no minimum) and detention in a place provided by the Minister for Justice, Equality and Law Reform will not exceed the maximum that can be imposed by the District Court. *Sections 144 and 146* deal with the powers of the courts to defer the making of a detention order for up to one year. During the period of deferment a child offender would be under the supervision of a probation and welfare officer. Alternatively, detention could be deferred until a suitable place becomes available in a children detention school. Also the courts will have the power to make an order imposing an appropriate community sanction where, but for the lack of a place in a children detention school, it would have made a children detention order (*section 145*).

In addition, the courts are being given power to impose a combined detention and supervision order (*section 151*) on 16 and 17 year olds under which half the sentence is served in detention and half under supervision by the probation and welfare service in the community.

*Section 155* deals with the situation that arises where a child is convicted on indictment. Children under 16 years of age will serve their sentence in children detention schools until they are 16 years of age (or up to 18 years 6 months, depending on circumstances) at which point, if the sentence has not been completed, they will transfer to places of detention provided by the Minister for Justice, Equality and Law Reform. Where the child has already attained 16 years of age at the time of sentence, he or she will commence the sentence in such a place of detention.

*Section 156* provides that no child can be sentenced to imprisonment.

## PART 10

### Children Detention Schools (*sections 157 to 224*)

This Part abolishes reformatory and industrial schools, functions in relation to which are vested in the Minister for Education and Science, and replaces them with children detention schools. These will be managed by boards of management appointed by the Minister for Education and Science and will be used for the detention of children

under the age of 16 years who have been referred to them by the courts on being found guilty of offences.

*Section 158* sets out the principal object of children detention schools. Their basic function is educational in nature and their overall objective is to promote the re-integration of child offenders into society.

*Section 159* ensures that existing reformatory and industrial schools, functions in relation to which stand vested in the Minister for Education and Science, will, with the agreement of their management, become children detention schools at the commencement of this Part.

*Section 160* allows the Minister to designate suitable places as children detention schools or to arrange for the construction of buildings that are suitable for such designation.

*Sections 161 and 162* give the Minister power to enter into an arrangement with others to provide facilities, similar to children detention schools, for the detention of children found guilty of offences.

*Section 163* sets out the circumstances whereby schools can be permanently closed by the Minister, i.e., where no longer suited or needed for the detention of children and when they can be temporarily closed.

*Sections 164 to 179* deal with the boards of management. Each school or group of schools will be managed by a board appointed by the Minister in accordance with criteria laid down by the Minister. The members of each board should have knowledge or experience of dealing with children. At least one member of each board will be nominated by the Minister for Justice, Equality and Law Reform, and at least one (a health board officer) by the Minister for Health and Children, at least two will be staff members and at least two will be community representatives.

*Sections 180 to 184* are concerned with the appointment of the Director and staff to the schools. Each individual school, or combination of schools, will have a Director who will be responsible for the immediate control and supervision of the schools.

*Sections 185 to 189* oblige the Minister for Education and Science to appoint an Inspector for the schools. The inspector will inspect each school regularly and will be empowered to employ whatever expert help and advice he or she deems necessary for the performance of his or her functions.

*Sections 190 and 191* allow the Minister for Education and Science to appoint a visiting panel for children detention schools with provision for more panels in the future should circumstances justify them. The members of the panel will be able to visit schools, hear complaints from children and report to the Minister on any abuses found or observed or on any other appropriate matter. The Minister can request a board to instruct the panel to report to it on any matter relating to the school and any report made to a board by the panel will be forwarded to the Minister with the views of the board appended.

*Section 192* allows Children Court judges to visit children detention schools at any time.

*Sections 193 to 201* deal with operational matters in the schools, in particular, aspects of admission of children to schools and their treatment therein. A school cannot refuse to accept a child offender referred to it by a court. It must also be in a position at all times to admit such a child. Discipline must be within the prescribed limits but cannot in any case include corporal punishment, deprivation of food or drink, treatment that is detrimental to wellbeing or cruel, inhuman or degrading treatment.

*Sections 202 to 210* deal in a structured way with permitted absences from the schools, mobility trips, temporary leave, placing out under supervision in the community, voluntary aftercare and discharge. While a child may be permitted to be absent from a school at any time for exceptional reasons, the usual situation will be that temporary leave will not be available until at least 2 months after the child's referral. During these periods of leave a child may be restricted in the evenings and night to the residence of the person supervising him or her, with that person's agreement. Placing out under supervision in the community has no specific time limits attached but a child so placed out must live with his or her parents or guardian or other responsible person and remain under the supervision of a probation officer. Where a child has completed his or her period of detention, he or she may voluntarily remain under the supervision of a probation officer, where it is considered appropriate. Other forms of absences include mobility trips under which children may be absent under supervision to promote their personal and social development, their awareness and appreciation in matters of culture, education and recreation and the implementation of treatment or counselling directions and absences for the purpose of seeking employment or work experience, etc.

*Sections 211 to 214* contain miscellaneous provisions relevant to this Part, including the rights of responsible persons, the duty of parents to notify any change of address to the school and the times when a detained child is in lawful custody.

*Sections 215 to 219* deal with escape and other offences, such as helping a child to escape. Escape may be prosecuted or dealt with as a breach of discipline, depending on circumstances.

*Sections 220 to 224* deal with other essential matters such as the Ministerial power to delegate certain functions and to make regulations and also provides for transitional provisions which will, *inter alia*, ensure that no child already in detention will have the period of that detention affected by the coming into operation of this Part.

## PART 11

### Special Residential Services Board (*sections 225 to 244*)

*Part 11* proposes the establishment of a Special Residential Services Board (the Board) for the purpose of ensuring the efficient, effective and coordinated delivery of services to children detained in children detention schools (*Part 10*) or special care units (*Part 3*). Although child offenders on whom children detention orders have been imposed and disturbed non-offending children in respect of whom special care orders have been made will be kept in separate residential accommodation, they regularly present with similar problems, require broadly similar care and treatment and benefit from similar types of services and programmes.

*Section 226* establishes the Special Residential Services Board. It will come into operation on a day to be fixed by the Minister for Health and Children, with the agreement of the Minister for Education and Science.

*Section 227* provides the functions of the Board; that is, the efficient, effective and coordinated delivery of services to children in children detention schools and children in special care residential units.

*Section 228* gives the Minister for Health and Children power to confer additional functions on the Board.

*Section 229* allows the Minister to give general policy directions to the Board in relation to the performance of its functions.

*Sections 230 to 235* provide for the membership of the Board. The members will include three representatives of the children detention schools and three of the Chief Executives of the health boards and five other members will include two experts in child care, two experts in special education and a probation and welfare officer.

*Sections 237 to 239* provide for the appointment of a Chief Executive and staff of the Board.

*Sections 240 and 241* provide for the funding of the Board and its accounting and auditing obligations.

*Section 242* obliges the Board to submit an annual report on the performance of its functions and other appropriate information to the Ministers for Health and Children and Education and Science.

*Section 243* allows the Ministers for Health and Children and Education and Science to delegate their functions under *Part 11* to a Minister of State.

## PART 12

### Protection of Children (*sections 245 to 258*)

The purpose of this Part is limited to reenacting in updated format the protection provisions of the Children Act, 1908; thus allowing the 1908 Act to be totally repealed. In general, the provisions of this Part protect children against abuse by persons who have the custody, charge or care of them.

*Section 246* deals with cruelty to or neglect of children. The main changes from the 1908 Act include a substantial increase in the penalties and removing the lower age limit (i.e., 17) of a person who can be charged with cruelty or neglect. The meaning of "the child's health or wellbeing" is expanded to include mental or emotional health or wellbeing and the expression "ill-treat" will include frightening, bullying or threatening a child.

*Section 247* re-enacts the offence of causing or procuring a child to beg. The main change from the 1908 Act is to place the evidential burden on the appropriate adult (usually a parent) to show that he or she did not send the child out to beg.

*Section 248* re-enacts with increased penalties the provision which makes it an offence to allow a child to reside in or to frequent a brothel.

*Section 249* updates, to take account of recent legislation in the area of sexual offences, the offence of causing or encouraging a sexual offence upon a child.

*Section 250* proposes a new offence which provides a higher penalty for soliciting or importuning a child for the purpose of prostitution.

*Section 251* makes it clear that, unless the court is satisfied that the presence of a child in respect of whom an offence is alleged to have been committed is necessary, the child need not be present in court for the proceedings.

*Section 252* clarifies legislatively the practice whereby anonymity is afforded to children in court proceedings.

*Section 253* re-enacts in updated form a provision in the 1908 Act concerning the mode of charging two or more or continuous offences against children.

*Section 254* is concerned with the circumstances in which the Gardaí can arrest without warrant a person reasonably suspected of having committed an offence against a child. It also refers to the duties of the Gardaí under the Child Care Act, 1991, in such circumstances.

*Sections 255* and *256* re-enact provisions of the 1908 Act that set out the powers of the courts to take depositions from children against whom it is alleged offences have been committed.

*Section 257* repeats a provision in the 1908 Act which provides that where an offence is committed against a child, it will be presumed that he or she was a child at the date of the commission of the offence unless the contrary is proved. It is a defence to prove that the person was not a child.

*Section 258* gives the court power to clear the court, except for certain specified categories of persons, in any proceedings when a child is called as a witness.

### PART 13

#### Miscellaneous (*sections 259 to 272*)

This Part contains provisions that are miscellaneous or common to two or more other Parts.

*Section 259* provides a limited “clean slate” in respect of most offences committed by children. It is not possible to say an offence never took place; what this section does is to limit as far as possible the effects of a finding of guilt by treating the person for all purposes in law as a person who has not committed, been charged with, prosecuted for, found guilty or dealt with for an offence.

*Section 260* extends the duties of probation and welfare officers under the Probation of Offenders Act, 1907, to all cases under this Act where a child is placed under the supervision of a probation and welfare officer and *section 261* provides that it will not be lawful for a parent or guardian to interfere with the supervision of a child under this Act.

*Section 262* gives the Gardaí power to check whether a child is complying with a restriction on movement order imposed by a court or whether a child is complying with any condition confining him or her to a residence as a condition of temporary leave from a children detention school.

*Section 263* allows the principal probation and welfare officer to delegate any of the functions of the principal probation and welfare officer under this Act.

*Section 264* provides for the temporary accommodation of children for up to 24 hours in a Garda station or some other place while in transit to or from court, etc.

*Section 265* permits the Minister to conduct or assist others in conducting research into child crime.

*Section 267* provides a technical amendment to section 5 of the Criminal Law (Rape) Act, 1981. Provisions referred to in section 5 are being repealed (they are concerned with the summary trial in certain cases of children) and are substituted by the equivalent provisions in this Act in *section 80*.

*Section 268* amends sections 17(2) and 59 of the Child Care Act, 1991. The first amendment extends from 8 to 28 days the time a child can remain in the care of a health board under an interim care order and where the board and parent consent, from a period exceeding 8 days to a period exceeding 28 days. The second amends the meaning of “children’s residential centre” so that it will now comprehend institutions for the care and maintenance of physically or mentally handicapped children.

*Section 269* ensures that where a child is in the care of a health board pursuant to any provision of this Act the board will have the same control over the child as if it was his or her parent.

*Section 271* replaces with modifications a provision in the 1908 Act which established safety standards for children at entertainments.

*Section 272* provides that any person under 18 years of age who is an enlisted member of the Defence Forces will continue to be subject to military law.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,  
Meán Fómhair, 1999.*