

# Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023

Bill No. 4 of 2023

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26 May 2023

## Abstract

The [Criminal Justice \(Engagement of Children in Criminal Activity\) Bill 2023](#) provides for two new criminal offences relating to the recruitment of children to commit crime.



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### This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2023, *L&RS Bill Digest: Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023. Bill No. 4 of 2023*

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## Overview

The General Scheme of the Bill (then titled the Criminal Justice (Exploitation of children in the commission of offences) Bill) was published by the Department of Justice on 15 January 2021.<sup>1</sup> The Bill was published on 23 January 2023. The Bill is in line with the commitment made in the [Programme for Government](#) to “criminalise adults who groom children to commit crimes”.<sup>2</sup>

The Joint Committee on Justice engaged in pre-legislative scrutiny of the Bill in May 2021. The Joint Committee requested an oral briefing from Departmental Officials on the provisions and context of the Bill. The Joint Committee did not publish a detailed report when the pre-legislative scrutiny of the Bill concluded. However, the Joint Committee did publish a letter briefly noting the Committee’s findings, based on the Departmental briefing that the Committee had received.<sup>3</sup>

Section 2 of the Bill proposes to create 2 new offences:

- The first provision makes it an offence for an adult to compel, coerce, direct or deceive a child for the purpose of causing the child to commit a crime.
- The second provision makes it an offence to induce or invite; or aid, abet, counsel or procure a child to commit crime.

In both cases, the person committing the crime must be aware, or be reckless as to whether the person being compelled to commit crime is a child. It is not a requirement that the child either engaged in the criminal activity concerned, intended to commit the activity, or has been prosecuted for the relevant offence.

There have been a number of Irish reports analysing the issue of children being recruited to commit crime. These reports underlined the need for legislative intervention in this area, noting the scope and context of the recruitment of children for criminal purposes. The primary reports were produced in partnership between the School of Law at the University of Limerick; the Department of Justice; and the Department of Children, Equality, Disability, Integration and Youth (DCEDIY).

- [Juvenile Justice, Crime and Early Intervention](#) (2011)
- [Greentown Report](#) (2015)
- [National Prevalence Study](#) (2017)
- [Building Community Resilience](#) (2019)
- [Bluetown Report](#) (2020)
- [Redtown Report](#) (2020)

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<sup>1</sup> [‘Minister Harris secures Cabinet approval for new Bill criminalising the grooming of children into crime’](#), gov.ie, 18 January 2023.

<sup>2</sup> [‘Programme for Government: Our Shared Future’](#) (June 2020), p 86.

<sup>3</sup> See p 16 of the Bill Digest. [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Exploitation of children in the commission of offences\) Bill 2020](#), Joint Committee on Justice, 25 May 2021.

## Table of provisions

A summary of the Bill's provisions is included in Table below.

**Table 1: Table of provisions of the Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023**

| Section | Title                           | Effect  |
|---------|---------------------------------|---|
| 1       | Definitions                     | <p>In this Act—</p> <p>“adult” means a person who has attained the age of 18 years;</p> <p>“child” means a person who has not attained the age of 18 years;</p> <p>“criminal activity” means activity—</p> <p>(a) that constitutes an offence, or</p> <p>(b) that, had it been engaged in by a person of full age and capacity, would constitute an offence;</p> <p>“directs”, in relation to criminal activity, means—</p> <p>(a) controls or supervises the activity, or</p> <p>(b) gives an order, instruction or guidance to, or makes a request of, a person with respect to the carrying out of the activity, with the intention that the person shall carry out that activity.</p>   |
| 2       | Offences and related provisions | <p>Section 2 makes it an offence for an adult to <b>compel, coerce, direct or deceive a child</b>, for the purpose of causing that child to engage in criminal activity whether they know or are reckless as to whether the child is a child.</p> <p>It is also an offence under this section to <b>induce, invite, aid, abet, counsel or procure</b>, a child to engage in criminal activity whether they know or are reckless as to whether the child is a child.</p> <p>Liability under this section is limited to adults to avoid further criminalising children, some of whom are already involved in criminal activity and could influence other children to commit crime.</p> <p>The penalty for committing an offence under this Act is;</p> <ul style="list-style-type: none"> <li>• On summary conviction – a class A fine or imprisonment for a term not exceeding 12 months or both;</li> <li>• On indictment – a fine or imprisonment for a term not exceeding 5 years or both.</li> </ul> <p>For liability for these offences to attach to an adult, it is not necessary for the child to have engaged in an offence,</p> |

| Section | Title                                  | Effect  |
|---------|--|---|
|         |  | intended to engage in an offence or to have been prosecuted for an offence.   |
| 3       | Amendment of Schedule to Bail Act 1997 | The provisions of this Act shall be without prejudice to any other enactment or rule of law.  |
| 4       | Application of Act                     | The provisions of this Act shall be without prejudice to any other enactment or rule of law.  |
| 5       | Short title and commencement           | (1) This Act may be cited as the Criminal Justice (Engagement of Children in Criminal Activity) Act 2023.<br>(2) This Act shall come into operation on such day as the Minister for Justice may by order appoint. |

Source: Criminal Justice (Engagement of Children in Criminal Activity) Bill 2023

## Background

The participation of children in Irish criminal networks has been identified as a serious issue by various studies conducted during the last decade.

The following reports examine the topic of children being recruited to commit crime and will be considered in more detail below. Three of the reports are locally based case studies. The Greentown and Redtown studies focus on network activity in two provincial towns. The Bluetown study is an examination of criminal networks in one Dublin location.

- [Juvenile Justice, Crime and Early Intervention](#) (2011)
- [Greentown Report](#) (2015)
- [National Prevalence Study](#) (2017)
- [Building Community Resilience](#) (2019)
- [Bluetown Report](#) (2020)
- [Redtown Report](#) (2020)

*“We estimate approximately 1,000 children across the state are engaged or at risk of engagement with a criminal network.*

*From a child protection perspective, these children are clearly being exploited by adults. From a law enforcement perspective, they appear to commit a significantly disproportionate amount of youth related crime.”*

Dr Sean Redmond, Adjunct Professor of Youth Justice at University of Limerick and Principal Investigator for the Greentown project ([source](#))

## The Greentown Project

The Greentown Project is carried out in partnership between the School of Law at University of Limerick, the Department of Justice and the Department of Children, Equality, Disability, Integration and Youth (DCEDIY). The project aims to provide new insights into how criminal networks attract and confine children, encouraging and coercing them to be involved in serious crime and limiting their opportunities to escape their influence. The Greentown Project has been ongoing for the last seven years and won the 2020 European Crime Prevention Award.<sup>4</sup>

The Bill will “complement the ongoing work” of the Greentown Project.<sup>5</sup>

The Greentown Project published four reports (referenced above) on 27 January 2021. These reports provide detailed examinations of the criminal networks that operate in locations where children were involved in high levels of crime, including burglary and drugs for sale and supply.

- **Greentown study:** Originally published in 2016, this research found that family and kinship networks were key to the longevity of the network presence in Greentown.
- **Redtown study:** The structure of the crime network was dependant on the type of crime being committed. The study reports evidence of parents passing on pro-criminal norms and coaching their children for offending.
- **Bluetown study:** Identifies four area-based criminal networks in one geographical area. The first network identified was family-based and hierarchical in nature. The second and third networks were based around peer relationships and neighbourhood. A fourth network appeared to have a looser drugs-orientated and more fragile organisational structure.
- **National Prevalence Study:** This is a report from a survey distributed to all Garda Juvenile Liaison Officers (JLOs) in Ireland. The key finding from this study was that JLOs estimated that a minority (1 in 8) of the children involved in the Diversion Programme fit the profile of the children who featured in the Greentown study, indicating that an estimated 1,000 children across the State could be involved with criminal networks.<sup>6</sup>

## Greentown Report (2016)

The Greentown Report, entitled '[Lifting the Lid on Greentown: Why we should be concerned about the influence criminal networks have on children's offending behaviour in Ireland](#)',<sup>7</sup> was published in 2016, and focused on a population of repeat offenders in 'Greentown' in the period 2010–2011. 'Greentown' was the fictitious name given to an actual Garda sub-district outside Dublin.

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<sup>4</sup> European Crime Prevention Network, '[Ireland: the Greentown Project](#)'. The ECPA is a contest that rewards the best European crime prevention project.

<sup>5</sup> '[Bill to outlaw the grooming of children into crime announced by Ministers McEntee and Browne](#)', Department of Justice, 15 June 2021.

<sup>6</sup> Irish Penal Reform Trust, '[Research reports from the Greentown Project launched by Minister for Justice](#)', 27 January 2021.

<sup>7</sup> Department of Children and Youth Affairs, '[Lifting the Lid on Greentown - Why we should be concerned about the influence criminal networks have on children's offending behaviour in Ireland](#)'. Dublin: Government Publications (2016).

The overall key finding of the study was that local criminal networks play a significant role in encouraging and compelling children to engage in criminal behaviour.<sup>8</sup> The study identified certain criminal networks within the selected area. Adults within the criminal network **recruited and groomed certain vulnerable local children to commit crime**. Network associates are often carefully selected for their personal vulnerability, family history of criminal association through elder siblings, poor supervision, parenting capacity compromised by alcohol and drugs misuse and absent or ineffective father figure or, more likely, combinations of these factors.<sup>9</sup> An environment of fear, intimidation, and coercion, cultivated by the network, made it extremely difficult for children to disengage from crime. The network had a significant influencing effect on this minority group of local children to commit **abnormally high** levels of crime.

The report recommended the design of a programme to include **interventions** with children and their families to help them withstand the influence of criminal networks.

### National Prevalence Study (2017)

A follow-up '[National Prevalence Study](#)' in 2017 surveyed Garda Juvenile Liaison Officers ('JLOs') around Ireland, and aimed to discover if the 'Greentown' findings were common to other communities across Ireland. The survey confirmed the results of the 'Greentown' study, finding that the same issues were seen by JLOs nationally and were not confined to urban areas.

The survey findings also suggest that approximately **one in eight of the children involved in the Garda Diversion Programme are being groomed into crime** by predatory adults. This confirmed the findings in Greentown. This pattern has emerged across the country and is estimated to affect approximately 1,000 children nationally.

The key findings<sup>10</sup> suggested that:

- Children involved in more serious and prolific offending present with multiple vulnerabilities and complexities.
- Some children involved in more serious and prolific offending were likely to be engaged in crime networks.
- Children involved in criminal networks who were described as blood relatives of local dominant crime families (family members) were predominantly groomed in crime by older family members.
- Children involved in criminal networks who were not blood relatives of local dominant crime families (associates) were mostly groomed in crime by younger non-family members of the network or 'recruiters'.

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<sup>8</sup> Ibid., p 7.

<sup>9</sup> Ibid., p 38.

<sup>10</sup> Catherine Naughton and Sean Redmond, '[National Prevalence Study](#)', School of Law, University of Limerick, January 2021



- In summary, from the perspective of JLOs, in terms of the profile of children involved in more serious and prolific offending, the Greentown findings resonated beyond the Greentown Garda sub-district.<sup>11</sup>

### Bluetown and Redtown Reports (2020)

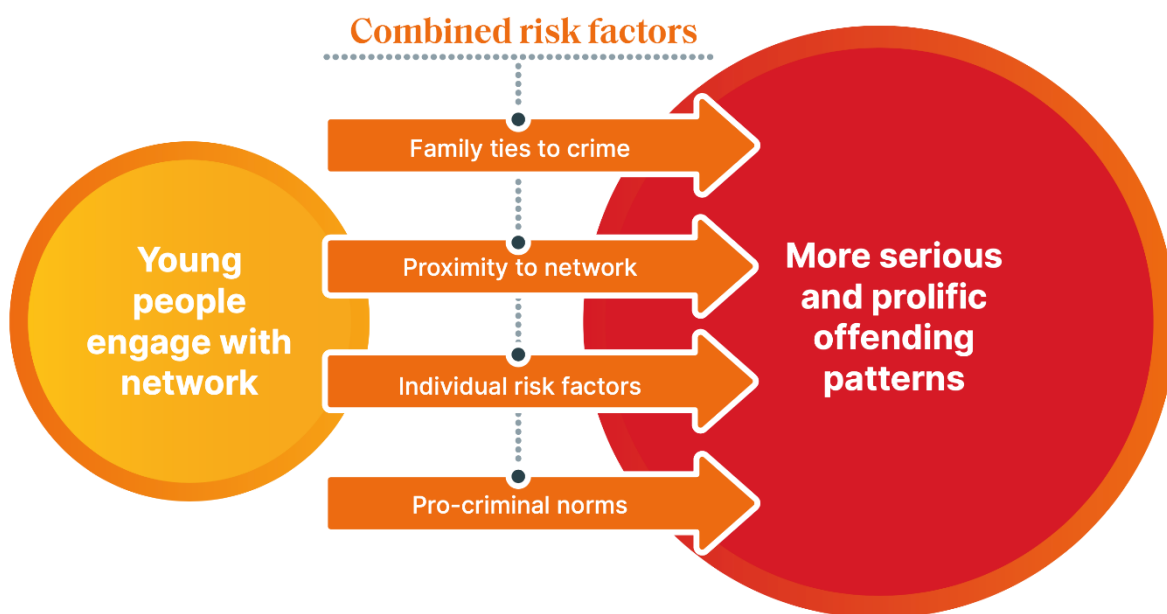
The Bluetown and Redtown studies are two replication case studies carried out to determine whether the findings of the Greentown study could be generalised to other locations in Ireland.

The aim of the replication case studies was to determine what factors influence young people's engagement and retention within a criminal network and how these factors may influence their crime trajectories.

#### **Bluetown Report**<sup>12</sup>

'Bluetown' was a large urban Garda subdistrict. Relevant findings of the study include:

**Finding 2:** A **combination of risk factors** was linked to young people developing more serious and prolific offending patterns across all networks.<sup>13</sup>



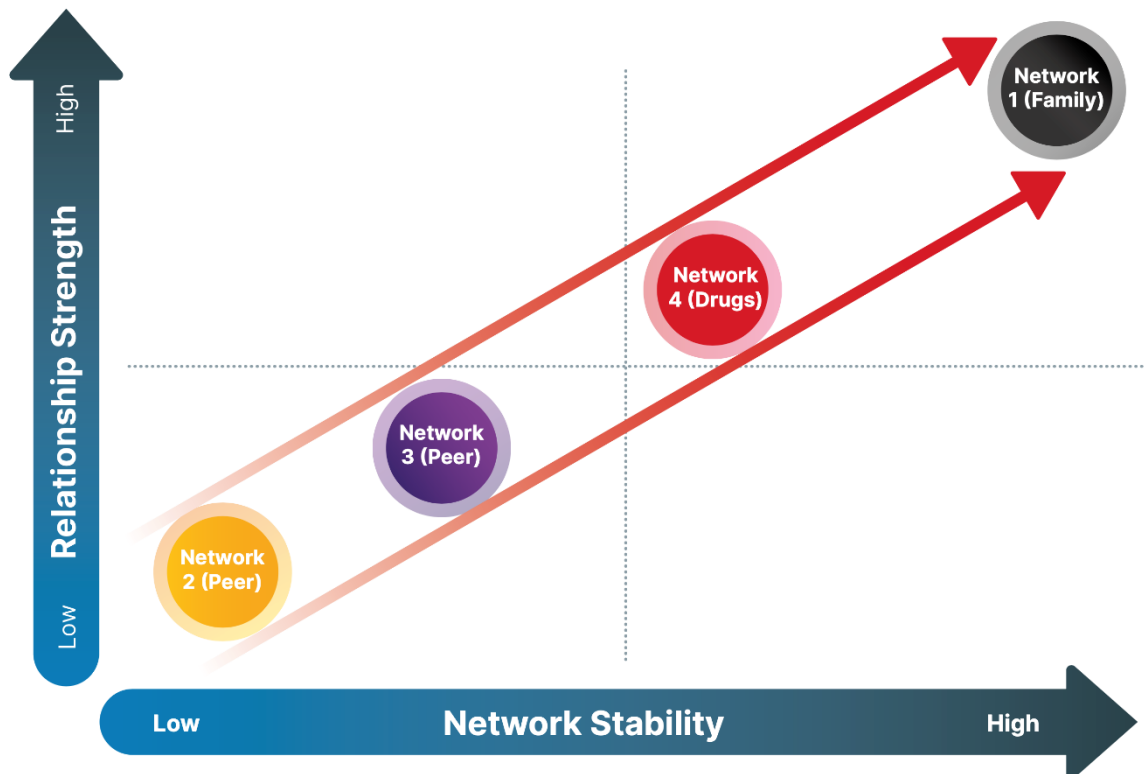
**Fig. 1: Combined risk factors leading to more serious and prolific offending patterns**

<sup>11</sup> Ibid., p 8-9.

<sup>12</sup> E. O'Meara Daly, S. Redmond, and C. Naughton, '[Lifting the Lid on Bluetown: A replication case study, which investigates the contribution of engagement in a local criminal network to young people's more serious and persistent offending patterns](#)', 2020

<sup>13</sup> Ibid, p 39.

**Finding 3:** Criminal network **strength and stability** was **enhanced** by the **quality of ‘trust’ in relationships** between members and influenced by fear and intimidation.<sup>14</sup>



**Fig. 2: Network position from low strength and stability to high.**

### **Redtown Report**

‘Redtown’ was another anonymised Garda sub-district. Redtown was selected for the study as it had the third highest level of detection of burglary and drugs for sale and supply offences committed by young people under the age of 18 years during 2014–2015.

Similar to previous reports, the Redtown findings suggest that it was the interaction between three particular factors that drove expectations to commit crime and contributed to the young people’s engagement in the Redtown criminal network. These are:

- (a) young people’s experiences of childhood adversity,
- (b) involvement in problematic peer groups and
- (c) pro-criminal norms (held by both families and peers).<sup>15</sup>

<sup>14</sup> Ibid, p 43.

<sup>15</sup> C. Naughton, S. Redmond, E. O’Meara Daly, ‘[Lifting the Lid on Redtown](#)’, School of Law, University of Limerick, p 11.

## Current programme

In 2021, the [Greentown project](#) announced the commencement of a newly designed community intervention programme based on their research.<sup>16</sup> This programme is being implemented on a pilot basis over three years in two locations, 'Whitetown' and 'Yellowtown', and aims to tackle coercive control of children by criminal groups, which entraps them in offending situations.<sup>17</sup> The programme has been designed by the [Research Evidence into Policy Programmes and Practice \(REPPP\)](#) project team, at the School of Law in the University of Limerick, with the input of leading international expertise on crime and criminal networks, together with Irish scientific, policy and practice expertise in child protection and welfare, drugs and community development.<sup>18</sup> The learning from these pilots will then be incorporated into mainstream Youth Diversion Programme<sup>19</sup> practice. Funds are already available for the initial pilots from the Dormant Accounts Funds, with a total of €4.2m allocated over three years.<sup>20</sup>

## Additional Reports

### 2011 Study – 'Juvenile Justice, Crime and Early Intervention'

In 2011, the [findings of a three-year study](#)<sup>21</sup> on criminal gangs and anti-social behaviour in Limerick were published. The study found that children involved in gangs "were being used by more senior criminals to maintain control over pockets of estates."<sup>22</sup> The author of the study stated:

"Because they were under the age of 12 and, therefore, below the age of criminal responsibility, they were perceived in some instances to be more useful to undertake small-scale tasks or subtly intimidate neighbours than children over 12."<sup>23</sup>

In evaluating how the findings of the research could be integrated into criminal justice and social policy responses, the study highlighted the need for more early intervention strategies with children 'at risk'. The study also detailed the substantial social reasons for the involvement of children in criminal activity, emphasising the role of family members in recruiting children, the high threshold

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<sup>16</sup> ['Minister McEntee launches new research which offers hope for children caught up in crime networks'](#), Department of Justice, 27 January 2021.

<sup>17</sup> ['The Greentown Project'](#), University of Limerick.

<sup>18</sup> ['Bill to outlaw the grooming of children into crime announced by Ministers McEntee and Browne'](#), Department of Justice, 15 June 2021.

<sup>19</sup> ['Garda Diversion Programme'](#). The Garda Youth Diversion Programme is provided for in the Childrens Act 2001. The Garda Diversion Programme is supported by a network of Garda Youth Diversion Projects (GYDPs). GYDPs are community-based multi-agency crime prevention initiatives, which seek to divert young people who have become involved in crime/anti-social behaviour and to support wider preventative work within the community and with families at risk. There are currently 105 GYDPs state-wide, and a further 10 projects with a special focus (e.g. more challenging children, family support, etc.).

<sup>20</sup> [Departmental Policies](#) - Dáil Éireann Debate, Tuesday - 29 March 2022.

<sup>21</sup> Dr. Niamh Hourigan, ['Juvenile Justice, Crime and Early Intervention: Key Challenges from the Limerick Context'](#), *Irish Probation Journal*, Volume 9, October 2012

<sup>22</sup> *Ibid.*, p 70.

<sup>23</sup> *Ibid.*

required for intervention by child protection services,<sup>24</sup> and the “respect” and validation that young people derived from their participation in gangs and criminal activity.<sup>25</sup>

### 2019 Report – ‘Building Community Resilience’

In December 2019, a report called [‘Building Community Resilience’](#) was published. It set out the findings of research on criminal networks in Dublin South Central and their impact on that community. Unlike Greentown, the research location for this study was not anonymised.

The report profiles the two main criminal Networks in the study in a way that suggests there are three strata within them:

- First there are career criminals at the centre of the drug trade.
- Second there are street dealers, usually teens and young men operating in and around hotspots.
- Third there are **children, often below the age of criminal responsibility who are groomed into participation in the Networks.**

The report recommended the creation of specific interventions for children who are identifiable as recruits for the Networks at late primary-early secondary school stages.<sup>26</sup>

### Involvement of children in drug related crime

The [What We Heard 2022](#) Report was published in February 2023 by the Policing Authority.<sup>27</sup> The Authority conducted research in communities across the country on a range of topics, including community safety; community policing; young people; drug intimidation and mental health.

Children between the ages of 6 and 12 were reported as acting as ‘runners’ for drug dealers. The Authority indicated that the typical age range is between 8 and 12.

A number of communities expressed serious concern about young children being lured into both dealing and taking drugs. The report indicated that children were now accruing debts and being subjected to drug related intimidation for cannabis whereas previously this was only the case for Class A drugs such as heroin or cocaine.

The Report indicated:

“A common theme emerged in discussions with communities across the country as to how dealers target children —they seek out children they know to be in already vulnerable positions, befriending them with gifts of luxury, high end shoes and clothes or giving

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<sup>24</sup> Ibid., pp 70 -71.

<sup>25</sup> Ibid. p 73. “Given that the primary finding of the Limerick research project was that young men and women in these communities crave ‘respect’, acknowledging the rationality of gang participation might be the starting point in identifying other routes outside of criminality where ‘respect’ can be gained.”

<sup>26</sup> [‘Building Community Resilience’](#), p 17.

<sup>27</sup> The statutory oversight body for An Garda Síochána. The Policing Authority, [‘What We Heard 2022’](#), February 2023.

‘freebies’ of nitrous oxide or cannabis that land them in debt for drugs consumed with their having to work off the debt for the dealer. In one area it was stated that the seeming ease with which money can be made at a very young age for the simple task of transporting packages over short distances entices children into criminality. **One group stated that they now use the terminology ‘child trafficking’ to describe what is happening within communities to convey the full extent of the abuse and exploitation faced by children.**<sup>28</sup>

In 2021, Garda Juvenile Diversion Bureau (GJDB) indicated that grooming of children by criminals was the primary cause of a 150pc rise in drug offences committed by juveniles in Dublin.<sup>29</sup> Approximately 1,000 drug offences were committed by children and adolescents aged 10 to 17 in 2020 compared with 400 drug offences in 2016.

## Calls for reform

### Reports of the Special Rapporteur on Child Protection

In 2016, as part of his [tenth report](#), the then Special Rapporteur on Child Protection, Professor Geoffrey Shannon said that:

‘...[T]here is an increasing trend in the grooming of children to carry out criminal acts to the profit of others. Adult criminals have targeted young persons to carry out criminal acts on their behalf. Whilst the common law on incitement may address this to some extent it falls short of what is required.’<sup>30</sup>

Prof. Shannon recommended that a new offence prohibiting the grooming of children into crime should be introduced in Ireland, and that the form of the offence may follow the similar offence introduced in Victoria, Australia (described below).

The most recent [Report of the Special Rapporteur](#) referenced the problem of trafficked children being forced to commit crime.<sup>31</sup>

### Summary of provision introduced in Victoria

In 2017, Victoria, Australia enacted the [Children and Justice Legislation Amendment \(Youth Justice Reform\) Act 2017](#). It created an offence of recruiting a child to engage in criminal activity.

Under this law, it is an offence for an adult (aged over 21 years) to recruit a child to engage in criminal behaviour which would be punishable with a prison sentence of at least five years.<sup>32</sup>

‘Recruit’ means to incite, direct, or induce. If an adult is convicted, they could be sentenced to up to

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<sup>28</sup> Ibid, p 10.

<sup>29</sup> [‘Grooming of children by criminals linked to 150pc rise in juvenile drugs offences’](#), *Independent*, 19 May 2021

<sup>30</sup> Professor Geoffrey Shannon, [‘Tenth Report of the Special Rapporteur on Child Protection’](#), 2016, p 10.

<sup>31</sup> Professor Conor O’ Mahony, [‘Annual Report of the Special Rapporteur on Child Protection’](#), 2022, p 64.

<sup>32</sup> “Criminal activity” is defined in the Act as conduct that constitutes an offence punishable on first conviction with imprisonment for life or for a term of 5 years or more.

ten years in prison. The adult must know the person is a child, and that it is likely the child will engage in the criminal activity.

The adult in question commits an offence even if the child who has been recruited does not actually carry out the criminal activity, or if the child is never prosecuted or found guilty of any offence.

### **The level of criminality being targeted by the Bill**

Under the Victorian legislation, it is a requirement that the criminal activity engaged in by the child is a serious offence that is punishable by more than five years in prison. The Engagement of Children in Criminal Activity Bill does not follow this approach, which means that the Bill facilitates earlier intervention by capturing lower levels of criminality that children may be recruited to engage in before progressing to more serious offending.

## **Law Reform Commission**

The Law Reform Commission was also supportive of possible legislative intervention aimed at preventing children from being recruited for criminal purposes:

“A substantial wrong is perpetrated against children [...] when they are used as instruments of crime and the law has a legitimate interest in preventing such persons from being incited towards crime.”<sup>33</sup>

## **Greentown Report**

One of the findings of the ‘Greentown’ report was that:

‘The suggestion that adults in the network appear to actively recruit and cultivate certain children towards criminal activity, coupled with the absence of nurturing and protection, **challenges authorities to consider whether statutory remedial protections are required** in such cases.’<sup>34</sup>

## **Private Members' Bills**

In January 2022, the [Coercion of a Minor \(Misuse of Drugs Amendment\) Bill 2022](#) was introduced by Mark Ward TD, Martin Kenny TD and Denise Mitchell TD. The Bill aims to criminalise the use and coercion of children in drugs distribution and proposes to make it a criminal offence to cause a minor to be in possession of drugs for sale or supply. The Bill has completed Second Stage in Dáil Éireann.

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<sup>33</sup> Law Reform Commission, ‘[Report on Inchoate Offences](#)’ (LRC 99-2010), p 127. This comment was not made in reference to the specific provisions of the Bill.

<sup>34</sup> Department of Children and Youth Affairs, [Lifting the Lid on Greentown - Why we should be concerned about the influence criminal networks have on children’s offending behaviour in Ireland](#). Dublin: Government Publications (2016), p 50.

In March 2018, Deputy Anne Rabbitte, TD, introduced the [Criminal Law \(Recruitment of Children to Engage in Criminal Activity\) Bill 2018](#) to Dáil Éireann. For the most part, the Bill mirrored the Victoria legislation, with some minor differences. The Bill was not opposed by the Government. However, it did not reach Second Stage and lapsed with the dissolution of the 32<sup>nd</sup> Dáil.

## Potential issues

### Age of the recruiter

The Bill defines an adult, for the purpose of the relevant offences, as a person over 18. This is a younger age than the law introduced in Victoria, which set the age of responsibility at 21. This could potentially lead to the Bill “over-criminalising” young adults who are often also victims of grooming.<sup>35</sup>

IHREC’s observations on the General Scheme noted that there are conceivably situations where a child approaching majority is incited to engage in criminal activity by an adult who is only slightly older. IHREC noted that “[t]he application of the law would be quite unequal if the young adult receives a significant penalty and is not entitled to any of the protections of the child justice system.”<sup>36</sup>

### Familial involvement in recruiting children

Both IHREC’s observations on the Bill and the University of Limerick reports highlighted the central importance of familial influence in the recruitment of children. There are a number of distinct issues arising from this, including (1) the grooming of children by family members, which is very difficult to prevent; (2) the subsequent difficulties in involving the child in the prosecution of their family members; and finally, (3) the potential impact on a child who has been groomed by a family member if that family member is to be imprisoned because they committed this offence.

Regarding the first point, IHREC noted:

“While the focus of the General Scheme on breaking the link between criminal gangs and the children they try to recruit is welcome, the complex issues that arise due to family and kinship ties are overlooked. For example, studies have shown that **children involved in criminal networks are often groomed by older family members, including parents.**”<sup>37</sup>

For example, the Bluetown study found that:

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<sup>35</sup> Dr Cian Ó Concubhair, ‘[Is the proposed 'Fagin's law' an actual change to Irish law?](#)’, Maynooth University, 2023.

<sup>36</sup> Irish Human Rights and Equality Commission, ‘[Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill](#)’, 2020 October 2021

<sup>37</sup> Ibid., p 12.

“In each network, respondents described how parents, siblings and the extended family of network members were involved in criminal activity at various points, and this may have influenced those on the network map to become involved and stay involved in crime.”<sup>38</sup>

The study indicated that in three of the four area-based criminal networks that were the focus of the research, there were close familial and/or social ties between the members of the network. These included, for example, a network that was led by a “husband and wife team”, whose sons and extended family were involved in the network.<sup>39</sup>

Similarly, a key finding of the Greentown study was that:

[T]he criminal network which existed in Greentown in 2010–2011 was hierarchical in nature and was **governed by a family and kinship-based ‘core’**.

The 2011 study on Juvenile Justice, Crime and Early Intervention in Limerick noted similar findings:

“The basic sociological unit of these communities is not the individual but the extended family. [...]

Family was also the central organising structure of the hierarchies within criminal gangs in Limerick. [...]

Family was also central to understanding the activities of child gang participants who, through their anti-social behaviour, were being used by more senior criminals to maintain control over pockets of estates. A number of these children were either related to or directed by families heavily involved in criminal gang activity.<sup>40</sup>

This involvement creates further complexities when a child who has been recruited to commit crime becomes involved with the criminal justice system and must, for example, give evidence in relation to the crimes of family members, who may have recruited them:

“Encouraging the participation of a child in the criminal justice process, including the provision of testimony, may be difficult if their parent, older sibling or other family member is facing charges and penalties for grooming or encouraging them to commit crimes. [...]

**There is a policy gap** relating to the provision of independent information and advocacy for children whose parents or close family members may be criminalised under the General Scheme.”<sup>41</sup>

Finally, the ‘collateral’ and hidden **effects of the imprisonment of a parent** or other family member on children are well documented, including disruptions in childcare arrangements,

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<sup>38</sup> E. O’Meara Daly, S. Redmond, and C. Naughton, ‘[Lifting the Lid on Bluetown: A replication case study, which investigates the contribution of engagement in a local criminal network to young people’s more serious and persistent offending patterns](#)’, 2020, p 40.

<sup>39</sup> Ibid, p 22.

<sup>40</sup> Dr. Niamh Hourigan, ‘[Juvenile Justice, Crime and Early Intervention: Key Challenges from the Limerick Context](#)’, *Irish Probation Journal*, Volume 9, October 2012. p 69 – 70.

<sup>41</sup> Irish Human Rights and Equality Commission, ‘[Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill](#)’, 2020 October 2021, p. 12.



relationship breakdowns, financial loss, stigmatisation, and social isolation.<sup>42</sup> The Irish Penal Reform Trust (IPRT) has published a number of resources on this topic, documenting these various negative effects.<sup>43</sup>

In this context, IHREC recommended that:

“[C]onsideration be given to the family and kinship ties that can exist in the exploitation of children in the commission of offences, including the **possible alternatives to prosecution or custodial measures** where the inciter is a parent or other family member.

The Commission recommends that independent and **specialised information and advocacy services** should be available throughout the criminal justice process for all children coming within the scope of the legislation, and particularly those exploited by parents, family members or other adults in the commission of offences.”<sup>44</sup>

### **Impact of social environment**

Aside from the involvement of immediate family members, children are very frequently recruited by people within their social sphere. The University of Limerick studies highlighted that there are longstanding networks that are “part of the community” and “part of the neighbourhood fabric”, which in turn facilitates the informal recruitment style typically used when recruiting children.<sup>45</sup>

It has been noted that simply creating new offences is a “low-cost response by states”.

“Properly resourcing and motivating police, social care workers and prosecutors to address this form of exploitation is an expensive and complex task. Legislation alone gives a political veneer of meaningful action.”<sup>46</sup>

### **Pre-existing rules on complicity**

It is questionable whether the Bill creates two entirely new offences. Both offences are already largely “covered by the current rules of criminal complicity”,<sup>47</sup> which apply regardless of the age of the person who has been recruited to commit the relevant crime. For example, section 7 of the [Criminal Law Act 1997](#) provides that:

“Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender.”

However, the proposed provisions do directly address an ongoing policy issue, and the offences to be targeted by the Bill are not limited to indictable offences, so the fact that there are pre-existing

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<sup>42</sup> Maternal imprisonment is particularly detrimental for dependent children. [‘Nearly 300 children in Ireland whose mothers are behind bars’](#), *Irish Legal News*, 2 March 2023; IPRT, [‘Maternal Imprisonment In Ireland: A Scoping Study’](#), 2 March 2023.

<sup>43</sup> Irish Penal Reform Trust, [‘Children of Prisoners’](#), list of resources.

<sup>44</sup> Irish Human Rights and Equality Commission, [‘Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill’](#), 2020 October 2021, p 13.

<sup>45</sup> Professor Sean Redmond, [Interview for NewsTalk](#), 24 January 2023

<sup>46</sup> Dr Cian Ó Concubhair, [‘Is the proposed ‘Fagin’s law’ an actual change to Irish law?’](#), Maynooth University, 2023.

<sup>47</sup> Ibid.

rules which govern the area should not be a reason to refrain from instituting the new proposed provisions.

## Pre-legislative scrutiny

The Joint Committee on Justice undertook pre-legislative scrutiny of the Bill in May 2021. The Joint Committee requested an oral briefing from Departmental Officials on the provisions and context of the Bill. The Committee did not publish a detailed report when the pre-legislative scrutiny of the Bill concluded. However, the Joint Committee did publish a letter briefly noting the Joint Committee's findings, based on the Departmental briefing that the Committee had received.<sup>48</sup>

The letter noted:

“Specifically mentioned was the possible need for including a provision to deal with circumstances where a child is deceived or duped into engaging in criminal activity. It was queried whether the offence included in Head 3, where an adult induces a child to engage in criminal activity, is considered to contemplate duping and/or deception. This is particularly prominent in the recruitment of young people in the context of gangland crime.”<sup>49</sup>

This proposed change is reflected in section 2 of the Bill, which now includes within the definition of the offence provided for in section 2(1) “*deceives the child*, for the purpose of causing that child to engage in criminal activity”.

## Principal Provisions

The Bill is comprised of 5 sections.

### Definitions

**Section 1** provides for the following definitions:

“adult” means a person who has attained the age of 18 years;

“child” means a person who has not attained the age of 18 years;

“criminal activity” means activity—

(a) that constitutes an offence, or

(b) that, had it been engaged in by a person of full age and capacity, would constitute an offence;

“directs”, in relation to criminal activity, means—

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<sup>48</sup> [Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice \(Exploitation of children in the commission of offences\) Bill 2020](#), Joint Committee on Justice, 25 May 2021.

<sup>49</sup> Ibid.

- (a) controls or supervises the activity, or
- (b) gives an order, instruction or guidance to, or makes a request of, a person with respect to the carrying out of the activity, with the intention that the person shall carry out that activity.

## New offences

**Section 2** creates two new offences. The first makes it an offence for an adult to compel, coerce, direct, or deceive a child for the purpose of causing the child to commit a crime. The second makes it an offence to induce or invite; or aids, abets, counsels, or procures a child to commit crime. In both cases, the person committing the crime must be aware, or be reckless as to whether, the person being compelled to commit crime is a child. It is not necessary that the child concerned engaged in the criminal activity concerned, intended to commit the activity, or has been prosecuted for the relevant offence.

Section 2(1) provides that an adult who

- (a) compels, coerces or directs the child, or
- (b) deceives the child,

for the purpose of causing that child to engage in criminal activity, shall be guilty of an offence. The adult must have knowledge that that the person being compelled or deceived etc. is a child or be reckless as to whether the person is a child.

Section 2(2) provides that an adult who, knowing that a person is a child or being reckless as to whether a person who is a child is a child—

- (a) induces or invites, or
- (b) aids, abets, counsels or procures,

the child for the purpose of causing that child to engage in criminal activity, shall be guilty of an offence.

Section 2(3) provides that an adult may be convicted of an offence under this section irrespective of whether the child concerned—

- (a) engaged in the criminal activity concerned,
- (b) intended to engage in the criminal activity concerned, or
- (c) has been prosecuted for, or found guilty of, any offence constituted by the criminal activity concerned.

## Penalties

Section 2(4) provides that a person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

## Refusal of Bail

**Section 3** of the Bill proposes to amend the [Bail Act 1997](#) (the 1997 Act). The 1997 Act permits the court to refuse bail in certain circumstances in order to prevent the commission of further serious offences by the applicant.<sup>50</sup> The applicant must first be charged with a serious offence.<sup>51</sup> The Schedule to the 1997 Act specifies which offences are “serious offences” for the purpose of the 1997 Act. The Bill proposes to amend the Schedule to include an offence under the Bill as a serious offence.

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<sup>50</sup> [Section 2\(1\)](#) of the 1997 Act provides that “Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.”

<sup>51</sup> A serious offence is “... an offence specified in the schedule for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a **term of five years** or by a more severe penalty.”

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