

THE DEVELOPMENTAL NATURE OF CHILDREN AND A PROPOSAL FOR A SPECIALISED IRISH YOUTH JUSTICE SYSTEM.

Abstract: This article provides an insight into one aspect of the Irish juvenile justice system, namely the developmental nature of children and young persons who appear before the courts. In doing so it observes current judicial practice, both from the perspective of judges, and through the lens of young people's probation officers ('YPPO'), child offenders and child victims. It acknowledges the importance of international treaties such as the UN Convention on the Rights of the Child ('UNCRC'),¹ and child friendly best practice as envisaged at the European regional level.² However, it also acknowledges the Irish constitutional position: the Oireachtas determines whether an international agreement has any effect in domestic law.³ Therefore, this article moves beyond the theoretical concept of the implementation of international treaties into domestic law by challenging the Irish juvenile sentencing system with a reform agenda that is not entirely dependent on the Oireachtas. In doing so it, it explores innovative sentencing case law in the USA, New Zealand and in England.

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Introduction

This article explores some of the findings from the author's recent professional doctorate on the sentencing of child and adolescent sexual offences in the Irish Youth Justice System.⁴ The doctorate incorporated a heavy emphasis on practice-based research and praxis, in the sense of developing legal practice. Its aim was to provide a bridge between academic theory and professional practice, by providing insights into how the youth justice system might address the justice and welfare dichotomy in sentencing. It entailed a methodology which respected the existing judicial doctrinal approach to sentencing but also advocated best practice by reference to international treaties, scientific developments and rights compliant youth judicial systems. It therefore needed a comprehensive methodology to enable research questions to be addressed which was achieved by adopting a combination of a legal doctrinal model as its primary model, with socio-legal and comparative analysis as subsidiary or complimentary processes. This methodology recognised that new issues are constantly emerging such as, for example, neuroscientific and behaviour research and also acknowledged that new academic studies and judicial thinking create a greater understanding of child and adolescent behaviour.

During the course of the research, the author explored how existing Irish judges approached the competing priorities in youth justice sentencing by way of semi structured interviews with 18 practising judges.⁵ These findings revealed that judges although emphatic to children in conflict with the law were heavily dependent on pre-sanction reports from probation officers

¹ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 (UNCRC).

² Committee of Ministers of the Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (17 November 2010).

³ Article 29.6°.

⁴ John O'Connor, 'The Sentencing of Child and Adolescent Sexual Offences in the Irish Youth Justice System: Judicial Discretion and the Justice/Welfare Dichotomy' (DProf, Nottingham Trent University 2021).

⁵ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019)

in formulating sentences for children who sexually offend. In light of this conclusion, a sample of 12 Young People Probation Officers (YPPOs) were interviewed (via focus groups and telephone).⁶ Findings revealed that although YPPOs are highly specialised and trained, there were gaps in assessing complex development needs in sexual abuse cases arising out of childhood trauma and the child offenders own sexual abuse.⁷ Calls for guidance for the judiciary were loud in the research conducted. Against this background, the thesis analysed a detailed study of sentencing case law. However, all trial courts in Ireland (as opposed to appellate courts) furnish oral sentencing decisions. Therefore, the study was supplemented by a selective examination of transcripts of sentencing decisions in the Central Criminal Court.

Dualistic legal system in Ireland

At the outset it is acknowledged that while the incorporation of international treaties into Irish law represents a utopian ideal, the reality is represented by dualism as expressed by Article 29.6^o of the Irish Constitution. This provides that the Oireachtas (Irish Legislature) determines whether an international agreement has any legal effect in domestic law. Therefore, dualism potentially creates a significant gap by not incorporating all of the provisions that apply to the international framework of best practice into domestic law. However this realism also recognises that the UNCRC and international treaties are not autonomous vectors of change. Therefore, this article goes beyond the theoretical concept of the implementation of international treaties into domestic law by challenging the existing Irish juvenile sentencing system with a reform agenda that is not entirely dependent on the Oireachtas.

Emerging Interdisciplinary Research

Societal changes have meant that 21st century adolescents grow up in a much more mobile and globalised world than their parents. This is amplified by contemporary technologies such as the internet and social media, where children can negotiate their social identities but can also have risks in relation to exposure to exploitation, extreme pornography and peer abuse. However, while technology, such as mobile phones, may be the most visible aspect of contemporary changes, the reality is that it is our recent understanding of neurological brain development, which is the most dramatic change in assessing how the judicial system should deal with children in conflict with the law. Effectively, changes to the brain can now be accurately detected from Magnetic Resonance Imaging (MRI) which was largely unknown prior to this century. MRI has shown the prefrontal cortex is developing dramatically in teenagers and young adults. The implications for assessing risk behaviour is profound. MRI imaging takes a snapshot or a photograph, at a high resolution, of the inside of the human brain. The prefrontal cortex is involved in a whole range of high-level cognitive functions, like decision-making and inhibiting inappropriate behaviour. Other functions include involvement in social interaction, understanding other people and self-awareness.⁸ It is also accepted that the environment and trauma, or in some cases multiple traumas, can and does shape the developing adolescent brain. For judicial sentencing it has practical implications on how best to deal with both rehabilitation and therapeutic intervention aspects of children in conflict with the law.

⁶ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019).

⁷ *ibid*, section 1.2.1

⁸ Sarah-Jayne Blakemore, 'Development of the social brain in adolescence' (2012) 105(3) *Journal of the Royal Society of Medicine* 111.

Concept of Evolving Capacity

In general, this relatively recent emergence of scientific developments in neuroscience has also led to a renewed interest in the concept of evolving capacity as envisaged by Article 5 of the UNCRC.⁹ The net effect is that internationally the concept of best interests is now being interpreted in terms of prevailing standards and understanding of developments of children and young people. As Professor Liefwaard observes, it is about balancing rights and best interests of a child within the broader context of child-friendly justice, which in turn stresses the importance of treating children different to adults.¹⁰ In sentencing this means taking account of the vulnerability and immaturity of children who encounter the criminal justice system.

Article 40(3)(a) of the UNCRC cites that State parties must have a minimum age below which a child is deemed not to have capacity and General Comment 24 of the UNCRC states that the Minimum Age of Criminal Responsibility (MACR) should be not less than 14. Irish law which has a MACR of 10 years old for serious crime and 12 years old for other crimes is not just lower but somewhat illogical when one considers that the law also deems children incapable of consenting to sexual activity until the age of 17, or even 18 in some cases, and prohibits the drinking of alcohol until eighteen years.¹¹

Minimum Age of Criminal Responsibility (MACR)

The Irish MACR has been criticised repeatedly by the UNCRC.¹² Ireland's response to this criticism is that it has never prosecuted a 10 or 11-year-old and that it is rare for children aged 12 and 13 to be prosecuted, though accepting there are some very recent high-profile cases.¹³ In addition, where a child under 14 years of age is charged with an offence, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecution.¹⁴

The author's research demonstrated nearly all judges and YPPOs interviewed would accept the view that age is a poor indicator of maturity, yet the criminal justice system must take cognisance of these factors.¹⁵ This finding is in line with other research.¹⁶ However, while it is preferable to consider the broader issue of the developmental nature of children who offend, the reality is we must have a MACR for criminal law. Various research studies relating

⁹ Ursula Kilkelly, "Evolving Capacities" and "Parental Guidance" in the context of Youth Justice: Testing the Application of Article 5 of the Convention on the Rights of the Child' (2020) 28(3) *The International Journal of Children's Rights* 500.

¹⁰ Ton Liefwaard, 'Juvenile justice from a children's rights perspective' in Wouter Vandenhole, Ellen Desmet, Didier Reynaert and Sara Lembrechts (eds), *Routledge International Handbook of Children's Rights Studies* (Routledge 2015).

¹¹ Children Act 2001, s 52 as amended by s 129 of the Criminal Justice Act 2006. Geoffrey Shannon, *Tenth Report of the Special Rapporteur on Child Protection* (Department of Children and Youth Affairs 2016).

¹² John O'Connor, 'Reflections on the justice and welfare debate for children in the criminal justice system' (2019) 3 *Irish Judicial Studies Journal* 19.

¹³ Department of Justice, *Youth Justice Strategy 2021-2027* (Department of Justice 2021).

¹⁴ Children Act 2001, s 52(4) as amended by s 129 Criminal Justice Act 2006.

¹⁵ John O'Connor, 'Document 4: Exploring young people's probation officers' perspectives in respect of child sexual offending in the context of 'welfare' and 'justice' in Irish youth justice' (DProf, Nottingham Trent University 2020) 32.

¹⁶ John Graham, Benjamin Bowling and Home Office Research, Development and Statistics Directorate, *Young People and Crime* (London, 1995); Mairéad Seymour, *Youth justice in context: Community, compliance and young people* (Routledge 2012).

to the evolving capacities of children noted that children, especially those under age 15, are likely not able to exhibit sufficient competency in either children or criminal courts.¹⁷ Furthermore, as outlined in the findings below, a substantial percentage of children, especially those under the age of 15, lacked legal competency as a defendant due to their own developmental immaturity. More recent results show:

- Children below 14 years old are less likely to be familiar with trial related material;¹⁸
- 15 years old and under are more likely to be impaired in their ability to understand criminal proceedings;¹⁹ and
- Capacities of 16 to 17 year olds are like young adults though they do not have the life experiences necessary to enhance their capacity.²⁰

While many children can either be behind or ahead in their development, physically, cognitively, emotionally or medically, most children in the criminal justice system also suffer from intellectual and emotional problems which in turn feeds into the child's capacity to participate in legal proceedings.

The Committee on the Rights of the Child has noted that it is not possible for a child to be effectively heard in an intimidating environment or one that is '...hostile, insensitive or inappropriate for his or her age.'²¹ Proceedings must be both accessible and child-appropriate. Attention needs to be paid to the provision and delivery of child friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges etc. In this respect, the ECtHR has held that an accused child must enjoy the right to understand what is happening at the trial and to play an active role in their defence - physical presence alone is not enough.²² Certain features have been pointed out as hindering effective participation such as for example intense public scrutiny, lack of waiting rooms, separate screens, inability to consult with lawyers due to immaturity and disturbed emotional state.

The Children Act 2001

The Children Act 2001 codified the juvenile justice law governing interactions between children below the age of 18 years, to comply with the UNCRC. According to the then Minister for Justice John Donoghue, the Act was designed to underpin the future development of the juvenile justice system in Ireland in response to changing circumstances in a way not anticipated at the time.²³ It placed on a statutory basis the diversion programme and probation-led family conferencing, as well as creating a Children Court in Ireland. Both

¹⁷ Thomas Grisso and Robert G. Schwartz, *Youth on trial: A developmental perspective on juvenile justice* (University of Chicago Press 2000).

¹⁸ Stephanie Elaine Rap-Leurs, *The participation of juvenile defendants in the youth court. A comparative study of juvenile justice procedures in Europe* (Pallas Publications 2015).

¹⁹ Thomas Grisso and Robert G. Schwartz, *Youth on trial: A developmental perspective on juvenile justice* (University of Chicago Press 2000).

²⁰ Thomas Grisso, 'Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants' in Ronald Roesch and Kaitlyn McLachlan (eds), *Clinical Forensic Psychology and Law* (Routledge 2007).

²¹ UN Committee on the Rights of the Child, *General Comment No. 12* (United Nations 2009).

²² *Blokhin v Russia* App No. 47152/06 (ECHR, 23 March 2016).

²³ Dáil Deb 12 April 2000, vol 518.

Tom O'Malley SC and Professor Dermot Walsh opine that the principles of the Act are heavily biased towards rehabilitation in that 'rehabilitation takes centre stage in the punishment of a child for a criminal offence'.²⁴ This is in keeping with the principles of the UNCRC. Section 96 of the Children Act 2001 requires:

any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances; a period of detention should be imposed only as a measure of last resort.

As well as Section 96, Section 143 also reiterates that detention should only be used as a measure of last resort. The emphasis in Section 99 on a probation and welfare report before sentencing and the alternatives to detention, such as the 10 community sanctions, collectively create a substantial welfare ethos.²⁵ The welfare aspect is particularly pronounced for summary and minor indictable offences in the Children Court where Part 8 of the Act authorises the judge to request the attendance of a representative of Tusla to attend court. It also allows a court, for example, to dismiss a case on its merits provided that the judge, having had due regard to the child's age and level of maturity, determines that the child did not have a full understanding of what was involved in the commission of the offence.²⁶ Reflecting the cross-over between welfare and rights, the Act allows the Children Court judge to direct Tusla, under section 77 of the Act, to convene a family welfare conference to consider if care and protection orders are needed.²⁷

Section 78 of the Act is the only reference to a legislative Restorative Justice-type sentence for children. It allows a Children Court judge to direct the probation and welfare service to arrange for the convening of a family conference in respect of the child. Court statistics have revealed that family conferences are rarely used by the courts and never in sexual abuse cases.²⁸ However, the most recent strategic plan of the Department of Justice states that 'Family Conferencing could be the catalyst for addressing the personal welfare and circumstances of the child'.²⁹

Section 99 of the 2001 Act permits a court to order a report from a probation and welfare officer in every case. However, it mandates it in the case of a detention order or a community sanction. While obtaining a report is mandatory irrespective of a child's wishes, the Act is silent on the content of the report.³⁰ Therefore, a lack of co-operation by a child can result in a meaningless report and the acceptance of same has been held by the High Court as within a court's discretion.³¹ It could be argued this view is somewhat at variance with the concept of child-friendly justice, which recognises that participation in proceedings also

²⁴ Thomas O'Malley, *Sentencing law and practice* (3 edn, Roundhall 2016); Dermot Walsh, *Juvenile Justice* (Roundhall 2005).

²⁵ Children Act 2001, s 115 – 141.

²⁶ Children Act 2001, s 52(3).

²⁷ *DPP v. AB* [2017] IEDC 12.

²⁸ Department of Justice, *Probation Service Annual Report 2020* (Department of Justice 2021).

²⁹ Department of Justice, *Youth Justice Strategy 2021-2027* (Department of Justice 2021).

³⁰ Louise Forde, "'Welfare' and 'Justice' in Irish youth justice: a children's rights analysis of diverse approaches to youth justice" (DPhil, University College Cork 2018).

³¹ *Mooney v. Governor of St Patrick's Institution* [2009] IEHC 522.

requires a child's views to be heard on the possible sanctions.³² The rights and best interests of the child does not require that the child's views determine the sentence but that the child is aware of the possible outcomes. While this issue could be alleviated by the child's lawyer-assistance, it is also problematic where the lawyer and judges lack appropriate specialised training. In this regard, the court should also consider any additional supports available for a troubled child which need to be dealt with in a child-appropriate way.

Therefore, while the purpose of a probation and welfare report is to ensure that the needs of the child are addressed, the author's research demonstrated that it is usually not sufficient, in serious cases such as for example, sexual abuse cases involving child offenders where specialised therapeutic interventions and treatments such as the AIM project are required.³³ A probation welfare report may also need to be supplemented with a psychologist report or psychiatrist report, though noting there are also practical dangers of obtaining additional welfare type reports which can reveal information such as other undisclosed potential offences which would be a breach of a child's presumption of innocence.

Judges' view of the Children Act 2001

Most contemporary youth justice philosophies 'are neither characterised nor polarised by one dominant philosophical influence'.³⁴ This would appear to facilitate sentencing judges adopting an eclectic approach to sentencing. However public policy increasingly requires a strong response to crimes such as sexual offences.³⁵ Therefore, in this context it is instructive to explore how Irish judges currently assess the balancing of the best interests of the child with the public demand for a punitive approach. A key finding in this regard is that judges are more concerned with future offending than retribution for existing offences. In practice this means judges are prepared to consider therapeutic and rehabilitative approaches to youth sentencing. The following are results gathered from the authors' research:

- Nearly all judges (95%) believed that the best interests of the child, public policy and victim interests as outlined in Section 96(5) of the Children Act 2001 could be achieved in sentencing. However less than half of the judges (43.75%) were positive about the Children Act 2001. The lack of resources, particularly outside Dublin, was frequently mentioned.³⁶
- All judges were positive about pre-sanction probation reports but 2/3 (66%) of judges felt the Children Court judges should have more discretion in sentencing.³⁷
- 75% of judges felt that retribution should not be a factor in sentencing children, which is in keeping with the principles of the UNCRC.³⁸

³² Ton Liefwaard, 'Child-friendly justice: protection and participation of children in the justice system' (2016) 88 *Temple Law Review* 905.

³³ Marcella Leonard and Simon Hackett, 'The Aim3 Assessment Framework Manchester' (AIM, 2019).

³⁴ Mairéad Seymour, *Youth justice in context: Community, compliance and young people* (Routledge 2012) 9.

³⁵ Brigitte Bouhours and Kathleen Daly, 'Youth sex offenders in court: An analysis of judicial sentencing remarks' (2007) 9(4) *Punishment and Society* 371.

³⁶ John O'Connor, 'The Sentencing of Child and Adolescent Sexual Offences in the Irish Youth Justice System: Judicial Discretion and the Justice/Welfare Dichotomy' (DProf, Nottingham Trent University 2021), section 10.1.

³⁷ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019) 31.

³⁸ John O'Connor, 'The Sentencing of Child and Adolescent Sexual Offences in the Irish Youth Justice System: Judicial Discretion and the Justice/Welfare Dichotomy' (DProf, Nottingham Trent University 2021), section 4.1.

- 70% of judges were positive about restorative justice, though the statistics reveal it is rarely used in practice.³⁹
- 100% of judges believed that the age and maturity of the child matter in practice and all judges, in accordance with international best practice, disapproved of having two ages of criminal responsibility.⁴⁰ However, there was little agreement as to what the minimum age should be. Not surprisingly, therefore, a significant number of judges (38.89%) in this research felt that chronological age alone was not sufficient and that there should be some form of capacity test. Uniquely, the Children Court judges have the authority to dismiss a case on its merits for a child under 14 years under section 76(c) of the Children Act 2001.

Research on psychological maturity and decision making is an emerging area where there is a significant gap in knowledge,⁴¹ so it is not surprising that regarding the current level of assessment of age and maturity, there was a divergence of views among judges. Approximately 1/3 of judges believe the current system was adequate, 1/3 believed it wasn't and 1/3 were unsure.⁴²

Against that, judges were more positive on developmental issues and the need for judicial independence. For example:

- 100% of judges believed that personal issues such as mental health and severe learning disabilities e.g. ADHD, were significant factors to be considered in sentencing.
- 90% of judges felt that children who commit sexual offences could be rehabilitated.⁴³
- 95% of judges would welcome guidance on sexual offending sentencing but only 28% felt the guidelines should be mandatory.⁴⁴

93% of judges believed the press influence the debate on juvenile sexual offences but 72% of judges felt it didn't influence them in the actual sentence and cited their oath of office.⁴⁵ Interestingly when YPPO were asked the same question, they agreed with judges that public opinion is much harsher around sexual offending than other types of offending and it had the potential to inflame public opinion. However, on the positive side, some YPPOs felt it could have an educational benefit particularly in relation to revealing issues such as sexting by teenagers who are often unaware they are committing an offence. What concerned YPPOs particularly was the perceived pressure the media may have on child victims. This they felt often manifested itself in victims being put under pressure to submit a victim impact statement when they do not wish to do so or where too much confidential information is revealed.

³⁹ *ibid* section 1.2.1

⁴⁰ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019) 40.

⁴¹ Mairéad Seymour, *Youth justice in context: Community, compliance and young people* (Routledge 2012); Carrie S Fried and Dickon N. Reppucci, 'Criminal decision making: The development of adolescent judgment, criminal responsibility and culpability' (2001) 25(1) *Law and Human Behavior* 45; Thomas Grisso and Robert G. Schwartz, *Youth on trial: A developmental perspective on juvenile justice* (University of Chicago Press 2000).

⁴² John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019) 42.

⁴³ *ibid* 45.

⁴⁴ *ibid* 36.

⁴⁵ *ibid* 37–38.

The most significant key finding is the need for specialisation and training of judges and lawyers. Specifically, 88% of judges favoured greater specialisation in juvenile justice and 100% of judges believed that there should be a trained panel of judges.⁴⁶ 38% of judges favoured specialist regional courts as opposed to the existing 25 District Courts.⁴⁷ In addition, 61% of judges favoured special facilities for children in courts.⁴⁸

The Child Victim

A significant challenge therefore for the judges interviewed and from a literature review is to apply a sentence that promotes rehabilitation and accountability for a child defendant but also provides justice and safety for victims and the public in child sexual abuse cases.⁴⁹ In addition, the literature indicates that a significant portion of child sexual offending also involves younger children as victims including children from the same household as the child offenders.⁵⁰ One of the unfortunate side effects is the concept that Professor Simon Hackett calls the victim to offender cycle, whereby individuals abused in childhood go on to complete the cycle by victimising others.⁵¹ However, the evidence also suggests that most victims of sexual abuse do not go on to abuse others.⁵² Many children who are abused encounter post-traumatic disorder, which may not manifest itself for many years. It will not be rectified solely by a victim impact statement. Indeed, the legal process leading to a sentence can result in more, rather than less, trauma for the victim. As Beijer and Liefwaard cogently point out, it can lead to 'secondary victimisation i.e. victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.'⁵³

Frequently, the perceived 'safe' approach to sentencing the child offender is to give a custodial sentence and thereby remove the child from the family for a period of time. However, the desirability of this approach for the victim, the child offender and their families is not always evaluated. Child victims are unlikely to be effective self-advocates.⁵⁴ Yet, the whole thrust of juvenile justice is that detention is a last resort,⁵⁵ notwithstanding other factors such as the needs of the victim and public policy issues which must also be taken into account.⁵⁶ In relation to victims, all YPPOs were of the view that victims should be allowed

⁴⁶ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019) 47.

⁴⁷ *ibid* 48.

⁴⁸ *ibid* 49.

⁴⁹ Riddhi Blackley and Lorana Bartels, 'Sentencing and treatment of juvenile sex offenders in Australia' (2018) 555 *Australian Institute of Criminology* < https://www.aic.gov.au/sites/default/files/2020-05/ti_555_050718.pdf > accessed 10 February 2022.

⁵⁰ Gail Ryan, Tom F. Lleversee and Sandy Lane, *Juvenile Sexual Offending: Causes, Consequences, and Correction* (John Wiley & Sons 2011); Nessa Lynch, 'The other child – The rights of the child victim in the youth justice system' (2018) 26(2) *The International Journal of Children's Rights* 228.

⁵¹ Simon Hackett, *Children and young people with harmful sexual behaviours* (Dartington London: Research in Practice 2014).

⁵² Daniel Salter and others, 'Development of sexually abusive behaviour in sexually victimised males: a longitudinal study' (2003) 361(9356) *The Lancet* 471-476; Simon Hackett, Myles Balfe, Helen Masson and Josie Phillips, 'Family responses to young people who have sexually abused: Anger, ambivalence and acceptance' (2012) 28(2) *Children and Society* 128; Di McNeish and Sara Scott, *Key messages from research on children and young people who display harmful sexual behaviour* (Centre of Expertise on Child Sexual Abuse 2018).

⁵³ Annemarieke Beijer and Ton Liefwaard, 'A Bermuda triangle-balancing protection, Participation and proof in criminal proceedings affecting child victims and witnesses' (2011) 7 *Utrecht Law Review* 70.

⁵⁴ Vince Mercer, Karen Sten Madsen, Marie Keenan and Estelle Zinsstag, 'Doing restorative justice in cases of sexual violence: A practice guide' (Leuven Institute of Criminology 2015).

⁵⁵ Children Act 2001, s 143.

⁵⁶ Children Act 2001, s 96(5).

to give impact statements where possible.⁵⁷ The difficulty this creates is that some victims are very young, and in those circumstances, the victim impact statements have to be furnished by their parents. This is compounded by the fact the abuse may not be revealed for a long period after the event. Much juvenile sexual offending for example is familial, which creates particular distress for parents. One study suggested that parental disbelief is often a defence mechanism,⁵⁸ and that it ‘serves to protect parents from the negative personal implications of total acceptance of their son’s actions’.⁵⁹ In the conflict between loving their children and protecting them, parents frequently tend to self-blame in sexual abuse cases. In this regard, YPPOs were of the view that much depends on how a court deals with victim impact statements. For example, they felt it was important that parents believe that the consequences of making a statement should not necessarily mean a harsher sentence for the offending child. Teenage sexual abuse can also have significant collateral damage for the wider family,⁶⁰ who themselves may end up as victims due for example to parental neglect.

As one YPPO case demonstrated the complexities of this:

NIAPP had a client where the parents were on board but they were almost over the top. The parents had a safety plan sellotaped in every room and there was an older sibling who was 16 years who was forgotten about. It transpired after a few months that this young person was actually suffering with suicidal ideation because he was seen as the buffer. It was as if ‘ah he’s alright’. They were trying to manage the young person who has harmed, manage the victim but the older brother of them was ignored and this older child ended up with suicidal ideation.⁶¹

Hackett and others found that 31% of children who sexually abuse have themselves been abused and when combined where there is a strong professional suspicion of such victimisation, the figure jumps to 50%.⁶² The author’s research also established that for many of the children who abuse, an awareness of the abuse that they themselves may have suffered only becomes apparent when they have been found to offend. YPPO emphasised that these children frequently normalise their sexual behaviour because of what happened to them in their past. Therefore, there is a disconnect for the child between his behaviour and the trauma caused by the sexual offending to the victim: ‘It can be hard for them to fully buy into the victim empathy module because they are victims themselves and there was nothing done about their abuse. It was tied up in the family or nobody knew enough about what happened to them, so it is hard for them to get into that space [sic Empathy].’⁶³ In this regard, YPPOs

⁵⁷ John O’Connor, ‘Document 3: A critical examination of the Irish judges’ assessment of justice and welfare issues with particular regard to sexual offences’ (DProf, Nottingham Trent University 2019).

⁵⁸ Yvonne Duane and others, ‘Experiences of parents attending a programme for families of adolescent child sexual abuse perpetrators in Ireland’ (2002) 8(1) *Child Care in Practice* 46.

⁵⁹ Simon Hackett, *Children and young people with harmful sexual behaviours* (Dartington London: Research in Practice 2014).

⁶⁰ *ibid.*

⁶¹ John O’Connor, ‘Document 4: Exploring young people’s probation officers’ perspectives in respect of child sexual offending in the context of ‘welfare’ and ‘justice’ in Irish youth justice’ (DProf, Nottingham Trent University 2020) 38.

⁶² Simon Hackett, Josie Phillips, Helen Masson and Myles Balfe, ‘Individual, family and abuse characteristics of 700 British child and adolescent sexual abusers’ (2013) 22(4) *Child Abuse Review* 232.

⁶³ John O’Connor, ‘Document 4: Exploring young people’s probation officers’ perspectives in respect of child sexual offending in the context of ‘welfare’ and ‘justice’ in Irish youth justice’ (DProf, Nottingham Trent University 2020) 39.

emphasised that treatment must first start with the offending child's own trauma, before building empathy. Unsurprisingly, therefore one YPPO emphasised that the courts should concentrate on victims feeling safe rather than forcing empathy from the offender.⁶⁴

One of the striking factors uncovered in this research relates to the group therapy with NIAPP (National Inter-Agency Prevention Programme); children who are referred may include children referred by Tusla/Child and Family Agency, by the Diversion Programme and by the courts for similar offences. Three different referral systems are therefore evident. The child who is referred by the courts may struggle to understand why he is treated more harshly than the other (non-court) children particularly if the crime was in effect the same. While judges take cognisance of victims, there is a dearth of research on how the changing conceptualisation of the role of victims influences the judicial process, including the final sentence bearing in mind that many children (both victims and perpetrators) have learning and speech and language issues.⁶⁵

Analysis of Current Irish Case Law

The author's research revealed that the Irish sentencing process has demonstrated considerable nostalgia for a jurisprudence embedded in the 20th century working of the Children Act 1908.⁶⁶ This is evidenced by the existing framework of sentences and by a legal process that has not yet adapted to academic research and post-UNCRC developments, such as neuroscientific child development. This is compounded by the lack of statistical court data and limited resources particularly outside Dublin. Judges also struggle to evaluate the maturation of children in sentencing. The current MACR of 12 years (or 10 years in the case of murder and rape) negates the scientific and developmental evidence regarding the capacity of children, leading to the adultification of children.⁶⁷ This is an area requiring legislative change. However, in the absence of such change, Irish courts should evaluate the positive experience of other common law countries notwithstanding that this may risk being labelled 'cherry-picking'.⁶⁸

YPPOs were unanimous in the view that sentencing is a matter for the judge who should take charge, yet the perceived paucity of sentencing options in the current Irish legal system has resulted in Irish judges resorting to a benign rehabilitative sentencing regime based on an adult model.⁶⁹ In this scenario, the judge takes a headline sentence and reduces the detention aspect by such matters as a plea of guilty and the young age of the offender. This is done in concert with the lawyers appearing before them who frequently advocate for such a sentence. All of this is exacerbated by the inadequate training and education of lawyers.⁷⁰

⁶⁴ *ibid.*

⁶⁵ Nessa Lynch, 'The other child –The rights of the child victim in the youth justice system' (2018) 26(2) *The International Journal of Children's Rights* 228.

⁶⁶ John O'Connor, 'The Sentencing of Child and Adolescent Sexual Offences in the Irish Youth Justice System: Judicial Discretion and the Justice/Welfare Dichotomy' (Doctoral dissertation, Nottingham Trent University 2021), section 10.1

⁶⁷ Barry Goldson, 'Unsafe, unjust and harmful to wider society: Grounds for raising the minimum age of criminal responsibility in England and Wales' (2013) 13(2) *Youth Justice* 111.

⁶⁸ David Nelken, *Understanding and learning from other systems of juvenile justice in Europe* (Routledge 2018).

⁶⁹ John O'Connor, 'Document 3: A critical examination of the Irish judges' assessment of justice and welfare issues with particular regard to sexual offences' (DProf, Nottingham Trent University 2019).

⁷⁰ Ursula Kilkelly, *Youth justice in Ireland: Tough lives, rough justice* (Irish Academic Press 2006); Ton Liefwaard and Ursula Kilkelly, *Juvenile justice in Europe: Past, present and future* (Routledge 2018).

A key finding in the author's research is notwithstanding judges prioritise cases involving children, delays generally in the criminal justice system can manifest itself in prosecution delay,⁷¹ historical abuse delay, judicial review or in the time required for a child or a victim to come to terms with the offence. Such delay results, particularly in cases of child sexual offending, being dealt with as adult sexual offending. Therefore, the child ages-out of childhood (at 18 years of age) and accordingly loses the benefits of the Children Act 2001. The result is that frequently the offender, the victim, the public and the judges are dissatisfied with the court sentence and the process. This in turn has implications for the legitimacy of the juvenile justice system and the rule of law.

Court Interventions in Youth Sentencing Internationally

It is worth noting 80% of Irish judges interviewed in the author's research were dissatisfied with the existing adversarial court system for children in conflict with law, 53% of Irish judges interviewed felt it should be a mix of adversarial and inquisitorial, while 27% felt that it should be entirely replaced with an inquisitorial system.⁷² One radical solution to facilitate this would be to adopt a more holistic model such as the Nordic Barnahus model which involves a multi-disciplinary interagency interventions to children.⁷³ This service integrates legal and social systems but also respects due process and is also child friendly. While worthy of further research, it is unlikely to be introduced in Ireland in current times. Instead, it is proposed to evaluate extracts from youth justice jurisprudence in three jurisdictions that could inform the Irish judicial system but which would not require judges to cast aside the current legislative model.

It is suggested that the trailblazer of common law jurisdictions is New Zealand ('NZ'). This is because NZ operates a unique approach to youth justice, whereby the youth court judges have effectively developed a strong child-friendly disposal format for finalising matters relating to offences.⁷⁴ A similar system could facilitate Children Court judges in Ireland in developing youth justice jurisprudence. Also, the US Supreme Court has the potential to inform the Irish Appellate Courts in developing a robust constitutional response to the use of neuroscience developments in youth justice sentencing. Finally, the English Court of Appeal has found solutions to a lacuna in the legislation as regards sentencing of children who have reached the age of 18 years.

New Zealand (NZ)

Most juvenile offending, including serious offences and sexual offences, are dealt with through some form of diversion. However, unlike Ireland, NZ does not have a statutory diversion programme.⁷⁵ In relation to disposal for juvenile sexual offences through the youth court, approximately 50% of Youth Court cases are marked proved but also result in a discharge. This means the child/young person is left without a charge or a formal order

⁷¹ *DPP v. Donoghue* [2014] 2 IR 762.

⁷² John O'Connor, 'The Sentencing of Child and Adolescent Sexual Offences in the Irish Youth Justice System: Judicial Discretion and the Justice/Welfare Dichotomy' (Doctoral dissertation, Nottingham Trent University 2021), section 8.1.

⁷³ 'Promise Barnahus Network, 'About Barnahus' <<https://www.barnahus.eu/en/about-barnahus>> accessed 9th April 2022.

⁷⁴ Nessa Lynch, 'Playing catch-up? Recent reform of New Zealand's youth justice system' (2012) 12(5) *Criminology & Criminal Justice* 507.

⁷⁵ Nessa Lynch, *Youth Justice in New Zealand* (3rd edn, Thomas Reuters 2019).

against them.⁷⁶ Therefore, the NZ cases are considered to shed light on sentencing options for the Irish Courts and also provide valuable insights into the treatment of ethnic groups in the justice system.⁷⁷ The NZ youth justice system is embodied in the Children, Young Persons and Their Families Act 1989,⁷⁸ and is regarded as a model for other jurisdictions.⁷⁹ It attempts to provide an effective resolution which aims to address a young person's accountability, acknowledging the child's needs and also addressing the causes of offending.⁸⁰ Re-integration, restorative justice, diversion and family empowerment are strong components of its ethos.⁸¹ The goal of family empowerment is central to the NZ youth justice system. It is primarily achieved through the Family Group Conference ('FGC') which has links to the *whanau* (extended family) of the Maori culture. The family, therefore, have a direct role in the consensus decision-making process.⁸² Measures must involve the victim and have proper regard to their rights and interests. The family conferencing concept directly influenced the Irish legislative equivalent.⁸³ It is also adopted in Australian states, and other jurisdictions such as Northern Ireland, with varying degrees of success.⁸⁴ Specifically, in respect of sexual offences, the treatment programmes for sexually abusive children have traditionally had a considerable emphasis on family-based community programmes. There is also a view that treatment programmes now need to be modified to take account of recent research.⁸⁵

According to Lynch, 'Many of the principles in the Oranga Tamariki Act dealing with outcomes are an amalgamation of the long-standing justice and welfare approaches.'⁸⁶ FGC plays a pivotal role in the youth court outcomes and arguments in the NZ Youth Court revolve around whether a judge will apply Section 282 or Section 283(a) of Oranga Tamariki Act 1989, as a discharge on completion of a FGC. The essential difference is that Section 282 is a complete and unconditional discharge whereas a Section 283(a) discharge leaves a record for the Youth Court even though there would be no other order or penalty. While no direct analogy can be made with Ireland, a Children Court judge in Ireland could conceivably use a discharge following a successful Family Conference ('FC') completion under Section 78 of the Children Act 2001. Specifically, the judge may, following a successful FC, either

⁷⁶ Nessa Lynch and Kate Peirse-O'Byrne, 'Criminal Records in the Youth Jurisdiction' (2016) *New Zealand Law Journal* 362.

⁷⁷ John Muncie and Barry Goldson, 'England and Wales: The new correctionalism' in John Muncie and Barry Goldson (eds), *Comparative Youth Justice* (Sage Publications 2006).

⁷⁸ Oranga Tamariki Act 1989, Children's and Young People's Well-being Act 1989 (Public Act 1989 No 24), replaced, on 14 July 2017, by section 5 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.

⁷⁹ Nessa Lynch, 'Playing catch-up? Recent reform of New Zealand's youth justice system' (2012) 12(5) *Criminology & Criminal Justice* 507.

⁸⁰ Nessa Lynch, 'Neurodisability in the youth justice system in New Zealand: How vulnerability intersects with justice' (2018) Victoria University of Wellington Legal Research Paper No. 16/2018 <https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2869502> accessed 30 January 2022.

⁸¹ Allison Morris and Dr Gabrielle M Maxwell, 'Juvenile Justice in New Zealand: a New Paradigm' (1993) 26(1) *Australian & New Zealand Journal of Criminology* 72.

⁸² Catherine Love, 'Family group conferencing: Cultural origins, sharing, and appropriation - A Maori reflection' in Gale Burford and Joe Hudson (eds), *Family group conferencing: New directions in community-centered child and family practice* (Routledge 2000); Allison Morris and Dr Gabrielle M Maxwell, 'Juvenile Justice in New Zealand: a New Paradigm' (1993) 26(1) *Australian & New Zealand Journal of Criminology* 72.

⁸³ Dáil Deb 12 April 2000, vol 518.

⁸⁴ Nessa Lynch, 'Playing catch-up? Recent reform of New Zealand's youth justice system' (2012) 12(5) *Criminology & Criminal Justice* 507.

⁸⁵ Ian Lambie and Fred Seymour, 'One size does not fit all: Future directions for the treatment of sexually abusive youth in New Zealand' (2006) 12(2) *Journal of Sexual Aggression* 175.

⁸⁶ Nessa Lynch, *Youth Justice in New Zealand* (3rd edn, Thomas Reuters 2019).

dismiss the charges on their merits, mark the charges proved but struck out, or attach an alternative sanction under Section 98 of the Children Act 2001.

In *Police v JYC Porirua*,⁸⁷ a young person abused a preschool child while his mother was absent from home, whereas in *Police Youth Aid v CJK*,⁸⁸ a 16-year-old made an intimate recording of two young children in a swimming pool. Both cases, although sexual offence cases, are examples of Section 282 discharges ie no conviction and no record. On the other hand, the following cases are examples of Section 283(a) discharges marking for the offender a record of being in the Youth Court but incurring no other order or penalty: in *New Zealand Police v. OV*,⁸⁹ OV was aged 18 at the date of the sentence. OV admitted sexually violating a 14-year-old victim and raping a 16-year-old victim when he was also aged 16. In *Queen v. NB*,⁹⁰ NB was under 15, and his sister (the victim) was under six years. The offences involved pornography, 'licking his sister's vagina and anus and having both vaginal and anal intercourse'. NB successfully completed his FGC plan, which involved completing therapy mentoring and 100 hours of community work. In *Queen v. SQ*,⁹¹ SQ (when aged 17) faced charges of sexual violation by rape and attempted sexual violation connection of a relative. At an FGC session, it was agreed that SQ engage in therapeutic processes with constant court supervision. In rare cases, where the offences are serious, the court may be requested by the Crown to transfer from the Youth Court to the District Court but even here a custodial sentence is also unlikely, with intense supervision a more likely result, as for example in *Queen v. FY*.⁹²

The United States of America (US)

Despite the US not having ratified the UNCRC, the perception of extreme punitiveness of youth justice sentencing in the US is 'also is at the forefront of many community-based interventions involving subsidised probation, mentoring and community justice'.⁹³ Academics frequently observe US Supreme Court decisions as constituting public policy.⁹⁴ From an Irish perspective, US jurisprudence has had an impact on Irish Superior Court judicial thinking on constitutional rights such as the right to a fair trial (*DPP v. Byrne*,⁹⁵ Finlay CJ referring to the US Supreme Court case of *Baker v. Wingo*).⁹⁶

Of particular significance are innovations by the US Supreme Court in youth sentencing starting with the case of *Roper v. Simmons* ('Roper');⁹⁷ *Graham v. Florida* ('Graham');⁹⁸ and *Miller v. Alabama* ('Miller').⁹⁹ These cases represent a radical assessment of psychological and

⁸⁷ *Police v JYC Porirua* CRI-2006-291-115, 12 March 2007.

⁸⁸ *Police Youth Aid v CJK* [2014] NZYC 344.

⁸⁹ *New Zealand Police v. OV* [2018] NZYC 490.

⁹⁰ *Queen v. NB* [2019] NZYC 225.

⁹¹ *Queen v. SQ* [2019] NZYC 627.

⁹² *Queen v. FY* [2018] NZYC 500.

⁹³ John Muncie and Barry Goldson, 'England and Wales: The new correctionalism' in John Muncie and Barry Goldson (eds), *Comparative Youth Justice* (Sage Publications 2006).

⁹⁴ Christina Mancini and Daniel P. Mears, 'US Supreme Court decisions and sex offender legislation: Evidence of evidence-based policy?' (2013) 103(4) *The Journal of Criminal Law and Criminology* 1115.

⁹⁵ *DPP v. Byrne* [1994] 2 I.R. 236.

⁹⁶ *Baker v. Wingo* (1972) 407 US 514.

⁹⁷ *Roper v. Simmons* US 551 (2001).

⁹⁸ *Graham v. Florida* 560 U.S. 48 (2010).

⁹⁹ *Miller v. Alabama* 132 S. Ct 2455 (2012).

neurobiological research and the consequent legal implications for sentencing.¹⁰⁰ *Roper* emphasised that juveniles still struggle to define their own unique identity which means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. The *Graham* case took up this theme and emphasised that children are less culpable than adults due to their underdeveloped brains and characters, while *Miller* reasoned that children are constitutionally different from adults for purposes of sentencing. The emphasis in *Miller* on the transient immaturity has recently been reassessed by the US Supreme Court in *Jones v Mississippi*.¹⁰¹ It held that the court need not make a specific finding that a youth is ‘permanently incorrigible’ or even give a specific *Miller* rationale for sentencing. It is sufficient that the judge understands that he/she has a discretion in the matter. Arguably, the judicial discretionary nature of this test could give rise to justice by geography depending on the state or judge that the child appears before. On the other hand—

shifting the focus from “permanent incorrigibility” (which cannot be predicted in a scientifically reliable manner) to “transient immaturity” (which is already established by robust development research and neuroscience) may provide opportunities for counsel and courts at trial or sentencing phases, and upon appellate reviews.¹⁰²

This of course presupposes that lawyers and judges are aware of the issues surrounding developmental and brain research and how it affects the individual child. While the US Supreme Court has drawn a clear distinction in how the criminal justice system treats adults and children, it is timely now to consider how a judicial system approaches the sentencing of young people who sexually offend and are entering adulthood. In this regard, it is of note that recent neuroscience research has revealed that late adolescents (ages 18-21), due to differences in brain developments, take more risks than young adults.¹⁰³ This cohort respond more like younger adolescents (ages 13-17) than young adults (ages 22-25) to emotionally charged situations and are less likely to delay gratification.¹⁰⁴ The presence of peers can intensify these situations.

England and Wales

Traditionally, like Ireland, judges in England and Wales have enjoyed wide judicial discretion in sentencing generally. However, there have been significant divergent developments in regards to sanctioning children and young people for serious offences. The English approach is heavily influenced by formal guidelines, which at the time of the research did not exist in Ireland, but are likely emerge in the near future following the Judicial Council Act 2019. In a recent *ex tempore* judgment of the Irish Court of Appeal, *DPP v. D*,¹⁰⁵ Edwards J referred to

¹⁰⁰ Terry A. Maroney, *The once and future juvenile brain. Choosing the future for juvenile justice* (New York University Press 2014)

¹⁰¹ *Jones v Mississippi* 141.S.Ct.1307 (2021)

¹⁰² MGH Center for Law, Brain and Behaviour, ‘White paper on the science of late adolescence: A Guide for Judges’ (Harvard Medical School 2022).

¹⁰³ Laurence Steinberg, ‘Adolescent brain science and juvenile justice policymaking’ (2017) 23(4) *Psychology, Public Policy, and Law* 410.

¹⁰⁴ Alexandra Cohen and others, ‘When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts’ (2016) 27(4) *Psychological Science* 549; Michelle Achterberg and others, ‘Frontostriatal White Matter Integrity Predicts Development of Delay of Gratification: A Longitudinal Study’ (2016) 36(6) *Journal of Neuroscience* 1954.

¹⁰⁵ *DPP v. D* (Court of Appeal, 4 March 2021).

the approach of the Sentencing Council for England and Wales and stated that while it could not be determinative in the Irish jurisdiction, nevertheless it is a useful comparative approach. Since 2018, the Lord Chief Justice Burnett has developed this area of law in respect of young adults and offered a new approach to the issues concerning a child over 18 years who commits a crime. The importance of the change is that it recognises that young adults between the ages of 18 years and 25 years must be given consideration for special treatment as opposed being treated as adults. The first case to outline the new sentencing approach was *R v. Clark* which involved a teenage boy who kidnapped, falsely imprisoned and threatened the victim with weapons. In the course of his judgment, Lord Chief Justice observed at paragraph 5:¹⁰⁶

Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear... full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research...is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision.

R v. Clarke was followed by some very serious and challenging sentencing cases but robustly dealt with by the Court of Appeal. *R v. Hobbs*,¹⁰⁷ involved manslaughter of a man who had burned to death after the defendants had ignited a flare in the car in which he was sleeping. Holroyd J observed that the modern approach to sentencing in that case required the court to 'look carefully at the age, maturity and progress of the young offender in each case'. The case significantly outlined that the principles that applied to young offenders under 18 years also applied to young people who offend in early adulthood but are far from the maturity of adults. In *R v. Balogun*,¹⁰⁸ the defendant was convicted of a campaign of rape against teenage girls. Issues which might be regarded as aggravating factors in an adult sentence were put into context in *R v. Quartey*,¹⁰⁹ which involved a gang murder; an inhumane and savage attack. The Lord Chief Justice drew specific attention to the appellant's background of falling out of mainstream education and into gang-based behaviour which he interpreted as indicative of immaturity and a lack of strength to resist peer pressure. However, sentences may not be reduced where the crime shows a particular level of sophistication by the late adolescents, such as *R v Raja Mohammed*,¹¹⁰ and *R v Assaf*.¹¹¹

Conclusion

The underlying philosophy of this article is that children who seriously offend, such as in sexual abuse cases, should be dealt with in a specialised judicial system which respects the rights and welfare of children in compliance with the underlying ethos of the UNCRC and international best practice. The existing model of sentencing which mitigates the harshest effects of an adult sentences is deserving of review. This requires an acknowledgement that children, though developmentally immature, are capable of reform. This model must also address the needs of victims and recognise those needs are complex as evidenced for example in sibling sexual abuse cases. Family conferencing, therapeutic interventions, and family

¹⁰⁶ *R v. Clark* [2018] 1 Cr. App. R. (S.) 52.

¹⁰⁷ *R v. Hobbs* [2018] 2 Cr App R(S) 36.

¹⁰⁸ *R v. Balogun* [2018] EWCA Crim 2933.

¹⁰⁹ *R v. Quartey* [2019] EWCA Crim 374.

¹¹⁰ *R v Raja Mohammed* [2019] EWCA Crim 2095.

¹¹¹ *R v Assaf* [2020] 1 Cr App R (S) 3.

involvement are necessary. A community sanction combined with therapeutic interventions tailored to the individual child's needs will obviate the necessity for a custodial sentence in the majority of cases. Individuality in sentencing therefore should be tailored to the child. One conundrum encountered in the author's research was the limited clarity from existing courts data. Juvenile judicial sentencing is understandably hidden behind a veil of court invisibility, such as the in-camera rule, however that effect could be somewhat obviated by trial judges furnishing written decisions. *DPP v TC* is an example of a written decision by the Children Court.¹¹²

Literature suggests with appropriate interventions such as multi-systemic therapy ('MST') the recidivism rate, for example in sexual offending, is low.¹¹³ Sentences therefore should take into account the stage of development of the child who has offended and, therefore, be proportionate to their risks and needs.¹¹⁴ Juvenile sentencing, particularly in sexual offences, is 'half the numbers, twice the complexity' in comparison to the justice system generally.¹¹⁵ However, a skilful mediation of the justice/welfare dichotomy in judicial discretion is central to this complexity in a way that upholds Ireland's commitment to the UNCRC, to child-friendly justice and to public policy considerations.

¹¹² *DPP v. TC* [2017] IEDC 7.

¹¹³ Joan Cherry and Deirdre O'Shea, 'Therapeutic work with families of young people who sexually abuse' in Marcus Erooga and Helen Masson (eds), *Children and young people who sexually abuse others. Current developments and practice responses* (Routledge 2006).

¹¹⁴ Ian Lambie, 'Young people with sexual behaviour problems: towards positive and healthy relationships' in Kathryn Geldard (ed), *Practical interventions for young people at risk* (Sage 2009).

¹¹⁵ Email from Dr Nessa Lynch, Associate Professor, Faculty of Law, Victoria University of Wellington to author (26 May 2021).