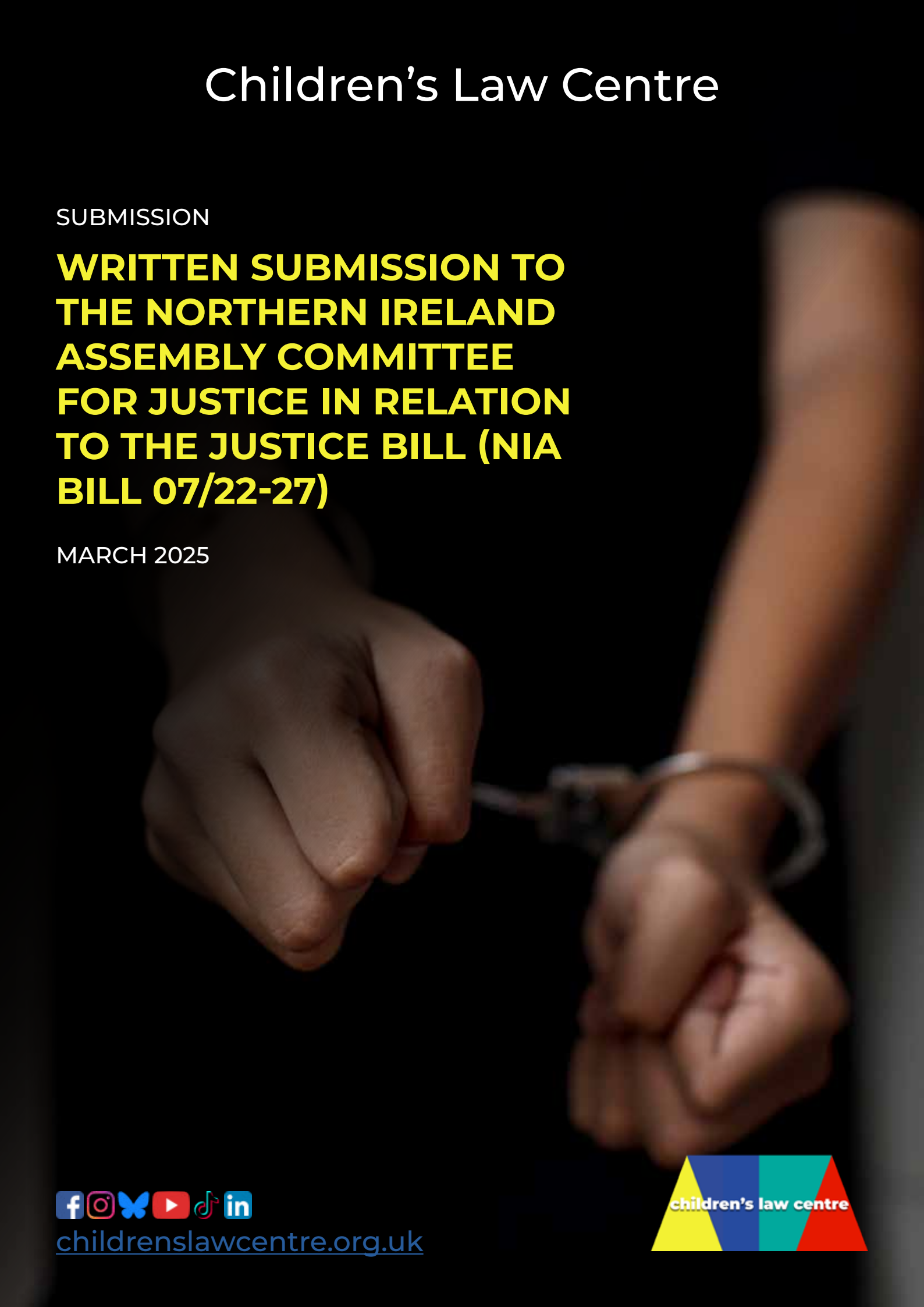
Children's Law Centre

SUBMISSION

WRITTEN SUBMISSION TO THE NORTHERN IRELAND ASSEMBLY COMMITTEE FOR JUSTICE IN RELATION TO THE JUSTICE BILL (NIA BILL 07/22-27)

MARCH 2025



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Children's Rights
Change Children's Lives

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INTRODUCTION

The Children's Law Centre (CLC) is an independent charitable organisation in Northern Ireland (NI) which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

Founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), CLC leads for NI NGOs in co-ordinating the submission of evidence to the Committee on the Rights of the Child (CRC) to support and inform its periodic monitoring and reporting work on the UK's compliance with children's rights standards.

Since establishment in 1997, CLC has provided free legal advice and information as well as strategic legal representation on a growing and increasingly complex range of issues affecting children. As a multi-disciplinary organisation, we offer training and research on children's rights, we make submissions on law, policy and practice affecting children and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children, young people, their parents and carers as well as a Live Chat service for young people. Our work is underpinned by a youth advisory panel, Youth@CLC.

Our model of practice is very different to that provided by solicitors and legal practitioners working in private practice. Our expert legal advice, information and representation service is child-accessible and jurisdictionally unique in that regard. The service is free and accessible to children who contact us directly for legal advice and support. Our policy and advocacy work is informed by analysis of our casework, children's lived experiences as communicated to us through Youth@CLC, research and legal analysis.

While we work on behalf of all children in NI, our focus is on vindicating the rights and unmet legal needs of the most marginalised and disadvantaged groups of children in society including but not limited to, children with severe and complex health and mental health needs, special educational needs and disabilities, social and emotional or additional learning support needs and children in or at risk of contact with the criminal justice system.

THE STRUCTURE OF THIS SUBMISSION

CLC welcomes the opportunity to provide written evidence to the Committee for Justice (the Committee) in relation to the Justice Bill (the Bill) in advance of attending the Committee's meeting on Thursday 27th March 2025.

This written submission should be read as an initial assessment by CLC of the Bill as introduced, focusing on Part 2 relating to bail, remand and custody arrangements for children.

It is our intention to provide further written material to the Committee in relation to the other Parts of the Bill as introduced, until then, members may find the following CLC policy documents of relevance:

- Children's Law Centre response to Department of Justice Consultation on Proposals to Amend Legislation Governing the Retention of DNA and Fingerprints in NI[1]
- Children's Law Centre response to Department of Justice Consultation on Proposals on the Use of Live Links for Police Detention / Interviews[2]

As we have not yet examined the amendments shared with the Committee by the Department which are expected to be introduced at Consideration Stage, we have not provided comments on those amendments in this submission but may provide additional written evidence in relation to them at a later date for the Committee's consideration.

This submission begins with high-level reflections regarding children's rights standards, as they relate to justice issues. We then consider a number of issues we recommend can and should be addressed by additional amendments to the Bill before providing specific comments on the contents of Part 2 of the Bill.

CHILDREN'S RIGHTS

In forming our view on the contents of the Bill we draw upon the standards set out in the United Nations Convention on the Rights of the Child (UNCRC)[3] which the UK government ratified in 1991 and is regarded and accepted as the authoritative description of the minimum basic human rights standards every child is entitled to and should expect to enjoy; as well as the General Comments (GCs)[4], Statements and Concluding Observations and Recommendations[5] of the United Nations Committee on the Rights of the Child (the CRC).[6]

It is worth noting that while the UNCRC and associated provisions have not been incorporated into domestic legislation in this jurisdiction, they are recognised by our Courts as an authoritative interpretative tool when considering domestic legislation. In that context CLC commends, for careful consideration by the Justice Committee, the CRC's Concluding Observations and Recommendations to the UK which have been issued following each periodic examination of the UK by the CRC since 1995. Many of these Concluding Observations and Recommendations relate to aspects of youth justice and are jurisdictionally specific.

Alongside this we also draw upon the European Convention on Human Rights (ECHR)[7], given domestic effect by the Human Rights Act 1998 (HRA)[8] as well as a range of other relevant children's human rights standards, such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty[9] and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).[10]

While the stated purpose of Part 2 of the Bill as reflected in the Explanatory and Financial Memorandum (EFM) is, ***"...to enhance compliance with Article 37 of the United Nations Convention on the Rights of the Child (UNCRC)..."***[11] it is important to note that the rights of children as set out in the UNCRC are interdependent and indivisible and so Article 37, whilst of crucial significance in its own right must be read, understood and applied in the context of the Convention as a whole.

Article 37 sets out that:

> *States Parties shall ensure that:*
>
> *a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

However, of equal importance in considering the contents of the Bill is Article 40, which states that:

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

a. No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

b. Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

i. To be presumed innocent until proven guilty according to law;

ii. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

iii. To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

iv. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

v. If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

vi. To have the free assistance of an interpreter if the child cannot understand or speak the language used;

vii. To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

a. The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

b. Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care

> *shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*

Further, while the Department has set out that enhanced compliance with Article 37 is the stated purpose of Part 2 of the Bill, we feel it is important to make clear that the Bill in its totality should be analysed through the lens of children's rights standards and to reiterate that the standards set out by the UNCRC are minimum standards that can and should be surpassed.

In that context, as the Committee's scrutiny of the Bill continues we would like to draw particular attention to the general principles of the UNCRC which should underpin how the Convention is interpreted and applied in practice. These general principles set out that all children and young people:

- Have the right to enjoy their rights without discrimination and to be protected from all forms of discrimination (Article 2, UNCRC)
- Have the right to have their best interests as the primary consideration in all actions and decisions taken in relation to them (Article 3, UNCRC)
- Have the right to life and to the highest possible level of survival and development (Article 6, UNCRC)
- Have the right to express their views freely and have those views taken seriously and given due weight, in matters affecting them (Article 12, UNCRC)

In addition, the Committee will find a number of the CRC's General Comments of use in considering the practical application of the standards of the Convention in the context of the contents of the Justice Bill, including but not limited to:

- General Comment Number 14 on the rights of the child to have his or her best interests taken as a primary consideration[12]; and
- General Comment 24 on children's rights in the child justice system.[13]

We strongly recommend that the Committee consider the guidance of the CRC contained within General Comment Number 24 in its deliberations, read alongside the Convention itself. In particular, we would like to draw the Committee's attention to the General Comment's introduction, in which it is stated that:

> *2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has*

been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child. As the Convention clearly states in article 40, every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.

Finally, in providing fuller context and understanding to the Committee in how the youth justice system has developed in this jurisdiction in recent decades we encourage members to consider the recommendations of the Review of Youth Justice[14] which reported in 2011 as well as Tracing the Review[15], a report jointly commissioned by the Children's Law Centre, Include Youth, NIACRO and VOYPIC which was published in 2021 to examine developments in youth justice in Northern Ireland from 2011 – 2021.

NECESSARY AMENDMENTS FOR MLAs TO CONSIDER

The Committee will be well aware of the wide-ranging nature of the contents of the Bill. While we recognise that it is a complex piece of draft legislation with a number of important provisions, CLC believes that further amendments on a limited number of additional policy areas which do not currently feature in the Bill are critical to delivering long overdue and much needed reform.

In particular, we wish to highlight two areas of law and policy where the evidence for change is overwhelming and too many opportunities to deliver such change have not been taken: raising the age of criminal responsibility; and repealing the defence of reasonable chastisement.

The Age of Criminal Responsibility

The Children's Law Centre strongly advocates for the urgent reform of Northern Ireland's laws to raise the minimum age of criminal responsibility (MACR) from 10 to 16 years. The current threshold is one of the lowest in the world and fails to align with international human rights standards. Extensive research highlights that criminalising young children is harmful, ineffective, and disproportionately affects vulnerable groups. Below we have set out a summary of a number of key reasons[16] why raising the age is necessary to ensure compliance with international obligations, to protect children's rights and to adopt a more effective approach to youth justice. We believe the Justice Bill provides the most appropriate vehicle through which to deliver this change in the law and to give statutory effect to what is current practice within the youth justice system in NI.

i. International Human Rights Standards

The United Nations Convention on the Rights of the Child (UNCRC) has repeatedly criticised the UK's low MACR, urging states to establish an age of at least 14 years and commending those setting it at 15 or 16 years. The UN Committee on the Rights of the Child has stated that the UK's approach is not compatible with its obligations under international law. Furthermore, General Comment No. 24 (2019) stresses that adolescent brain development continues into the mid-20s, reinforcing the need to avoid criminalising young children.

It is also relevant to highlight that in the specific context of Northern Ireland, Professor Yanghee Lee, the then Chair of the UN Committee on the Rights of the Child speaking at the Children's Law Centre's Annual Lecture in 2008

stated that:

> *"It can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.*
>
> *In order to persuade State parties to seriously consider raising the age of criminal responsibility to an age that would be considered as not being too drastic of a change, 12 was decided as the absolute minimum age by the Committee. What was important was to have countries that still had MACR set at 7 and 8 years to effectively reset the age in a rather speedy manner.* ***It must not be forgotten that the Committee also emphasized raising the age even further. Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16".***[17] *(Our emphasis).*

As recently as November 2023, Bragi Gudbrandsson, the then (and still current) Vice-Chair of the Committee on the Rights of the Child said, in delivering the Children's Law Centre's Annual Lecture that:

> *"The repeated recommendation of the Committee is for Northern Ireland to raise the minimum age of criminal responsibility. It is the view of the Commitee that the current age of 10 is unacceptable. This is said in light of our knowledge today on the complex needs of children's and young people's mental, emotional, physical or social well being as well as on children's brain development.*
>
> ...
>
> *We know that the Human Rights Institutions, Civil Society including children's and youth organisations in NI supports the rise of the minimum age to 16 and the Committee wholeheartedly supports this position."*[18]

ii. Scientific Evidence on Child Development

Neuroscience research has demonstrated that children under 16 years old lack the cognitive maturity to fully understand legal proceedings, consequences of actions, and impulse control. The frontal lobe, responsible for decision-making and risk assessment, is still developing during adolescence. Studies show that criminalisation worsens outcomes for young people, increasing the likelihood of further offending rather than rehabilitation.

iii. Disproportionate Impact on Vulnerable Children

Children who come into contact with the criminal justice system are often among the most vulnerable. Over 34% of children in custody in Northern Ireland are care-experienced. Additionally, children from socio-economically disadvantaged backgrounds and those with mental health issues, learning disabilities, or histories of abuse and neglect are disproportionately represented. Instead of criminalising these children, early intervention, support services, and diversionary approaches should be prioritised.

iv. Inconsistencies with Other Legal Age Limits

The age of criminal responsibility is starkly inconsistent with other legal protections and limits for children in Northern Ireland. A child under 16 cannot leave school, vote, sit on a jury, or purchase alcohol or tobacco. Yet, at age 10, they can be held criminally responsible for actions they may not fully comprehend.

v. Criminalisation Does More Harm Than Good

Evidence demonstrates that criminalising children does not reduce crime but instead:

- Stigmatises and alienates young people, leading to repeat offending;
- Creates barriers to education, employment, and rehabilitation;
- Leads to long-term negative consequences, such as acquiring a criminal record, and reducing life opportunities. Data from the Department of Justice shows that reoffending rates for young people who receive a custodial sentence are 80% within a year, proving that punitive approaches are ineffective.

vi. A More Effective Approach: Rehabilitation and Support

Countries with higher ages of criminal responsibility adopt welfare-based approaches that focus on education, family support, and mental health interventions rather than criminal punishment. Research from Scotland and other jurisdictions shows that diversionary programs lead to lower reoffending rates and better long-term outcomes. The Committee should consider how the Children's Services Co-operation Act can be fully utilised to enable this approach, in the best interests of children and young people.

vii. Growing momentum for change

The calls to raise the age of criminal responsibility in Northern Ireland have been growing consistently for many years from human rights organisations, legal and academic experts, those in the voluntary and community sector who are directly engaged with young people and by children and young

people themselves. The Department of Justice's public consultation on the issue in 2022 has also clearly demonstrated a broad consensus that at 10 years old, our current MACR is too young.

Equal Protection

While most forms of physical punishment have been prohibited across the UK, NI law continues to permit its use by parents and caregivers under the defence of 'reasonable punishment', as provided by the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. Therefore, at present, the legal defence of 'reasonable punishment' allows parents and caregivers to use physical punishment, creating a situation where children have less legal protection from violence than anybody else in Northern Ireland despite being among our most vulnerable members of society.

It is also important to be clear that a robust body of evidence exists demonstrating that physical punishment does not lead to any positive behavioural outcomes and in places where reform has already taken place it has been linked to a reduction in the use of physical punishment and a shift towards positive, non-violent parenting approaches.

A change in the law would not create a new criminal offence, it would simply remove a legal defence which has been retained to date. Removing that legal defence should be accompanied by increased support for parents and carers to develop a greater understanding and awareness of non-violent forms of discipline.

CLC believes that the Justice Bill presents a timely opportunity to repeal the legal defence of 'reasonable punishment'. To do so would see Northern Ireland finally adhering to the standards of the UNCRC and acting upon the repeated recommendations of the CRC and an ever-increasing coalition calling for change to protect children from all forms of violence and to explicitly remove the 'reasonable punishment' defence.

COMMENTARY ON PART 2 OF THE BILL

As outlined in the opening introduction to this submission, we will now provide comments on the contents of Part 2 of the Bill, relating to bail, remand and custody arrangements for children.

In what follows we have provided commentary on almost every clause of this Part of the Bill to support the Committee's considerations and necessary scrutiny work. Alongside these specific comments on individual clauses we also ask the Committee to consider two overarching recommendations:

1. An overarching provision to protect the best interests of the child

Having considered the wide-ranging nature of the Bill, CLC strongly recommends that the Committee consider an additional Clause be added to the beginning of the Bill which is consistent with the provision of the Justice (Northern Ireland) Act 2002, amended by the Justice Act (Northern Ireland) 2015 to set out that all persons and bodies exercising functions in relation to the youth justice system must have the best interests of the child as a primary consideration in all matters relating to a child. This new clause would apply to all parts of the Bill, not just Part 2.

2. The importance of language: children, not juveniles

CLC believes it is important that in all instances where the term juvenile is used in the Bill that it be replaced with child. In some provisions of the Bill the term child is used, in others the term juvenile is used. Our view is that the term juvenile carries a stigma associated with delinquency and wrongdoing whereas the term child is humanising and reflective of the actual legal status of an under 18, as well as the protections they are entitled to. Using the language of child is therefore consistent with the rehabilitative, rather than punitive, approach to youth justice that is the prevailing policy approach of the Department of Justice.

Where we have used the term juvenile in what follows it is simply to reflect the actual text of the Bill as introduced.

COMMENTS ON CLAUSES

Clause 4 – Duties of custody officer after charge

CLC support the general intention of Clause 4, however we recommend the Committee consider the following:

- That Clause 4, (e) (i) be amended to include, 'vulnerabilities' so that it reads:

  the juvenile's age, maturity, needs and vulnerabilities

- Whether the Department has set out the definition of 'needs' (at Clause 4, (e) (i)) and if so, whether that definition is consistent with that of a child in need as outlined in the Children (Northern Ireland) Order 1995.

- That, when considering the capacity of the child (4, (e) (ii)) it is essential that all practicable help and support is given to the child to enable them to understand the process and any conditions which are being imposed on them through bail. This should be reinforced in the codes of practice for the Act to ensure consistency with the Mental Capacity Act and best practice.

Clause 5 – Police bail after arrest

CLC does not believe that the Department's stated policy objective of strengthening the presumption of bail for children and young people has been achieved in the draft legislation contained within Clause 5 of the Bill and that the language of the Clause should state clearly that a child to whom it applies must be released on bail and that the presumption of bail is also a presumption of bail without conditions attached.

We would also welcome clarity in relation to the Department's motivation and evidence base for the proposed new ground (at (2) (d)) for attaching conditions to police bail where a child "may be required to comply, before release on bail…to secure that he does not cause a serious threat to public order." In this same Clause (at (3) (d)) and again in Clause 6 (new Articles 10F and 10G) references are made to the child's release causing a serious threat to public order. The inference, through difference in language and without adequate detail in the EFM, is that a child may not achieve bail or have conditions attached to bail as a result of the behaviour or actions of others. We strongly encourage the Committee to explore this issue in further detail and to seek clarification from the Department in relation to the rationale for

these provisions as well as to explore how a serious threat to public order is defined and by who, in this context.

Further, at Paragraph (5), sub-paragraph (2) we recommend that the Committee considers the following in relation to the considerations set out which a custody officer must have regard to when deciding whether to impose bail conditions:

(b) the character, antecedents, associations and community ties of the juvenile

CLC are concerned by the extremely subjective nature of this consideration and by the significant scope for discretion to be given to custody officers, particularly in relation to considerations in which a child has limited, if any agency. We are particularly concerned that this consideration may permit custody officers to refuse bail on the basis of perceptions of the community in which the child lives or their relationship to family members. We encourage the Committee to give careful consideration as to whether it is reasonable and proportionate for this consideration to be applied to a child.

(c) the juvenile's record as respect the fulfilment of the juvenile's obligations under previous grants of bail

CLC are concerned about the potential for differential adverse impact on particular groups of young people by this consideration, e.g. care experienced children. We too are unclear how this consideration may be applied to a child's compliance with bail conditions which may have been set prior to any commencement of new provisions in this draft Bill (i.e. if, for example, previous bail conditions were set without consideration to the age, maturity and needs of a child which would be required if this Bill becomes law, would a custody officer be compelled to consider whether previous bail conditions were reasonable and proportionate)? The Committee may wish to explore how the retrospective implications of this provision and the need to include an additional safeguard which requires considerations of whether previous bail conditions were reasonable.

(d) the strength of the evidence of the juvenile's having committed the offence

CLC are unclear as to the rationale for the inclusion of this consideration. At the point of decision relevant to this Clause, the child will already have been arrested and charged, a determination has therefore already been made by the PSNI regarding the evidence and therefore should not have a bearing

on decisions related to bail conditions. Further determinations on the strength of the evidence of the young person having committed the offence is a matter for the courts.

(e) the juvenile's age, maturity and needs

As with Clause 4, we recommend this consideration be amended to include 'vulnerabilities' so that it reads as follows:

the juvenile's age, maturity, needs and vulnerabilities

(f) the juvenile's capacity to understand and comply with any condition of bail

We reiterate (as stated at Clause 4) that when considering the capacity of the child it is essential that all practicable help and support is given to the child to enable them to understand the process and any conditions which are being imposed on them through bail. This should be reinforced in the codes of practice for the Act to ensure consistency with the Mental Capacity Act and best practice.

Clause 6 – Court Bail

CLC welcomes the clear presumption of bail that is established by this Clause. As recommended in relation to Clause 5, we suggest the presumption of bail established here should also include a presumption of bail without conditions attached. While we welcome the strength of the presumption of bail in the text of Clause 6, we are however unclear about the purpose of Paragraphs (3) – (5) of new Article 10E (Right to bail) and are concerned about the potential consequences of elements of it. The EFM is of limited utility in setting out what these new provisions are seeking to achieve and we are particularly concerned about the provisions of Paragraph (4) (b) – (d) in relation to what should be treated as a conviction and therefore remove the presumption of bail for some children without a clear rationale. We recommend the Committee consider the following:

(b) a finding that the child is not guilty by reason of insanity

That in order for a person to be found not guilty by reason of insanity it is necessary for a court to conclude that the act has in fact been committed but that the defendant at the time was "insane" and therefore lacked the appropriate criminal intent to commit the crime. Such a finding could result in the making of a hospital order or other measures being put in place in relation to mental health. This presents a number of issues in relation to children. Northern Ireland does not have a secure forensic mental

health unit for a child with a hospital order to be admitted to. This issue was raised by CLC in previous evidence sessions to the NI Assembly dating back to the evidence gathering by the Ad Hoc Committee on the Mental Capacity Act (NI) 2016 which has justice provisions, which have yet to be enacted, but which the services for children do not exist. The finding of a child being not guilty by reason of insanity is a rare occurrence and so the Committee may wish to explore the Department's understanding of how often it currently happens and the process which it follows at the moment in light of the concerns raised above.

(c) a finding that the child is unfit to be tried and that the child did the act or made the omission charged

In order to find that a child is unfit to be tried there must be a finding of the court that the act has been carried out by the child but at the time of the hearing they are unfit to proceed with the process. This could result in a number of different disposal options for the court, including a hospital order. As Northern Ireland does not have a secure forensic mental health unit for children, which has been raised by CLC and others in the past, this limits the disposal options for the court and so we recommend the Committee explore the outworking this provision and the potential implications for the vulnerable children it would impact upon.

(d) a conviction of an offence for which an order is made discharging the child absolutely or conditionally

If a child receives a disposal of absolute discharge then the court process is over. It is difficult to understand under what circumstances bail would have to be considered for the child once the case is complete. Similarly, in the case of a conditional discharge the child has had their case disposed of with no penalty under the condition that they do not re-offend for a period of time. Again, it is unclear why, since the case is concluded, that the child would require bail.

In relation to new Article 10F (Power to refuse bail) we would welcome clarity, as indicated at Clause 5, regarding the concerns we have raised regarding the introduction of considerations in relation to public order in the context of the release of a child. We also recommend that the necessary combination of conditions to be met are further clarified (i.e. are the conditions those set out in paragraph (2) and (3) (a) – (d) collectively or are they those set out in paragraph (2) and (3) (a) or (b) or (c) or (d)).

The considerations in relation to provisions regarding public order are also relevant to new Article 10G (Conditions of bail).

We welcome the provisions included in Clause 6, new Article 10G which require bail conditions to be proportionate.

New Article 10H establishes what the Court must have regard to when deciding whether to refuse bail, impose bail conditions or vary or remove bail conditions. As outlined above at Clause 5 we have substantial concerns regarding a number of these considerations (10H (2) (b) – (d)) and also suggest that 10H (2) (e) and (f) be amended in line with our stated recommendations at Clauses 4 and 5 above.

CLC supports the provisions outlined in new Article 10I. We recommend that Paragraph (2) (c) is amended so that the child and their legal representative automatically receive a copy of the bail decision, rather than having to request it.

Clause 7 - Arrest for absconding or breaking conditions of bail

While this Clause as drafted relates solely to the circumstances in which a constable has the power to arrest a child for breaching bail conditions but decides not to, CLC recommends, notwithstanding the existing recording and reporting requirements on officers following an arrest, that this Clause be amended to provide a proactive duty on officers to make a similar record of the decision when an arrest is made for breach of bail conditions. This record should clearly outline the reasons why the officer has chosen to carry out an arrest.

Clause 8 - Considerations relevant to bail: accommodation

The issue of appropriate accommodation for children who are trying to perfect bail has been a long-standing feature of CLC's casework. CLC has been working on this issue for over 20 years and it is important to be absolutely clear that there is a statutory responsibility upon Health and Social Care Trusts under the Children (Northern Ireland) Order 1995 to provide accommodation for children who are granted bail but who have no accommodation to go to.

This statutory obligation has been clarified through multiple legal challenges to the High Court, which have concluded that once a child has been granted bail and has no suitable or appropriate accommodation to go to then there is a statutory obligation upon Health and Social Care Trusts to accommodate that child.

This has presented a number of challenges through our casework. There are a limited number of appropriate accommodation options available for children who require a bail address. This has resulted in a number of young people

being placed in inappropriate accommodation which is unregulated and there have been some poor outcomes for those children as a result.

Importantly, CLC are aware from our casework of a consistent number of children who are in the Juvenile Justice Centre with bail being granted subject to an address being provided where the Health and Social Care Trust have taken a prolonged period of time, and in some cases required interventions from CLC and solicitors in private practice, to provide the accommodation to perfect bail. This has resulted in children remaining in the Juvenile Justice Centre for periods of time in excess of that which they would have received if they had been sentenced for the offence. This is clearly unacceptable and a significant breach of the rights of these children.

The Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21 Year Olds[19] has clear guidance and sets out the law and processes in detail for the provision of bail addresses for children who cannot return home for whatever reason. CLC believes that the Bill provides an opportunity for the Committee to put in place a statutory system for the provision of accommodation for children who require a bail address, based upon the standards of the guidance referenced above.

The Guidance has a specific requirement for the court to be updated by the relevant Health Trust as to their progress in providing bail accommodation by the attendance of Trust personnel at court. The Committee should consider making this obligation part of the Bill. This is not creating a new duty upon the Trusts but instead is strengthening a protection for children requiring bail and this would assist the court in making its bail decisions.

In addition to this recommendation, in order to ensure Clause 8 actually delivers on the need to ensure a child's accommodation needs are not a factor in denying bail, we strongly recommend that the word, 'solely' is removed from the Clause on both occasions in which it is used.

Further, CLC query the inclusion (in Clause 8 (2)) of the courts consideration of the child's accommodation needs at all in respect of the decision of a court to refuse to release a child on bail under new Article 10F when consideration of a child's accommodation needs have not been explicitly included as a consideration in new Article 10F (Clause 6 of the Bill). This is also the case in relation police bail (Clause 8 (1)) where no reference to the consideration of a child's accommodation needs have been explicitly included earlier at Clauses 4 and 5.

Clauses 9 – 11, 13,16 and 17

CLC welcomes the provisions set out in Clauses 9, 10, 11, 13, 16 and 17 which would provide legislative underpinning for the separation of children and adults in custodial settings on sentencing, remand and detention. While

these proposed changes are welcome and, to our knowledge, reflect current practice, CLC would take this opportunity to highlight to need to ensure the same standard is replicated in police custody settings. We recommend the Committee explore whether the Department has considered legislative change to ensure the separation of children and adults in all custodial settings – including police custody – and if not, to bring forward amendments to achieve this.

Specifically, in relation to Clause 13 (Place of detention following remand in custody) we are challenged by the inclusion of new Article 10J, Paragraph (4) which seems to indicate that the Article will not apply where a court considers it appropriate to remand a child to customs detention under section 152 of the Criminal Justice Act 1988. Our understanding is that this legislation does not apply where a charge is brought against anyone under the age of 17 and so it is not clear to us why those aged 17 would be excluded from the safeguards of new Article 10J as a result. The EFM provides no detail to aid our understanding in relation to this and so the Committee may wish to seek further explanation from the Department.

Clause 12 – Youth custody and supervision orders

It is CLC's understanding that the proposed new Youth Custody and Supervision Orders would replace the existing Juvenile Justice Centre orders as well as the currently uncommenced custody care orders and apply only to children aged 14 or above.

In that context we recommend the Committee explore the breadth of disposals available to the court for all children to ensure adequate options exist which are non-custodial in nature, complying with children's rights standards that custody should be a measure of last resort and for the shortest appropriate period of time as well as giving primary consideration the best interests of the child.

CLC agree that it is a positive development that the courts are not readily using custody as a sentencing option for young children, but we are also clear that this cannot and should not be seen as an alternative to raising the minimum age of criminal responsibility. Even with the proposals contained within Clause 12 that the new orders will only apply to children aged 14 and above, Northern Ireland will still have an unacceptable and extremely low age of criminal responsibility which clearly breaches children's rights standards.

In addition, as noted in CLC's response to the Department's public consultation on proposals for new custodial arrangements for children in 2022,[20] we are clear that children's rights standards do not allow for a minimum sentence duration as it is contradictory to Article 37(b) of the UNCRC, which provides that detention and imprisonment should only be used as a measure of last resort and for the shortest appropriate period of

time. Imposing a minimum sentence duration in all cases removes the ability of the court to decide the shortest appropriate period of time a child should be in custody.

Further, this principle should be applied to how the new order is divided/split, meaning that the period of supervision in the community should be permitted to be of longer duration than the period held in custody rather than the even split structure that is proposed in the Bill.

Clause 14 – Remand in custody exceeding three months

CLC welcomes the provisions contained with Clause 14 of the Bill. In order to ensure the meaningful application of the intention of this Clause, CLC recommends that new Article 10K, Paragraph (2) (b) be removed and replaced with a new Paragraph (3) which states:

> *(3) The court must ensure the extent to which the total period for which the child is remanded in custody must not exceed the likely period of any custodial sentence.*

With existing Paragraph (3) renumbered (becoming Paragraph (4)).
We also recommend, in relation to existing Paragraph (3) that the standard contained in Clause 6 (Record of decisions concerning bail), new Article 10I Paragraph (2) – (3) be replicated here to ensure that language used by the court to remand a child for a further period is appropriate to the age, maturity and understanding of the child and should be provided automatically to them and their legal representative.

Clause 15 – Consideration of time spent on remand in custody

CLC welcomes the provisions contained within Clause 15 of the Bill that require the court to consider any period for which a child has already spent remanded in custody for an offence in the context of the court deciding whether to impose a sentence following a finding of guilt. In order to ensure the meaningful application of the intention of this Clause, CLC recommends that it be amended to require the court not only to consider any such period but to also explicitly take any such period into account in the sentencing decision.

Clause 18 – Minor and consequential amendments

CLC has no comment to provide in relation to Clause 18.

Clause 19 – Transitional provisions and savings: custody of children

CLC has no comment to provide in relation to Clause 19.

CONCLUSION

CLC is grateful for the opportunity to provide evidence to the Northern Ireland Assembly Committee for Justice in relation to the Justice Bill. While this submission has focused largely on Part 2 of the Bill relating to bail, remand and custody arrangements for children it is our intention to provide further written evidence to the Committee on the additional aspects of the Bill's contents. We hope the Committee finds our evidence constructive and useful and we remain willing to engage on an ongoing basis to support the Committee's scrutiny of the Bill.

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