

# CHILDREN'S RIGHTS AND POLICE QUESTIONING

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# **Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána**

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## Contents

Authors .....	i
List of Abbreviations .....	i
<b>Executive Summary.....</b>	<b>ii</b>
<b>1. Research Design.....</b>	<b>1</b>
1.1. Introduction .....	1
1.2. Aims of the Study .....	1
1.3. Methodology.....	2
1.4. Limitations.....	4
<b>2. Legal Framework Relating to Police Questioning.....</b>	<b>6</b>
2.1. International Children’s Rights .....	6
2.2. Irish Law .....	7
2.2.1. Treatment, Notification and Information .....	7
2.2.2. Legal Advice and Assistance by a Parent or “Other Adult” .....	7
2.2.3. Treatment of Children in Custody.....	8
2.2.4. Analysis of the Irish legal framework .....	8
2.3 Interviewing child suspects in practice.....	9
<b>3. Findings: Children’s Experiences of their Rights during questioning by members of the Garda Síochána .....</b>	<b>10</b>
3.1. Access to Information .....	10
3.1.1. The International Children’s Rights Perspective .....	10
3.1.2. Research Findings .....	11
3.2. Conditions of Police Custody.....	11
3.2.1. The International Children’s Rights Perspective .....	11
3.2.2. Research Findings .....	12
3.3. Legal Advice .....	13
3.3.1. The International Children’s Rights Perspective .....	13
3.3.2. Research Findings .....	14
3.3.2.a. Children’s Right to Consult a Lawyer .....	14
3.3.2.b. Children Waiving the Right to Consult with a Lawyer.....	15
3.3.2.c. Lawyer Presence During Garda Interviews .....	17
3.3.2.d. The Child’s Experiences of Accessing Legal Advice.....	18
3.4. Approaches to Interviewing Children.....	19
3.4.1. The International Children’s Rights Perspective .....	19
3.4.2. Research Findings .....	20
3.4.2.a. The Physical Environment .....	20
3.4.2.b. The Approach Taken to Questioning .....	20
3.4.2.c. Children’s Perspectives of the Interview Process .....	23
3.5. How Children are treated by Members of the Garda Síochána .....	24
3.5.1. The International Children’s Rights Perspective .....	24

3.5.2. Research Findings .....	24
3.6. Children’s Capacity and Understanding .....	27
3.6.1. The International Children’s Rights Perspective .....	27
3.6.2. Research Findings .....	28
3.6.2.a. Children’s Capacity and Understanding During the Interview Process.....	28
3.6.2.b. Supporting Children’s Understanding .....	30
3.6.2.c. The Use of Appropriate Language .....	32
3.6.2.d. Children with Learning Difficulties.....	32
3.7. Children’s Vulnerability During Garda Interviews .....	34
3.7.1. The International Children’s Rights Perspective .....	34
3.7.2. Research Findings .....	34
3.8. The Role of Parents .....	38
3.8.1. The International Children’s Rights Perspective .....	38
3.8.2. Research Findings .....	39
3.8.2.a. The Attendance of Parents or Other Adults .....	39
3.8.2.b. The Role of Parents/Guardians in the Interview Process .....	40
3.8.2.c. Adults Other than a Parent or Guardian .....	43
3.9. Training and Supports for Professionals.....	43
3.9.1. The International Children’s Rights Perspective .....	43
3.9.2. Training and supports for professionals in Ireland.....	44
<b>4. Conclusions and Recommendations.....</b>	<b>46</b>
4.1. Conclusions .....	46
4.2. Key Learning.....	46
4.3. Key Recommendations.....	47
<b>Bibliography.....</b>	<b>50</b>
<b>Appendices .....</b>	<b>54</b>
Appendix A: Membership of the International Expert Steering Group and Youth Advisory Group ..	54
Appendix B: Question Frames for Semi-Structured Interviews.....	55



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## List of Abbreviations

ECHR	European Convention on Human Rights
GSIM	Garda Síochána Interview Model
PACE	Police and Criminal Evidence Act 1984
UNCRC	United Nations Convention on the Rights of the Child
YAG	Young Person’s Advisory Group

## Executive Summary

Children, defined as those under 18 years (s.3 of the Children Act 2001), have particular legal rights in light of their age, needs and circumstances. The particular characteristics of children who come into conflict with the law require that special protections are in place to ensure their rights are protected and the integrity of the justice process is preserved. For children, whose age and stage of development makes them inherently vulnerable, being questioned by the police can be an intimidating and at times terrifying experience. They can also face particular challenges in exercising their rights. For these reasons, Irish and international law – including the UN Convention on the Rights of the Child – sets out the legal protections to which children are entitled in such situations. To date, however, no Irish research has explored how children enjoy these rights in practice.

This study carried out by the School of Law at University College Cork, funded by the Policing Authority, explores the experiences of children questioned by members of the Garda Síochána (the police). The experiences of children, members of the Garda Síochána, lawyers representing children, and parents and other adults who support children were documented and set against the benchmarks of national and international law and contextualised within the international research and literature. As the first of its kind in Ireland, this study offers an important and original insight into children's experiences of their rights during Garda Síochána questioning and, in consultation with key stakeholders, it offers recommendations for how these rights might be better protected.

### Aims and Methodology

The aim of the research was to understand children's experiences of their rights in Irish and international law during Garda Síochána questioning. In order to achieve this, semi-structured interviews were carried out with four distinct groups:

- 1) children with experience of being interviewed by members of the Garda Síochána;
- 2) members of the Garda Síochána with experience of interviewing children;
- 3) lawyers with experience of representing children in criminal matters; and
- 4) parents/guardians or other adults present during Garda Síochána interviews.

The methodology comprised desk-based and qualitative research. The desk-based research involved an analysis of the relevant research and national and international law on police questioning of children. This analysis established the benchmarks against which the empirical research findings were measured. Following this, work was undertaken to identify and review the relevant international literature on police questioning of children, which helped to situate the Irish experience in the international context.

The qualitative research undertaken as part of this study involved a series of short, individual, semi-structured interviews with four groups of participants; children, members of the Garda Síochána, lawyers and parents. Twenty children, aged between 14-18 years, took part. In co-operation with the Garda Research Unit, nine members of the Garda Síochána participated; four lawyers (all solicitors), and three parents and adults acting in a supportive role for children were also interviewed. In total, 36 interviews were conducted.

### Summary of Key Learning

The study presents a snapshot of children's experiences of their rights during Garda Síochána questioning, from the perspective of children, members of the Garda Síochána, lawyers and parents/carers. It contains detailed findings regarding children's experiences of their rights when questioned by members of the Garda Síochána. There is strong alignment between the issues raised by this study and those evident in the international literature.

Notwithstanding the small scale of the research, it is clear from this study that the process of interviewing children in police custody is complex. Key concerns are: access to information and legal advice, children's treatment during questioning, the nature of the environment, children's capacity and understanding and the role of parents and others who support children during the process. This study highlights some good practice and also highlights areas where practice could be improved.

The following key points of learning emerge from this study:

- Children are particularly vulnerable when questioned by members of the Garda Síochána, and as a result, they have a right to be treated in an age-appropriate way, using language and communication that is adapted and child-friendly;
- Some children had negative experiences of being detained in Garda custody prior to or during interviews. The absence of suitable facilities in Garda Síochána stations was a concern, highlighting that priority needs to be given to improving facilities;
- While information is sometimes provided in a child-friendly way, further consideration should be given to how explanations are provided to children; tools and resources should be developed to aid communication and understanding;
- Children's exercise of their right to legal advice and assistance is a concern in light of their ability to waive their right to a lawyer;
- Although parents play an important role in supporting children during questioning, legal and practical issues arise where the parent or guardian is not available to attend the Garda Síochána station. Further statutory guidance would help to bring clarity to this issue;
- Children need additional support to enable them to understand the information they are given and the questions asked of them before, during and after Garda interview. Special measures should be taken in the case of children with additional vulnerabilities or learning difficulties;
- The experience of the child being interviewed can vary depending on the approach of the individual member of the Garda Síochána. Measures should be adopted to promote consistent good practice. Allegations of ill-treatment by members of the Garda Síochána, including both physical and verbal abuse, are a matter of serious concern which require urgent attention; and
- All professionals who work with children – both members of the Garda Síochána and lawyers who advise children – require additional specialist training.

Two overarching conclusions are worthy of further research and analysis. The first relates to consistency. In particular, it is evident from all research participants that each child's experience of their rights depends on multiple factors, including the approach of individual members of the Garda Síochána and the child's personal circumstances. The second overarching conclusion is that on a range of issues relevant to the child's experience of the police interview, there is a divergence between the child's experience of the interview process and that of the adult participant. This highlights the importance of taking account of the views of children both in research and in the reform of policy and practice.

This study highlighted examples of good practice amongst members of the Garda Síochána including their specialist expertise and experience. At the same time, the research suggests that improvements are needed to ensure that the rights of the child are fully protected during police questioning. Addressing these concerns requires the clear articulation of these standards in law and policy, while at the same time ensuring that members of the Garda Síochána are equipped with the tools, resources and training they need to ensure those standards are consistently met.



## Summary of Recommendations

The key recommendations emerging from this study can be summarised as follows:

1. Adopt clear policy on interviewing child suspects;
2. Develop law and policy framework to address the issue of parents, guardians and "other" or "appropriate" adults;
3. Develop resources and tools to aid communication;
4. Improve facilities in Garda Síochána stations and detain children in Garda custody only as a last resort;
5. Develop approaches to promote children's exercise of their right to legal advice and assistance;
6. Adopt a zero-tolerance approach to any ill-treatment of children;
7. Develop specialist training for all members of the Garda Síochána and lawyers;
8. Take children's views into account in measures to improve policy and practice in the Garda Síochána;
9. Enhance oversight of children's rights during police questioning; and
10. Conduct further research into Garda interviews with child suspects.

# 1. Research Design

## 1.1. Introduction

Children, defined as those under 18 years (s.3 of the Children Act 2001), have particular legal rights in light of their age, needs and circumstances. The particular characteristics of children who come into conflict with the law require that special protections are in place to ensure their rights are protected and the integrity of the justice process is preserved (Feld 2013; Crane 2017; Gooch and von Berg 2019).

The police interview can be a difficult experience, where allegations of criminal conduct are presented, sometimes with little or short notice, and the accused person is expected to respond to questioning under legal caution. For children, whose age and stage of development makes them inherently vulnerable, being questioned by the police can be an intimidating and at times terrifying experience.

For these reasons, Irish and international law sets out the legal protections to which children are entitled in such situations. To date, however, no Irish research has explored children's experiences of their rights in practice.

This study carried out by the School of Law at University College Cork, funded by a Policing Authority Research Bursary, presents the experiences of children questioned by the Garda Síochána (the police). Set against the benchmarks of national and international law, and contextualised within the international research and literature, the study presents children's views and experiences of their rights when being interviewed by the police. While the views and experiences of children are central to the research, the study also examined the issues from the perspectives of the other participants in the interview process, i.e. members of the Garda Síochána, lawyers and parents/caring adults who act in a supporting role. As the first of its kind in Ireland, this study offers an important and original insight into children's experiences of their rights during police questioning and, in consultation with key stakeholders, it offers recommendations for how these rights might be better protected.

The report is presented in four parts.

- This section sets out the aims and the methodology of the study;
- Section 2 discusses the relevant Irish and international law relating to police questioning of child suspects;
- Section 3 presents the findings of the research by theme, introduced in each case by a summary of the international research; and
- Section 4 highlights the key findings of the study and concludes with recommendations for the future.

## 1.2. Aims of the Study

The aim of the research was to understand children's experiences of how their rights in Irish and international law are protected during Garda Síochána questioning. To this end, the study explores children's rights in this area from four perspectives:

- 1) children with experience of being interviewed by members of the Garda Síochána;
- 2) members of the Garda Síochána with experience of interviewing children;
- 3) lawyers with experience of representing children in criminal matters and
- 4) parents/guardians or other adults present during Garda interviews.

### 1.3. Methodology

The methodology comprised desk-based research and qualitative research. The desk-based research involved an analysis of the relevant literature and national and international law on police questioning of children. The review of the relevant law included Irish legislation and case law, international human rights instruments and case law of bodies like the European Court of Human Rights. Taken together, the legal analysis established the benchmarks against which the empirical research findings were measured.

Following on from this, work was undertaken to identify and review the relevant international literature on police questioning of children. This review of the relevant scholarship drew from peer reviewed journals and other sources from a range of disciplines (including law, psychology and criminology) and jurisdictions (such as the United States, Canada, Australia, the United Kingdom and Ireland). The academic literature serves to situate the Irish experience in the international context.

The qualitative research involved a series of short, individual, semi-structured interviews with four groups of participants; children, members of the Garda Síochána, lawyers and parents. Consultations were carried out with a Youth Advisory Group and an International Expert Advisory Group to develop the question frames for these interviews. Twenty children, aged between 14-18 years, were interviewed, significantly exceeding the number originally proposed. Children were identified through various means and contacts, including Oberstown Children Detention Campus, Garda Youth Diversion Projects, and other youth groups working with children in conflict with the law in the community. The interviews with children took place in person and lasted on average between 10 and 20 minutes each.

The children who took part in this study all had experience of being interviewed by members of the Garda Síochána, although the frequency of this contact varied between individuals. The children were aged between 14-18 years old at the time of the interview; the majority of these young people were aged between 16-17 years old. Those young people who had reached the age of 18 at the time of the interview spoke about their experiences while they were still under the age of 18. The group was predominantly male, with only one female taking part. While efforts were made to identify both male and female participants, the predominance of boys in the youth justice system meant that it was not possible to identify more girls, and the experiences of girls who are interviewed by Gardaí is an area which will need further study in the future. The young people were from diverse parts of the country, and had different levels of contact with the youth justice system. While the majority of those who took part in this study had multiple experiences of contact with members of the Garda Síochána, a small number had one-off or less frequent contact. Due to the small number of participants in this study overall, and in light of the need to ensure the anonymity of all who shared their experiences, further information which may risk identifying the children involved is not provided in this report.

In co-operation with the Garda Research Unit, nine members of the Garda Síochána, with varying levels of training and experience of child questioning, participated in the study. Six Garda participants were trained to GSIM Levels 3 & 4, while the remainder had received training to GSIM Levels 1 & 2. Four lawyers (all solicitors) were interviewed, identified directly from law firms working in the youth justice field. Three parents and adults acting in a supportive role for children were interviewed, identified through facilitator groups working with children in conflict with the law. All interviews with parents/adults in a supportive role were carried out in person; interviews with lawyers and members of the Garda Síochána were either carried out in person, or over the telephone. Interviews with the adult participants lasted between 25 minutes and one hour, with the majority lasting between 30-45 minutes. The difference in the length of child and adult interviews

can be explained by a number of factors including: concentration and focus, tendency toward short answers by the young people and the level of interest in the research. All interviews proceeded on the basis of informed consent and confidentiality and in full compliance with ethical approval and child safeguarding procedures. Across all cohorts, efforts were made to include participants from different parts of the country, and with diverse experiences.

Following the interviews, all audio recordings were transcribed in full. These transcriptions were then analysed to identify common themes. Given the nature of the study, this was not a representative sample; therefore the experiences are not presented as typical. In line with the children’s rights-based approach, the views and experiences of each individual child is deemed uniquely important and valid (See further Lundy and McEvoy 2012).

<b>Table 1: Details of the Research Participants</b>	
<b>Participant Group</b>	<b>No. of Participants</b>
Children (aged 14-18 inclusive)	<b>20</b> (total) from a range of settings across the country, with different levels of contact with the youth justice system
Members of the Garda Síochána	<b>9</b> (identified in co-operation with the Garda Research Unit)
Lawyers	<b>4</b> (identified through letters of invitation sent to solicitor practices)
Parents/Adults in a caring role	<b>3</b> (1 parent, and 2 adults who had acted in a supportive role)

Ethical approval for this part of the study was granted by the University College Cork Social Research Ethics Committee on 16 September 2019 and permission was also granted from the Garda Research Unit for the interviews carried out with members of the Garda Síochána.

A Young Person’s Advisory Group (it was this group’s preference to be referred to as young people rather than as children) was established to support the consultation with the children. The YAG was established in collaboration with a local educational centre, made up of four young people, some of whom had experience of Garda contact and others who did not. The YAG was made up of three girls and one boy, aged between 14-18 years old. Their role was to provide feedback on the approach taken by the researchers to the consultation with the children. For instance, they ensured that information and consent forms could be easily understood and that the questions posed were presented in a way that would help child participants to feel comfortable. Over two group sessions, the Advisory Group were consulted about:

- The information provided to children about the project;
- The issues that would be most important to children being interviewed by members of the Garda Síochána;
- Draft interview questions and practical steps to be taken to ensure research participants would be comfortable during the consultation process; and

- Draft methodology and questions for the focus groups, and any practical steps to be taken to ensure children were supported to share their experiences. However, after consultation with the YAG and other stakeholders working with children, it was decided that individual interviews were a more appropriate way to gather data about children's experiences and it was agreed not to proceed with the focus groups as a result.

The feedback and input of the YAG was taken into account in finalising the methodology and interview frames.

An International Expert Advisory Group, detailed in Appendix A, drawn from leading international scholars with expertise in the area of police questioning of children was established to provide peer review and academic oversight. Members highlighted any gaps in the literature review, pointed to relevant studies in other jurisdictions and reviewed the draft report. This Group also provided feedback on the methodology and the question frames used (see Appendix B). Due to time-zone constraints, this process took place over email and one-to-one telephone calls.

Once an initial draft of the findings and of the report had been compiled, recommendations were developed taking a number of factors into account. First, the review of the international standards and the international literature in the area provided researchers with requirements and standards of good practice including from other jurisdictions. Second, all four cohorts of participants were asked during the interviews to identify ways in which the experience of Garda Síochána questioning could be improved. Finally, in order to test the efficacy of the draft recommendations, the researchers held a structured, follow-up discussion with four members of the Garda Síochána. This took place online as a result of COVID-19. At this event, the researchers presented the key findings of the research and sought their input into the most practical ways in which the recommendations of the study might be implemented. While the input of all participants in this study fed into the recommendations of the report, the additional input of members of the Garda Síochána was sought through this follow-up discussion so that suggestions for improvements to practice were informed by the particular experiences and practical realities of those tasked with interviewing children who come into conflict with the law.

#### **1.4. Limitations**

This research was a small-scale study, limited in time and scope, designed to present an authentic and original snapshot of the experiences of children during police questioning taken from the diverse perspectives of the children and the other parties to the interview process. As such, the findings are not intended to be generalisable or to present dominant or majority experiences. At the same time, the report seeks to distinguish between those views held by one person and those held by more than one individual.

A further element of the study is the diversity present across the four cohorts of research participants – for instance, some children had significant, while others had one-off experience of being questioned by the Garda Síochána; similarly, the members of the Garda Síochána interviewed included those with specialist knowledge and experience as well as those with more general experience. The lawyer cohort all had experience of representing children in the criminal process. The nature of the identification and selection process for participants means that an element of participant bias may exist amongst the lawyer and Garda Síochána cohorts in particular. The numbers in each participant group also varied – while it is important that children made up the largest cohort of research participants at 20, difficulties identifying parent participants meant that this group was very small, with three people. Of these three, one was a parent, and two others had

acted in a supportive role for young people being questioned by Gardaí. This inevitably limits the significance of this perspective in the study.

## 2. Legal Framework Relating to Police Questioning

This part of the study sets out the law relating to questioning of children by members of the Garda Síochána. A summary of international law relating to the rights of the child is first presented. The Irish law is then explained. This is followed by a brief explanation of the Garda Síochána Interview Model. It should be noted that this information is based on descriptions provided to the researchers by members of the Garda Síochána during the course of interviews conducted as part of this study.

### 2.1. International Children's Rights

The United Nations Convention on the Rights of the Child (UNCRC), ratified by Ireland in 1992, recognises that children in conflict with the law are entitled to be treated in a manner consistent with their age and needs. Article 40 of the UNCRC recognises the importance of age-appropriate treatment and requires states parties to ensure that children enjoy due process rights, including procedural protections during the investigation process. Article 12 of the UNCRC, which recognises the right of children to be heard and to have their views taken into account in all matters affecting them, is also important in this context. Together, these provisions highlight the need for procedural safeguards to be in place for children in the youth justice system, at all stages of the proceedings, including the investigation stage (Rules 10 and 13 of the UN Standard Minimum Rules for the Administration of Juvenile Justice). According to the UN Committee on the Rights of the Child, measures must be taken to ensure that these rights are upheld in practice (UN Committee on the Rights of the Child 2019).

At European level, additional standards and provisions articulate the rights of the child during the investigation of criminal proceedings. Article 6 of the European Convention on Human Rights (ECHR), given legal effect in the ECHR Act 2003, guarantees the right to a fair trial and according to the European Court of Human Rights, this requires that special protections are in place for children throughout their contact with the criminal justice system, including during the investigation stage (*Martin v. Estonia* 2013; *Salduz v. Turkey* 2000). The European Guidelines on Child-Friendly Justice provide further guidance on how the justice system should be adapted to the particular needs and circumstances of children. EU Directive 2016/80 sets out the procedural safeguards that must apply to child suspects in criminal proceedings, including the right to the presence of a lawyer during police questioning (Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings). Although Ireland has opted out of this instrument, it nonetheless represents an important international benchmark in the area.

In summary, international law is clear that the questioning and investigation of children requires a children's rights-based approach with specific procedural safeguards that reflect the child's vulnerabilities and circumstances.<sup>1</sup> Many of these principles are also reflected in Irish law.

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<sup>1</sup> United Nations Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49) ; UN Standard Minimum Rules for the Administration of Juvenile Justice (Adopted by General Assembly resolution 40/33 of 29 November 1985); UN Committee on the Rights of the Child, *General Comment No.24 on the rights in the child justice system* (18<sup>th</sup> September 2019) (CRC/C/GC/24); Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098<sup>th</sup> meeting of the Ministers' Deputies); Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

## 2.2. Irish Law

The Children Act 2001, as amended, (“the 2001 Act”) is the primary legislation governing the treatment of children in conflict with the law in Ireland. Part 6 of the Act is concerned with the treatment of child suspects in Garda Síochána stations. The Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 also apply, and a code of practice concerning the attendance of lawyers during Garda questioning provides additional guidance (An Garda Síochána 2015). It is important to note from the outset that a number of members of the Garda Síochána may come into contact with a child during police questioning. For instance, while the member of the Garda Síochána responsible for the child’s apprehension or arrest will usually be involved in the child’s questioning, those with specialist training may be involved in more complicated or high-profile cases. Equally, when a child is brought into a Garda Síochána station, the member in charge has a specific role to play and has responsibility to ensure that the procedural checks are carried out in relation to bringing a child into custody. The member in charge of the station has a duty to ensure the child’s welfare is taken care of while in custody and does not play a role in the questioning process.

### 2.2.1. Treatment, Notification and Information

The key provision of the 2001 Act concerning the treatment of children in Garda Síochána custody is section 55 which provides as follows:

“In any investigation relating to the commission or possible commission of an offence by children, members of the Garda Síochána shall act with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons”.

The Act also sets out steps to be followed when a child is brought to a Garda Síochána station to be interviewed.

- **Section 57** requires that information is given to a child who has been arrested on suspicion of involvement in offending about the offence, their entitlement to a lawyer, and that their parent or guardian will be contacted and notified and asked to attend the Garda Síochána station;
- **Section 58** requires the member in charge of the Garda Síochána station to notify the parent or guardian of the child, or, if a parent or guardian is not available, another adult relative or other adult named by the child (s.58, Children Act 2001);
- **Section 59** requires notification to be given to Tusla, the Child and Family Agency, if there is reasonable cause to believe that the child is in need of care and protection (s.59, Children Act 2001); and
- **Section 62** requires that if a decision is taken to charge a child with an offence, notice of the charge must be provided to the child’s parent or guardian (s.62, Children Act 2001).

### 2.2.2. Legal Advice and Assistance by a Parent or “Other Adult”

A child who is going to be questioned on suspicion of involvement in offending also has a right to consult with a lawyer prior to being questioned and must be notified of this right by the member in charge (s.57, Children Act 2001). Where a child, or their parent or guardian, asks for a lawyer, the member in charge has a duty to notify the lawyer as soon as practicable, and to provide the child with the name of a lawyer if they do not have one (s.60, Children Act 2001). If a child requests a



lawyer, they should not be asked to make a statement until a reasonable time has been allowed to facilitate this consultation (s.61, Children Act 2001). The right to access a lawyer in these circumstances is a constitutional right, although this has historically been limited to access to a lawyer prior to interview (*D.P.P. v. Healy*, 1990; *Lavery v. Member in Charge, Carrickmacross Garda Station*, 1999; see also *Gormley and D.P.P. v White*, 2014; *D.P.P. v. Doyle*, 2017). Although it is not a statutory entitlement, it is now common to allow a lawyer to be present during the questioning of a child by members of the Garda Síochána, and a Code of Practice supports this practice (An Garda Síochána 2015). While this provides an additional safeguard to children who are being questioned by members of the Garda Síochána, it remains a matter of Garda policy only and it is not clear to what extent this is always guaranteed in practice (Conway and Daly 2019).

Under section 61 of the 2001 Act, a child shall not be questioned or asked to make a statement unless accompanied by a “parent or guardian” or “another adult”. However, a parent or guardian may be excluded from the questioning process for a number of reasons, including if they are the alleged victim, are suspected of being complicit in the offence, or if there are reasonable grounds for believing that they would obstruct the course of justice if they were present. If a parent or guardian is not present, “another adult”, nominated by the member in charge, must be present. The Act does not require that this person should be nominated by the child. Nor is the role of the parent, guardian or other adult in the process prescribed by law and the courts have taken different approaches to this issue (*D.P.P. v. Onumwere*, 2007; *D.P.P. v. K.D.*, 2016).

### **2.2.3. Treatment of Children in Custody**

Section 56 of the 2001 Act sets out the treatment of children while in Garda Síochána custody. Children should, as far as practicable, be prevented from associating with any adult detained in the station and “shall not be kept in a cell unless there is no other secure accommodation available”. Both requirements are subject to the caveat of “in so far as is practicable” and require that some other form of secure accommodation is available.

The Treatment of Persons in Custody Regulations require that proper records be kept of all arrests and details of custody, that interviews should be conducted “in a fair and humane manner”, should take place in rooms set aside for interviews, and that interviews should be terminated or adjourned for a reasonable period of time after a maximum of four hours. The Regulations also state that where a person is under the influence of intoxicating liquor or drugs to the extent that he or she is unable to appreciate the significance of the questions put to them, he or she should not be questioned while in that condition, except with the authority of the member in charge. Specific provisions relating to interviewing children reiterate the statutory requirement that a parent or other “responsible adult” should be present.

### **2.2.4. Analysis of the Irish legal framework**

While Irish law contains many of the key requirements of the international children’s rights standards – e.g. notification to parents or guardians, and the presence of a parent, guardian or other adult during police questioning, the entitlement to consult a lawyer, and provisions relating to the needs and vulnerability of children – there are some gaps. For example, there is no requirement to check that the child has understood the information provided. Similarly, while provisions mandate the presence of a parent, guardian or other adult, there are no requirements as to the role of these adults or the qualifications, suitability or role of the other adult. Finally, while the right to consult a lawyer is safeguarded in legislation, and policy exists to allow the presence of a lawyer, the latter is not a legal right. Therefore, while key elements are present within the current statutory framework, there are areas where the law could be strengthened.

While the Garda Diversion Programme – the programme of police diversion set up under Part 4 of the Children Act 2001 as amended – has been subject to extensive analysis and review, (e.g. Annual Reports of the Committee set up under the Children Act 2001 to Monitor the Garda Diversion Programme; Brennan 2012) there has been comparatively little scrutiny of the implementation of Part 6 of the Children Act 2001 in either scholarly or policy terms (Kilkelly 2006). The Commission on the Future of Policing addressed the relationship between children and the Garda Síochána in a general way, noting for instance that the recommendation that members of the Garda Síochána should be trained with respect to children had been raised during the Commission’s public consultation (Commission on the Future of Policing 2018, p.25). The Commission’s own recommendation as to training appears limited to those involved in the Garda Diversion Programme and the report did not deal at all with the questioning of children by members of the Garda Síochána (Commission on the Future of Policing 2018). While existing reports have so far given relatively little consideration to the questioning of children by the Garda Síochána, with the focus mainly on the Garda Diversion Programme and Garda Youth Diversion Projects (e.g. Report of the Garda Inspectorate 2014), it is welcome that the Policing Authority is now focusing attention on this important subject, including through the funding of this study.

### **2.3 Interviewing child suspects in practice**

The Irish legal framework, as discussed above, sets out key parameters that regulate the treatment of children in Garda custody and interviews carried out with child suspects. These provide important guidelines on much of the interview process, but do not explicitly set out requirements relating to the conduct of the interview itself. In practice, members of the Garda Síochána follow the Garda Síochána Interview Model. This model was explained and discussed by members of the Garda Síochána who took part in this study.

Members of the Garda Síochána involved in interviewing children follow the Garda Síochána Interview Model (GSIM) where members are trained to a variety of different “levels”. While most members of the Garda Síochána are trained to Level 1 and Level 2, more specialist interviewers are trained to Levels 3 and 4. The type of interview – particularly with reference to the seriousness of the offence – typically determines the interviewer selected to carry it out (Garda 1).

Members of the Garda Síochána highlighted during this study that, while some members are trained as Child Specialist Interviewers, these generally interview child witnesses or victims, rather than suspects (Garda 3). It was noted that in certain cases, for example more complicated cases, it would be possible to seek advice from Child Specialist Interviewers (Garda 1).

There are a number of stages laid out in the GSIM that have to be followed in carrying out any interview, whether it is conducted with a child or an adult, including the planning stage, first contact, rapport, getting an account of knowledge, and finally a challenge stage before concluding the interview (Garda 1) (see further Conway and Daly 2019). This model, therefore, provides a framework for carrying out interviews with children. Although not designed specifically for children, some members of the Garda Síochána who took part in this study explained its relevance to interviewing child suspects. This is detailed further in section 3.

### 3. Findings: Children’s Experiences of their Rights during questioning by members of the Garda Síochána

Section 3 of this report presents the findings of the research interviews, presented against the backdrop of the international children’s rights perspective drawn from the literature and international instruments. The research raises a number of issues relating to the police questioning of child suspects regarding the implementation of international children’s rights standards and the national law. Many of these reflected the findings in the international literature, but they also raised different questions about children’s experiences of their rights in this setting. Key themes included access to information, legal advice, the approach taken to interviewing children, the role of parents, children’s capacity and understanding, children’s treatment by members of the Garda Síochána and the importance of training and support for professionals. This section explores these themes by first summarising the international law and scholarly research to situate the theme in its context, before presenting the data collected from the interviews.

#### 3.1. Access to Information

##### 3.1.1. The International Children’s Rights Perspective

International law is clear that children have a right to information and appropriate explanation in relation to the charges against them. Information – including as to the charges, their rights, the procedures and any support mechanisms available for the child – should be given to the child promptly, as soon as possible after first contact in language they can understand (Article 40(3)(ii) of the UNCRC; UN Committee on the Rights of the Child 2019; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice). In practical terms, the child must not only be given information about the charges, he/she must also be supported to understand it. According to the Committee on the Rights of the Child, providing the information through an official document is insufficient; an oral explanation is necessary. Further, while it is desirable to have a parent or appropriate adult help the child understand the information, the authorities are required to ensure that the information is understood (UN Committee on the Rights of the Child 2019, para.48). Providing information to the adult is not a substitute for providing information directly to the child (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

International research explains that a number of factors can impede a child’s understanding. The **type and quality of information** is important to the child’s understanding along with the nature of the information given, and the manner in which it is provided. While ‘easy-read’ versions of information leaflets have been produced in some jurisdictions, the use of written information (over graphic illustrations for instance) may cause difficulties for some children, particularly those with learning difficulties (Parsons and Sherwood 2016).

The **language** used is also key to children’s understanding. For instance, US research has found that the way Miranda warnings - which are legally-required warnings given to people on arrest about their rights, such as their right to silence and their right to legal advice – are given to children can create the impression that the process is a bureaucratic ritual, rather than one where important information about legal rights is being conveyed (Feld 2006).

Studies show that attention needs to be given therefore to **how information is provided** to children to avoid difficulties in their understanding of the information and its significance (Zelle et al. 2015). Police may not fully appreciate the difficulties under which children labour, especially given the challenge of working under the pressure of the ‘custody clock’ (Zelle et al. 2015). The nature of the challenge is illustrated by the fact that even where children understand the words said, they may

have difficulties exercising their rights effectively if they do not understand the significance of these rights (Feld 2006).

### **3.1.2. Research Findings**

In this study, participants described the way information about the matter under investigation and the child's rights were communicated. Importantly, members of the Garda Síochána demonstrated an awareness of the need for this information to be *"pitched at a level that they [children] fully understand"* (Garda 1).

In some cases, children said that they had all the information they needed about why the members of the Garda Síochána wanted to speak with them, either because they had been told directly (Child 7), or because they knew why they were wanted for questioning (Child 17). In other instances, they reported that a member of the Garda Síochána had told them that they wanted to speak to them about *"an incident"* but no specific information was provided (Child 5). One child said that they did not get this information before the interview began.

*"No like sometimes they wouldn't tell you until you're in the interview really."*  
(Child 1)

The members of the Garda Síochána explained that providing children with information about their rights was a standard part of the process, fulfilled by reading the child a standard notice of their rights. Some members of the Garda Síochána noted that this was undertaken by the member in charge, who is required by law to ensure all detained persons receive appropriate information about their rights (Garda 4).

Some members of the Garda Síochána emphasised the need to ensure that the information was provided in a way that children and their parents could understand. This may involve repeating information about the child's legal entitlements more than once.

*"Their notice of rights has to be fully explained to them and if their reasonable adult isn't there, it's explained to them a second time with their reasonable adult present so that they fully understand and again, that has to be pitched at a certain level."*  
(Garda 1)

Children recalled receiving specific information from members of the Garda Síochána about their rights and reported that they understood that information (Child 2 and Child 8). However, as highlighted below, this may not always be the case.

## **3.2. Conditions of Police Custody**

### **3.2.1. The International Children's Rights Perspective**

Article 37 of the UNCRC states that the "arrest, detention or imprisonment of a child" must be used "only as a measure of last resort and for the shortest appropriate period of time". The Committee on the Rights of the Child has stressed that states should "ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time" (UN Committee on the Rights of the Child 2019, para.85). Equally, the UNCRC states that children who are deprived of liberty should be treated with dignity, humanity and with respect for the needs of a person of their age, and in particular, they should be separated from adults (Article 37(c) of the UNCRC). The Committee on the Rights of the Child has emphasised that these standards also apply where a child is placed in a police cell (UN Committee on the Rights of the Child 2019, para.92). Children deprived of liberty have a range of procedural rights, including the right to access

legal and other appropriate assistance, as well as the right to challenge the lawfulness of their detention under Article 37 of the UNCRC.

Research shows that the **conditions** under which children are questioned, and **the approach of the police** to interviewing can be highly significant for a child (Nowak 2019). Where the child has been arrested and detained in police custody, this can significantly add to the stress and pressure they experience, especially given that they may be strip-searched, placed in a cell or held in custody overnight prior to being interviewed (Gooch and von Berg 2019). According to research, the **physical environment** of the police station, and factors such as whether the child has spent time in a cell, how long they have been detained, whether their parents are present, and their state of physical well-being can all impact on their experience of police questioning (Nowak 2019).

### 3.2.2. Research Findings

As members of the Garda Síochána explained, it is the role of the member in charge to ensure that the child's welfare was safeguarded in custody. In explaining the role of the member in charge, one member of the Garda Síochána said that he would try to make it clear to the child that this person's role was significantly different to that of the interviewers, with the welfare of the child being their key concern.

*"...So he doesn't have to treat him with the same suspicion as me the interviewer when this man, or woman, is only there to mind him and look after their welfare, make sure they get their rest, their meals, the exercise, whatever else, their smoke breaks if they're smoking."*  
(Garda 1)

Some participants raised the issue of children being detained in Garda Síochána stations before or while they were being interviewed. Although not all children who participated in this study had experience of being detained in Garda custody in cells, all children interviewed who spoke about being in Garda custody reported negative experiences, with the poor conditions of Garda Síochána stations and the long periods of time they spent in custody the source of particular complaint.

Children spoke with concern about being held in a Garda cell (Child 1, Child 3, Child 7) and some reported that they had been held there overnight (Child 2, Child 3, Child 7, Child 9, Child 10, Child 14) or over the weekend (Child 7, Child 9).

*"I was locked in a Garda station for two or three days... I got arrested on Friday and I wasn't brought to court until Tuesday."*  
(Child 7)

*"I got arrested in me house and I got took down the Garda station for 3 days."*  
(Child 14)

*"4 days. Friday, Saturday and then Sunday and Monday and then court Tuesday."*  
(Child 15)

Children reported that they were generally held in the cell on their own, but one remembered being held in the same cell with friends (Child 7). The children's experiences mirrored that of the lawyers interviewed, who said that it was usual practice for children to be held in cells while they were waiting to be interviewed, though an empty interview room was sometimes used as an alternative (Lawyer 2, Lawyer 3). This could be an intimidating experience, with one lawyer commenting that being in a cell could be *"very daunting"* (Lawyer 1).

The unsuitable nature of this practice was highlighted by members of the Garda Síochána, who acknowledged that cells were not an appropriate environment to hold children for significant

periods of time. One participant said that *“you don’t want to be throwing [children] in a cell”* and said that avoiding this would make it *“less of an endurance for them”* (Garda 6).

Children were negative about the experience of being in the cell and said:

*“They’re alright like they’re not the best, you know? They’re not the most comfortable or anything you get me?”*

(Child 14)

*“The cells are crappy – pissy and shitty like you know what I mean?”*

(Child 13)

*“Yeh, freezing as well like. You wouldn’t get a mattress or anything with that”*

(Child 3)

Children’s experiences of being in Garda Síochána custody could be shaped by the available facilities. Two of the lawyers interviewed reported advocating for better conditions but acknowledged that this wasn’t always something within the remit of the Garda Síochána station to address.

*“So, the first thing I would always do is speak to the Garda, if they’re held in a cell ask them why they’re being held in a cell, if another room could be facilitated. More often than not, the answer is ‘we don’t have the facilities, we don’t have the resources’ which is incredibly unfortunate, it is incredibly unfair....”*

(Lawyer 3)

*“That cold structure of a cell environment where they could be in that cell by themselves for periods of time, it’s certainly just not conducive for a young person and it’s very intimidating and I think that is something that should be and could be looked at and it just comes down to facilities really.”*

(Lawyer 1)

### 3.3. Legal Advice

#### 3.3.1. The International Children’s Rights Perspective

Article 40(3)(ii) of the UNCRC provides that a child should have access to “legal or other appropriate assistance”, and according to the Committee on the Rights of the Child, this must apply from the outset of the proceedings (UN Committee on the Rights of the Child 2019, para.49). The Committee has also strongly recommended that **free, effective legal representation** is provided for all children facing criminal charges (UN Committee on the Rights of the Child 2019, para.52).

The right to a lawyer is also clearly set out in European law. The Guidelines on Child-Friendly Justice, for example, say that children “should be provided with access to a lawyer”, and should not be asked to make or sign a statement about their involvement in alleged offences except in the presence of a lawyer or one of the child’s parents (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice). The right to access a lawyer is also a part of the child’s Article 6 rights under the European Convention on Human Rights, and the European Court of Human Rights has found a breach of Article 6 rights where a child was denied access to a lawyer while in police custody (*Halil Kaya v. Turkey*, 2009). Article 7 of the EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings also requires states to ensure that a child is assisted by a lawyer prior to being questioned by the police; however, Ireland has opted out of this Directive.

The question of **whether and how children avail of the right to a lawyer** is complex and studies have shown that children frequently do not avail of their right to legal assistance during the course

of police questioning (Cleary 2014). In one US study, for example, 80% of children waived their rights (Feld 2006), and another suggested that this number can be as high as 90% (Feld 2013). In England and Wales, while it seems as though the introduction of the Police and Criminal Evidence Act 1984 and the Codes of Practice under this legislation may have had a positive effect on the rates of requests for legal advice generally, much more limited evidence is available in relation to children (Kemp et al. 2011). One study found that 45% of detainees between the age of 10 and 17 requested legal advice; children aged 10 to 13 years were the least likely to request and receive legal advice (Kemp et al. 2011). It was also noted that 43% of children did not request to see a lawyer despite going on to be charged (Kemp et al. 2011).

There can be a myriad of reasons why a person may choose not to exercise their right of access to a lawyer, including eagerness to leave the police station as soon as possible, factors relating to the seriousness of the offence and perceived innocence or guilt, and the availability of a lawyer (Skins 2019). Research has also indicated that both adults and children can be unaware of the importance of accessing legal advice at this stage of their contact with the criminal justice system (Kemp et al. 2011).

The issue of **whether a child can legitimately waive their right to legal advice** has been a subject of debate (Viljoen and Roesch 2005). Some US research has suggested that children may not always understand the warnings given to them sufficiently to provide a basis for making a valid waiver of their rights (Feld 2006). Others have found that children with prior experience of being arrested in relation to serious charges were less likely to waive their rights than those with fewer or less serious contacts with the police (Feld 2013).

### 3.3.2. Research Findings

#### 3.3.2.a. Children's Right to Consult a Lawyer

Importantly, children interviewed for this study had been **advised of their right to consult with a lawyer** prior to being interviewed and confirmed that they were given the opportunity to speak to a lawyer before the interview took place. They reported having been informed of this entitlement by a member of the Garda Síochána (Child 1, Child 19). The members of the Garda Síochána interviewed also highlighted the importance of advising children about their right to consult with a lawyer on an ongoing basis.

*"...you know when you are dealing with a child and a parent ... you know, you would overemphasise that it is important that they do seek legal advice prior to coming into an interview room."*

(Garda 8)

For lawyers, the first point of contact was a very important step in the process, described as 'very, very critical' (Lawyer 2). Some lawyers said that part of their practice was to get "as much information from the investigating Guard" (Lawyer 2) as possible before attending a Garda Síochána station with a client. In some cases, however, children or their parents may not know the name of a lawyer to contact (Caring Role 2).

Lawyers said they had enough time to consult with children, and that a consultation could last "as long as you want" (Lawyer 4). It was also acknowledged, however, that the process of advising children could be time-consuming. As one lawyer explained, however, the priority remains to ensure that the child is prepared:

*"I'm not going into anything until I'm satisfied absolutely that the young person understands everything and understands the ramifications of any decision that they make."* (Lawyer 3)

### **3.3.2.b. Children Waiving the Right to Consult with a Lawyer**

One issue raised in the study was that **children do not always avail of their right to consult with a lawyer** prior to being interviewed. Some members of the Garda Síochána indicated that in the majority of cases, a lawyer would be consulted, with one stating: *“it’s rare these days that they don’t”* (Garda 4). However, the study indicates that children do not always avail of this right. According to one lawyer:

*“I have an awful lot of mainly male juveniles and they will regularly refuse the right to consult with a solicitor.....”*  
(Lawyer 4)

Children interviewed also said that they did not always choose to speak to a lawyer or have a lawyer present with them during the interview despite being advised of their right to do so. There was not always a clear reason for this (Child 4). In some cases, they referenced the delay that would be caused if they had to wait for a lawyer and wanting to get out of the Garda Síochána station as quickly as possible. Others referred to the fact that if they wanted to wait for a lawyer, they would have to wait in a cell in the Garda Síochána station.

*“I never even bothered ringing my solicitor most of the time ... because I always wanted to get out of there as fast as possible and the Guards would say to me like, you know, it’s going to take your solicitor a few hours to get here and you’ll be here longer and all this shit so I was just like, aw I’m not even waiting for my solicitor because I hate being inside in the Garda station especially if they have you waiting in the cells like.”*  
(Child 1)

*“..it takes time for them to come and it’s just a whole lot of hassle... I just want to get home as quick as I can”*  
(Child 11)

Those interviewed acknowledged that this delay could place a significant pressure on the child in this situation, impacting on their decision-making in relation to seeking legal advice.

*“But the problem is, when you talk to them on the phone, they want to hurry up, they want to get out of there because they feel like, if they’re being detained they’re trapped in a room and they might have difficulties with that. And they think that if they talk and get out of there they’ll be done. And if you delay them, they think that means they’ll have longer time to spend in the Garda station.”*  
(Lawyer 2)

*“Even young people that have ... been in contact to such a degree that they’ve been to court previously, will sign a statement and get out as quick as they can. They’re in the station, an hour’s a lifetime’s struggle and they’d do anything to get out. So, they’re likely to speak, talk, do anything. Solicitor is the last thing on their mind.”*  
(Caring Role)

In other cases, the decision not to consult a lawyer was explained with reference to the possibility that the child did not fully understand the seriousness of the situation they were in or the potential consequences (Lawyer 4). Some children similarly felt that they did not need a lawyer, either because the charge they faced was not considered serious, or because they intended to admit their involvement in the incident.



*"Because like, I dunno it's only like thefts and stuff I don't think I need a solicitor for that like you know what I mean. I'm going to go in and say 'yeh I did it' like you know."*  
(Child 2)

*"I'm happy enough I didn't bring one because at the end of the day, I know how it would come out and even if the lawyer was there the blame would still come back on me so there was no point like."*  
(Child 16)

*"No not really because there was nothing really serious about it like. I was doing fine without it so."*  
(Child 17)

Others said that they did not look to speak to a lawyer because they already knew what they were going to say in response to the charge. This was particularly the case if a child had been arrested and questioned before.

*"No difference really, you kind of learn from the first time or the second time."*  
(Child 7)

*"Didn't need to... I have set answer going in which is 'no comment'."*  
(Child 5)

The lawyers interviewed questioned whether children should be able to waive their entitlement to consult with a lawyer, given the negative consequences that could follow (Lawyer 2, Lawyer 4). According to one lawyer: *"no child should be allowed to refuse a solicitor unless it's done in a manner in which they are fully informed, and their parents are fully informed."* (Lawyer 2). They also highlighted the measures that should be taken to ensure that children in such circumstances have their rights protected:

*"... my view is that no child should be allowed to decline a solicitor without it being done on tape in the interview. And they should have to sign something, it should have to be explained to them on the tape and the parents."*  
(Lawyer 2)

A number of children in this study who had not availed of their right to consult with their lawyer prior to being interviewed admitted, with hindsight, that they would make a different decision:

*"For all of them, I would have been bringing in a solicitor. Like coz sometimes I'd say no and then like I'd regret it. Like for the assault like I should have brought my solicitor in because now, like, it looks really bad on the statement you know?"*  
(Child 2)

*"It would have been better to talk beforehand yeh... Well like I could have backed up my story better like."*  
(Child 19)

One child, looking back on his experience, also suggested that children should not be able to refuse the assistance and advice of a lawyer.

*“I think that a solicitor should be mandatory because when you’re younger you’re just going to say, ‘no I don’t want a solicitor, I just want to get out of here’ but then you’re just going... they’re delighted with that then because you’re just going yourself into a ball of shit like” (Child 1)*

### **3.3.2.c. Lawyer Presence During Garda Interviews**

Although there is no statutory right to have a **lawyer present during police interviews**, lawyers routinely attend, in acknowledgement that this is good practice in all the circumstances. Lawyers noted that it would be “*very, very rare*” (Lawyer 1) for them not to be present and members of the Garda Síochána similarly noted that there is now an expectation that lawyers will be present for the interview, with one member noting that it was “*unusual if there’s not a solicitor present especially for serious crimes*” (Garda 4).

Experience can clearly differ however, and some participants reported different experiences. One member of the Garda Síochána noted that it was “*unusual*” for lawyers to be present during an interview (Garda 5) while another member indicated that whether a lawyer was present or not during an interview could depend on the child’s familiarity with the process of being questioned.

*“What you would find is for people who are regularly arrested and interviewed, generally solicitors will talk to them on the phone and say, you know what I’m going to say, to say nothing and they’re happy enough to proceed without a solicitor being present you know? But for people inexperienced with the system or maybe haven’t been in trouble at all or maybe only a small bit before or experienced the police before interviewing, generally a solicitor would always be present.”*  
(Garda 7)

The members of the Garda Síochána interviewed acknowledged the value of a lawyer being present, both from the child’s perspective – where it acts as an important safeguard – and from the Garda perspective where having a lawyer present allows them to focus on the interview.

*“I suppose it kind of takes some of the pressure... from us in ensuring that we can concentrate on the interviews.”*  
(Garda 1)

Members of the Garda Síochána also observed that having a lawyer attend the interview had the advantage of bringing greater transparency to the process, ensuring that the child was supported to understand their questions. The presence of a lawyer could also serve to reduce the likelihood of later challenges to the interview process, protecting the integrity of the trial later on. As one Garda explained:

*“I think down the line it’s going to help the process within the court system ...there can’t be as many challenges because a solicitor was sitting in the room and why didn’t they challenge it then you know? So I think it’s protecting the client, it’s you know and ultimately it is protecting us to have them there as well and, you know, it will prevent that challenge within the court after that.”*  
(Garda 8)

During the interviews, members of the Garda Síochána commented on how the interview process could be impacted as a result of lawyers being present, with one member noting the increasing exercise by the child of their right to silence (Garda 1). Others reported that there could be occasions where lawyers over-stepped their role.

*“Some of the solicitors will step beyond the boundaries of what their role is by answering questions on behalf of the suspect and stuff like that and that’s not helpful because... the arrest provides an opportunity for them to provide an account...”*

(Garda 2)

Lawyers also expressed differing views about the importance of having a lawyer present with a child during the Garda interview. One view was that it was very important to sit in on interviews:

*“even if the juvenile doesn’t really want you to, you should be very firm in telling them that our office policy is that if you’re a juvenile we should be sitting in with you”*

(Lawyer 2)

However, another felt that it may do more harm than good for a lawyer to be physically present during the interview process as it may impact negatively on their ability to challenge the interview at a later stage.

*“...Usually we are of the view that us being physically present while it’s all being recorded could actually be doing the client more harm than good in the long run because you’re sat in there with no information.”*

(Lawyer 4)

#### **3.3.2.d. The Child’s Experiences of Accessing Legal Advice**

For children whose lawyer attended their interview with them or exercised their right to consult a lawyer, this was regarded as beneficial.

*“Yeh, 100%. 100%. She was telling me what to do, what to say, what not to say. That kind of thing. So she was helpful yeh..”*

(Child 14)

*“It was very helpful. Very very helpful... .. you know, he’s fighting the case with me.”*

(Child 15)

Children were aware of the benefits of being able to speak with a lawyer in advance, even if they were not physically present during the interview.

*“They try to help you, they try to... because they’re on your side you know what I’m saying? They try to help you in as much ways as they can.”*

(Child 9)

*“Because he’ll tell you what to say and what not to say.”*

(Child 12)

For some children, the lawyer could be an important source of information.

*“Yeh. You need to know, like, you know he’d know more than you would at that time. He’d know what evidence they’d have you know and whether to do this or do that.”*

(Child 7)

*“They tell you more about the interview and all than the Guards will.”*

(Child 10)

According to the children, one potential benefit to the physical presence of a lawyer was their perception that they were treated differently by members of the Garda Síochána.

*“Because they’ll try to intimidate you if your legal advice isn’t there like they’ll think you don’t know what do and all. But then when your legal advice is there, they know that you’ve been told to do the right thing and what your solicitor thinks best.”*

(Child 7)

Children also felt that it was helpful to have the advice of a lawyer to help them navigate the questioning process.

*“... If I didn’t have her there, I probably wouldn’t (have) known what to say or what to do like”*

(Child 14)

Others said it was useful to have lawyers there to take notes, so that there was another record of the conversation (Child 7). They found it helpful to be able to ask a lawyer’s advice during the course of the interview, particularly if there was something they did not fully understand.

*“Yeh, yeh it is because he’d say to me, if I shouldn’t answer anything, he tells me ‘don’t answer that’ so it’s handy like for something you don’t understand.”*

(Child 13)

While the majority of children in this study had positive experiences, others felt that it had not been useful to them.

*“Yeh. I only went into my solicitor to talk to her a few times really. I didn’t find it helpful (laughs). I didn’t see the point of a solicitor in court at all like they don’t really do nothing. I could tell the judge all the same stuff that they’re telling, just about my background and all that like.”*

(Child 1)

### **3.4. Approaches to Interviewing Children**

#### **3.4.1. The International Children’s Rights Perspective**

The child’s right to be presumed innocent until proven guilty is recognised in Article 40(3)(i) of the UNCRC, and Article 40(3)(iv) recognises the right of the child not to be compelled to give testimony or to confess guilt. The Committee on the Rights of the Child has highlighted the particular risk of children making false or unreliable confessions, as a result of their age, lack of understanding, suggestibility, or other factors (UN Committee on the Rights of the Child 2019, para.59). It recommends putting audio-visual recording in place wherever possible to reduce this risk (UN Committee on the Rights of the Child 2019, para.60). In assessing the reliability of a child’s statement, factors including the length of the interrogation, the availability and presence of legal or other appropriate assistance, and of the parent, guardian and appropriate adult should all be taken into account, alongside the child’s age and maturity (UN Committee on the Rights of the Child 2019, para. 60).

International research has considered how stressful conditions under which children are questioned can contribute to them providing false or unreliable statements or confessions (Cleary 2014). Particular forms of questions can increase the risk of false compliance (O’Mahony et al. 2012) and concerns about the potential for manipulation and false statements being made by children has led to recommendations that all interviews with children should be audio-visually recorded to create an objective record which can be examined at a later date (Feld 2006). Research suggests that when

false evidence is presented to children, there is an increased likelihood that this will produce a false confession (Redlich and Goodman 2003).

Similarly, the lack of specialist interviewing techniques among the police can hinder the ability of a child to provide reliable evidence, increasing the risk of false statements (Gooch and von Berg 2019). The duration of the police interview can be important, with the risk of false confession increasing with longer interviews (Feld 2013).

Internationally, there is little research on police training on interviewing children (Cleary and Warner 2016) and there appears to be little stand-alone training available (Gooch and von Berg 2019). It is rarely required that police officers have undergone high levels of training in order to be considered capable of interviewing children (Gooch and von Berg 2019). However, this is recommended by the Committee on the Rights of the Child (UN Committee on the Rights of the Child 2019, para.112).

### **3.4.2. Research Findings**

The qualitative research highlighted that a number of factors impacted on children's experiences of their rights during questioning. These included the **physical environment** in which the questioning takes place and the **general approach taken to the interviewing process**.

#### **3.4.2.a. The Physical Environment**

Children described being interviewed in an interview room in a Garda Síochána station, with a table and chairs on either side, and audio recording equipment. They recalled typically being accompanied by a parent or other adult, and sometimes a lawyer; generally two members of the Garda Síochána were involved in the interview. The children gave the following impressions of the environment:

*"It's just tiny like, you know?"*  
(Child 1)

*"Looks like a principal's office. That's my best way of describing it but you can smell... the smells in there are weird."*  
(Child 16)

Members of the Garda Síochána highlighted that a small interview room may become quite easily crowded, creating an intimidating environment (Garda 7). One participant noted that in some cases, they would try to make changes to the physical environment if they were interviewing a child:

*"...at times ... we have asked to have the bolts taken out of the chair for the purpose of making it a more relaxed environment .... I will remove one of the tables from the room. ... communication is key and having a desk there is formalising in ways that, you know, it needs to be removed. Remove any barrier.."*  
(Garda 8)

All interviews with children are audio recorded and hand-written notes are also taken, impacting the dynamic of the interview. The children noted that this lengthened the interview (Child 1) and according to one member of the Garda Síochána, this could *"destroy the flow"* of the interview (Garda 1).

#### **3.4.2.b. The Approach Taken to Questioning**

Participants were asked about **the approach taken by members of the Garda Síochána** to interviews with children. One member of the Garda Síochána said that there was no material difference between child and adult interviews as follows:

*“In general... it is pretty much the same as an adult you know? ... Other than the fact that you have someone, a parent or guardian in the room with you....The parents or guardians don’t tend to interact. So, the process would be exactly the same, as I’ve said, with an adult.”*

(Garda 5)

This lack of a distinctive approach for children was also noted by one of lawyers.

*“... I sit in on a lot of adult interviews as well, my concern is that I don’t see any difference and there should be a stark difference in to how you deal with a juvenile and how you deal with an adult and there isn’t...”*

(Lawyer 4)

However, others observed a number of practical differences in how children are interviewed. Those with specialist training highlighted the differences in the approach taken to child interviews:

*“I suppose our way of dealing with it is that you would treat a child and speak to a child and interview a child very very differently than obviously a hardened criminal or an adult and you have to be proportionate too.”*

(Garda 7)

As noted in section 2, the Garda Síochána Interview Model (GSIM) is used as a framework for Garda interviews, and members of the Garda Síochána in this study explained its relevance in interviewing child suspects. In particular, the planning stage of the interview process was highlighted as being very important.

*“...you’re very much trying to get a background of the young person. You may have knowledge of the family, you may have knowledge of the young person themselves from previous interactions and I suppose that, that background will assist in maybe building a rapport with that juvenile...”*

(Garda 2)

*“We’ll be making lots of plans as to what we’re going to do from the strategy we’ll use to interview them to how to make sure that they’re well treated in custody, to make sure that there’s no interference with other prisoners while they’re in custody. You’ve got to make sure that their stay is as comfortable as a stay in a Garda station can be.”*

(Garda 4)

It was also highlighted that the preparation stage was important to ensure that the interview was tailored to the circumstances of the child, including how any particular vulnerabilities might be taken into account.

*“Say the case I mentioned before with [a child with specific difficulties], we were nearly taking breaks every twenty or twenty-five minutes to let him, you know, stand up take a breather, go outside with his solicitor, go outside with his father because, you know, you have to cater for what’s in front of you.”*

(Garda 3)

A number of participants spoke about the importance of the rapport-building stage in interviewing children, and highlighted the importance of *“trying to make them as comfortable as possible because unless they’re any way comfortable or you know you haven’t built up that rapport with them to... you know, they’re not going to feel comfortable talking to you.”* (Garda 8). In particular, some

members of the Garda Síochána highlighted that they were trying to put the child at ease during an interview, because they felt that it helped in the process of establishing the truth.

*“So, what we’re trying to do, especially when dealing with kids, is put them at ease because obviously it’s an intimidating place for any adult not to mind a juvenile. I suppose the one thing that I’d always try to harp onto, not only with children but with anyone I’m interviewing, is that we’re only there to establish the truth and that’s one thing I try and hammer home to them. That all we want is the truth.”*

(Garda 4)

The child’s experience was different however and some explained that the member of the Garda Síochána was being friendly solely to get information out of them.

*“Oh, they always suck up to you in an interview like if they want to the information so. And then inside the interview then like some Guards like to... I dunno, some of them are nice and some of them aren’t but in the interview, they’re always sucking up to you because they want to know stuff like.”*

(Child 1)

Or, as another child described:

*“You’d get kind of angry at something like that you know what I mean? They bring in personal things like. What does personal things have to do with the charge?”*

(Child 15)

Members explained that children would be informed about the allegation and asked to give their version of events within the ‘account of knowledge stage’.

*“... you explain the reason for the interview and that sort of thing and make the young person aware of the accusations against them and then you ask for... what we call the account of knowledge stage and that’s where the young person is invited to give their version of the events. Obviously at that stage it’s up to them whether or not they choose to answer.”*

(Garda 3)

Following this, the ‘challenge stage’ of an interview would take place. Some members noted that this should be adapted to take account of the fact that the interviewee was a child.

*“A challenge phase is identifying the inconsistencies between the story that they have said, the account which they have given, versus the evidence that we have. And that can be done in a very calm, methodical, speaking quite normally kind of way. Challenge sounds very harsh but it shouldn’t be that. It generally doesn’t have to be that because you’re tailoring your challenge to – no more than tailoring your questions to the juvenile, you’re tailoring that challenge as well.”*

(Garda 2)

Again, some children experienced this differently, in that they felt under pressure when they were being questioned. As two children explained:

*“They try and put you under pressure ‘n’ all to say it was you to get it over and done with.”*

(Child 10)

*"...it was such a long period of time being there. I was so stressed and didn't know what to think about it like. I just kind of went with it and said what had to be said and that was it."*  
(Child 16)

The experience could be very dependent on the individual member of the Garda Síochána who was carrying out the interview.

*"I would say there's two categories of the Guards dealing with young people. There is the category... they're very sympathetic, they're very professional, they're very respectful to the young person and they, what I would always say is, they effectively do their job. .... Then I think that there can be another category that is well the opposite of that. There is a level of tension, aggression, a lot of smart-ass remarks to the young person and saying things to goad them."*  
(Lawyer 3)

### **3.4.2.c. Children's Perspectives of the Interview Process**

The children interviewed remembered the questioning during the interview process being clear and easy to follow.

*"Well like from all my experiences, I'd say they were pretty straightforward."*  
(Child 17)

*"It was grand like just questions back and forward, back and forward. Like nothing much really."*  
(Child 20)

However, not all children's experiences of police questioning were positive and a number felt that they were being "tricked".

*"They'd try trick you out on stuff like. They'd go back on questions they already asked you and see if you'd give them a different answer and then they'd point it out like, 'why did you say this and now you're saying this?'."*  
(Child 1)

*"They try trick you out when your Mam is not there, they try trick you out and make you slip up."*  
(Child 12)

*"They were just asking me questions and trying to trick me out... They would repeat the same question but like a different way. They'd say it in a different way."*  
(Child 19)

Children also referred to being asked questions repeatedly.

*"I dunno, like they'd kind of like... they keep asking questions, you know, like not specifically 'did you do it' but different ones that would lead towards you doing it, if you know what I mean."*  
(Child 6)

*"And it's like a circle, they'll just keep going. The same questions after and after but they'll keep... they'll word it differently like."*  
(Child 7)



Sometimes, according to the children interviewed, members of the Garda Síochána were not truthful during the course of the interview and might, for instance, suggest that a friend who had also been arrested with the child was giving a different version of events.

*“No, no they just try to put pressure on you, you know what I’m saying. Say if there was you... say if it was me and one of me mates was arrested, they’d say, ‘oh he already told it was you’ and they’d be in the next room saying, ‘oh well [X] already said it was you’ or [Y] or whoever you know what I mean? They try to put pressure on you. They try to break you.”*  
(Child 7)

Children complained that sometimes in the course of an interview they would be asked about a number of different incidents, which they found unfair.

*“Yeh like there was one time there where I was getting in trouble a lot and they just tried to pin all these other charges on me at the same time to get them over... to get convictions for them but they weren’t actually me like but they were pressing me for information ...”*  
(Child 1)

*“They’d say, yeh in different ways like this happened me before, they’ve said they want to question me about something else and then they’d take me in and they’d question me about a different thing like.”*  
(Child 4)

### **3.5. How Children are treated by Members of the Garda Síochána**

#### **3.5.1. The International Children’s Rights Perspective**

Article 40(1) of the UNCRC recognises the right of children to be **“treated in a manner consistent with the promotion of the child’s sense of dignity and worth”**. Equally, where a child has been detained in police custody, Article 37 states that the child should 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”.

Research suggests that children’s perceptions of whether police have acted fairly impacts on their beliefs about **the legitimacy of police action**, which in turn can affect whether children are willing to co-operate with them (Hinds 2007; Dirikx and Van den Bulck 2014; Ellem and Richards 2018). While children often expect good but not perfect behaviour from the police, a single experience of a ‘bad’ police officer can greatly affect the child’s overall perception of the police, leaving a lasting impression (Hinds 2007; Dirikx et al. 2012).

#### **3.5.2. Research Findings**

A number of members of the Garda Síochána in this study spoke about **the importance of ensuring that children were treated fairly and with respect** during the interview process. They highlighted the role of the member in charge of the Garda Síochána station in terms of looking after the child’s welfare and children themselves found this helpful.

*“Actually sometimes a member in charge comes in.... between every interview ... and he comes in to ask you do you want a drink of water or are you ok to keep going ... That’s kinda helpful then.”*  
(Child 11)

Children reported **varying experiences with individual members of the Garda Síochána** with one reporting it as "grand" (Child 2), for instance. The lawyers reported that children were generally treated with sensitivity and respect by members of the Garda Síochána.

*"Now I have to say that as a general rule, for the most part young people are treated very well, very compassionately ... they'd be shown a lot of respect and they would be treated sensitively"*

(Lawyer 1)

Acknowledging that children's behaviour can sometimes be challenging during police questioning, the members of the Garda Síochána responded well according to one lawyer (Lawyer 1).

However, this was not the experience of all lawyers interviewed with one noting for instance that the behaviour and attitudes of some members of the Garda Síochána fell *"below the standards of how a young person should be treated in a Garda station"* (Lawyer 3).

Similarly, some children felt that they had been treated badly, reporting that they had been called names and were not treated with respect.

*"Like they just had no respect. They call you a prisoner like, that's what they call you – prisoner – when you're in the Garda station. They don't call you by your name. Like just that fact is degrading like."*

(Child 1)

Some children reported being shouted at by members of the Garda Síochána.

*"But one time actually I had an interview in a different Garda station and like those Guards were being so rude and mean and they were like shouting and my Mom was there and all, but they didn't care."*

(Child 2)

*"Well I can't remember what the situation was but I'm pretty sure that he kind of shouted... Yeh, very angry."*

(Child 17)

*"Obviously like the Guards are only doing their job but they shouldn't intimidate anybody, not even just kids. They shouldn't intimidate anybody."*

(Child 7)

Children complained about the inconsistency of their experience.

*"It's just... I've been interviewed by the Guards a load of times so it's kind of normal at this stage but there's definitely nicer Guards and there's worse Guards, I can tell you that much like. Like they can definitely do it a nicer way or a worse way."*

(Child 6)

Members of the Garda Síochána acknowledged the impact that their approach could have and expressed awareness of the need to treat children with respect, given how important this is to build rapport.

*"... I suppose the way... the way I've always worked is that if I give respect, I'd hope to get it back you know? It's the best place to start."*

(Garda 8)

One adult who had acted in a caring capacity to support a child in a Garda Síochána station expressed the view that certain children may not always be treated respectfully by members of the Garda Síochána.

*"I suppose with certain young people and from where they're living, and I've gone into stations and if they're from certain areas ... they're gonna be really badly treated..."*  
(Caring Role 2)

Children during the interview spoke about the importance of fair treatment, and said that this had an impact on the way they would respond to individual members of the Garda Síochána.

*"I mean if they're nice to me, I'm going to be nice to them. Simple as, really. Treat someone how you want to get treated."*  
(Child 6)

During some interviews, children chose spontaneously to talk about their treatment by the members of the Garda Síochána, complaining that members of the Garda Síochána had been rough with them or assaulted them.<sup>2</sup> This issue was not the specific subject of the research interview (see the question frame in Appendix B) however when asked about their experience, eight children (one of whom had reached the age of 18 at the time of interview), spontaneously made reference to times when they had been ill-treated by the Gardaí. The children who spoke about this referred to experiences where they had been ill-treated either during the course of arrest, or while being held in Garda custody.

*"When they arrest you, they throw you down on the ground and maybe knee you and shit like that and I was there when one of my friends got punched in the face off Guards and all that."*  
(Child 1)

*"No, it was in the shop and then when they got me to the Garda station and then when they got me to the Garda station, they smashed me head off the floor."*  
(Child 4)

*"Well basically they tell you, 'your cousin already ratted you out, you might as well come clean' or else they'll give you a beating in the cell. With wet towels, they're good at using the wet towel yeh... I've got a couple of slaps off them before yeh with a wet towel but that was it."*  
(Child 9)

Children referred to these incidents happening during the course of arrest, or in the Garda Síochána station if they were in a cell.

*"They're just... like I often got bet by a Garda in the cell like"*  
(Child 7)

*"Sometimes you get arrested and they beat you like."*  
(Child 8)

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<sup>2</sup> These matters were reported in line with the ethical approval for the study.

*“Sometimes, they’re alright and sometimes they can be pricks. I had an incident that was in the cell, two Guards came in on top of me, one of them stuck their knee in me head and asked me did I do a load of burglaries and it wasn’t me.”*

(Child 9)

One child referred to experiencing ill-treatment in an interview room.

*“Went into an interview room, wouldn’t turn on the TVs and give you a beating and all this craic.”*

(Child 12)

*“When your Mam’s not there, they kick you under the table. Like they’ll give you a boot under the table”*

(Child 12)

Some of the children we spoke to noted that they had made complaints in relation to these incidents but said that they didn’t think anything had come of this.

*“Yeh, I made a statement to the Guards before about an assault that happened to me like, but nothing ever came of it you know what I mean? They can do what they want.”*

(Child 1)

A further issue raised by some participants related to children being interviewed while *“under the influence of drugs”* (Child 15), or while *“the young person was really heavily intoxicated”* (Caring Role 1). One child reported that they did not remember much about their experience of being questioned *“because half the times that I have been interviewed, I’ve been always on drugs”* (Child 4). Another felt strongly that measures should be in place to prevent these forms of mistreatment.

*“Your parent or your solicitor, like someone older than you, should be there always. Like they should never interview you without them unless you’re over 18... and they shouldn’t be allowed interview you then if you’re stoned.”*

(Child 12)

### **3.6. Children’s Capacity and Understanding**

#### **3.6.1. The International Children’s Rights Perspective**

Article 40(3) of the UNCRC sets out the **procedural guarantees that must be in place to support a child to participate in the criminal processes** and requires that specific guarantees be in place to support a child throughout the course of criminal procedures.

In addition to ensuring that appropriate protections are in place, the standards require that attention be given to how these rights are implemented in practice and should be **adapted to ensure that they support children’s understanding and capacity to engage with the processes in a meaningful way**. The concept of ‘effective participation’ requires that children can engage meaningfully with the criminal process and this right applies to the investigation stage, as well as to the trial (*Martin v. Estonia* 2013; *Salduz v. Turkey* 2000). This goes beyond requiring a ‘checklist’ of safeguards, and requires attention to be paid to children’s capacity to engage effectively in the process. The Committee on the Rights of the Child has recommended that steps are taken to ensure that a child is able to exercise their right to participate effectively in the process, including ensuring that all practitioners working with children support the child to understand the charges and their possible consequences to allow them to respond effectively. Language should be child-friendly and attention should be paid to facilities and interview rooms that are child-friendly (UN Committee on

the Rights of the Child 2019, para.46). Provision should be made for interpreters, where required, and for assistance by professionals to children who experience barriers to communication (UN Committee on the Rights of the Child 2019, paras.64-65).

As research shows, children being questioned by the police must make a range of complex decisions, including whether to invoke the right to silence, how to answer police questions, and whether to avail of their entitlement to access legal advice. These processes rely heavily on the suspect having sufficient language skills to successfully negotiate this process (Viljoen and Roesch 2005; Anderson et al. 2016). Yet, many children involved in the justice system have communication or intellectual difficulties which may hamper their ability to understand the process and what is being asked of them (Anderson et al. 2016; Ellem and Richards 2018).

The **capacity of a child to understand the criminal process**, including questions asked by the police during an investigation, is thus a live issue in the international research. Competency to be interviewed can include a range of factors including understanding of the purpose of the interview, the questions asked, and the implications of the answers provided (Gooch and von Berg 2019). Without appropriate supports, there is a risk that children may not understand particular words, or concepts used by the police (Feld 2013; Zelle et al. 2015).

One of the key difficulties is **how to assess the understanding of children** prior to questioning. Although the formality of assessment procedures varies from one jurisdiction to the next, it has been suggested that, given the prevalence of language difficulties amongst children in conflict with the law, language screening should be mandatory (Anderson et al. 2016). While in some jurisdictions, a formal assessment procedure is in place, research in Garda stations in Ireland has indicated that the process of assessing detainees (though this study is not specific to children) is relatively informal and unstructured (Skinns 2019). While the mere fact of being a child will trigger the application of Part 6 of the Children Act 2001, it is important to note that section 55 of the Act also requires members of the Garda Síochána to act with due regard for the child's special needs, including any physical or mental disability.

With respect to whether children's needs are met, one Irish study (not specific to children) noted that there were occasions when the police did not seem to believe the detainee or their lawyer when issues were raised around the former's well-being and the risk of self-harm (Skinns 2019). This is of significance not just in relation to the requirement to treat all children in conflict with the law with dignity and respect for their age and needs, but, as scholars have suggested, due to the link between a child's needs and the protection of their due process rights (Pierpoint 2006).

### **3.6.2. Research Findings**

#### **3.6.2.a. Children's Capacity and Understanding During the Interview Process**

During the study, members of the Garda Síochána showed an **awareness of the challenges associated with accommodating children's capacity and understanding**, with some demonstrating awareness of the level of planning needed to take account of these circumstances. This included the overall approach to be followed, including identifying whether there were any issues with the child's capacity, and to what extent the language used in the interview may need to be modified. One Garda set out the preparatory approach as follows:

*"Sometimes you'd go to whatever school they're at or if they're involved in clubs. Try and get as much information... background information as to their capabilities or their cognitive capabilities and that. Are they going to be able to understand...where do we need to pitch our interview at? Our language or tone or, you know, things like that." (Garda 1)*

Evidently, whether or not a child was perceived to understand the information provided and questions asked during the interview depends on the individual child and varies from one case to the next. Some participants observed a difference in the level of understanding between children who had regular contact with members of the Garda Síochána compared to others who did not. As one member said:

*“I’ve experience whereby juveniles have an exceptional level of understanding, better than some adults. They’re able to quote detention times, who gives the detentions, they know when they’re entitled rest periods... they’re very much aware of our interviewing and our investigative powers and abilities so... and as I say, some of them are probably better versed in the procedure than some adults that are coming in.”*

(Garda 2)

The same Garda noted **the importance of adapting the approach** for those who are being arrested for the first time, noting: *“you definitely are ensuring that they have an understanding if they are a first-time arrest or you think that there is some, maybe, vulnerability.”* (Garda 2)

The lawyers had mixed views of how well children understood what was being asked of them.

*“So, I think some of them understand, some of them don’t. Sure sometimes, in the interview I don’t even understand what they’re asking them about and if it gets to that stage, obviously, I’ll be interrupting but some of them get lost.”*

(Lawyer 2)

Although, as noted earlier, children sometimes felt they were being “tricked” by the approach taken, members of the Garda Síochána nonetheless emphasised that everything had to be put to children in a straightforward way that facilitated their understanding:

*“Yeh generally speaking it’s my experience that they do understand. Everything we need, there’s nothing hidden or, I suppose, underhanded in relation to interviewing children or suspects. I suppose everything is upfront and you know there’s no trickery or anything like that involved and I would think I suppose perhaps sometimes, I think people can be some bit surprised at how honest, I suppose, or how, you know... the television sometimes can portray police as being underhanded and sneaky and you know but the actual system used in Ireland for interviewing young people and the law and the Treatment of Persons in Custody regulations and the safeguards, they’re all very robust and very much in the favour of a person in detention you know?”*

(Garda 7)

As was the case in relation to other aspects of the interview process, such as the approach taken to questioning and how young people felt members of the Garda Síochána had treated them, **several children reported understanding everything that was being asked of them** and considered the interview process to be very clear cut.

*“No it was straightforward questions like just normal standard questions.”*

(Child 5)

*“It’s clear, it’s enough, yeh. I always found it clear enough, yeh.”*

(Child 9)

*“No, not really, no. They’re pretty straightforward.”* (Child 14)

Other children, however, **admitted to not understanding everything** said during the course of the interview:

*“Sometimes, they’re confusing because they use hard words I don’t really understand. Like my English is good like but I don’t understand some of the hard words they’d use like. They use the law words and like, I don’t understand them...”*  
(Child 6)

*“Sometimes, yeh, they use too big words.”*  
(Child 10)

*“No I didn’t really understand the words or nothing and the way they were asking me the questions, I kept getting confused so”*  
(Child 3)

*“Sometimes not, no. See that’s why the solicitor wants you to say no comment because the Guard won’t know... like I won’t know what they mean and I could answer it the wrong way and they could take it that I’m saying that I did it you know?”*  
(Child 12)

Some children found some things confusing, but explained that in such circumstances they had asked the member of the Garda Síochána or their parent or guardian for clarification.

*“Sometimes but like they’d clear it up for or my mum would.”*  
(Child 2)

*“There was a few questions, yeh, that I was kind of confused on but then the Garda explained it to me and I would have answered. Pretty straightforward, yeh.”*  
(Child 11)

*“Yeh they’re clear. They explain them to you. They ask do you understand them a lot if they’re hard questions. But I get away with it a lot coz you just have to say no comment.”*  
(Child 13)

Others said that on occasion, despite finding certain things confusing, their key concern was to get the interview over with as quickly as possible.

*“Yeh, when I was younger it was confusing stuff like, I wouldn’t understand it but as I said you just want to answer it all and get out of there because I don’t like being in there.”*  
(Child 1)

### **3.6.2.b. Supporting Children’s Understanding**

According to the Guidelines on Child-friendly Justice it is important for children to have a **supportive advocate or representative present during police questioning**. Both lawyers and members of the Garda Síochána have a role to play in helping children understand the information that is being given to them during police questioning, and the questions that they are asked. **Lawyers have a particularly important role to play** in ensuring that children understand their legal rights, how the interview process will work, and the potential consequences of being questioned. Some lawyers acknowledged that they could impact on children’s experience in this regard and said that part of their role was to *“focus people and reassure them step by step so that they’re not overwhelmed”* (Lawyer 1).

Lawyers in this study discussed their responsibility to help a child understand the process and the potential consequences. They noted the complexity of this process, highlighting the challenges in trying to impart this information in an appropriate way, and to try to gauge a child's level of understanding.

*"...with a juvenile you have that extra pressure or... you know what I mean, extra role to explain every little thing to them that you don't have to do in a normal consultation with an adult and as well, you might be meeting this young person for the very first time. So, on top of that, you have to try and assess are they understanding, what level are they at, do they have any learning difficulties, do they... you know, are they... do I think they understand my function and my role, or do I think that they are just telling me something that I want to hear?"*

(Lawyer 2)

However, the lawyers also highlighted that it could be difficult for them to ascertain whether a child fully understands the information provided or whether there are other factors impacting on a child's capacity to understand. As one lawyer explained:

*"What is very often the case, and of course you won't find out until they're charged and you get reports from various places, is that they have a disability, intellectual disability, and they have learnt to repeat what is being said even though they don't understand it and that for me is the hardest part of attending."*

(Lawyer 4)

**Members of the Garda Síochána also acknowledged that they had a role to play** in helping children to understand the process, and to communicate in a way that the child could understand. Some emphasised that a lot *"comes down to the person who's dealing with them, how well they explain it"*, and that there is a need to *"break it down for people ... in ordinary language"* (Garda 6).

Some members of the Garda Síochána said that checks on understanding could be carried out by them at the beginning of the interview process. This was particularly the case in relation to the legal caution, to ascertain whether the child understood the substance of the caution, rather than seeing it as a bureaucratic checklist.

*"Now the Legal Caution can go over the head of a lot of people sometimes so that's going to be explained and explained in ordinary language ... You need to check that they understand it. So by simply asking the person to explain that to me back in their own language is generally the best way to know that, well, they understand the caution and the same for their reason for arrest.... so for the first half an hour of an interview generally you're explaining procedure to them but you're also checking their understanding."*

(Garda 7)

Members of the Garda Síochána acknowledged that ensuring that children understood the process and their rights and entitlements could be challenging. It was also highlighted that a lesser level of maturity may result in a child *"not understanding the gravity of what's happening with them"* (Garda 1) or the potential consequences of these actions.

In considering this, members of the Garda Síochána noted the important role of the lawyer in helping the child's understanding, echoing comments earlier regarding the important role played by lawyers as a *"safety net"* for children during the interview process (Garda 4).



Members of the Garda Síochána also reported that they **may speak to the child's parent or guardian if they felt that the child did not fully understand** what was being said to them.

*"I suppose I would speak to the parent. So... and I'd probably speak to the parent outside of the child just to see had they... is there a way that they may understand that better. Am I not speaking in a term... you know, am I using terms that they're not understanding? Or does the parent even understand?"*

(Garda 5)

### **3.6.2.c. The Use of Appropriate Language**

A key theme emerging from the interviews was the **importance of using appropriate, child-friendly language**. Members of the Garda Síochána often spoke about using ordinary language, and pitching explanations at a level that suited the child, modifying their language appropriately.

*"We'd be very much tailoring the language, the terminology at a juvenile and checking their understanding throughout the process. The type of questions and your style of questioning should be tailored to the age and maybe the understanding of that."*

(Garda 2)

*"It's to explain all that in very, I suppose, simple ordinary language would be important."*

(Garda 7)

*"You try to speak to them, explain it in laymen's terms you know? I think telling someone that they're going to be arrested under Section 4 of the Criminal Justice... that's not, you know? They don't understand that"*

(Garda 5)

However, this was not always the experience across the board.

*"I don't find that Gardaí use child-friendly appropriate language. I would say that 98% of the time, the language is the same language as the language they would use with an adult."*

(Lawyer 2)

Whether language was modified sufficiently could be dependent on a number of factors, including the type of offence; it was suggested by one lawyer that more child-friendly language was, in their experience, more regularly used in the case of serious offences, where interviewers were more likely to be specially trained, or where there was an awareness that the judicial proceedings that followed may be different (Lawyer 2).

Lawyers also acknowledged **the need to ensure that they were using appropriate language when speaking to and advising a child** (Lawyer 3). However, they said that certain legal issues could be very difficult for children to understand, and that this could have an impact on their ability to exercise their rights. In particular, the issue of inferences was raised as being particularly problematic (Lawyer 2, Lawyer 3).

*"...educated adults have enough of an issue with understanding the concept of inferences let alone trying to explain that to a young person ...."*

(Lawyer 3)

### **3.6.2.d. Children with Learning Difficulties**

Lawyers highlighted that there were significant difficulties where a child's capacity to understand was impacted by a **learning difficulty or other similar issue**, a situation they encounter with some regularity.

*“A lot of them, like the majority of kids do have learning difficulties ... So, I have to, kind of, determine can they understand. And if they can understand then fine but if they can't then it's not fine.”*

(Lawyer 2)

A particular problem highlighted was where the child would not admit to not understanding something that was put to them, sometimes employing strategies to cover up a lack of understanding.

*“They don't understand the question and they will never admit that they don't know. That is the massive problem, especially with the boys..”*

(Lawyer 4)

Members of the Garda Síochána also demonstrated awareness of where children's circumstances impacted on their ability to understand, with some noting the importance of taking time, at the beginning of the interview, to check the child's vulnerability and gauge their understanding.

*“I will ask, do you understand what that means and they say yes but do they actually understand it? So the next obvious question after that is, ok if you understand what that means tell me in your own words what that means to you and then, you know, they... they inevitably will give it back to me and that is one... that is one of the checks that I can do that they are understanding what that means.”*

(Garda 8)

Members of the Garda Síochána showed an **awareness that the vulnerabilities experienced by children could impact on their ability to understand the process and engage fully**, and spoke about the need to *“constantly [look] for vulnerability or for their cognitive understanding”* and adapt their approach to take account of this (Garda 1). Some members spoke about their experiences interviewing children with particular difficulties and vulnerabilities and explained how they adapted their approach in response (Garda 3).

Other issues can arise where a child has **behavioural difficulties** that make it difficult for them to engage in the interview.

*“Well, if there's behavioural issues or, for example, if you've a child with ADHD or their attention is going. The most basic thing I see is a nervous laughter and that will, for some, will antagonise the Guards.”*

(Lawyer 3)

As members of the Garda Síochána explained, where there appears to be an issue with the child's understanding, it may be necessary to **have a discussion with the child's parents or to seek advice from other professionals**. As one member of the Garda Síochána explained, this process can be ad hoc:

*“Well I suppose if it was prior to the interview and something comes to your attention that ... they have a learning difficulty or something like that like you'd be speaking to the parents maybe beforehand to kind of get a bit of understanding of...what that learning difficulty is, ... You might speak to a doctor or you might ring, you know, an agency that might be dealing with that specific learning difficulty and just kind of try to get some understanding of how you're going to deal with this issue if it arises.”*

(Garda 6)

Lawyers similarly noted that in some cases it may be necessary to access additional services to assess the child's level of understanding, such as *"a child psychologist or getting a psychiatrist report"* if they felt that there was a significant concern (Lawyer 2).

If there were significant issues evident with a child's understanding, members of the Garda Síochána said that this could result in the interview process being halted (Garda 8).

As well as raising issues around fitness to be interviewed, some lawyers expressed concern that children with particular vulnerabilities should not be detained in Garda custody (Lawyer 3).

### **3.7. Children's Vulnerability During Garda Interviews**

#### **3.7.1. The International Children's Rights Perspective**

Research makes clear that children are particularly vulnerable in the context of a police interview (Feld 2013; Cleary 2014; Gooch and von Berg 2019). Children may also be more inclined to cooperate with authority figures in such a way as to heighten the risk of making an unreliable statement (Feld 2006; Feld 2013).

#### **3.7.2. Research Findings**

Children reported **mixed experiences of Garda interviews**, with some finding the experience not at all stressful (Child 7, Child 11, Child 12) and others admitting that they found the experience frightening or intimidating. Children found that certain aspects of the process, such as being put in handcuffs or in a cell, could be particularly difficult.

*"Just being inside the Garda station in general like you know? Like when I was 14, they used to handcuff me and all you know? So that was scary you know?"*  
(Child 1)

Other children said that they felt pressured, especially if they were alone.

*"They try to intimidate you and all when you're by yourself but then if you have legal advice there, they're completely different people you know what I mean."*  
(Child 7)

During interviews, some children reported feeling *"angry and upset"* (Child 2), and said they wanted to get out of the station as quickly as possible (Child 2). Others said that they felt *"nervous"* during the interview (Child 10). The mixture of emotions is captured by this child:

*"There was a lot going through my mind like. What was... why am I here? Why am I hearing this like? Never heard of this before, never. The locations they were telling me about where these incidents happened like I wasn't even at these locations for probably well over 4, 4 and a half years and it was just funny like at some points. They were trying to be nice and then when I wasn't kind of cooperating they started getting tougher and tougher and it was just a bad experience overall."*  
(Child 16)

Children also highlighted that physical discomfort could make the experience more difficult, particularly in situations where the process took a long time or they had spent time in custody.

*"I'm starving. You know they give you a little smelly burger, you know what I mean? Burger and chips and then, you know, the next morning you get a breakfast sandwich about that size. ... it's bad like. You do be starving."* (Child 15)

Children found that **being questioned by members of the Garda Síochána for the first time** was particularly stressful:

*“It was my first time ever in the Garda station ... and I was just thinking a lot of things like you get me? Like if I was getting locked up or not. I didn’t know if I was getting charged. Like a few things going through me head because it was me first time you get me?”*  
(Child 14)

*“Well my first experience was like... I was kind of very nervous, scared. I suppose because I didn’t know what it was like or anything like that. ... So I was just kind of scared, nervous.”*  
(Child 17)

Some children said that the initial interview was more difficult than a later one, and observed how they learned to cope with it better as time went on.

*“I dunno like, scared kind of when I was younger like. When I got older, I got used to it like, but I was interviewed a few times for stuff I didn’t do like and you know, that was annoying like you know?”*  
(Child 1)

*“Ah you get used to it after a while don’t you? You get used to it after a while. Best thing to say is no comment all the way.”*  
(Child 9)

For one child, **the interview had an impact on them for some time** afterwards. As he explains:

*“I was shook for about 3 or 4 months like. I didn’t know what was going on. Into town was scary like, down to my local store for even milk I wouldn’t go like. I’d send Mom or something to go down like so it’s a bad experience overall.”*  
(Child 16)

For this child, a perception that a member of the Garda Síochána had breached assurances given during the course of the interview that everything would be confidential impacted on his relationship with the Garda Síochána generally:

*“When I was at the interviews, they said to me it was confidential, no one would know but every time I got stopped by Guards it was told that, oh you’re the lad that was doing this and that. So that’s why let’s now, even if I’m talking to [youth worker] away and having a chat with them I don’t like having a conversation about Guards because from my point of view they talk and whatever they say is confidential that’s not true like.”*  
(Child 16)

The parent we spoke to also said that her son’s experience had influenced his opinion of the Garda Síochána afterwards.

*“And he’s never been in trouble with the Guards since. But in saying that, he just avoids them and hates them and I’d be like, ‘oh you can’t say that because they’re not all...’ and he’d go, ‘no I do, they’re all pricks, end of’.”*  
(Parent 1)

Lawyers and members of the Garda Síochána noted that **the experience could vary considerably from one child to the next**. They also differentiated between children who were more used to being

interviewed by the members of the Garda Síochána, and those who were not. As with issues surrounding children's understanding of their rights, some Gardaí perceived that young people who had more experience of being interviewed had "no fear" while, in other cases "you can see that they're frightened" (Garda 4).

Those interviewed also noted that the experience of being interviewed was sometimes something to boast about:

*"For some of them, it's a badge of honour and they want to be in and out of Garda stations and that probably sounds alien, but that is my experience."*

(Lawyer 4)

*"For some, it's kind of rite of passage. They're happy enough.... Maybe can be quite boastful even in relation to it, depending on who interviews them, the type of offence. They can look for their tapes when they're leaving because they want to show their friends that I said no comment for anything and there can be an element of bravado for that."*

(Garda 2)

However, lawyers also noted that for some children, the experience could be frightening and stressful.

*"...obviously there's some children and they've never been in trouble before and the Garda interview is an incredibly foreign and distressing experience for them. And that can be even with the most professional and respectful Guards."*

(Lawyer 3)

Some highlighted that there were times when children might be extremely stressed, but were not always willing to admit it:

*"The most difficult part for me personally is you have a child who doesn't trust the system, doesn't trust adults and you're... you have them in this extremely stressful situation that they won't accept. They won't say they're stressed."*

(Lawyer 4)

*"Sometimes I think that can kind of go unnoticed that it could be affecting them more than they're letting on. It generally is."*

(Garda 7)

Members of the Garda Síochána were clearly **aware of the anxiety children may feel during questioning**, even where this was not admitted, and they undertook to take this into account to minimise the impact that the questioning process would have on the child (Garda 8).

*"I suppose, you're conscious that being inside in a Garda station and being interviewed is a daunting enough experience maybe even if they're not letting that on. So you're trying to be ultra aware of that and trying to ensure that, I suppose, that it's as least daunting as possible for them."*

(Garda 2)

Lawyers reported that in some cases this impacted the decisions children made when under pressure, especially where their anxiety caused them to want to get out of a Garda Síochána station as quickly as possible. As one lawyer commented:

*“The child is scared. The young person, generally you know, they might pretend they’re not scared but 9 times out of 10, the young person is afraid or, if they’re not, they’re mad to get out of there for whatever reason they just want to get out and they don’t really want to listen to me and they’ll ‘yep, yep, yep I understand, when am I going in? When am I getting out?’ You know, that’s all they care about.”*

(Lawyer 2)

For lawyers, the **extent of understanding amongst members of the Garda Síochána** about the potential stress caused to children who were being questioned varied from one individual to the next.

*“I feel Guards who have a background in community policing they would appreciate and understand it. I mean, you know, we’ve had extremely serious offences – firearms and things like that – where the Guards have just been, I would say, superb with the young person ...but I do feel that a lot of Guards when dealing with drug offences and young people, and like I say they could be young people they’re coming across day in day out, I don’t think they’re dealt with very sympathetically no.”*

(Lawyer 3)

Some lawyers felt that members of the Garda Síochána were generally sensitive to the needs of children, and how stressful the experience could be. As one lawyer explained, some members of the Garda Síochána displayed *“a lot of understanding and a certain humility and a human approach to them and recognising their vulnerabilities and their age”* (Lawyer 1)

It was noted that some members of the Garda Síochána display empathy towards children, and that while this quality is important to all children, it can be particularly important in the case of those who are especially vulnerable.

*“I deal with a lot of children in care and I’ve had mixed scenarios in terms of the Garda station. I’ve had some very good Guards and as soon as you tell them, that the child is in care, they’re happy to engage with you and try and facilitate you and they are very good, and they try and help you in any way they can.... But the children in care, I’ve had some very difficult scenarios and I’ve had things that have absolutely blown up simply because of the way the Guard handled it.”*

(Lawyer 2)

By contrast, particularly in the case of more minor offences, some lawyers felt that members of the Garda Síochána did not always appreciate the impact that being questioned could have on children (Lawyer 4, Lawyer 2).

Members of the Garda Síochána highlighted the need to ensure that interviewers were alert to these issues in relation to children, referring to the need to carry out vulnerability checks on an ongoing basis.

*“... that’s what I’d call a vulnerability check. You’re checking vulnerability as you go. You’re checking do they understand everything at the start of the interview.... You’re constantly alert.”*

(Garda 1)

Some members of the Garda Síochána acknowledged that there were steps they could take to alleviate some of the stress experienced by a child in this situation, through modifying their own

approach. As one member of the Garda Síochána explained: *“I think once you’re fair to them, they’ll appreciate it like”* (Garda 6).

In some cases, it may be appropriate for a member of the Garda Síochána to take steps to reassure a child for example when they were leaving the Garda Síochána station. One member of the Garda Síochána commented:

*“...you have to be aware of is that if people are affected by them... by the process you need to explain to them it’s not the end of the world, we’re not saying you’re guilty of this, even if this does go to court there are... or sorry even if this does proceed, it might not go to court, it could be JLO caution, it could be court but you know we’ll cross that bridge when we come to it...”*

(Garda 7)

### 3.8. The Role of Parents

#### 3.8.1. The International Children’s Rights Perspective

**Parents and guardians** have an important role to play in supporting children during the investigation process. Notice is required to be given to a child’s parents or guardian in a prompt manner, and the Committee on the Rights of the Child has highlighted that this notification process should not be delayed because of either convenience or resource issues (UN Committee on the Rights of the Child 2019, para.47). Parents or guardians should also be present throughout the proceedings, and states are recommended to legislate for the maximum possible involvement of parents or guardians because of the psychological and emotional assistance they can provide to children (UN Committee on the Rights of the Child 2019, paras.56-57). It has been emphasised that a child should be supported by a parent, guardian, or other appropriate adult during the questioning process (UN Committee on the Rights of the Child 2019, para.60) and that the presence of parents or guardians should only be limited, restricted or excluded where it is specifically requested by the child or his or her legal or other appropriate assistance, or where it is in the child’s best interests (UN Committee on the Rights of the Child 2019, para.56). Similarly, the Child-Friendly Justice Guidelines require that children should be given the opportunity to contact their parents once they are apprehended by the police, and that the parents should be informed of the child’s presence in the police station, the reason for this, and be asked to come to the station “save in exceptional circumstances” (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

However, **securing the presence of a parent or guardian** can sometimes be difficult and can cause delays that prolong the child’s time in police custody (Skinns 2019). There can also be **uncertainty regarding the role of the parent or guardian** and the lack of specifically defined goals and parameters for parental involvement can result in confusion (Peterson et al. 2010). For instance, research has found that parents oscillate between defending the child on the one hand and encouraging the child to co-operate with the police on the other (Cleary 2014).

**Where a parent or guardian cannot be present, there is usually provision for another adult to attend** at the station although the role of the appropriate adult is not always clear, nor the functions clearly defined (Dehaghani and Newman 2019; see further Dehaghani 2016). For instance, there are no regulations in Irish law as to who can act as a responsible adult, with a Peace Commissioner sometimes being called upon to act in this role (Skinns 2019). Under the PACE legislation applicable in England and Wales and Northern Ireland, the ‘appropriate adult’ aims to mitigate against the vulnerability of children in police custody, a safeguard that can be difficult to implement in practice (Pierpoint 2006; O’Mahony et al. 2012; Dehaghani 2017). At the same time, ‘appropriate adults’ can play a role in the prevention of unfair questioning, checking the level of the suspect’s

comprehension of questions and processes, and providing some comfort to the suspect (Pierpoint 2006). They can also play a role in facilitating communication (Dehaghani and Newman 2019).

A range of individuals can fulfil **the ‘appropriate adult’ role**, including a relative or friend of the child, a volunteer, a social worker or other professional, or someone with no connection to the child (Dehaghani and Newman 2019). In the majority of cases, parents are expected to fulfil this role (Gooch and von Berg 2019). Where this is the case, questions arise as to their suitability, due to their lack of training or knowledge of the youth justice system, or due to their level of emotional involvement or the potential for conflict (Pierpoint 2000; Dehaghani 2017). For this reason, it has been suggested that both parents and an independent professional appropriate adult should be present (Pierpoint 2006). Studies of volunteers and social workers acting in this role also highlight both positives and negatives of these models (Pierpoint 2000; Pierpoint 2006; Dehaghani 2017; Dehaghani and Newman 2019). Nor are lawyers necessarily well placed to fulfil the role of an appropriate adult, as this may impose additional strain on lawyers who are already over-stretched providing legal advice and support to their clients. There may also be a conflict between the lawyer, as an active advocate, and the appropriate adult as an independent observer (Dehaghani and Newman 2019; see further Gooch and von Berg 2019).

### 3.8.2. Research Findings

#### 3.8.2.a. The Attendance of Parents or Other Adults

Under the Children Act 2001, it is a **requirement that children have a parent, guardian, or “other adult” with them** while they are being interviewed by members of the Garda Síochána. Those interviewed for this study were clear that they would not speak to a child unless they were accompanied by an adult.

Notwithstanding that under the 2001 Act, the Garda Síochána are required as soon as practicable after the child is brought to the Garda Síochána station to advise the child’s parent or guardian to attend the station without delay, **delays can occur between the child’s arrest and the time contact is made with his/her parent or guardian**. In this study, children reported having to wait for a period of time before their parents arrived at the Garda Síochána station (Child 2). Concern was raised (Child 12, Lawyer 3) about parents not being called promptly following the child’s arrest and arrival at the Garda Síochána station.

There could clearly be multiple reasons why a **parent cannot attend or would not be a suitable person to attend** the Station. As one member of the Garda Síochána explained:

*“It can be difficult to contact the parents or guardians depending on the juvenile. Certainly, if it’s a juvenile... they’ve come through the system on numerous occasions, the parents may not make themselves amenable or available to come in or they might just downright refuse.”*  
(Garda 2)

It may also be the case that they *“may not be suitable to come in because of their involvement in the case. They could be co-accused.”* (Garda 2). Other factors could also impact parents’ ability or willingness to attend.

*“Sometimes they just want nothing to do with... their heart is broken with a child. They just don’t want anything to do with it ... it can be logistical too. It can be in relation to, I suppose, having other kids and having to mind other children.”*  
(Garda 7)



In some cases, a child may not want a parent to attend with them. Members of the Garda Síochána deliberate carefully on this issue. As one member explained:

*“Is it appropriate to have a parent there? It may not be depending on the relationship that we find there between the suspect and the parent. Do they need somebody completely independent? At times I find that maybe they would gravitate more to having an aunt or an uncle present as opposed to their mother or father or whoever they’re living with at that time.”*

(Garda 8)

Where it was not possible for a parent to attend, **another adult may be asked to attend** in their place. Members of the Garda Síochána explained the difficulties they have had in requiring a parent or guardian to attend the station when their child has to be interviewed. In these circumstances, they may have to ask another adult in the community to sit in on the interview.

*“Look, real life sometimes it can be very hard to contact parents or guardians you know? And if that fails, we’ll look for a brother, sister if they’re over 18 or if there’s a family member that they might be close to. Even grandparents, an uncle, an aunt. I suppose, if all that fails what we do end up at times is getting one of the local community workers and we would have one or two that we could ring all the time that would come in for the child.”*

(Garda 4)

### **3.8.2.b. The Role of Parents/Guardians in the Interview Process**

No clear consensus emerged from the interviews as to **the role parents play in the interview process** with some participants noting that a parent’s role was often limited to simply being present. As one lawyer explained:

*“They obviously can’t answer questions or anything like that for the young person and where they do, they’re admonished by the Guard and reminded that, you know, ‘if you do that again we’ll put you out and we’ll get another guardian in here’.”*

(Lawyer 3)

Similarly, as a member of the Garda Síochána noted:

*“... they’re not there to interject in the interview, they’re just there as a parent/guardian to make sure the young person is treated properly within the regulations but they have no role... they’ve no active role within the interview..”*

(Garda 3)

Children also reported that the parents, guardians, or other adults accompanying them played a limited role, and that they were not always actively involved in the process (Child 1).

Individuals operating in a caring role felt that their key role was to offer advice to the child:

*“I would think my main role is to go in before the interview and go in and speak to the child and tell them not to say anything until the solicitor is present... It is also to make sure that the child’s rights are being protected as much as possible. That’s how I would see it in there and make sure that the child feels that they’re safe and has an adult that they know around them.”*

(Caring Role 2)

However, some children saw **clear value in having a parent present** during the interview, with many finding it reassuring to have someone with them to make them feel safer and more comfortable during the process.

*“Because I don’t think the Guard would risk the chance really, you know what I mean? He didn’t want to go too far really than if he wasn’t there...Yeh, I felt safer.”*

(Child 17)

*“Yeh it made me feel more like... I dunno, it just made me feel more like myself like. Because if I was there on my own I would have been like... I don’t know how to explain like... I dunno if I would have been there on my own it just would have been different than my Mam like”*

(Child 18)

*“I dunno it was just someone there with me like. It just felt better like.”*

(Child 19)

Some children said that members of the Garda Síochána treated them better when their parents were present.

*“Like some Guards obviously a bit different. ... sometimes they don’t treat you well but they always treat you well when your parents are there, coz you know?”*

(Child 2)

Children also felt that having a parent meant that someone was able to offer them advice and guidance.

*“It was me first time obviously so I needed a bit of guidance like or assistance you know?”*

(Child 14)

Other children said that they **did not find it very helpful to have their parents present** with them during the course of the interview (Child 5) with some preferring not to have their parents hear the details of alleged incidents or because there were inter-personal issues between them.

*“Coz like maybe you don’t want your Ma to hear some of the details or see something, you know, that’s after happening like. It’s probably not good for her.”*

(Child 13)

*“My mam and myself don’t really get along so I don’t really care if she was there or not like.”*

(Child 16)

For members of the Garda Síochána, **the presence of a parent, guardian, or other adult was an important safeguard** to take care of a child’s “safety, health and welfare” and to “advocate” for them “if there is anything that they deem oppressive” (Garda 8).

However, as both members of the Garda Síochána and lawyers noted, the attitude of parents can vary widely, and parents may react in a variety of ways when a child was being questioned.

*“...it’s a tricky one because parents and guardians, they all vary so much. And you go from having the parents and guardians who are there and they’re there regularly, so they know how it works and they get so used to it that they decide, ‘ah you don’t need a solicitor, I’m here anyway’. You have some that are... you know, as in they don’t understand their function*

*either and can be quite vocal and they start talking when they're being threatened that they'll be kicked out and then everybody's on edge and everybody's anxious. And then you have, the parents or guardians who are there with you and if you haven't met the child before, it can be hard to ask them to leave in a consultation and you're probably trying to get instructions and the child is afraid to tell you because the parent is there. It's a tricky one."*  
(Lawyer 2)

In some cases, the behaviour of parents or guardians might be shaped by their own experiences and attitudes towards the members of the Garda Síochána, particularly if these had been negative (Garda 6). In such cases, the behaviour of parents can make the situation worse:

*"... you can have a parent who attends with a child and they themselves have been in and out of Garda stations for their whole life and they just disrupt the entire process by interfering and not letting their child answer and giving abuse to the Guards... ."*  
(Lawyer 1)

In this regard, members of the Garda Síochána distinguished between the role of the lawyer and the role of the parent:

*"The solicitors are generally quite versed at what goes on inside in an interview, they have received training. So they're aware of the guidelines, maybe the rules, the regulations as such whereas the parent or guardian may not be and sometimes there can be interruptions that are not beneficial or helpful for anyone. They can be disruptions really is what they are."*  
(Garda 2)

Some participants questioned **whether parents were the most appropriate person** to provide support to a child in this situation.

*"Certainly, in a lot of cases, obviously it's very important for a parent or a guardian to be there in terms of lending support. But it's a spectrum, it can all be fine, or it can be a disaster because of the attitude of the parents. You know, a lot of the time, I've thought we would all be better off here if the parent wasn't here. Not that there wasn't somebody there but just that sometimes a parent isn't the best person to sit in on interviews actually."*  
(Lawyer 1)

Sometimes, the presence of a parent could add an additional layer of complexity to the interview, particularly if the offence under discussion was a sensitive one (Lawyer 2).

*"Because of the type of investigation, some may not want Mom or Dad inside there. There might be an element of embarrassment or shame."*  
(Garda 2)

*"I do find that having a parent or guardian there, although it is fantastic having them there, I often find that they don't want to tell you or they want to tell you but they don't want to tell you because their parent... it's like, you know are you going to own up to drinking or doing drugs at 14 in front of your parent?"*  
(Garda 5)

Parents' behaviour could also create complications from a legal perspective, by volunteering information to members of the Garda Síochána. As one lawyer highlighted.

*“...sometimes I have an issue when they’re talking to the Guards before you get there. They’re telling them loads of stuff that when you get there, you’re like ‘ah, ah, ah I don’t want that going any further’ but that’s more lack of you know... it’s your first time and you don’t know any different and the same thing for social workers and care staff.”*

(Lawyer 2)

*“So, like there’s been countless times where I’ve seen parents trying to interject and there have been times where they’re trying to interject to help us you know? And you just have to say to them, ‘no look this is whoever’s chance to speak and tell us their story and tell the truth like’.*

(Garda 4)

### **3.8.2.c. Adults Other than a Parent or Guardian**

If a parent or guardian is not available to be present during an interview, or if it is not considered suitable for them to be present, **other adults may be asked to sit in on an interview with a child**. Where the child is in the care of Tusla, the Child and Family Agency, this may be a social worker (Child 7). Members of the Garda Síochána highlighted that, in the absence of a parent or guardian, it was important that the child had someone to look to during the course of an interview.

*“The idea of a Peace Commissioner, or someone independent, is that the child has somebody that they can talk to or lean towards or somebody that is in their corner you know?”*

(Garda 7)

In terms of choosing who may be most appropriate to perform this role, a balance must be struck between ensuring that the child has a suitable person to support them, and considerations relating to the integrity of the investigation (Garda 2).

## **3.9. Training and Supports for Professionals**

### **3.9.1. The International Children’s Rights Perspective**

**Training and support** are central to ensuring that children’s rights are safeguarded during the criminal process, including during police questioning (UN Committee on the Rights of the Child 2019).

**Specialisation and professionalisation** are emphasised throughout the international guidance on child justice. “Continuous and systematic training of professionals” is considered crucial to ensure that the rights of children are upheld, and highlights that professionals should be able to work in multi-disciplinary teams, should be well informed about the physical, psychological, mental and social development of children and about the needs of particularly marginalised groups of children (UN Committee on the Rights of the Child 2019, para.39). The training of police in interrogation techniques and practices is particularly important to avoid unreliable testimony and injustice (UN Committee on the Rights of the Child 2019, para.60).

Training and multi-disciplinary work is also important and the Child-Friendly Justice Guidelines require that all professionals working with children receive training on the rights and needs of children, on proceedings adapted for children, and in communicating with children, including those who are particularly vulnerable (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice). The importance of multi-disciplinary work is emphasised, including the desirability of establishing a common assessment framework for professionals working with children to provide any necessary support to those taking decisions to enable children’s best interests to be served (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice).

### 3.9.2. Training and supports for professionals in Ireland

The availability of **training and supports** was discussed with members of the Garda Síochána and lawyers in this study.

The Garda Síochána Interview Model (discussed above) offers different levels of training from basic to specialist. According to those interviewed, there was no specific training relating particularly to children although the training on vulnerability, included in Level 3 of the GSIM training was considered to encompass this category of interviewees.

*“I suppose in relation to the training of a Level 3 and a Level 4, there isn’t any specific, specific let’s say training on the course for children, for interviewing suspect children. I suppose the interview training is done on a broad spectrum that you can adapt it to any person that you have to interview. I suppose the only kind of specific thing that you would get is vulnerability. You get training around vulnerability.”*

(Garda 6)

Some members of the Garda Síochána also highlighted that while in an ideal situation, it would be useful to have access on a consistent basis to someone who was specially trained to work with children, there were practical constraints to this.

*“Ideally you would have at least one on each unit trained to deal with young people but it’s just not the case.”*

(Garda 3)

In general, however, members of the Garda Síochána were very positive about the model of interviewing that was used and highlighted that it had improved practice in the last number of years.

**Training and supports were also discussed with lawyers** who highlighted that there was no formalised, specialised training for lawyers who represent children, and that training was undertaken on a more ad hoc basis through attendance at seminars etc. Some participants referred to the availability of Continuous Professional Development (Lawyer 1), and courses to deal with specific issues, such as trauma (Lawyer 4). However, it was also highlighted that lawyers working in this area were not required to have specialised training in child development or associated areas.

*“...what we do, is just try and attend as many, you know, seminars as ... Speech and Language therapists specialising with children or child psychologists or child psychiatrists. ...I suppose, the thing to be aware of is that we aren’t specialists in the area of child psychology or child psychiatry or Speech or anything like that or behavioural issues. And we’re going on our guts a lot of the time and what our opinion is, in terms of trying to manage a child or deal with a child.”*

(Lawyer 3)

Some lawyers spoke of the need to improve training for lawyers working with children in conflict with the law in Ireland. In particular, lawyers noted the lack of formalised, specialised training for those representing children and expressed a desire for additional training.

*“I think, I’ll be honest with you, there’s a good few of us who deal with juveniles on a daily basis and we understand how important it is and we’re the ones getting extra training ... personally, I think, nobody – no solicitor or barrister – should be allowed to deal with a young person unless they have the necessary training..”*

(Lawyer 2)

*"I would absolutely welcome specialist training in the area and a recognition that solicitors are not social workers and we're not psychologists and we are not experts in terms of the behaviour of the young person."*

(Lawyer 3)

The risks of lawyers not having specialised training to work with children was acknowledged, along with the benefits of requiring mandatory training for all those in the justice system.

*"I think that we could traumatise the young people if we're not properly trained. And people are doing that."*

(Lawyer 2)

*"...if there was more education and training, for all of us – solicitors and Guards as well – to know what to do when you have a child in difficulty and not say 'oh that child is as bold as anything' or 'he's only a scumbag' or whatever, it's to notice when there's a child in difficulty. That really needs to come into play. It actually is appalling that we don't have mandatory training to deal with juveniles and vulnerable people"*

(Lawyer 2)

In addition to training, lawyers emphasised that they needed **knowledge about and access to the supports that were available to assist children** in this situation at an earlier stage. This raised the issue of whether broader supports may be able to be identified to assist children in relation to their behaviour more generally, outside of the context of the interview process itself.

*"...for a long time I would have said there should be nobody in a Children's Court, not an inspector, not a Probation Officer or a solicitor or a judge who doesn't have proper training. ...I think I would have said before we should be given some type of training. It should be compulsory if you are dealing with children, childcare, anything of that nature.."*

(Lawyer 4)

## 4. Conclusions and Recommendations

### 4.1. Conclusions

This study presents a snapshot of children's experiences of their rights during police questioning, from the perspective of children, members of the Garda Síochána, lawyers and parents/carers. It contains detailed findings regarding children's experiences of their rights when questioned by members of the Garda Síochána, and identifies both examples of good practice and areas where practice could be improved in order to ensure that children's rights are adequately protected in line with the requirements of Irish and international law. There is strong alignment between the issues raised by this study and those evident in the international literature.

Notwithstanding the small scale of the research, it is clear from this study that the process of interviewing children in police custody is complex. Key questions arise about access to information and legal advice, children's treatment during questioning, the nature of the environment, children's capacity and understanding and the role of parents and others to support children during the process.

### 4.2. Key Learning

This section highlights the key themes arising from the study. They are as follows:

- Children are particularly vulnerable when questioned by members of the Garda Síochána, and as a result, they have a right to be treated in an age-appropriate way, using language and communication that is adapted and child-friendly;
- Some children had negative experiences of being detained in Garda custody prior to or during interviews. The absence of suitable facilities in Garda Síochána stations was a concern, highlighting that priority needs to be given to improving facilities;
- While information is sometimes provided in a child-friendly way, further consideration should be given to how explanations are provided to children; tools and resources should be developed to aid communication and understanding;
- Children's exercise of their right to legal advice and assistance is a concern in light of their ability to waive their right to a lawyer;
- Although parents play an important role in supporting children during questioning, legal and practical issues arise where the parent or guardian is not available to attend the Garda Síochána station. Further statutory guidance would help to bring clarity to this issue;
- Children need additional support to enable them to understand the information they are given and the questions asked of them before, during and after Garda interview. Special measures should be taken in the case of children with additional vulnerabilities or learning difficulties;
- The experience of the child being interviewed can vary depending on the approach of the individual member of the Garda Síochána. Measures should be adopted to promote consistent good practice. Allegations of ill-treatment by members of the Garda Síochána, including both physical and verbal abuse, are a matter of serious concern which require urgent attention; and
- All professionals who work with children – both members of the Garda Síochána and lawyers who advise children – require additional specialist training.

Apart from the various substantive and procedural children's rights issues raised by the study, the research points to two overarching conclusions that are worthy of greater research and analysis:

The first relates to **consistency**. In particular, it is evident from all research participants that each child's experience of their rights depends on multiple factors, including the approach of individual members of the Garda Síochána and the child's personal circumstances. Varying standards in the facilities of Garda Síochána stations and the level of specialisation achieved by the professionals involved mean that individual children can have very different experiences. The absence of an agreed, single approach to accommodate a child's vulnerability, for example, means that even children with similar circumstances may be treated differently.

The second overarching conclusion is that on a range of issues relevant to the child's experience of the police interview, there is a **divergence between the child's experience of the interview process and that of the adult participant**. In particular, the child's perceptions of the process, their appreciation of time and their treatment by other parties stand at times in direct contrast to the views and experiences of lawyers and members of the Garda Síochána. The research methodology used meant that all interviews took place in accordance with a pre-approved semi-structured format which did not allow these different perspectives to be presented to either cohort as they emerged. Nonetheless, this finding highlights the importance of hearing directly from children in research about their experience of their rights and the divergence of perspectives is an area that merits further study.

This study highlighted **examples of good practice** amongst members of the Garda Síochána, who make significant efforts to adapt their approach when interviewing children. Specific examples of good practice include the adaptation of the physical environment of the interview room and modifying the language used to support children's understanding. The need to be flexible was highlighted, as was the need to be vigilant to the stress that children can experience during the interview process. One of the merits of this research therefore is to highlight the specialist expertise and experience that already exists within the Garda Síochána in this area.

At the same time, the research **suggests that improvements are needed** to ensure that the rights of the child are fully and consistently protected during police questioning. Children's experiences were often dependent on the approach of individual members of the Garda Síochána. Addressing these concerns requires, among other things, the detailed articulation of these standards in law and policy, while at the same time ensuring that members of the Garda Síochána are equipped with the tools, resources and training they need in order to ensure those standards are consistently met.

The final section of this report presents a summary of the key recommendations emerging from this study. Informed by the international standards and the research literature, the recommendations take account of the proposals made by the research participants during the course of the study, including input received from members of the Garda Síochána at follow-up discussions held on 30 September 2020.

### **4.3. Key Recommendations**

#### **1. Clear policy on interviewing child suspects**

It is recommended that the Garda Síochána give consideration to developing clear policy on the interviewing of child suspects. While existing law, such as the Children Act 2001 and the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987, contain some child-specific requirements, and the Code of Practice on Access to a Solicitor by Persons in Garda Custody applies equally to adults and children, these should be augmented so as to comprehensively cover the full range of issues specific to children in this context.



## **2. Develop law and policy framework to address the issue of parents, guardians and “other” or “appropriate” adults**

Consideration needs to be given to how better to support implementation of section 61 of the Children Act 2001. In particular, clarification is required as to who constitutes an “appropriate adult”; and what role they are expected to play. Learning from other jurisdictions, it is recommended that an independent, trained and Garda Síochána vetted panel of adults be established to support children without parental support during Garda questioning. This would ensure that children are adequately supported during questioning, while enabling the process of police investigation to progress without unnecessary delay.

## **3. Develop resources and tools to aid communication**

Measures should be taken to enhance the quality of every child’s participation in the interview process in order to safeguard their rights and promote the efficacy of the police investigation.

Resources and tools of various kinds are required, both to assist children in their understanding of the interview process and to enhance the role of both lawyers and members of the Garda Síochána. While some international examples are available, further consideration should be given to those approaches most suitable for use in the Irish context.<sup>3</sup>

## **4. Improve facilities in Garda Síochána stations and detain children in Garda custody only as a last resort**

Consideration should be given to ensuring that when children are interviewed, especially by agreement, steps are taken to ensure the best available facilities are used and measures taken to maximise their safety and comfort.

In addition, measures should be taken to ensure that this type of detention takes place only as a last resort and for the minimum period of time, in line with national and international standards. The strict adherence to child specific, minimum time periods should be set out in Garda Síochána policy.

## **5. Develop approaches to promote children’s exercise of their right to legal advice and assistance**

Consideration should be given to making it mandatory for children to access legal representation prior to the police interview. The presence of a lawyer during questioning should also be mandatory in these circumstances.

In the short term, approaches need to be developed to ensure that children understand the consequence to them of waiving their right to legal advice in such circumstances. In the development of policy on child interviews, guidance should be given to members of the Garda Síochána on how these explanations should be given. Resources developed to assist communication should also contain information about the role of lawyers during Garda interviews.

## **6. Adopt a zero-tolerance approach to any mistreatment**

It is extremely concerning that children in this study reported mistreatment during Garda Síochána questioning, and this needs to be addressed as a matter of urgency. Concrete steps – including strengthening supervision, training, and monitoring mechanisms – are needed to underscore and ensure adherence to a zero-tolerance approach towards all forms of violence and ill-treatment in the Garda Síochána. Children’s effective access to independent complaints mechanisms should also be supported through the provision of age-appropriate information at Garda Síochána stations. In addition, further research, including with children themselves, is needed to understand the nature and prevalence of this issue

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<sup>3</sup> See some examples of the resources available at: <http://www.talkingtroublenz.org> and <https://www.thecommunicationtrust.org.uk/projects/youth-justice/>

## **7. Develop specialist training for all members of the Garda Síochána and lawyers**

It is recommended that a systematic training programme be put in place for all members of the Garda Síochána and lawyers. The Garda Síochána Interview Model (GSIM) which includes training on vulnerability needs to be augmented with training on children's needs, rights and circumstances. Mainstream training is also required to ensure that all members of the Garda Síochána are equipped to communicate effectively with children. This is particularly important when child suspects are being interviewed. Consideration may also usefully be given to additional levels of training for specialist interviewers for complex cases involving children.

Lawyers who represent children should also receive mandatory and specialist training and this should be a condition for all lawyers who represent children.

Opportunities for knowledge exchange should be explored as a means of sharing good practice, information and expertise among members of the Garda Síochána and lawyers working with children.

## **8. Take children's views into account in measures to improve policy and practice in the Garda Síochána**

It is recommended that mechanisms are introduced in the Garda Síochána to ensure that children's views are taken into account in the development and reform of policy and practice concerning the questioning of child suspects. Children should be involved, for example, in the development of resources to improve communication and understanding during the questioning process.

## **9. Enhanced oversight of children's rights during police questioning**

Sustained attention is needed from bodies such as the Policing Authority to consider the impact of the implementation of law and policy on the realisation of children's rights. Consideration should be given to tracking implementation of the recommendations of this study while expanding their scrutiny to the related areas of arrest, and stop and search of children.

## **10. Conduct further research into Garda interviews with child suspects**

While a number of important issues were highlighted during the course of this study, more research is needed to develop a more comprehensive understanding of children's experiences of their rights during police questioning. This should also be extended to include the study of children's interaction with the Garda Síochána. The difficulties encountered in this study identifying parents and guardians to participate highlights that more research with this cohort is needed.

Consideration should be given to establishing partnerships between academic researchers, policy-makers and youth justice practitioners including, members of the Garda Síochána and lawyers working with children. This could enhance opportunities for co-operation in order to identify and develop innovative and practical solutions to enhance the effective protection of children's rights.

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## Appendices

### Appendix A: Membership of the International Expert Steering Group and Youth Advisory Group

#### Members of the International Steering Group

Associate Prof. Nessa Lynch, Victoria University of Wellington

Professor Els Dumortier, Vrije Universiteit Brussel

Dr. Vicky Kemp, University of Nottingham

Dr. Iain Brennan, University of Hull

Dr. Roxanna Deghagani, Cardiff University

Dr. Clare-Ann Fortune, Victoria University of Wellington

#### Members of the Youth Advisory Group

Members of the Youth Advisory Group comprised young people from Cork Life Centre. While names are not recorded here to ensure the anonymity of the young people, we are extremely grateful to the young people who gave us valuable feedback and advice in relation to our methodologies, and to Don, Rachel, Thomas and all at Cork Life Centre for supporting this research.

## Appendix B: Question Frames for Semi-Structured Interviews

### Question Frame for Semi-Structured Interviews with Young People

1. What was your experience like of being interviewed by the Gardaí?
2. How did you find out that you had to be interviewed?
3. What information did you get before you were interviewed? Did you have enough information?
4. Did you have to spend much time in the Garda station? If so, can you tell us what that experience was like?
5. Were you able to get help from a lawyer before you were interviewed?
6. Where were you interviewed?
7. Can you tell me about the interview itself?
8. Who was with you when you were interviewed?
9. Did you feel safe during the interview?
10. Did you understand the words being used during the interview?
11. When the interview was over, did you have enough information about what was going to happen next?
12. Looking back, what would you have changed about the experience? Would any other supports have been helpful?
13. Is there anything we haven't asked you about that you think it is important for us to know?



### **Question Frame for Semi-Structured Interviews with Gardaí**

1. What experience do you have in interviewing children suspected or accused of being involved in committing criminal offences?
2. If you are arranging an interview with a young person, what steps do you normally go through to arrange the interview and inform the young person and their parents/guardians?
3. Before the interview takes place, what kind of information do you give?
4. What rights do you advise young people and/or their parents/guardians of at this stage?
5. Do you think young people and parents understand the information they are being given well?
6. What role do lawyers play when a young person is being interviewed? Do you think lawyers help or hinder the process when you are interviewing a young person? Why?
7. Can you describe how you go about interviewing young people?
8. What difficulties/challenges do you experience in interviewing young people?
9. Do you have a sense of how young people cope with the experience of being interviewed by the Gardaí?
10. What role do parents/guardians play in the interview process?
11. As someone who is involved in interviewing children, do you receive any type of special training or support to help you to carry out this job?
12. Are there any additional training or supports you think you should have to help you to do your job in this situation?
13. Do you have any suggestions that you would make to improve the situation overall of how Garda interviews are conducted with young people?
  - a. For Gardaí with responsibility for interviewing?
  - b. For young people being interviewed?
  - c. For the parents/guardians who are assisting them?
  - d. For lawyers assisting them?
14. Is there anything we haven't asked you about that you think it is important for us to know?

### **Question Frame for Semi-Structured Interviews with Lawyers**

1. How do you first come into contact with young people being interviewed by Gardaí?
2. What experience or specialist training do you have with working with young clients, and with young clients who are accused of breaking the law?
3. Did you have enough time to consult with your client and advise them properly before the Garda interview?
4. Were you able to sit in on the interview with your client and the Gardaí? Why or why not?
5. Was there any specific element of the case that had an impact on your client's ability to engage properly with the interview process?
6. How prepared did you feel your client was for the interview?
7. Were there any challenges or barriers to helping your client be fully prepared for the interview?
8. Did you feel that your client and his or her parents/guardians understood the information they were being given, what they were being asked during the interview, and the potential consequences of the interview well enough?
9. What was your impression of how the Gardaí conducted the interview?
10. What was your impression of the role played by the parent/guardian/appropriate adult in the interview?
11. Is there any other training or supports you feel that you could get that would help you to carry out your job in these situations?
12. Do you have any suggestions that you would make to improve the experience for young people being interviewed by the Gardaí, and for the parents/guardians who are assisting them?
13. Is there anything we haven't asked you about that you think it is important for us to know?

### **Question Frame for Semi-Structured Interviews with Parents/Guardians/Appropriate Adults**

1. What was the experience like overall of having [your child/the young person you supported] interviewed by the Gardaí?
2. How did you find out that they had to be interviewed?
3. What information did you get before [insert name] was interviewed? Did you have enough information?
4. Were you able to get help from a lawyer before [insert name] was interviewed?
5. Where did the interview take place?
6. Can you tell me about the interview itself?
7. Who was there at the interview?
8. What was your role during the interview?
9. How did you feel during the interview?
10. Did you understand what was being asked during the interview?
11. Looking back, what would you have changed about the experience? Would any other supports have been helpful?
12. Is there anything we haven't asked you about that you think it is important for us to know?

