

BOOK REVIEW

“JUVENILE JUSTICE”

Professor Dermot Walsh
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It is probably fair to say that a judge in any court who has to deal with children, particularly in a criminal context, finds it very challenging in attempting deal with the problem in a manner which is sensitive to the circumstances of the child, while at the same time satisfying the law and order demands of adult society. It is also fair to say that existing legislation available to the judiciary does not make it any easier to find a solution.

In the preface to his latest publication, entitled “Juvenile Justice”, Professor Dermot Walsh points out that the Children Act 1908 introduced both a proactive and reactive intervention to accommodate the special circumstances of young offenders. It is interesting to note that the 1908 Act had been the primary source of legislation in the area of juvenile crime up until the advent of the Children Act 2001.

Again the author opines that the enactment of the Children Act 2001, which is a major piece of legislation in itself, has not resulted in the immediate repeal of the 1908 Act. Instead, following the enactment of various parts of the 2001 Act from time to time, the appropriate sections of the 1908 Act would be repealed. As it stands, the Children Act 2001 contains 271 sections and is divided into 13 parts. Furthermore, despite the existence of some ten statutory instruments, the 2001 Act is as yet, not fully operational.

Professor Walsh's book is divided into three main parts. The first deals with the substantive law; namely the 1908 Act and the new Children Act 2001. The second part deals with a correlation of statistical data and trends in juvenile crime, detection and sentencing. The third section is devoted to a summary of available literature in

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the area of juvenile justice.

For the purposes of the Children Act 2001, a child is defined as a person under the age of 18 years.

In Chapters One to Two, the author sets out a clear and cogent historical summary of both the 1908 Act and the 2001 Act and any pertinent amending legislation. He also deals with subjects such as the age of criminal responsibility and the definition of a child. As it stands, at common law, the age of criminal responsibility is 7 years. The 2001 Act envisages raising the age to 12 years as per section 52; however this section has as yet not been implemented.

Other areas covered include offences concerning children (Chapter Three); the Juvenile Diversion Program (Chapter Four); police powers of arrest, detention and interrogation, in particular the safeguards and treatment of juveniles while in garda custody; the notification of parents or guardians; Health Boards; access to a solicitor; and the taking of bodily samples (Chapter Five)

Chapter Six deals with the establishment of the Children Court and the whole question of trial procedures. Interestingly, the Act states that when exercising any such jurisdiction (as a Children Court), the Court shall sit in a different building or room from that in which sittings of any court are held or at different times from those on or at which sittings of any such court are held. The jurisdiction procedures and powers of the Children Court are all predicated by the age of the defendant i.e. under the age of 18 years it deals with situations where a child is charged with summary offences or on indictment. It also covers situations where a child is jointly charged with an adult.

Also covered in this chapter are the procedures in respect of initiating prosecutions, remands, bail, legal aid and who is entitled to be present in court. The author covers in some detail the power of the court to trigger a family welfare conference under the auspices of the Health Executive (not yet implemented), or a family conference under the supervision of the Probation and Welfare services.

The author also covers the primary function of the court, where a child is charged with a criminal offence, which is to determine the innocence or guilt of the child. The court also has a duty to promote the welfare of the child at all times.

Chapter Seven sets out in detail the various penalties under the 1908 legislation, which include the sending of offenders to industrial schools, or reformatory schools. Many of these penalties are still in use today. Indeed it is interesting to note that the option of whipping was only removed from the statute books in 1997.

Chapter Eight is an extremely important chapter in that it sets out clearly the new sentencing options under the 2001 Act. It effectively deals with Part Nine of the Act in great detail and includes one of the principal aspirations of the Act in that it says that detention should only be used a last resort. Under the provisions of section 98, the Children Court has wide and varied powers upon a finding of guilt, to impose fines and compensation orders. It also gives power to impose compensation orders on the parents or guardian of an offending child. Section 115 also lists a number of community sanctions which might be imposed, such as community service orders, day centre orders, probation and training orders, supervision orders and restriction of movement orders. However, unfortunately most of this part of the Act has not been implemented as yet, and as a result many of these alternatives are not available.

Chapters Nine and Ten deal with places of detention under the 1908 legislation and as envisaged under the 2001 Act. Again a substantial part of these changes have as yet to be implemented.

Chapter Eleven deals with the Special Residential Services Board, which is up and running since November 2003, setting out its functions and responsibilities. It is to be noted that in the event that detention is envisaged for a child, be it on remand or by way of detention order, the Board should be contacted in advance to ensure that there is a place available.

Chapter Twelve covers the miscellaneous provisions under parts 12 and 13 of the 2001 Act. These cover topics such as the protection of children from offences such as cruelty, begging and permitting children to be in a brothel. Section 258 is worthy of note in that it provides a facility to expunge a criminal record picked up whilst a juvenile, in certain circumstances.

Chapter Thirteen begins the second section of the author's book and details his efforts to carry out statistical comparisons based on available data. He lists the primary sources as the Garda

Commissioner's Annual Reports, the Prison Services Annual Reports and the annual reports from the Department of Education and Science. However, the author is very clear to point out that there are serious discrepancies in carrying out this exercise as one is not comparing like with like.

By way of illustration, the Garda Commissioner's Report provides information on the number of offenders who were convicted or otherwise dealt with by the courts or the Juvenile Diversion Programme. These figures are broken down into age and gender categories. The juvenile diversion statistics are further broken down on a regional basis. The annual reports from the Prisons provide data on the number of juveniles sentenced to custodial terms in prison or detention in St. Patrick's, while the reports from the Department of Education and Science only give details of juveniles detained in special schools. These too are broken down into age and gender categories.

In chapters Fourteen to Eighteen the author deals in great detail with trends in indictable crime and also data from the Juvenile Diversion Programme. Despite the limitations expressed by the author, a substantial analysis of the crime data has been undertaken and a substantial amount of useful information has been cogently extracted. Indeed, for a legal text a substantial number of bar-charts, pie-charts and graphs denoting the various trends have been reproduced.

In the final section of the book, the author deals with a summary of the available literature available on juvenile crime. These include: the Cussen Report (1934); the Kennedy Report (1970); the Henchy Report (1974); the Report of the Task Force (1980); the Whitaker Report (1985); the Dáil Select Committee (1986); and the Report of the National Crime Forum (1998). The Kennedy Report deserves special mention as it is interesting to note that one of its most radical recommendations was that the age of criminal responsibility should be raised to twelve years. Despite this it has taken some thirty-five years to introduce this in statute form. There is also a very extensive bibliography detailing various reports, both from Government and non-government sources as well as other research and legal commentaries.

It is often said that the day a legal text is published is the day it goes out of date. In these circumstances Professor Walsh's book is unique in that it is far from out of date and indeed it will remain in date for many years to come given the rate of implementation of the provisions of the Children Act 2001. For anyone dealing in the area of juvenile justice this book will prove to be an invaluable tool. Professor Walsh and the Department of Justice Equality and Law Reform, who funded the research, are to be congratulated on this important and very worthwhile publication.