

**Recent updates in juvenile justice**

**Delivered by Ms Justice Aileen Donnelly** **at Atlantic Technological University, Letterkenny on 29 April 2025[[1]](#footnote-1)**

1. Good afternoon everyone, it is a pleasure to be joining you here today in Letterkenny to discuss what is a very important societal issue within the context of criminal justice and also, an area of law where the Supreme Court has recently delivered two significant judgments. I am Judge Aileen Donnelly and before being appointed to the Supreme Court I served as a judge of the High Court and the Court of Appeal. As I am sure many of you in this hall will be considering, I decided to pursue a career at the Bar after college. As a practicing barrister, I spent much of my time in criminal practice and in the very early years I spent a lot of time practising in the Children’s Court in Dublin.
2. While the criminal law is rooted in fundamental foundational normative principles, it is an area of law that continues to develop. If you look at the statistics in the most recent Supreme Court Annual Report from 2023, you will see that criminal law matters and criminal judicial review cases make up the largest substantive law category of applications for leave to appeal to the Supreme Court, comprising some 21.6% of all applications.[[2]](#footnote-2)
3. During the course of this short lecture today, I will provide some brief context in regard to the area of juvenile justice before proceeding to discuss the two Supreme Court decisions in *The People (DPP) v PB* (“*PB*”)[[3]](#footnote-3)and *The People (DPP) v CC* (“*CC*”)[[4]](#footnote-4) which were delivered only last month at the beginning of March. The judgment in *PB* deals with the proper application of the statutory protection of anonymity afforded to children involved in criminal proceedings. The judgment in *CC* concerns the appropriateness of imposing a life sentence on a child, the sentencing court's jurisdiction to review and modify a sentence, the implications for sentences where such a review has already been granted and also the power to suspend part of a sentence.
4. The question of how the criminal justice system deals with juvenile offenders is a nuanced and sensitive issue. As stated by my colleague Mr. Justice Charleton and his co-authors of the textbook *Criminal Law and Evidence*, “[c]riminal law is essentially an adult business. Prisons are designed to punish and rehabilitate mature offenders. Children have no place within a system which may corrupt them further or which may break their undeveloped spirit”.[[5]](#footnote-5) It has long been recognised, that while seeking to achieve the overall aims of upholding the proper order of society and vindicating the people’s entitlement to justice, the criminal law when dealing with children must have regard to their vulnerability, reduced culpability, the societal interest in assisting their development and the greater prospect of their rehabilitation.
5. In addition to the rehabilitation consideration identified by Mr. Justice Charleton, the degree of criminal blameworthiness in regard to children must be considered in a separate manner as compared to adults. By their nature, children are not fully developed emotionally, cognitively or socially and may have an insufficient understanding of the consequences of their actions. The motivations of child offenders for their criminal conduct generally are not solely based on some inherent wickedness but rather may stem from peer pressure, socio-economic issues, neglect or abuse, exposure to violence, mental health issues, or a lack of proper guidance and support.
6. The fundamental distinction between children and adult offenders has been recognised in statute as far back as the Summary Jurisdiction over Children (Ireland) Act, 1884. This Act made provision for children in certain circumstances to be tried without a jury for most offences, excluding homicide. The Act also set various limits on the punishment which a child could receive having been convicted of an offence. For serious offences, the legislature, that being the British House of Commons at the time, decided that the maximum punishment for children would be either “to pay a fine not exceeding ten pounds, or to be imprisoned with or without hard labour, for any term not exceeding three months.”[[6]](#footnote-6) It is interesting to note that the Act went on to say that if the offending child was a boy and under the age of fourteen the court could also “adjudge such [a] young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable…”.[[7]](#footnote-7)
7. Needless to say, the law has developed considerably since the 1884 Act. In Ireland, the introduction of the Children Act, 1908 was a major development which provided the statutory framework for juvenile justice in the State for nearly a century.[[8]](#footnote-8) Professor Dermot Walsh of the University of Kent notes that the 1908 Act was “an exceptionally liberal and innovative measure for its time”.[[9]](#footnote-9) The Act sought to assist in the rehabilitation of juvenile offenders and recognised that to treat child offenders in the same manner as adults was “harsh, unfair and destined to lock them into a lifestyle of crime”.[[10]](#footnote-10)
8. The provisions of the 1908 Act eventually became recognised as outdated and inadequate. The need for reform was addressed by the enactment of the Children Act, 2001 which repealed and replaced the 1908 Act and other statutory provisions to comprehensively reform the State’s juvenile justice system. Speaking in a reading of an earlier version of the Bill that would become the 2001 Act, Minister of State at the Department of Justice Austin Currie heralded the reforms as providing “a statutory framework within which can be created and developed a new juvenile justice system responsive to the challenges posed by a sophisticated and largely urbanised society at the end of the 20th century.”[[11]](#footnote-11)
9. The Children Act, 2001 confers a number of specific protections on children appearing as defendants in criminal trials. As stated by O’Malley J. in the *PB* judgment which I will presently discuss, the Act “is an ambitious, wide-ranging statute that brought in sweeping changes to the court process and penal systems applicable to juvenile offenders.”[[12]](#footnote-12)
10. Section 93 of the Children Act provides for a ban on the public reporting of the identity of a child involved in criminal proceedings other than in certain circumstances. It was the extent of the application of this provision that was the subject of the Supreme Court decision in *PB*. Just to note, the cases which I am about discuss only refer to the defendants by initials namely PB and CC.
11. The appeal proceedings in *PB* and *CC* had commenced as separate murder cases where the offender was a child when the offence was committed. Both defendants reached the age of eighteen while their cases were still being heard in the courts. This is referred to as ‘ageing out’. As the defendants aged out during the course of their proceedings, a question arose as to whether they were entitled to continue to benefit from the protection of anonymity.
12. The second issue which arose in *CC* directly and in *PB* indirectly concerned the sentence which was imposed. In both cases, the trial judge determined that the appropriate sentence was one of detention for life, but the Court would review these sentences after thirteen years in custody. Both defendants sought to appeal against the severity of this sentence.
13. As CC and PB were in the same position as to the anonymity and (some of the) sentencing issues, the appeals were heard at the same time by the Supreme Court. Thus, whatever the Supreme Court decided in one case would also apply to the other.
14. As I previously mentioned the anonymity issue was considered in the judgment of the Court in *PB* and the sentencing issue was dealt with in the judgment of *CC*. The Supreme Court delivered one judgment in each case both written by Ms. Justice O’Malley. I will consider first the decision in *PB*. For the ease of explanation, I will discuss *PB* primarily thought the anonymity issue and *CC* through the sentencing issue.

***The People (DPP) v PB***

1. In January 2020, a young man named Mr Cameron Blair was murdered by PB with a knife. PB was only a few months short of turning eighteen at the time of the offence. PB was charged and sentenced before his eighteenth birthday. As he was still a child, PB was entitled to protection against any report, publication or communication that would reveal his identity, pursuant to s. 93 of the Children Act. PB appealed his sentence and before his appeal was heard he turned eighteen. As he was no longer a child the Court of Appeal determined that he was no longer entitled to the statutory protection of anonymity afforded by s. 93.[[13]](#footnote-13)
2. PB appealed this decision arguing that the approach adopted by the Court of Appeal meant that he had been deprived of the statutory protection of anonymity simply because he exercised his right to appeal. He said that the interpretation adopted by the Court was in error. The respondent was the Director of Public Prosecutions who is responsible for conducting criminal prosecutions in the State. The Attorney General was joined on consent as a notice party to the case. When important constitutional issues or significant matters involving public interest concerns are raised by a case, the Attorney General may enter the proceedings as a notice party.
3. The DPP and the Attorney General argued that the correct interpretation of s. 93 was that the provision is to protect children only, and that it is not available to someone who is no longer a child such as PB or CC. All the parties accepted that if PB had not appealed and the proceedings were concluded before he turned eighteen, he would potentially have had life-long anonymity.
4. The sole issue in the appeal for the Supreme Court was whether a defendant who is charged and brought before the courts while a child, can remain entitled to the statutory protection of anonymity if they reach the age of eighteen before the criminal proceedings, including any appeal, have concluded. This was a question of the correct interpretation of s. 93 of the Children Act, 2001, the full text of which you can see on the screen here. It should be noted that the anonymity protection under s. 93 is not absolute. Subsection 2 provides that a court may dispense, in whole or in part, with the requirements of subsection 1 where it is satisfied that is necessary to do so to avoid injustice to the child, for the purpose of apprehending the child or in the public interest.
5. O’Malley J. commenced her analysis by setting out the relevant constitutional provisions which were engaged in the case. Article 34.1 of the Constitution provides that the administration of justice must take place in public, “save in such special and limited cases as may be prescribed by law”. Article 38.1, which many of you will be familiar with as criminal law students, guarantees that no person shall be tried on any criminal charge save in due course of law, while Article 40.1 provides that all citizens shall, as human persons, be held equal before the law. O’Malley J. stated that although Article 42A is primarily concerned with matters such as child care proceedings, it “can be seen as expressly recognising the status of childhood”.[[14]](#footnote-14)
6. This constitutional dimension is an important feature of the decisions in both *PB* and *CC*. O’Malley J. acknowledged that children are not immune to the criminal justice process and can be subjected to punishment. She said that while the Constitution does not prescribe any particular process for criminal prosecutions against children, the guarantees of a fair trial and equality “may, in the cases involving child defendants, justifiably be implemented by way of trial procedures that are adapted to accommodate at least to some extent … certain relevant features of childhood.”[[15]](#footnote-15) In examining the special recognition of the status of childhood, O’Malley J. drew attention to the vulnerable nature of children which meant that the law should extend to them a particular protection. Furthermore, there exists a general societal interest in attempting to ensure that children grow to adulthood as integrated members of the community.
7. The factors I have previously mentioned namely, the vulnerability of children, their lesser culpability, the societal interest in assisting their development and the greater prospect of rehabilitation were identified in the judgment of *PB* as central features of the criminal law in regard to children and are reflected in the Children Act 2001. As with many constitutional issues, the protection of anonymity involves an intersection and balancing of rights. As O’Malley J. observed, the interests and welfare of a child defendant in criminal proceedings should not necessarily take primacy over other interests. Criminal trials involve a complex range of rights and interests including the societal interest in the prosecution and punishment of crime as well as the rights of the victims.
8. In determining the correct interpretation of s. 93, it was noted by O’Malley J. that the view heretofore taken by the courts was that anonymity lasts permanently if the proceedings conclude while the individual is still a child but lasts only until the day the person turns eighteen if the proceedings are still continuing when the individual ages out. As I am sure you will have conceived of yourself, s. 93 is possibly capable of a number of different interpretations. To briefly note two of the various possibilities, the section could mean that anonymity lasts only until age eighteen and expires at this age regardless of the fact that the proceedings may have concluded before this point. The protection could also apply whenever the court is concerned with the actions of a child no matter what the age of the accused at trial. So conceivably, an adult defendant who was many years past eighteen could benefit from anonymity as long as they committed the offence as a child. Each of these interpretations and others were considered by the Court and arguably all the potential approaches had their own flaws and logical inconsistencies.
9. Using tools of interpretation and analysing the provision in its context, the proper construction of s. 93 identified by the Supreme Court in *PB* is “that it applies when proceedings are commenced against a child and continues to apply throughout those proceedings. Its effects last beyond the conclusion of the proceedings in so far as any publication or report relates to the proceedings and is likely to identify the person who was ‘the child concerned in the proceedings’.”[[16]](#footnote-16)
10. O’Malley J. opined that this reading of the anonymity protection provision “reduce[s] the possibility of unequal and unfair treatment as between young offenders, and attempts to ensure that they are not subjected to additional, unjustified and unnecessary pressure and harm while involved in the criminal justice process.”[[17]](#footnote-17) It further provides for the rehabilitation of defendants after their criminal proceedings have concluded. Drawing on the language of a separate provision of the Children Act, 2001, O’Malley J. held that the purpose of the anonymity protection is to “promote reintegration of child offenders into society ‘and prepare them to take their place in the community as persons who are capable of making a positive and productive contribution to society’.”[[18]](#footnote-18)
11. The effect of this finding is that the appeals of PBand CCwere successful, and a declaration was made in both cases that s. 93 would continue to apply regardless of the fact that the defendants had aged out.

***The People (DPP) v CC***

1. Turning now to the judgment in *CC*. The appellant in this case was found guilty of the murder of Ms Urantsetseg Tserendorj, which he committed when he was fourteen years old. The aforementioned anonymity issue also arose in these proceedings due to the defendant ageing out. The issue discussed in the *CC* judgment concerned the imposed sentence.
2. The defendant, CC, was sentenced by the Central Criminal Court for life detention with a review after 13 years. The appeal brought by CC against his sentence raised three primary issues for the Court to consider:
	1. Firstly, whether the Central Criminal Court could reserve the power to modify a sentence through a review procedure, as it did in this case. The particulars of the sentencing and review framework is somewhat complex and for the short time we have today it is sufficient for you to understand that the Supreme Court held that the courts do not have this power of review in consideration of the principle of the separation of powers.
	2. The second issue raised in *CC* concerned the question of whether it was permissible to suspend or partially suspend a child’s sentence Once again, for reasons of time I won’t set out the consideration of this issue at any great length suffice to say that the Supreme Court found that a court may impose a part-suspended sentence on a child if part of the sentence will be served as imprisonment (i.e. when they are over the age of eighteen).
	3. It is the third issue raised in *CC* that I want to focus on today. As you may be aware from your studies, the mandatory life sentence penalty does not apply to children.[[19]](#footnote-19) This means that when a child is convicted of murder, he or she will not be *required* to receive a life sentence. A life sentence does not follow *automatically* from a conviction. However, the question arose in *CC* as to when, if ever, it was appropriate to impose a life sentence on a child.
3. In her consideration of how courts should approach the sentencing of a child convicted of murder, O’Malley J. once again set out the constitutional context which I have already discussed in relation to *PB.* O’Malley J. held that the protection of the constitutional status of childhood requires the courts to take account of the reasons for that protected status, such as the reduced culpability of children and their greater potential for rehabilitation. When imposing a sentence, a court must give the appropriate significance to these factors.
4. O’Malley J. found that particular emphasis should be placed on the reduced blameworthiness of child offenders. Referencing the Scottish Sentencing Council’s 2023 guidelines for sentencing young people which is based on an ‘umbrella’ review of over 300 scientific studies, from around the world, on the development of the human brain, O’Malley J. noted that: “Children are generally less able to exercise good judgment than adults, are more vulnerable to negative influences like peer pressure or exploitation by others, may be less able to think about the consequences of their actions and may take more risks.”[[20]](#footnote-20) The Court also noted the important consideration and societal interest in the successful development and rehabilitation of the child. Children are more amenable to rehabilitation, and it is significant that they are still in the process of development towards mature adulthood.
5. The Court found that the lesser culpability of children “means, in principle, that it will often be appropriate to impose a shorter, or even a significantly shorter, sentence on a child than the sentence that might be appropriate or even mandatory in the case of an adult.”[[21]](#footnote-21) O’Malley J. stated that the Court was not laying down a general binding principle and emphasised that it was not being said that a life sentence should never be imposed on a child. As is the nature in all criminal cases, individual crimes vary greatly in gravity and offenders vary in culpability.
6. It is necessary for sentencing courts to be aware of the damage an indefinite life sentence may cause to a child. O’Malley J. made particular reference to indeterminate sentences, that being a sentence where the offender does not know the potential length of their punishment. The distress and confusion caused by the uncertainty of an indeterminate sentence undoubtedly has a greater impact on children as compared to adults.
7. O’Malley J. stated that “a life sentence should be imposed on a child only in exceptional cases where the evidence shows that the child’s intentions and actions can fairly be equated with those of an adult.”[[22]](#footnote-22) Making such a determination will involve a consideration of whether the murder involved premeditation, or planning such as efforts to conceal guilt, the deliberate luring or exploitation of the victim, or sexual violence or gratuitous brutality. Apart from these exceptional cases, O’Malley J. stated that the most appropriate sentence for a child convicted of murder is a determinate sentence with a part-suspended element. A determinate sentence is one where the offender knows the length of detention that they will serve. The length of this detention should be tailored to reflect the age of the child at the time of the offence.
8. In light of the above conclusions reached by O’Malley J., the Supreme Court ordered that the determination of sentences for PB and CC should be sent back to the Court of Appeal so that that Court could impose a sentence in accordance with the principles outlined in the *CC* judgment.

**Conclusion**

1. The judgments in *PB* and *CC* are hugely consequential for juvenile justice and will no doubt influence and inform how the courts deal with child offenders well into the future. What both judgments emphasise is the importance of the constitutional status of childhood and that the protection of this status requires the courts to take account of the vulnerability of children, their lesser culpability for criminal behaviour, the societal interest in assisting their development and their greater prospect of rehabilitation. As I am sure you have understood from this presentation, the issues that arise in cases such as these are incredibly difficult, highly emotive and often involve differing rights and interests. It is the role of the Supreme Court to make determinations on the appropriate balancing of these rights and to provide clarity on what the Constitution requires in these cases of fundamental importance.
2. Before I conclude, you will remember at the start I mentioned the constant evolution of the criminal law. While the Supreme Court delivered a judgment on anonymity in *PB*, the Court has also recently heard submissions in a case called *Doe v Director of Public Prosecutions* where the issue is argued from a different perspective. The respondents in *Doe* say that by reason of blameworthy delay on the part of the gardaí and prosecution authorities they are no longer entitled to any of the protections extended to children by the Children Act 2001 and they seek to stop their trials on that basis. The High Court said that there had been blameworthy delay on the part of the investigating and prosecuting authorities but that in considering all the factors, it was not appropriate to prohibit the trial. As the main loss to the accused young men had been the opportunity to have anonymity if they had been charged at an appropriate earlier time before they reached adulthood, the High Court decided to make an order that their names should not be published. This is under the power of the Court to make what are called Gilchrist Orders meaning an order that in some shape or form restricts public access to the court or publication of certain aspects of the evidence or of the names of parties or witnesses.
3. The issues that arise in regard to juvenile justice are not new. The Courts Service have recently produced a podcast series, in which one of the episodes is focused on the career and work of Judge Eileen Kennedy. Judge Kennedy, from Carrickmacross in County Monaghan, was the first female judge in the Republic of Ireland when she was appointed to the District Court in 1964. Upon her appointment, Judge Kennedy was made responsible for the Children’s Court, a position which she held right up until her death in 1983. In the podcast episode, a recording is played of an interview which Judge Kennedy gave in 1970 and one is struck that the issues faced by child offenders in the past are strikingly similar to those faced in the present day. Judge Kenney conveyed her “great sympathy” for the children of Dublin “who get into trouble” and noted the various socio-economic issues which she identified as the root cause of crime. In particular, Judge Kennedy pointed to the “bad housing, poverty, lack of facilities” and crowded living conditions.[[23]](#footnote-23) As the functioning of the State’s juvenile justice system continues to evolve through cases such as *PB*, *CC* and *Doe* it is important to remember the historical and continuing role of the courts in upholding and protecting the constitutional framework, particularly the special constitutional status of childhood, that underpins the juvenile justice system.
1. I am grateful for the work of my Judicial Assistant Eoin Ryan in preparation for this presentation. [↑](#footnote-ref-1)
2. Supreme Court of Ireland, *Annual Report 2023* (Office of the Chief Justice 2024) 21. [↑](#footnote-ref-2)
3. [2025] IESC 12. [↑](#footnote-ref-3)
4. [2025] IESC 11. [↑](#footnote-ref-4)
5. Charleton et al., *Charleton & McDermott’s Criminal Law and Evidence* (2nd edn, Bloomsbury Professional 2020) para 26-01. [↑](#footnote-ref-5)
6. Summary Jurisdiction over Children (Ireland) Act, 1884, s. 5(1). [↑](#footnote-ref-6)
7. ibid. [↑](#footnote-ref-7)
8. Dermot Walsh, *Juvenile Justice* (Thomson Round Hall 2005) para 1-01. [↑](#footnote-ref-8)
9. ibid para 1-02. [↑](#footnote-ref-9)
10. ibid. [↑](#footnote-ref-10)
11. *Dáil Debates*, Vol. 474, Cols 1306 (February 12, 1997) [↑](#footnote-ref-11)
12. *PB* (n 3) [8]. [↑](#footnote-ref-12)
13. *The People (DPP) v PB* [2024] IECA 60. [↑](#footnote-ref-13)
14. *PB* (n 3) [83]. [↑](#footnote-ref-14)
15. ibid [85]. [↑](#footnote-ref-15)
16. ibid [114]. [↑](#footnote-ref-16)
17. ibid [115]. [↑](#footnote-ref-17)
18. ibid. [↑](#footnote-ref-18)
19. Criminal Justice Act, 1990, s. 2 as amended by Criminal Justice (Amendment) Act 2024, s. 2. [↑](#footnote-ref-19)
20. *CC* (n 4) [185]. [↑](#footnote-ref-20)
21. ibid [187]. [↑](#footnote-ref-21)
22. ibid [188]. [↑](#footnote-ref-22)
23. The Courts Service, ‘Eileen Kennedy, Ireland’s first woman Judge’ (17 October 2024) <https://open.spotify.com/episode/5PopEEUHs0wkQKvCJNbjP8>. [↑](#footnote-ref-23)