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## The Custodial Remand System for Juveniles in Ireland: the Empirical Evidence

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## The Custodial Remand System for Juveniles in Ireland: The Empirical Evidence

### Abstract

This paper documents the present system of custodial remands for children under sixteen years in Ireland. The research includes the entire population of children remanded into custody during the summer of 2000 (N=117). A flow chart model illustrates these young people's experiences, and the paper highlights issues such as the number of non-offending children who are in custody (21%); the cycle of repeated remands and court appearances (up to 22 repeats); excessive periods of time spent in secure detention (up to 351 days); and the use of remand facilities for those awaiting a suitable residential placement (57%). It provides an important baseline from which to assess the impact of legislative reform in this area.

### Biographical Note

Sarah Anderson graduated from the Dublin Institute of Technology with an MPhil by Research in November 2004. She has a joint honours degree in Psychology and Sociology from the University of Edinburgh. Her interest in juvenile justice developed through direct work with young offenders in secure custody.

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# **The Custodial Remand System for Juveniles in Ireland: The Empirical Evidence**

## **1. Introduction**

In Ireland, there have been growing concerns that the needs and rights of some young people within the current juvenile justice system are not being met, and that there are serious problems in the provision and availability of services (Minister for Children, 2004).

The recently enacted Children Act 2001 signifies a new approach to young offenders that openly embraces the welfare ideology, and, by replacing the Children Act 1908, aims to address many of the criticisms of a justice system that has been in place for almost a century. However, it is imperative that any proposed changes in the justice system are based on a solid understanding of the current situation and the difficulties encountered within it.

Without this knowledge policy changes may not address the most serious issues in our present system.

Ireland has one of the highest rates in Europe of young people in custody. About one quarter of the Irish prison population are under 21 years of age, much higher than other Western European countries where this group often represent as little as 5 per cent of the prison population (O'Mahony 2000; 18). Given that there are fundamental concerns regarding the deprivation of liberty, the rights and freedoms which this restricts and the potential consequences of incarceration on both the young people themselves and society in general, changes to the current remand system need to be carefully considered.

This paper, based on research that sought to establish the policy and practice of custodial remand for children under 16 years (Anderson 2004), will illustrate the present system of remand for young people in Ireland. The research was conducted during four time periods in

the summer of 2000, and included the entire population of children remanded to custody during this time. A flowchart is presented, and is used to illustrate some of the particular difficulties young people encounter within the current system. The paper discusses present and proposed legislation, policies in relation to juvenile remand and a discussion of practice. There is a focus on issues such as the numbers on remand, reasons for court appearance, types of offences, purpose of remand and the length of time children spend in custody. These results provide an important baseline from which to assess the need for legislative and practical changes to the current system, and to plan the most effective implementation of the measures contained within the Children Act 2001.

## **2. Legislation In the Irish Juvenile Justice System**

Wide spread criticism of the current system of juvenile justice in Ireland began as early as 1970 with the publication of the Kennedy Report on the Industrial and Reformatory Schools system. This was followed by a number of government led publications (Task Force 1980, Whitaker Report 1985), as well as reports published by various organisations (Irish National Teacher's Organisation 1995; Irish Penal Reform Trust & Barnardos 2000; National Youth Federation 1996). All of these reports made strong recommendations for changes in the legislative framework for dealing with young offenders.

Despite such recommendations, and the enactment of the Children Act 2001, the juvenile justice system still awaits significant changes. This has been explained as being a result of 'a long standing lack of political interest in this area', and 'a complete absence of political and public discussion on the prevention of juvenile offending' (Quinn, 2002; 677).

This lack of political will to instigate change continues and is reflected in the slow and piecemeal implementation of the measures contained in the Children Act 2001. At the time of writing, a number of significant measures still await implementation, many of which are directly relevant to this study. These include:

- Section 88 – which deals with remands in custody, and includes measures such as the separation of children on remand and children on a detention order and ensuring that remand is not used if the only reason for doing so is that the child is in need of care or protection.
- Sections 95 – 107 which deal with the powers of courts in relation to child offenders, including s.100 which allows for the remand of a child into custody for the preparation of reports, and for a period not exceeding 28 days.
- Sections 115 – 132 and 137 – 141 which deal with community sanctions available to the courts, including day centre orders, probation orders, care and supervision orders and family support orders.
- Sections 142 – 156 which deal with detention orders, including the use of alternative sanctions where there is no place available in a children detention school.
- Section 77 whereby the court can refer the case of a child who is charged with an offence to the Health Board to convene a family welfare conference when it may be appropriate to do so (e.g. the child is in need of care or protection).

(National Children's Office, May 2005)

## 2.1. Legislation for Offenders

The Children Act, 1908 was, at the time of this study, and pending implementation of the Children Act 2001 remains, the primary legislation for juvenile justice in Ireland.

The study investigated children, under sixteen years of age, who were remanded to custody in Ireland. The four units used for remand of these young people were certified places of detention under the Children Act 1908.

Sections 94 to 97 of the 1908 Act<sup>1</sup> deals with places of detention and procedures for the bail and custody of juvenile offenders, including remand.

Section 57 of the 1908 Act<sup>2</sup> deals with the committal of young offenders, aged between 12 and 17 years to Reformatory Schools ('a school for the industrial training of youthful offenders'). Children under the age of 12 years convicted of an offence can be committed to an industrial school under section 58 of the 1908 Act.

Section 63 of the 1908 Act allows for the committal to custody of a child awaiting placement in a certified school to any place to which they might be committed on remand, i.e. a certified place of detention. Given the lack of a sufficient number of secure therapeutic detention places for young offenders, a situation which has not changed since it was described as "the most glaring deficiency in the juvenile justice system right now" (O'Malley, 1991; 32), it is inevitable that any child detained on remand under this section of the Act may be waiting some time before s/he is finally placed elsewhere.

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<sup>1</sup> amended by sections 24 & 25 of the 1941 Act

<sup>2</sup> amended by section 9 of the 1941 Act

## **2.2. Legislation for Non-Offenders**

A number of children appear in court for reasons other than as a result of offending behaviour. It is through the use of the following pieces of legislation that an increasing number of young people in need of care and protection find their way into the Irish Juvenile Justice System. Once the child has appeared in court the judge can then order the child to be remanded in custody for the purposes of an independent professional assessment.

Section 58 of the Children Act 1908<sup>3</sup> relates to those children liable to be committed to an industrial school ('a school for the industrial training of children'). There are two industrial schools remaining in Ireland, St Lawrence's in Dublin and St Joseph's in Co Tipperary, both of which cater solely for boys. Under section 58 (4), those children who are deemed to be out of control of their parents can be sent to a certified industrial school, whether they have committed an offence or not. A certain precursor to such a placement is a three-week assessment within either the National Assessment and Remand Unit (for boys) or Oberstown Girls Centre (for girls).

Similarly, under the School Attendance Act, 1926, School Attendance Officers can bring a case to the District Court against the parent of a child who is not attending school, and the child can then be remanded for three weeks for a full assessment to take place. The current practice of remanding non-offending children for assessment purposes is addressed under the Children Act 2001, where Section 88(13) states that 'the court shall not remand a child in custody...if the only reason for doing so is that the child is in need of care or protection'.

However this section still awaits implementation.

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<sup>3</sup> as amended by section 10 of the 1941 Act

One of the most glaring concerns in relation to the use of remand for non-offending children is that they are detained in the same unit as those who have committed offences. Even if the assessment period itself can be justified, these children are then likely to encounter the same problem as their offending counterparts, i.e. a lack of suitable placements, and thus may well be detained in secure units, under section 63 of the 1908 Act, for far longer than the three week period initially anticipated. Results presented in this paper will illustrate this point. In addition, these children's experience of the court process is no different to that of offenders, in that they are handcuffed whilst being transferred to and from court by Gardai, and are detained in holding cells in the children's court with often serious offenders whilst waiting for their case to be heard.

An additional issue in the present remand system is that there are a number of juveniles whose cases have been sent to the High Court by a district court judge for Constitutional Judicial Review. In these cases the matter in question is whether the constitutional rights of the child, under Article 40 of The Irish Constitution, are being denied by the State (Byrne & McCutcheon, 1996). The High Court Judge in these circumstances is being asked to make a ruling in relation to the failure of the State (Ministers for Justice, Education and Health) to provide a suitable residential placement for the child.

It has been revealed that in some circumstances judges are forced to detain children in highly unsuitable accommodation such as adult psychiatric hospitals, garda stations, hotels and bed and breakfast accommodation because there is no other place for them. In addition, units intended for the remand and detention of young offenders are forced to turn young offenders away because beds are being taken up by other young people in need of care and protection who often have no convictions (Kearns, 2001).



The measures contained in the Children Act 2001, once fully implemented, should form the basis for positive change for children and young people who are brought before the courts – whether because of their troubled lives or troublesome behaviour. However it is essential that there is a solid understanding of the existing system, in order to provide a baseline from which to assess the impact of these changes.

### **3. Remand Provision in Ireland for Children Under 16 years**

There were four units in Ireland that catered specifically for the remand of males and females under 16 years of age. The remand provision within these units, managed under the auspices of the Department of Education and Science, is illustrated in Table 3.1.

Table 3.1. : Remand Institutions in Ireland for children under 16 years

	Remand places	Security of unit	Detention	Assessment
National Assessment & Remand Unit	18	low	No	Yes
Oberstown Boys Centre	10	medium	Yes	No
Trinity House School	2	high	Yes	No
Oberstown Girls Centre	5	medium	Yes	Yes

There were a total of 68 young people in custodial remand, almost two fifths (46; 39.3%) of whom were detained in the National Assessment and Remand Unit, a further 19 (16.2%) in Oberstown Boys Centre, 20 (17.1%) in Trinity House and all 19 girls (16.2% of the total population) in Oberstown Girls Centre.

Information was taken from individual case files with the use of a code sheet that was developed during the pilot phase of the research. This data was then entered into SPSS databases for analysis. There were three sections to the results, each of which targeted a specific aspect related to the custodial remand of children under 16 years in Ireland.

The results of the background profile of these young people were in line with other studies of young offenders, illustrating a pattern of multiple disadvantage and negative life experiences (Anderson, 2004). There are other Irish studies that support these findings in relation to the general background profile of young Irish offenders (O'Mahony et al 1985; Bates 1996; Burke et al 1981; CSER 2001; Graham et al 1999). However, there was no research available specifically relating to children remanded into custody. A recent study of the Irish Children's Court raised concerns over the extent to which children were being detained in custody, that charges against young people were 'continuously and persistently adjourned', and that there were a number of other issues relating to the insufficient protection of the rights of these young people (Kilkelly, 2006). These concerns are supported by the results of this study. A number of organisations and professionals related to the field have highlighted the lack of provision of appropriate services to meet the needs of young people coming before the courts, and the use of legislative loopholes in order to detain young people without charges (INTO, 1995; Barr, 1999; IPRT & Barnardos, 2000). However, there was no empirical evidence on which to validate the claims in respect of young people on remand in Ireland, until this study was undertaken.

#### **4. Numbers of Children in Custodial Remand**

A total of 117 children and young people were recorded as being detained in custodial remand during the four time periods selected in the summer of 2000. This represented all 68 individuals, some of whom were present during two or more weeks of study. Each of the 117 cases were treated as separate individuals, as their circumstances relating to the period of remand often changed across the different weeks. For instance the same individual may have been on a district court order detained for remand and assessment during week one, but by week three (3 months later) s/he may have been the subject of a high court order awaiting placement in a residential unit.

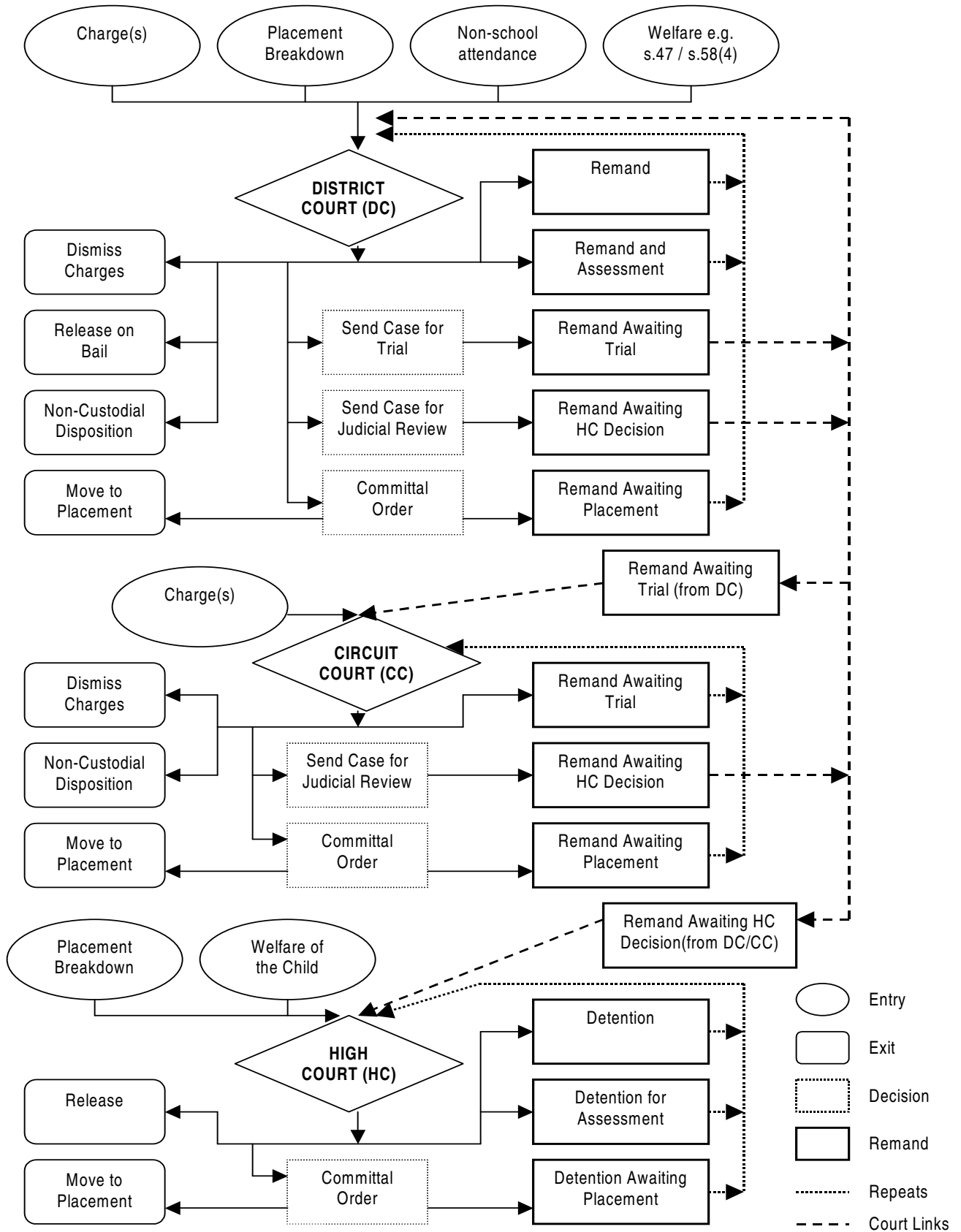
Of the 117 cases, 98 (83.8%) were male and 19 (16.2%) were female. The total population ranged in age from 11.4 years to 17.1 years, with a mean age of 14.8 years. The vast majority of the population, a total of 72 (61.5%) were aged between 14 and 16 years of age. Around one fifth (25; 21.4%) were under 14 years of age and the remaining 20 (17.1%) were over 16 years old. This is particularly notable given that all the units in this study are certified for those *under* 16 years of age.

There was a significant difference between males and females in terms of age (Pearsons  $r = 0.472$ ,  $p < 0.001$ , one-tailed). All 19 females were aged 14 or over, 11 of whom (57.9%) were aged 16 or 17 years. By comparison, the male population was somewhat younger than the females since 25 (25.5%) of males were under 14 years of age, a further 64 (65.3%) were between 14 and 16 years, and only 9 (9.2%) were over 16 years old.

## **5. The Remand System**

The remand system in Ireland is a highly complex and complicated process with a number of changing variables for each individual case. In order to illustrate the intricacies of this system, a flowchart model was created. As this model developed it was apparent that not only does it provide a clearer and more easily obtainable insight into the system, it also illustrated the specific difficulties that many of the young people encountered. The flowchart model is illustrated in Figure 5.1 and each aspect of it will be explained in turn, under the headings Entry, Exit, Remand, and Repeats.

Figure 5.1. Flowchart of the Remand System



## **5.1. Entry**

The oval boxes on the model indicate an entry into the remand system, at either District Court, Circuit Court or High Court level. The most likely introduction to the formal court system for most young people is with an appearance at one of the 248 District Court venues in the country. Appearance in court could be the result of the child committing an offence or could be for welfare-related reasons such as non-school attendance (under the School Attendance Act, 1926) or for out of control behaviour (under section 58(4) of the Children Act, 1908). A small number of children would enter directly into Circuit Court hearings, primarily as a result of the serious nature of their offence. Finally, some children enter the system through High Court hearings. This mainly applies to children and young people who are already on a high court detention order for welfare related reasons, and whose residential placement breaks down. It must be noted that a child who is detained in one of the four units by an order of the High Court is not actually 'on remand' but they were included in this study because they were detained in remand units, and often presented with very similar circumstances. In addition, some of these children were the subject of simultaneous remand orders by either the district or circuit courts.

### **5.1.1. Reason for Court Appearance**

The court warrant issued for the detention for each child indicated the reason for the child's appearance in court. Table 5.1 illustrates the findings for this.

Table 5.1: Reason for Court Appearance

	Male		Female		Total	
	N	%	N	%	N	%
Charge(s)	59	60.3	10	52.6	69	59.0
Non-school attendance	6	6.1	0	--	6	5.1
Out of Control (s.47 & s.58(4))	2	2.0	0	--	2	1.8
High Court (welfare of the child)	4	4.1	5	26.3	9	7.7
Placement Breakdown	7	7.1	1	5.3	8	6.8
Charge(s) & Placement Breakdown*	20	20.4	3	15.8	23	19.7
Total	98	100	19	100	117	100

\* the majority of these cases are where the charges relate either to assaults on staff or damage to the residential unit where the children were residing.

As the table shows the majority of young people appeared in court as a result of their offending behaviour (69; 59.0%). A further 17 (14.6%) appeared in court as a result of concerns for their welfare whether in the district court or the high court. It is notable that a total of 31 cases, which represented over a quarter of the sample (26.5%), appeared in court as a result of the breakdown of their residential placement.

### 5.1.2. Types of offences

Where the young people had been charged with an offence, the details of the offence were recorded and coded. The number of offences that each individual had been charged with ranged from 1 through to 52 in total and the children committed a total of 431 offences

between them. Table 5.2 shows the breakdown in types of offences committed and how these compare to garda statistics for the same year.

Table 5.2: Breakdown of offences

	Total Offences		Compared to garda statistics (2000)
	N	%	%
Motor Vehicle Offences	122	28.4	8.5
Larceny Offences	101	23.4	21.2
Property Offences	60	13.9	12.9
Offences Against the Person	51	11.8	7.9
Public Order Offences	16	3.7	6.8
Court Offences	65	15.1	0.4
Other	16	3.7	42.3
Total	431	100	100

Roughly a quarter of the total offences committed were motor vehicle offences, which includes unlawful taking, carriage, and interference of motor vehicles, and a similar number were larceny offences which includes larceny, handling stolen property and trespass with intent. Court offences, which were roughly 15% of the total include failure to appear in court and breach of bail conditions. Property offences generally concerned minor damage to property however a number of young people were also charged with arson (fire-setting). Offences against the person accounted for almost 12% of the total and included assault, assault of garda, as well as a small number of sexual offences against the person. Finally, public order offences included breach of the peace and intoxication in a public place. There were no significant overall differences between males and females in the types of offences committed, though the majority of motor vehicle offences were committed by males. The



table also compares the major types of offences committed by the young people with the total offences committed in Ireland by juveniles in 2000. Larceny and criminal damage (damage to property) are roughly the same proportion of the total offences whereas the young people on remand had committed many more motor vehicle and court offences.

## **5.2. Exit**

Once a child has appeared in court there are a number of options available to the judge in order to deal with the case. The rounded rectangle boxes to the left of the flowchart model represent an exit from the remand system. An exit from the system through this channel can occur if the judge dismisses the charge(s), releases the child on bail to appear in court at a later date, or sanctions the child with a non-custodial disposition such as a fine, probation order or community service order. In addition, if the judge recommends that the child be committed to the care of the State, for example in a residential children's home, special school or detention unit, and providing there is a place available for the child, this would also constitute an exit from the remand system.

## **5.3. Remand**

The bold rectangular boxes to the right of the model represent a period of remand into custody (or detention in the case of a High Court order). Table 5.3 illustrates which of the courts had ordered the detention of the 117 young people.

Table 5.3: Court that ordered the detention

	Male		Female		Total	
	N	%	N	%	N	%
District Court	57	58.2	10	52.6	67	57.3
Circuit Court	1	1.0	0	--	1	0.9
High Court	18	18.4	6	31.6	24	20.5
District Court & High Court *	15	15.3	3	15.8	18	15.4
District Court & Circuit Court	1	1.0	0	--	1	0.9
High Court & Circuit Court	2	2.0	0	--	2	1.7
District, Circuit & High Court	4	4.1	0	--	4	3.4
Total	98	100	19	100	117	100

\* includes cases where child is subject of hearings in the high court but may not have a warrant from that court on file.

Over half the population (67; 57.3%) of young people were the subject of district court orders only, a further 24 (20.5) were subjects of high court orders only, and 18 (15.4%) were detained by both district court and high court orders. The remaining 8 fell into the following categories: circuit court orders only (1), circuit court and district court orders (1) circuit court and high court orders (2) and orders from all three courts(4).

Thus, of the 117 young people being detained, 48 (41.0%) were the subject of high court orders, with or without charges being heard in another court.

There are a number of reasons why a court would choose to order the remand or detention of a young person. Table 5.4 illustrates the reason why the various courts ordered the remand and detention of the 117 young people in the study.

Table 5.4: Purpose of detention

	Male		Female		Total	
	N	%	N	%	N	%
Remand	7	7.1	4	21.3	11	9.4
Remand & Assessment*	23	23.5	5	26.1	28	24.0
Remand Awaiting Placement	36	36.7	4	21.3	40	34.2
Remand Awaiting Trial	4	4.1	0	--	4	3.4
Remand Awaiting High Court Decision	2	2.0	0	--	2	1.7
Detention	3	3.1	0	--	3	2.6
Detention & Assessment*	1	1.0	1	5.2	2	1.7
Detention Awaiting Placement	22	22.5	5	26.1	27	23.1
Total	98	100	19	100	117	100

\* includes those cases where the young person is detained awaiting probation/social reports.

### 5.3.1. Remand (Detention)

Sections 94 to 97 of the Children Act 1908 deals with places of detention and procedures for the bail and custody of juvenile offenders. Where a judge postpones the hearing of the case, and the child is not released on bail, the child can be remanded to custody until the date of the next court hearing. In the study there were 11 cases of remand ordered by the District Court, represented by the 'remand' box on the model, and 3 cases of detention by order of a High Court, the 'detention' box. These 14 cases of straightforward remand or detention, represent only 12% of the total population.

### 5.3.2. Remand (Detention) & Assessment

Should the judge require more information on the child's circumstances in order to make an informed decision on the case s/he can remand the child into custody whilst waiting for social or probation reports to be completed. If a more detailed insight is required the child can be remanded to one of the remand and assessment units, usually for a period of three weeks, in order that a full assessment report be completed.

There were 28 cases of remand for assessment or reports ordered by the district courts, as illustrated by the 'remand & assessment' box on the diagram, and 2 cases of detention for assessment or reports by the High Court, the 'detention & assessment' box. These 30 cases represented just over one quarter (25.7%) of the total population.

### 5.3.3. Remand Awaiting Trial

Sometimes the offence may be too serious to be dealt with in the district court and thus becomes the jurisdiction of the circuit court. In such circumstances the district court judge may send the case forward to the circuit court and has the option of remanding the child in custody until such time as his/her case is heard in the circuit court, noted by the 'remand awaiting trial' box in the district court section of the model. There were 2 such cases in this study. In a further 2 cases the young people had entered directly into circuit court hearings, and were remanded awaiting a trial date, represented by the 'remand awaiting trial' box at the circuit court level in the model. Those children on remand whilst awaiting trial represent a very small percentage (3.4%) of the population, and supports the research evidence that only a very small number of young people commit serious offences.

#### 5.3.4. Remand Awaiting Placement

Section 63 of The Children Act (1908) allowed for the committal to custody of a child awaiting placement in a certified school to any place which they might be committed on remand, i.e. a certified place of detention. Given the lack of secure therapeutic detention places for young offenders it was inevitable that a number of children were likely to be detained under these circumstances.

Indeed, the study found that a total of 67 children and young people, representing 57.3% of the total population on remand were being detained whilst waiting for a suitable placement elsewhere. The majority of these were waiting for a high support unit or an alternative residential placement following a placement breakdown. Of these 67, 40 were detained by order from the district court, the 'remand awaiting placement' box in the model, and 27 were detained by orders from the high court, the 'detention awaiting placement' box.

#### 5.3.5. Remand Awaiting High Court Decision

Finally, in relation to this study, there were some children whose cases had been sent to the high court for judicial review. Typically this was after a significant period of time on remand 'awaiting placement' and the child's solicitor had brought up the right of the child to have suitable placements available that would meet his/her needs. In this case, the district court judge can dismiss any charges the child has if the case is deemed to be a matter of the child's welfare rather than his/her offending behaviour. The child's case is then taken up solely by the high court. Alternatively, the district court judge can uphold the charges and continuously remand the child into custody until a high court decision has been made. There

were 2 children in the study who were the subject of such orders, as represented by the 'remand awaiting high court decision' box in the flowchart.

### 5.3.6. Length of time on remand

Table 5.5 shows the average length of time spent in secure custody for each of the different types of remand/detention. The total number of days in detention for all individuals ranged from 2 days to 106 consecutive days, with an average of 30.8 days. This is out of a total of 99 cases as in 18 cases the length of time on detention was unclear. This was where the child was being detained by order of the high court but the specific warrant was either not on file or did not specify a date for a future hearing.

Table 5.5: Average length of time on remand

<b>Type of Remand/Detention</b>	<b>Number of cases</b>	Min. no of days	Max. no of days	<b>Average no of days</b>
Remand (DC)	<b>11</b>	2	33	<b>13.5</b>
Detention (HC)	<b>3</b>	14	36	<b>25.7</b>
Remand & Assessment (DC)	<b>28</b>	14	42	<b>21.9</b>
Detention & Assessment (HC)	<b>2</b>	22	46	<b>34.0</b>
Remand Awaiting Trial (DC)	<b>2</b>	14	28	<b>21.0</b>
Remand Awaiting Trial (CC)	<b>2</b>	30	33	<b>31.5</b>
Remand Awaiting Placement (DC)	<b>40 (39)</b>	7	106	<b>37.8</b>
Detention Awaiting Placement (HC)	<b>27 (10)</b>	14	101	<b>50.5</b>
Remand Awaiting HC Decision (DC)	<b>2</b>	28	31	<b>29.5</b>

As table 5.5 illustrates, the average number of days on remand or detention varies substantially depending on the reason why the young person is detained. The shortest

average stay of 13.5 days is for those on district court orders on straightforward remand. This is increased to 25.7 days average if the order is from a high court. Where the young people are remanded for assessment, the average number of days is 21.9 which would be expected given that both the assessment units require three weeks to compile a full assessment on each child. In comparison, it is those children who have been detained whilst awaiting a placement that spend the longest periods of time on remand, with an average of 37.5 days for those on district court orders, and 50.5 days for those on high court orders.

#### **5.4. Repeats**

The dotted lines on the flowchart represent repeat remands of the young person at each of the three court levels. This is where the child appears in court following a period of remand and is subsequently detained for a further period of remand.

During the data collection phase information relating to periods of remand that ran consecutive to the specific week(s) of the study was also collected for each of the 68 individuals, in order to identify the remand episode.

A remand episode represents the period from first remand or detention into one of the units, to the date of leaving the unit through the exit channel. During this period the young person may have been on a number of consecutive court warrants that meant a continued period of time locked in a secure unit.

Out of the 68 individuals in the study, there were a total of 71<sup>4</sup>remand episodes. Of the 71, 45 (63.4%) had completed their remand episode and 22 (31.0%) had not. The remaining 4 (5.6%) individuals had absconded before their episode was complete and did not return to the unit.

Of the 45 who had completed their episode the minimum total length of stay, adjusted for any overlap on the warrants, was 14 days and the maximum duration was 271 days. For the 22 cases where the episode was not yet to completion, the minimum stay was 2 days and the maximum 323 days. For those whose episode had ended in absconsion the minimum stay was 21 days and the maximum stay was 351 days.

In 10 out of the 71 cases (14.1%) the actual number of court appearances and therefore number of repeat remands was not clear, primarily due to high court detention orders which were not always kept in or updated in the case file. (However the number of days in custody was obtained from the unit records). For the remaining 61 cases the minimum number of remands was 1 and the maximum number of repeat remands was 12 for completed episodes, 22 for incomplete episodes and 13 for those whose episode ended in absconsion.

For each of the 71 episodes, the path of the individual through the custodial aspect of the remand system was followed, and illustrated on the flowchart model. This section of the results particularly highlighted the difficulties experienced by the young people waiting for a

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<sup>4</sup> 3 individuals had 2 episodes each, i.e. they had been released from one episode and then returned to court at a later date and entered a new episode. They were also present during at least one week of the study in each episode.



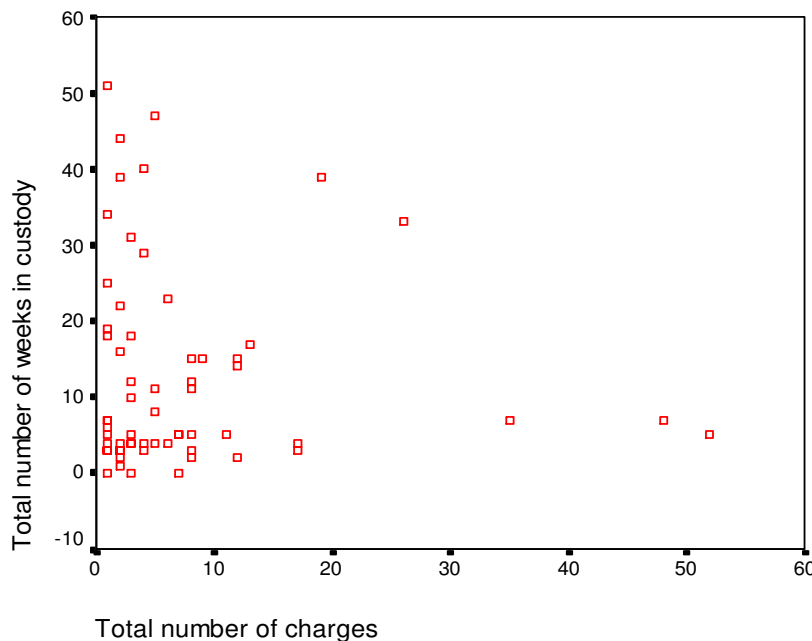
placement elsewhere, including large numbers of repeat remands and excessive periods of time in secure custody (Anderson; 2004).

Given that under the UN Convention on the Rights of the Child, detention on remand should only be used as a last resort and for the minimum possible period of time, it would appear that for these young people their fundamental rights are not being met.

Not only has the research shown that those children who are awaiting a suitable residential placement are likely to spend the longest periods of time in secure custody, it is also significant that this situation is more prevalent for those who have fewer, if any, charges for offending behaviour.

The research shows that there is an inverse relationship between the number of charges a young person has and the length of time they spend on remand. As figure 5.2 below shows, those with the most number of charges often spend quite short periods of time on remand, compared to those with fewer or no charges who spend the longest times on remand.

Figure 5.2 : Total Number of Charges Compared with Duration of Remand



As a result these children and young people become caught up in a cycle of repeated court appearances and subsequent remands in detention, with no idea when a placement will be available for them. It is generally accepted that secure, therapeutic residential placements are required to meet the needs of a small number of children and young people. However, many people have criticised their over-use in circumstances where alternatives to secure provision may be an option. Others have criticised the use of detention as a means of social control, or the practice of detaining children in secure provision that is unsuitable to their needs (Penal Affairs Consortium 1996; Irish Penal Reform Trust 1995; National Youth Federation 1996; Ashton & Moore 1998, Kelly 1992). Thus the practice of remanding children with welfare needs for extensive periods of time in detention units designed for the short-term detention of young offenders is wholly unacceptable. Furthermore, this practice is incompatible with the welfare ideology that Ireland currently claims to adopt. As Asquith notes, children's rights are often insufficiently protected within the welfare model of justice because of the individualised approach and often indeterminate and inconsistent responses of decision-makers (Asquith, 1983). The findings from this study would appear to support this view and are an important reminder of the need to implement policies and practices in the juvenile justice system that will ensure such practices become a thing of the past, never to be repeated.

## **6. Conclusions and Recommendations**

The provisions made under the Children Act, 2001 do go some way towards addressing these issues. For instance, Section 144 of the Children Act 2001 addresses the practice of remand awaiting placement and states that the detention order be deferred, and the director

of the children detention school shall apply to the court to make the order once a place becomes available. Section 143 of the Act states that a detention order should not be made unless it is the only suitable way of dealing with the child, and that a place is available for him or her. When a junior remand centre is part of a children detention school, the Act states that 'children remanded in custody to the centre shall, as far as practicable and where it is in the interests of the child, be kept separate from and not allowed to associate with children in respect of whom a period of detention has been imposed.' The current practice of remanding non-offending children for assessment purposes is addressed under the Children Act 2001, where Section 88(13) states that 'the court shall not remand a child in custody...if the only reason for doing so is that the child is in need of care or protection.'

Depriving children of their liberty is not something that should be done lightly under any circumstances and careful consideration of the current system of remand in Ireland is urgently required. Priority should be given to the sections of the Children Act 2001 that ensure that children are detained only as a measure of last resort, for the minimum necessary period of time and limited to a small number of cases.

The practice of remand for assessment purposes is quite unnecessary in many cases. Funding should be made available to develop community-based assessment facilities at a national level. In addition to keeping many children out of the remand system, this practice would also result in an increased availability of remand beds for those children whose actions warrant a custodial remand. The Forum for Youth Homelessness recently noted that, "It was suggested...that a greater availability of remand places, even for a short period, would give social workers a better opportunity to contact young people's families, provide a better response to the needs of the young people and be of assistance to the courts." (Forum on

Youth Homelessness, 2000; 46) The use of remand and detention facilities within the juvenile justice system for the purposes of addressing a social problem such as youth homelessness is totally unjustified and unacceptable.

Community-based sanctions for young offenders should continue to be a priority. Results from this study showed that for 18% of the young people on remand, this had been their *first* contact with the formal juvenile justice system, and not all of the children had had the experience of community based interventions beforehand, only 36% had been on the garda juvenile liaison scheme, and only 57% had been on probation.

Alternative arrangements need to be put in place for those children on remand who require a residential placement. Children are being detained in units designed for short-term detention for excessively long periods of time, in some cases almost a year, and this practice is totally unacceptable. The grounds for establishing the need for residential placement may need to be revised and more effort made to return children to the family home wherever possible.

This will necessitate the provision of extra resources to provide community and family based supports as an alternative for these children.

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