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Volume 14

Issue 1 *Special Issue on Criminology and Penology*, Guest Editor Liam Leonard

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2014-05-14

## Increasing the Potential for Diversion in the Irish Criminal Justice System: The Role of the Garda Síochána Adult Cautioning Scheme

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### Recommended Citation

Tolan, Graham and Seymour, Mairéad (2014) "Increasing the Potential for Diversion in the Irish Criminal Justice System: The Role of the Garda Síochána Adult Cautioning Scheme," *Irish Journal of Applied Social Studies*: Vol. 14: Iss. 1, Article 7.

doi:10.21427/D7FD9S

Available at: <https://arrow.tudublin.ie/ijass/vol14/iss1/7>

## **Increasing the potential for diversion in the Irish criminal justice system: The role of the Garda Síochána Adult Cautioning Scheme**

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Vol. 14(1), 2014, 60-71.

### **Abstract**

Established in 2006, the Garda Síochána Adult Caution Scheme provides a mechanism to divert adult offenders, aged 18 years and over, from the criminal justice system by way of a formal police caution in lieu of prosecution before the courts. Drawing on statistical data provided by the Central Statistics Office, this paper explores the use of the scheme over a five year period from 2006 to 2010. It identifies the types of offences for which cautions are most commonly administered, the age and gender profile of offenders involved, variability in the application of the scheme across the country, and the extent to which offenders come to the attention of An Garda Síochána post-caution. Overall, the paper analyses the role of adult cautioning in the Irish context and provides some observations on the potential for increased diversion, through expanding the remit of the scheme in future years.

Keywords: cautioning; caution scheme; diversion; An Garda Síochána

### **The adult cautioning scheme**

The introduction of a structured diversionary scheme where an offender receives a formal police caution in lieu of prosecution before the courts has been in existence in Ireland since 01 February 2006. The scheme was established in light of growing recognition of the need to use alternative measures to divert offenders from the criminal justice system in order to reduce the volume of cases appearing before the District Court. Among the conclusions of a report that reviewed the manner in which crimes were prosecuted in Ireland (Nally Report) was a recommendation to extend provision for the use of on-the-spot fines and a recommendation to develop a system whereby instead of prosecution, warnings would be issued to offenders by An Garda Síochána, in 'certain circumstances' specified by the Director of Public Prosecutions (DPP) (Public Prosecution System Study Group, 1999, p. 42).

The purpose of the adult cautioning scheme is to provide an alternative to prosecution for specific offences, where the prosecution of such an offence is not in the public interest (An Garda Síochána, 2006). In determining if it is in the public interest to issue a caution, consideration must be given to the nature of the offence committed, the circumstances surrounding the offence as well as to the suitability of the alleged offender for inclusion in the scheme. Initially, the scheme catered for 14 offences, but following a review in 2009, this was extended to 20 offences. Specifically, the offences to which the scheme applies are for the most part of a minor nature and low monetary value (less than €1,000) and include theft, handling or possessing stolen property, damaging or threatening to damage property, assault, public order, and some liquor

licensing offences.<sup>ii</sup> The offence of possession of cannabis resin had been included on the schedule of offences but was excluded prior to the implementation date.<sup>iii</sup>

A further criterion to determine whether a caution in lieu of prosecution is in the public interest is the offender's previous involvement with the criminal justice system. The scheme is primarily targeted at individuals with no previous adult convictions who 'may be dealt with effectively and deterred from acting in a criminal manner in the future through cautioning rather than prosecution' (An Garda Síochána, 2006, 2009). Although provision is made under the scheme for a caution to be used in lieu of prosecution for a second or subsequent offence in exceptional circumstances, such as where the subsequent offence is of a trivial nature, or where a substantial time period has lapsed since the administration of the first caution, anecdotal evidence suggests that very limited use of cautions is made in these circumstances. Where an offender is deemed suitable for a second or subsequent caution, An Garda Síochána is required to seek the permission of the DPP before the caution is administered (ibid., 2006, 2009).

In addition to meeting the standards of public interest, a number of other conditions must be met prior to the application of a caution. Firstly, the investigating member of An Garda Síochána must establish the existence of prima facie evidence of the offender's guilt. Secondly, the recipient of the caution must admit the offence. Thirdly, An Garda Síochána must be satisfied that the offender understands the significance of the caution and fourthly, the offender must consent to the caution in writing. A final consideration in the decision relates to the views of the victim. The directive on the scheme stipulates that an account of the effect of the offence and any reasons why a caution should not be administered should be sought from the victim 'if reasonably possible' before a decision is taken to caution or prosecute (An Garda Síochána, 2006, 2009). Although the victim's perspective is an influential factor, it does not override other considerations, and a caution may be administered without the victim's consent. In such cases, direction may be sought from the DPP, who will ultimately decide whether a caution or a prosecution is warranted. Indeed in any circumstance where doubt exists about the suitability of an offender's inclusion in the scheme, the matter may be submitted to the area Superintendent for a decision, or alternatively direction may be sought from the DPP. Overall, while members of An Garda Síochána are obliged to take cognisance of the nature and circumstances of the offence, as well as the past criminal history of the offender in question, they retain the discretionary power to prosecute an individual for an offence under the scheme if a caution is considered to be an inappropriate course of action (ibid., 2006, 2009). With few exceptions, cautions are administered in Garda stations by a Superintendent or an Inspector acting on behalf of a Superintendent.

A central benefit of the adult caution scheme is the option to avoid a criminal conviction and its associated consequences. That said, it is important to note that cautions are formally recorded and should be disclosed in court where subsequent criminal proceedings are taken against the offender. Under the English adult cautioning system, details of a caution appear on any subsequent requests under the Data Protection Act and may also be disclosed for employment vetting purposes (Office for Criminal Justice Reform, 2008). The situation differs from the Irish context where an offender's caution history is not disclosed to third parties through vetting requests (Garda Vetting Office,

2011). The arrangement permits the recipient of a caution to avoid the long lasting effect a conviction can have on an individual's ability to secure employment or a visa to travel abroad. This is particularly significant given that at the time of writing, Ireland is the only EU country that does not have a scheme to expunge criminal convictions after a specified period of time, meaning that a criminal conviction may act as a potential barrier to employment and reintegration regardless of the time period that has lapsed since the original conviction, or the seriousness of the offence.<sup>iv</sup>

### **The rationale for diversion**

Adult cautioning is situated within the broader realm of an expanding range of strategies designed to divert offenders away from the formal criminal justice system. The growth of diversionary mechanisms emerged in an international context against the backdrop of the 'nothing works' debate which created a strong sense of pessimism about the effectiveness of custodial and community-based rehabilitation programmes to reduce levels of re-offending (Brody 1976; Martinson 1974).<sup>v</sup> Although the material upon which the 'nothing works' argument was constructed was subsequently called into question, it nevertheless succeeded in raising concerns about the effectiveness of traditional criminal justice approaches in responding to offenders who commit crimes of a minor nature. In tandem with this concern, increased recognition of the cost implications of drawing low-level offenders into the more punitive echelons of the criminal justice system created an impetus to develop a system to divert such offenders from prosecution or from custody. Diversionary mechanisms are an appealing option to ameliorate the difficulties caused by expanding prison populations and overburdened courtrooms especially in the context of the development of managerialism in criminal justice and declining resources to tackle criminal justice matters (Garland, 1996; O'Callaghan, Sonderegger & Klag, 2004; Potter & Kakar, 2002).

The administration of a formal caution by the police to individuals who commit minor offences is in line with the ethos espoused by proponents of diversionary initiatives who argue that, as there is a scale of offences covering the most minor indiscretions to the most serious, so too there should be a scale of sanctions and punishment. In this regard, it is contended that the decision of the courts should be reserved for more serious offences, with diversionary programmes utilised for more minor indiscretions (Davies, Croall & Tyrer, 2009). Cautioning as a form of diversion represents a non-punitive opportunity for an offender to avoid criminal justice proceedings and the stigma associated with appearing before the courts (O'Callaghan *et al.*, 2004). The significance of reducing exposure to shameful and stigmatizing experiences is highlighted by proponents of labelling theory, some who argue that the likelihood of deviance increases when 'the labelled person conforms to the stereotypical expectations of others' (Liska & Messner 1999 in Bernburg & Krohn, 2003, p.1289). An alternative perspective is that the probability of deviance rises when access to conventional opportunities such as employment is reduced as a result of individuals being labelled as deviant (Sampson & Laub, 1993).

### **Criticism of diversion**

Critics warn of the distinct danger that diversion can lead to what is known as a 'net-widening' effect. Net-widening refers to the situation where individuals who may have previously been dealt with informally, such as receiving a reprimand or a telling-off

from a police officer, are now brought into the criminal justice system as new formal mechanisms for dealing with their offending have been introduced (Department of Justice, Equality and Law Reform, 2010; O'Callaghan *et al.*, 2004). The net effect is an increase in the numbers of individuals entering the criminal justice system due to an expansion in the provisions to address their criminal behaviour (*ibid.*, 2004). A net-widening effect may also occur where individuals are subjected to 'more intrusive measures and disguised social control in the name of diversion than if they had been punished by the courts and placed in custodial institutions' (Lo, Maxwell & Wong, 2006, p. 17).

One of the strongest criticisms levelled at diversionary mechanisms relates to what Fischer *et al.* (2002, p. 402) describe as 'its potential infringements on 'justice' through the erosion of due process rights of the accused, and indirectly, the increase of social control'. As outlined above, a core condition of eligibility for inclusion in diversion schemes, such as the Adult Caution Scheme, is that the offender admits guilt. Commenting on the situation for young offenders referred to the Garda Juvenile Diversion Programme in Ireland, Griffin (2004, p. 5) argues that in consenting to a caution 'the offender relinquishes the rights implicit in the formal criminal justice system' including the presumption of innocence and the right to a fair trial. Sanders (1988, p. 516) argues that as suspects tend not to seek legal advice where diversion is being considered, they are unlikely to be informed of the 'legal defences' which could vindicate them in the same way as if they had gone forward for prosecution and had legal representation. A number of commentators also question the perceived voluntary nature of participation in diversionary mechanisms. O'Callaghan *et al.* (2004, p. 194), for example, posit that 'coercive strategies' are an aspect of all diversion programmes insofar as 'offenders are confronted with the decision to do something about their drug problem (e.g., undergo therapy) or face legal consequences, such as imprisonment'. In drawing together his case, Sanders (1988, p.516) outlines three grounds to dispute the voluntary nature of consent given by suspects in the context of diversion. First, he suggests that many will not be aware that an acquittal is possible; second, suspects may not realise that they have a choice; and thirdly he argues that 'choice is not real when prosecution is the real or perceived alternative'.

### **Methodology**

The research upon which this article is based examines the use of the adult caution scheme in Ireland over a five year period from its inception in 2006 to 2010. Statistical data on the use of adult cautioning was accessed by way of a direct written request to the Central Statistics Office (CSO). The research sought to provide a profile of recipients subject to the adult caution scheme, and to this end, data was requested from the CSO on offenders' age, gender, and nationality. Data was also sought on the use of the adult caution scheme for different types of offences. While the offences eligible for inclusion in the scheme are restricted to a select number of relatively minor offences, as described earlier in this paper, we were interested in establishing the extent to which cautioning was used in response to these specific offences and how practice differed across Garda regions. Finally, one measure of the effectiveness of any intervention designed to divert offenders from the criminal justice system is the extent to which it contributes to reducing the propensity for further offending. With this in mind, data was

requested on any subsequent alleged criminal behaviour recorded over a one year period following the imposition of the caution.

Crime statistics produced by the CSO are derived from the Garda computerised database system for recording crime (the PULSE system). It is worth noting that the manner in which crime is classified for the purposes of the scheme differs to how it is categorised by the CSO so, for example, offences recorded in the PULSE system under the Intoxicating Liquor Act 1927, the Intoxicating Liquor Act 2003, and the Licensing Act 1872 respectively are categorised by the CSO under one combined heading 'Liquor Licensing'. Overall, the 20 offences that are eligible for adult cautioning are recorded by the CSO under the categories of assault, criminal damage, drunkenness, handling stolen property, liquor licensing, public order, theft, and trespass. Differences in how data are recorded bring to mind Jupp's (1989) assertion that incongruence often exists between the information available and the information sought for research purposes.

### **Findings**

The key findings of the study are presented below under three main headings (a) profile of the recipients of the adult cautioning scheme; (b) use of the cautioning scheme; and (c) subsequent contact with the criminal justice system.

#### **Profile of the recipients of the adult cautioning scheme**

Analysis of the data from 2006 to 2010 identifies that the majority of recipients of adult cautioning are aged between 18 and 32 years. Drawing on statistical information from 2010, it emerges that 43 per cent of recipients of the scheme were aged between 18 and 22 years, and a further 29 per cent were aged between 23 and 32 years. That almost three-quarters (72 per cent) of those in receipt of adult cautions were aged between 18 and 32 years is not unexpected given the well-documented phenomenon, captured through the age crime curve, which points to a peak in offending behaviour towards late adolescence and early adulthood followed by a relatively dramatic decline in the propensity to offend thereafter, and then a more gradual tapering out of offending behaviour over time (Bottoms & Shapland, 2011). The dominance of male offenders in criminal justice statistics was also reflected in the gender profile of persons subject to adult cautioning. Examination of the gender profile over the five year period from 2006 to 2010 identifies that 73 per cent of persons who availed of the scheme were male and 27 per cent were female. Despite the increased cultural diversity of Irish society, criminal justice data on the nationality or ethnic background of offenders remains limited with some exceptions (e.g. the Irish Prison Service 2011). Data on the race or ethnicity of participants of the adult cautioning scheme, while captured on the Garda Pulse system, are not available from the CSO.

#### **Use of the cautioning scheme**

As outlined in Table 1, since the inception of the scheme, the number of incidents dealt with by way of adult cautioning has more than doubled rising from 3,865 in 2006, to a total of 9,308 in 2010. Overall, a total of 38,350 incidents have been resolved through the use of cautioning over the five year period from 2006 to 2010. When the number of cases dealt with in this way is examined as a proportion of the total offences that are deemed eligible for the scheme, it emerges that there has been a steady increase in the proportionate use of cautioning as a response to criminal behaviour. However, the data

also highlight that cautioning is used in response to a very small proportion of eligible offences. For example, in 2006, just three per cent of the total incidents considered eligible for adult cautioning were dealt with in this manner. Although the proportion increased to 5.2 per cent in 2007, and rose further to 6.3 per cent in 2008, 7 per cent in 2009 and 7.3 per cent in 2010, the overall increase has been very modest. Taken together, it emerges that on average just 5.8 per cent of eligible offences were dealt with by way of adult caution in the period from 2006 to 2010 inclusive. One possible explanation is that individuals are generally not considered suitable for inclusion in the scheme if they have a previous conviction or caution. This means that while the offence may be considered 'eligible', the case is excluded on the grounds of the offender's previous involvement with the criminal justice system. Analysis of the data found minor regional variation in the extent to which the scheme was used. The Western region recorded the highest number of adult cautions (9.4%) followed by the South Eastern region (7.8%), the Southern region (7.6%), Dublin (7%), and the Northern and Eastern regions respectively (6.6%).

**Table 1: Incidents dealt with by way of an adult caution 2006 - 2010**

<b>Year</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Total number of eligible incidents</b>	129,985	134,595	140,052	131,921	126,789
<b>Number of incidents dealt with by adult cautions</b>	3,865	7,124	8,831	9,222	9,308 <sup>vi</sup>
<b>% of incidents dealt with by adult caution</b>	3%	5.2%	6.3%	7.0%	7.3%

Analysis of the data identifies that of the 9,308 incidents resolved through cautioning in 2010, 44 per cent related to public order offences and 32 per cent to the offence of theft (non-person). Overall, cautions issued in respect of the crime categories of public order and theft accounted for more than three-quarters of total cautions issued under the scheme in 2010. Drunkenness accounted for just 12 per cent of incidents dealt with by way of caution, followed by criminal damage (5 per cent), assault (4 per cent) and trespass (2 per cent). The accumulative total of handling stolen goods, liquor licensing offences and theft from person accounted for just one per cent of incidents where cautions were administered in 2010.

In order to place the use of cautioning in context, the number of incidents where cautions were issued was explored against the backdrop of the total numbers of offences in each category. As demonstrated in Table 2, of 20,899 offences of 'theft from shop' recorded in 2010, 14 per cent were dealt with under the adult cautioning scheme. The proportion was similar for offences of drunkenness (12 per cent) and public order (11 per cent) but considerably lower for offences relating to assault (4 per cent), trespass (4 per cent), handling stolen goods (3 per cent), criminal damage (1.3 per cent), liquor licensing (1.2 per cent), and theft from the person (0.4 per cent). What clearly emerges from these findings is that only very small proportions of cases are diverted from the court system through the adult cautioning scheme in each crime category. On the basis

of these figures, it is evident that there is considerable scope to increase the use of cautioning for the offences currently included in the scheme.

**Table 2: Number and proportion of offences dealt with by adult caution, 2010**

Offence Type	Total number of offences, 2010	Number of offences dealt with by Adult Caution	% cases dealt with by Adult Caution
Theft from shop	20,899	2,974	14%
Drunkenness	9,426	1,157	12%
Public order	37,812	4,106	11%
Assault	11,077	385	4%
Trespass	3,781	145	4%
Handling stolen goods	1,541	47	3%
Criminal damage	36,553	458	1.3%
Liquor Licensing <sup>vii</sup>	2,038	24	1.2%
Theft from person	2,869	12	0.4%

#### Adult cautioning and subsequent contact with the criminal justice system

The rationale underpinning the adult cautioning scheme seeks to divert individuals from the criminal justice system thereby reducing the likelihood of them becoming immersed in further criminal activity. A follow up analysis of persons cautioned between 2006 and 2009 identifies that one-third came to the attention of An Garda Síochána as a *suspected offender* in the twelve month period after committing the offence for which they were cautioned. It is important to note that a suspected offender refers to an individual who may have been arrested on suspicion of committing a crime though was not necessarily charged or convicted. Given existing criminological knowledge regarding the relationship between age, gender, and criminality, it was not unexpected to find that the majority of those who subsequently came to the attention of An Garda Síochána in the twelve month period following a caution were young males. For example, 82 per cent of those who came to further garda attention within twelve months of being cautioned in 2009 were males and aged between 18 and 32 years. That just over two-thirds of individuals in receipt of an adult caution did not come to the attention of An Garda Síochána as a suspected offender is noteworthy and offers much promise with regard to the diversionary potential of the adult cautioning scheme. However, it also reflects that almost all recipients of an adult caution are first-time offenders and, consequently, their propensity to re-offend is likely to be lower than their counterparts with prior criminal convictions and a history of involvement with the criminal justice system (see O'Mahony, 2000).

The inclusion of cases where offenders are arrested but not necessarily charged is likely to present a less promising picture in terms of the overall effectiveness of the scheme. The likelihood is that considerably fewer cases will result in a conviction when compared with the number arrested. This is confirmed by statistics from the UK where



it is demonstrated that only 19 per cent of adults given a caution went on to re-offend within a 12 month period. Here the rate refers only to cases where cautions and convictions were given for offences committed within 12 months of the original caution (Office for Criminal Justice Reform, 2010).

### **Discussion**

A key issue to emerge from the analysis is the scope that exists to increase the use of adult cautioning in the Irish context. The current practice of restricting the scheme to low-level offences is in contrast to approaches elsewhere where provision is made to use cautioning for more serious offences. In England and Wales for example, the Home Office directs that cautioning may be used for serious offences - including offences that are tried by indictment only - where it is deemed appropriate in light of the circumstances of the offence or the offender (Ministry of Justice, 2013a). Similarly, guidance on the operation of the Police Adult Diversion Scheme in New Zealand facilitates the use of cautioning where the offence is serious but 'the circumstances are at the bottom end of the scale and the effect of a conviction is out of all proportion to the offence's seriousness' (New Zealand Police, 2011, p. 7).

Although provision is made under the Irish scheme for an offender to receive a second or subsequent caution in exceptional circumstances, anecdotal evidence suggests that it is used in these circumstances in very limited cases. While additional investigation is required to understand the underlying reasons, one possible explanation relates to the non-specific nature of the guidance provided to An Garda Síochána about the conditions under which additional cautions may be considered, beyond a suggestion that the offence is of a 'trivial nature' or that a 'substantial period has lapsed' since the first caution. More direct guidance which overcomes the subjectivity inherent in the current regulations is likely to provide stronger parameters for decision-making and may in turn contribute to increasing the use of adult cautions for a broader range of offenders. One example of more specific guidance is found in the cautioning guidance for England and Wales where it is stipulated that a second caution can be administered if two years has lapsed since the administration of a simple caution (no conditions attached) or five years in the case of a conditional caution or conviction (Office for Criminal Justice Reform, 2010).

There can be little doubt that there is an increased awareness of the role the victim plays in the criminal justice system. Fischer *et al.* (2002, p. 392) argue that the increased emphasis on the rights of victims in the criminal justice process 'has recast the phenomenon of crime' and in recent times there has been a steady shift toward a more victim-centred approach. However, some commentators suggest that the police cautioning system could be viewed as a move in the opposite direction, with offenders dealt with 'behind closed doors' and the victim being deprived of their day in court (Sanders, 1988). In addressing some of these criticisms, a number of jurisdictions including England and Wales, and New Zealand, have incorporated a reparative element into the adult cautioning process whereby conditions are attached to the standard caution such as a requirement to pay compensation to the victim, to repair damaged property, to make a donation to a charitable organisation, to write a letter of apology to the victim, or to meet with the victim to participate in a restorative justice process (Ministry of Justice, 2013b; New Zealand Police, 2011). Where such conditions are

attached, the caution is often referred to as a restorative caution. Paterson and Clamp (2012, p. 596) describe the restorative caution as one which encourages offenders 'to take responsibility for their actions' by reflecting on the harm caused and exploring 'how they may physically or symbolically repair the damage or harm that they have caused' to the victim. A review of restorative justice practice in Ireland undertaken by the National Commission on Restorative Justice in 2009 identified the 'potential to apply restorative justice as a diversionary measure at a pre-court stage as an option under the Garda Adult Cautioning Scheme' (Department of Justice, Equality and Law Reform, 2009, p.20). However, it remains the case that victim reparation, including restorative justice, is not currently provided for under the adult cautioning scheme in Ireland. Although the evidence on the effectiveness of restorative cautioning in reducing subsequent offending behaviour is mixed (Wilcox, Young & Hoyle, 2004), previous research has indicated that reparative and/or restorative cautions, when properly executed, can have mutual benefits for victims and offenders and improve overall victim satisfaction levels in the criminal justice process (Braddock 2011; Campbell *et al.* 2005; Hoyle, Young & Hill, 2002).

Cautioning schemes have also expanded in some jurisdictions to include rehabilitation conditions as part of the caution. Under these circumstances, conditions may include the requirement for offenders to attend alcohol or drugs counselling or anger management training. One rationale for the expansion of cautioning schemes into the area of offender rehabilitation is the argument that punitive responses, such as custodial sentences, are less likely to succeed in preventing offending when it is related to problems such as drug misuse (Ogilvie & Willis, 2009). More critical proponents of criminal justice intervention might argue that the use of additional conditions has the potential to place onerous demands on relatively low-level offenders and risks drawing them more deeply into the realm of the criminal justice system if they do not comply with the stipulated requirements and are prosecuted for the original offence as a result. Concern about this type of net-widening effect has led commentators to advocate for the expansion of safeguards 'to ensure that penalties ... are not dispensed which are more interventive, onerous, or stigmatizing than the offender concerned would be likely to receive from a formal court' (Hudson, 2002, p.619). These concerns point to the importance of grounding the expansion of any cautioning scheme within a policy and practice framework that is based on the principle of proportionality and with conditions appropriately targeted to the specific rehabilitative needs of the offender. Furthermore, they highlight the necessity of providing adequate resources to facilitate the successful completion of offender rehabilitation conditions or victim reparation requirements.

The evidence presented in this paper identifies an international precedent for the expansion of adult cautioning to address concerns about victim reparation and offender rehabilitation while at the same time diverting offenders out of the formal criminal justice system. While looking outwards to the experiences of adult cautioning in England and Wales, and New Zealand, key lessons may also be garnered from the long and established history of juvenile cautioning in Ireland. Commencing in 1963 with the Juvenile Liaison Scheme, the practice of cautioning young people under 18 years has evolved over time. The most significant change occurred when juvenile cautioning was placed on a statutory basis as part of the Children Act 2001 (Seymour, 2012). Now known as the Garda Juvenile Diversion Programme, in 2010 almost three-quarters (72

per cent) of the 27,257 offending cases were diverted by way of an informal or formal caution. Unlike its adult counterpart, the majority of offences, including serious offences, are considered eligible for inclusion in the scheme with decisions made on a case-by-case basis. Furthermore, the evidence suggests that cautioning is not restricted to first-time offenders, and subsequent cautions may be issued subject to the circumstances of the offence and the status of the offender (An Garda Síochána, 2011). As part of the caution, provision exists for recipients to undertake a number of actions including attendance at diversionary activities designed to address offence-related behaviour, meeting with the victim, apologising for the harm caused, compensating the victim's loss, or abiding by an agreed curfew (*ibid.*, 2011).

In conclusion, it is argued that further research is required before concrete conclusions can be drawn about the effectiveness of the adult cautioning scheme in reducing re-offending. That said, early indications suggest that in line with the international experience, the adult cautioning scheme in Ireland provides an alternative to divert offenders from prosecution and further immersion in the criminal justice system. Notwithstanding the concerns that were raised about net-widening in this paper, the overall analysis points to the potential that exists to expand the scheme in order to divert a broader range of offenders. Furthermore, drawing on the international experience, the scope for using enhanced cautions to address concerns about offender rehabilitation and victim reparation are identified. While there are serious implications inherent in any proposal to expand the parameters of criminal justice, with appropriately executed safeguards, initiatives such as the adult cautioning scheme offer a promising alternative, that has the potential to deliver a proportionate response to offending, in a more expedient and cost-effective manner than the formal mechanisms of the court and prison systems.

### **Acknowledgements**

The authors would like to extend sincere thanks to Dr. Matt Bowden for comments on an earlier draft of this paper.

### **Biographical Notes**

Graham Tolan is a Garda Sergeant based at Kells, Co. Meath.

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### **Notes**

<sup>i</sup>The research upon which this article is based was undertaken in fulfilment of the requirements of the MA Criminology at the School of Languages, Law and Society, Dublin Institute of Technology. Both authors contributed equally to the article.

<sup>ii</sup>For a full list of the offences eligible under the Adult Caution Scheme please see <http://www.garda.ie/Documents/User/adult%20cautioning%20final%20for%20publication.pdf>

<sup>iii</sup>Limited information exists on the rationale for such a decision. In response to a Dáil question posed by Ciarán Cuffe (02 February 2006), Michael McDowell, the then Minister for Justice, Equality and Law Reform, stated that the offence of possession of a controlled drug had been withdrawn pending further consultation between An Garda Síochána, the Director of Public Prosecutions and the Department of Justice, Equality and Law Reform.

<sup>iv</sup>The Criminal Justice (Spent Convictions) Bill 2012 published in May 2012 will allow for certain convictions to become spent after a period of between 3-7 years if an offender remains conviction free.

Custodial sentences of 12 months or less and a range of non-custodial sentences are covered under the Bill (see <http://www.oireachtas.ie/documents/bills28/bills/2012/3412/b34a12s.pdf>).

<sup>v</sup>One of the most influential advocates of the ‘nothing works’ debate was Martinson (1974). On the basis of a meta-analytic study of more than 200 programmes he concluded ‘that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behaviour’ (Martinson, 1974, p.49). Research in Britain by Brody (1976) and the IMPACT study (Folkard *et al.*, 1976) also led to a questioning of the effectiveness of treatment programmes.

<sup>vi</sup>Data were provided from the CSO on two separate entities. The first related to the number of incidents resolved through the use of cautioning and the second to the number of individuals cautioned in a given year. An unexpected anomaly arose in the data insofar as the number of individuals exceeded the number of incidents dealt with by caution. For example, in a pattern that was consistent across the years, data returned for 2010 suggested that there were 9,308 incidents involving 9,950 individuals. One explanation provided by the CSO was that different criteria are used to record incidents compared with individual cases. In the absence of further clarification, an alternative explanation put forward by the authors is that the disparity may have arisen because of the practice of cautioning a number of individuals for the same offence (incident).

<sup>vii</sup>Offences under the Intoxicating Liquor Act and the Licensing Act are not recorded individually by the PULSE system, but are captured with many other offences under the respective Acts, including offences by the licensee which are not open to the adult caution scheme. As a result, it is not possible to state with certainty what proportion of offences, recorded under these pieces of legislation, are *eligible* for inclusion in the adult caution scheme.

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