
Submission

to the

**The Joint Committee
on Health and Children**

Children First Bill 2012

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Introduction

Treoir is the national federation of services for unmarried parents and their children. We operate the National Specialist Information Service for unmarried parents and those involved with them and advocate on their behalf. Our client group includes unmarried expectant parents, unmarried parents living together or apart (both opposite and same sex), their relatives and those working with them. We have a special interest in young parents.

Treoir welcomes any developments that protect children and promote the wellbeing of children in Ireland.

Children First Bill 2012

Our interest in the *Children First Bill 2012* is specifically in relation to consensual, underage sexual activity between teenagers. The difficulty with underage sexual activity between two consenting teenagers is that while it is a criminal offence under the *Criminal Law (Sexual Offences) Act 2006*¹ “it might not be regarded as constituting ‘child sexual abuse’”.² (See Appendix 1). In its briefing note to the Minister for Health and Children, the HSE Crisis Pregnancy Programme stated that there is a conflict for those acting in a professional capacity (for example a G.P.) “between their professional responsibility to act in the best interests of the young person or to act within the law.....”.³

Member organisations of Treoir have been operating under *Children First: National Guidance for the Protection and Welfare of Children*⁴ (*Children First*) and the *Children First Bill 2012* states that the Bill will operate in conjunction with *Children First*.

In Treoir’s submission to the Minister for Health and Children on the issue of reporting underage sexual activity⁵ Treoir laid out clearly the difficulties of *Children First* (see Appendix 2). If a child has been abused or exploited, then it is clear that this must be reported to the HSE or An Garda Síochána. However, where the sexual activity is a consensual act between teenagers should every instance be reported?

The *Children First Bill 2012* states that any person working in an agency providing services to children – for example a crisis pregnancy counselling

¹ Section 3 of the *Criminal Law (Sex Offences) Act 2006* as amended by Section 5 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007*.

² *Children First: National Guidance for the Protection and Welfare of Children*, Department of Children and Youth Affairs, Government Stationery Office, Dublin 2011.

³ *Briefing Paper to Inform Developments In Relation to Mandatory reporting of Under Age Sexual Behaviour*.

⁴ *Ibid*, 7.16.2.

⁵ *Issues for those working with underage parents*, Treoir 2012

service or Teen Parents Support Programme – will have a duty to report “concerns or allegations of child abuse” to the Designated Officer (Head 10). The Designated Officer is to report in writing to the HSE in accordance with the *Guidance for the Reporting of Abuse*, which will be published by the Department of Children and Youth Affairs. The Designated Officer can decide not to report the concern or allegation of child abuse and record the reasons for not reporting.

The *Children First Bill 2012* is very broad in its definition of “sexual abuse”. Under the definition (Head 2) “sexual abuse” between children can be considered to have occurred where there is a difference in age or status between the two children, where one child coerces or induces the other children to engage in sexual activity or where one has insufficient capacity to have consented to the activity.

The question remains - does underage consensual sexual activity fall into the “sexual abuse” category?

It would be a great benefit to those working with young, underage parents if the *Children First Bill 2012* made it clear that consensual, underage sexual activity, between young people of a similar age, where there is no coercion, (a Romeo and Juliet clause) could be excluded from the definition of sexual abuse in the *Children First Bill 2012* and also in the *Guidance for the Reporting of Abuse* to be published by the Department of Health and Children for use by Designated Officers. It would require careful consideration as to how to establish that the sexual activity is in fact consensual.

The Law Reform Commission’s Report on Child Sexual Abuse⁶ in 1990 recommended that in the case of a girl between the ages of 15 and 17, sexual intercourse should be a criminal offence only where the male participant is “a person in authority” or at least five years older than the girl in question.

Member agencies of Treoir are very concerned that if every case of underage consensual sexual activity is reported to the HSE, it will in turn be referred to An Garda Síochána. This could mean that

- young women may delay accessing services.
- a social worker or a member of An Garda Síochána may visit the young father and/or mother which could result in the young mother withdrawing from the support agency, or avoiding it altogether.
- women may refuse to name the fathers of their children in the Births’ Register or involve them in the lives of their babies for fear of prosecution of the young father. This is not good for children.
- young fathers will continue to be advised by solicitors (as at present) not to enter their names in the Register of Births or apply to become the child’s legal guardian, as they have committed a criminal offence.
- the rights of children to have the names of their fathers on their birth certificates and to have relationships with their fathers could be seriously

⁶ Report on Child Sexual Abuse (LRC 32-1990)

affected where young fathers are inhibited from putting their names on birth certificates and applying for joint guardianship rights in respect of their children.

These are situations which members of Treoir face on a regular basis in Ireland today and are a cause for deep concern.

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012

It is important that the *Children First Bill 2012* and the *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Bill 2012* are examined together. Section 2 of the Bill clearly states that a person shall be guilty of an offence if he or she knows or believes that an offence has been committed and fails *without reasonable excuse* to disclose that information to an Garda Síochána.

Without reasonable excuse seems to refer to Section 4 of the Bill where if a person is accused of withholding information, it can be a defence for that person that the child against whom the offence was committed “made known his or her view” that it should not be disclosed to An Garda Síochána. This appears to mean that if a young pregnant woman under 17 presents to a service and says that she does not want her situation reported to An Garda Síochána that the person working in the service (professional or volunteer) may avail of this defence for not reporting this “criminal offence”. However, that person could still face civil responsibility under the *Children First Bill 2012* for not reporting concerns or allegations of child abuse to a Designated Officer. It is fundamental that the disjunction between both bills is bridged in order to avoid confusion for those working in the area resulting in organisations reporting every incident in order to play safe. Arguably this will not be in the best interest of children who may withdraw from the support provided by agencies in order to avoid being reported.

The purpose of the *Children First Bill 2012* is that all persons and organisations who come under the provisions of this Bill, should have regard to the welfare and protection of the child as their first and paramount concern. Given the level of sexual activity in Ireland⁷ it is important that this new legislation reflects the reality of consensual sexual activity among young people in Ireland.

⁷ *Irish Contraception and Crisis Pregnancy Study 2010*, (ICCP – 2010) – a Survey of the General Population, McBride et al, HSE Crisis Pregnancy Programme, 2012,

Appendix 1

Children First: National Guidance for the Protection and Welfare of Children, 2011.

7.16 Special considerations

7.16.1 Certain child protection concerns that come to the attention of the HSE are of particular relevance to An Garda Síochána.

Age of consent

7.16.2 For the purposes of criminal law, the age of consent to sexual activity is 17 years. This means, for example, that a sexual relationship between two 16-year-olds who are boyfriend and girlfriend is illegal, although it might not be regarded as constituting 'child sexual abuse'. In any event, investigations should be sensitive to the needs of the child.

7.16.3 In cases where abuse is not suspected or alleged but the boy or girl is underage, consultation must be held between the HSE and An Garda Síochána, and all aspects of the case will be examined. Both agencies must acknowledge the sensitivity required in order to facilitate vulnerable young people in availing of all necessary services, while at the same time satisfying relevant legal requirements.

Underage pregnancy

7.16.4 When a pregnant girl under 17 years presents to a health service, a health professional will attempt to establish whether there is any cause for concern regarding child sexual abuse. Where concerns exist, the health professional will refer the case to the HSE Children and Family Services.

7.16.5 Where such abuse is suspected or alleged and the designated person within the HSE has been so informed, then An Garda Síochána must be notified by the designated person within the HSE using the Standard Notification Form (*see Appendix 4*).

7.16.6 In cases where abuse is not suspected or alleged, HSE procedures should be in place to provide guidance on consultation with An Garda Síochána to examine all aspects of such cases. Both agencies must acknowledge the sensitivity required in order to facilitate vulnerable young girls to avail of medical or therapeutic services, while at the same time satisfying relevant legal requirements.

Appendix 2

ISSUES FOR THOSE WORKING WITH UNDERAGE PARENTS Submission to Minister for Health and Children 2012

SUMMARY

Studies indicate that there is a considerable amount of sexual activity taking place among under 17 year olds in Ireland

Children First: National Guidance for the Protection and Welfare of Children is unclear as to whether or not professionals outside of the HSE and An Garda Síochána should report every act of sexual activity among underage young people which is known to them to either the HSE or An Garda Síochána. It doesn't mention agencies funded by the HSE or volunteers.

The *Child Protection and Welfare Practice Handbook* does not mention underage sexual activity or pregnancy.

Advice from Children First Information and Advice Officers is contradictory.

There is inconsistency in the way different geographic areas within the HSE deal with reports of underage sexual activity/pregnancy.

Questions raised –

1. Who is required to report knowledge of sexual activity and pregnancy to the HSE or An Garda Síochána?
2. Who decides whether the sexual activity is consensual or not?
3. Where the sexual activity is consensual is there a requirement to report to the HSE or An Garda Síochána?
4. If there is a requirement to report, does this requirement relate only to young men, given Section 5 of the 2006 Act?
5. Are there procedures in place to provide guidance on consultation between the HSE and An Garda Síochána where abuse is not suspected or alleged?

Concerns with regard to putting the Guidance on a legislative footing

- young women will delay accessing services
- reporting the underage pregnancy may result in a social worker or a member of An Garda Síochána visiting the young father and/or mother which could result in the young mother withdrawing from the support agency
- women may refuse to name the fathers of their children in the Births' Register or involve them in the lives of their babies for fear of prosecution of the young father

- young fathers will continue to be advised by solicitors not to enter their names in the Register of Births or apply to become the child's legal guardian, as they have committed a criminal offence
- the rights of children to have the names of their fathers on their birth certificates and to have relationships with their fathers could be seriously affected where young fathers are inhibited from putting their names on birth certificates and applying for joint guardianship rights in respect of their children.

In addressing this issue care needs to be taken to ensure that:

- young pregnant women will not delay accessing ante-natal care or other services, especially crisis pregnancy ounseling services, due to fear of being reported to An Garda Síochana
- young fathers are fully supported in being involved in the lives of their children with no fear of criminal prosecution, either at this point or in the future
- children will not be deprived of having their fathers' names on their birth certificates or of having a relationship with both their parents
- there is a consistency within the HSE as to how the issue of underage sexual activity/pregnancy is dealt with
- there is clarity about the procedures for those working with young parents.