

Mental Health Act 2001 & Children

Rosemary Smyth
Mental Health Commission
15th November 2007



Definition of a Child

- "child" means a person under the age of 18 years other than a person who is or has been married (Section 2)

General Considerations

- United Nations Conventions on the Rights of the Child
 - adopted by UN General Assembly :20/11/'89
 - Ireland signed the Convention : 30/09/'90
 - Ireland ratified the Convention : 21/09/'92

Due consideration should be given to the Articles of the Convention, as appropriate, when taking action pursuant to the Mental Health Act 2001.



General Considerations (continued)

- **United Nations Principle for the Protection of Persons with a Mental Illness and the Improvement of Mental Health Care**
 - Adopted by General Assembly on 17th December 1991
- **The Convention of Human Rights and Biomedicine (Oviedo Convention)1997**
 - Article b(2): minors and capacity

Legislative Provision in Ireland

- Constitution of Ireland
- Child Care Act, 1991
- Non-fatal Offences against the Person Act, 1997
(NFOAP Act, 1997)
- Mental Health Act, 2001 (& Code of Practice)



Constitution of Ireland

- **Article 40**
 - Personal Rights
- **Article 41**
 - Family
- **Article 42**
 - Education



Mental Health Act, 2001 and Child Care Act, 1991

- **Section 23 (4) Mental Health Act, 2001** — Section 13(4) Child Care Act 1991 applies with necessary modification
- **Section 25 (14) Mental Health Act, 2001** — Sections 21, 22, 24 to 35, 37 and 47 of Child Care Act 1991 applies with necessary modification.

Non- Fatal Offences Against the Person Act 1997, (NFOAP Act, 1997)

Section 23 – consent by a minor (who has attained the age of 16) to a medical procedure.

Does Section 23 NFOAP Act 1997 enable children aged 16 and 17 years to admit themselves voluntarily to an approved centre for treatment.?

Medical and health professionals may need to obtain legal advice in relation to individual cases.



Voluntary Admission of a Child

- Majority of Children Requiring in- patient treatment for
 - Mental illness
 - Mental disorder

will be admitted as voluntary patients

- Such admissions will be at the request of the child's parent(s)/guardian

Mental Disorder

Definition (Section 3) applies to children



Mental Disorder (MHA 2001) means:

Mental illness, severe dementia or significant intellectual disability

WHERE

A. Because of the illness, dementia or disability: there is a serious likelihood of the person concerned causing immediate & **serious harm to himself or herself or other persons**

OR

B. Because of the illness, dementia or disability: The **judgement of the person concerned is so impaired** that failure to admit the person to an approved centre would be likely to lead to a **serious deterioration of his or her condition** or would prevent the **administration of appropriate treatment** and reception, detention and treatment of the **person would be likely to benefit or alleviate** the condition of that person to a **material extent**.

Involuntary Admission of Children

- Principles to be considered :
 - Least restrictive form of care
 - Involuntary detention and treatment should be for the minimum period in line with the best interests of the child.
 - Consideration of the child's views should extend in line with age and maturity.

Application for Involuntary Admission

- Made to the District Court
- Best interests and welfare of the child is paramount, having regard to
 - the rights and duties of the parents, and, in so far as in practicable
 - The age, understanding and wishes of the child

(M.H.A. 2001 S. 25(14) – Child Care Act 1991 S. 24)



Application for involuntary Admission – With parental consent for examination by a consultant psychiatrist (Steps 1- 4)

- **Step 1:** Parents of the child or either of them or person acting in loco parentis consents to the examination
- **Step 2:** Consultant Psychiatrist (who is not a relative of the child) examines the child
- **Step 3:** HSE makes an application to the District Court for an order authorising the detention of the child in an approved centre
- **Step 4:** HSE furnishes a written report of the result of the examination by the consultant psychiatrist to the District Court



Application for involuntary Admission – With parental consent for examination by a consultant psychiatrist (Steps 5-6)

- **Step 5:** District Court considers the report and any other evidence presented before it.
- **Step 6:** If the District Court is satisfied that the child is suffering from a mental disorder it makes an order to admit and detain the child in a specified approved centre for a period not exceeding 21 days.

Application for Involuntary Admission without parental consent for examination by a consultant psychiatrist

- **Step 1:** Parents of the child or either of them or person acting in loco parentis
 - Refuse to consent to the examination or cannot be found
- **Step 2:** HSE makes an application to the District Court for an order authorising the detention of a child in an approved centre
- **Step 3:** If District Court is satisfied that there is reasonable cause to believe that the child has a mental disorder it will:
 - direct the HSE to arrange for an examination of the child by a consultant psychiatrist
 - Specify a time frame for receipt of a written report

Application for Involuntary Admission without parental consent for examination by a consultant psychiatrist (continued)

Written report:

- details the results of the examination;
- indicates whether or not the consultant psychiatrist is satisfied that the child has a mental disorder.

- **Step 4:** Consultant psychiatrist reports to the District Court in writing.
- **Step 5:** District Court
 - considers the report, and
 - Any other evidence presented before it.

Application for Involuntary Admission without parental consent for examination by a Consultant Psychiatrist (continued)

- **Step 6:** If satisfied that the child is suffering from a mental disorder the District Court:
 - makes an order to detain and admit the child in a specified approved centre for a **period not exceeding 21 days.**
- **Ex Parte Application:** If there is an urgent need to make an application the HSE may make an application without informing any other interested party

District Court

Proceedings before the District Court

- Proceedings will be heard *in camera*
- Restrictions are placed on reporting
- Court Considers:
 - report of the consultant psychiatrist, and
 - any other evidence before it
- Court may order a direction for any report relevant to the application to be furnished to the Court
- Authors of such reports may be called to testify before the Court.

District Court Proceedings before the District Court (continued)

- Copies of the reports are made available to all parties concerned
- Child is generally not a party to the proceedings
- Child is not necessarily required to be present in Court
- If the child requests to be in court, the court may only exclude the presence of the child if:
 - it is of the view that it would not be in the child's interest to be present (having regard to child age and nature of proceedings)

District Court Proceedings before the District Court (continued)

- Court may appoint a guardian ad litem.
 - In appropriate circumstances the guardian ad litem may be legally represented .
 - Decision of the Court:
 - If the Court is satisfied the child has a mental disorder makes an order that the child be admitted and detained for treatment in a specified approved centre for a period of up to 21 days
 - Court has the power to vary or discharge the order
- or
- Give any direction in respect of the order

District Court

Application to the Court and the making of a Court order.

- Court itself (or on the application of any person) may:
 - give directions as to the care and custody of the child as it sees fit pending the making of a court order.
 - Any such direction will remain in force until the court has made a final decision.

- **21 day period** of detention may be extended by the District Court, on application to it by the H.S.E. for an initial period of up to **3 months**

Independent Review of Detention

- No equivalent of a Mental Health Tribunal for children admitted involuntarily
- Review system – District Court
 - May only make an order for a maximum period of 21 days
 - Extension of periods of detention may only be granted by the District Court on consideration of a report from a consultant psychiatrist
 - who has examined the child, and
 - has indicated that they he/she is satisfied that the child continues to have a mental disorder

Child admitted involuntarily on reaching his/her 18th birthday

- Options for consideration

- Person (now an adult) could be asked to consent to remain in the approved centre as a voluntary patient

or

- In the absence of such consent:

- the person could be admitted involuntarily under the provisions of the Mental Health Act (2001) as they relate to adults.
- Section 24 invoked if appropriate (power to detain voluntary patients)

Treatment of Children

- **It is NOT permissible to:**

- perform psychosurgery

or

- administer Electro-Convulsive Therapy

**on children detained pursuant to Section 25
without the approval of the District Court.**

Treatment of Children Administration of Medicine

- **Section 61**
 - amendment required
 - will be progressed as soon as practicable

Conclusion

- General Considerations

- UN Convention on the Rights of the Child
- Constitution of Ireland
- Child Care Act, 1991
- Non-fatal Offences against the Person Act, 1997
- Mental Health Act, 2001



Conclusion

- Voluntary Admission of a Child
- Involuntary Admission of a Child
- Independent Review of Detention
- Treatment of Children

