

Politics, Proportionality and Child Protection in Ireland

In recent years a barrage of incidents has focused public attention on child protection issues. Institutional abuse, incest cases and the finding of unconstitutionality in relation to the statutory rape law are among the developments prompting public outcry, the establishment of commissions of inquiry and the appointment of Rapporteurs for Child Protection. A referendum proposal, currently dormant, provided for the reinstatement of an absolute liability offence in respect of sexual intercourse with a minor, as well as the introduction of 'soft information' to assist the monitoring and investigation of potential sex offenders.

This paper will argue that extreme caution is required when considering and implementing law reform in the context of child protection. Society must protect its youngest and most vulnerable members from sexual predation, but there must be proportionality to how this is achieved. Soft information is capable of hard effects for the person suspected of inappropriate or illegal behaviour, while the manifest unfairness of absolute liability offences is well documented.

Child protection is understandably emotive, but emotion is not helpful in the context of reforming the criminal law. The stakes for those caught within its ambit are far-reaching and serious. Draconian and populist legislation is an ever-present danger. It will be contended that the avoidance of injustice requires a detached and rational approach to reform in this area.