



Supporting LGBTI+
Young People in Ireland

BeLong To Youth Services Submission on the General Scheme of the Criminal Justice (Hate Crime) Bill, 2021

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Context and Background

BeLonG To Youth Services is the national organisation supporting lesbian, gay, bisexual, transgender, and intersex (LGBTI+) young people in Ireland. Since 2003, the organisation has worked with LGBTI+ young people aged 14-23 years old to create a world where they are equal, safe, and valued in the diversity of their identities and experiences. BeLonG To also advocates and campaigns on behalf of young LGBTI+ people and offers a specialised LGBTI+ youth service with a focus on mental and sexual health, alongside drug and alcohol support. BeLonG To responds to the needs of LGBTI+ young people in Ireland and helps them thrive.

Central to our theory of change is the belief that systemic problems and underlying causes such as societal attitudes result in the challenges LGBTI+ young people face. We deal with the effects of these challenges through our support services and are dedicated to solving the root causes of these challenges through training and education. Through our youth work, our advocacy and our research we have witnessed a rise in both physical and verbal hate directed at members of the LGBTI+ community. The introduction of hate crime legislation sends an important message to society that this behaviour is not acceptable and will not be tolerated.

Structure of Submission

BeLonG To welcomes the opportunity to provide input on the drafting of the Criminal Justice (Hate Crime) Bill, and to put forward the perspective and experiences of LGBTI+ young people. The submission is informed by a focus group conducted with young LGBTI+ people from BeLonG To's Dublin-based youth groups and from the National Network of LGBTI+ youth groups regarding hate crime and the proposed legislation in Ireland. Quotes from the young people have been included throughout this submission, and a thematic summary of the feedback provided by the focus group is included at Appendix 1.

BeLonG To is also a member of the Coalition Against Hate Crime and contributed to the joint submission prepared collaboratively by the Coalition. We strongly support the Coalition's call for the Criminal Justice (Hate Crime) Bill to be consistent with and complementary to related national and European legislation, namely the upcoming

Digital Services Act,¹ the Online Safety and Media Regulation Bill,² the Harassment, Harmful Communications and Related Offences Act 2020,³ and the EU Victims' Rights Directive.⁴ We take this opportunity to express concern that issues may arise in the capacity for harm done in online spaces to be considered offences, and in placing adequate regulatory responsibility on social media companies whose platforms facilitate the distribution of such harmful content. The second additional recommendation addresses these concerns in further detail and outlines some possible ways to remedy this protection gap.

As requested, the submission sequentially addresses each of the heads of the General Scheme of the Bill. Following analysis of the General Scheme, further recommendations complementary to the introduction of the Bill are detailed, along with areas for further consideration.

¹ <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

² <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>.

³ [Harassment, Harmful Communications and Related Offences Act 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2020/act/12/enacted/en/html)

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>.

Head 1: Preliminary and general

No observations on Head 1.

Head 2: Interpretation

- a) The definition of 'hatred' should remove the words 'of a magnitude'. The legal threshold is already clear as set at 'harm or unlawful discrimination'. The inclusion of this phrase is unnecessary and may cause issues in interpretation.
- b) The term 'unlawful discrimination' included in the definition of 'hatred' should be defined, perhaps in accordance with Section 3(1) of the Equal Status Acts 2000.
- c) The term 'prejudice' is not defined under Head 2. This is a significant omission, as the term 'prejudice' rather than 'hate' is used for aggravated offences under Heads 4 through 8. The term should be clearly defined under Head 2, including the elements of bias and hostility.
- d) The definition of 'protected characteristic' should be updated to replace the words 'ethnic or national origin' with 'ethnicity or national origin'. The term 'ethnic origin' is not defined under Head 2; however, 'ethnicity' is.
- e) The interpretation of 'ethnicity' should be updated to read 'includes membership of the Traveller or Roma community'.
- f) The interpretation of 'gender' should be updated to read 'includes gender expression or identity, including non-binary identities'.
- g) The term 'disability' should not be defined as per the Equal Status Act 2000.
 - It is unclear why 'disability' has a fixed definition, yet all other protected characteristics have only guiding indicators as to what should be included within their broad interpretation.
 - Disability rights groups should be contacted regarding the correct phrasing of this interpretation.
- h) We strongly recommend the inclusion of antibody status and sex characteristics under the interpretation of 'protected characteristic'.

- These inclusions relate to persons living with HIV/AIDS⁵ and persons who are intersex, or with variation of sex development (VSD) respectively.
 - The National LGBTI+ Inclusion Strategy contains a commitment to provide “explicit protection” for trans, intersex and gender non-conforming people in equality legislation.⁶ As an extension of this, it is vital that sex characteristics be considered a protected ground under this legislation.
- i) By virtue of circumstances that heighten the vulnerability of persons falling within these social categories, the following should also be considered for inclusion under the interpretation of ‘protected characteristic’: citizenship, residency status, socioeconomic status, and homelessness.
- j) Provisions should be included for the revision of Head 2, should protected characteristics under the Equal Status Acts 2000-2006 be updated.
- k) Intersectionality
- It is important to acknowledge the overlapping motivations behind the harm done to some persons, at the intersection of two or more elements of their identity, which are also protected characteristics.
 - The young people who spoke at our focus group raised questions regarding whether this intersection is accounted for in legislation, whether it would lead to increased sentencing, and whether motivation would have to be proven on each alleged protected ground.
 - Where a person is charged with an aggravated offence relating to two or more protected characteristics, the legislation should make clear that the prosecution would not be required to prove motivation on every protected characteristic so as to secure conviction of an aggravated offence.
 - Clarification is needed on the sentencing implications should a person be convicted of an aggravated offence on grounds of two or more protected characteristics.

⁵ UNAIDS has recently reiterated its call for an end to discrimination on the basis of HIV status, see for example: [HIV and stigma and discrimination — Human rights fact sheet series 2021 \(unaids.org\)](#)

⁶ See p. 13 [LGBTI+Inclusion Strategy 2019-2021.pdf \(justice.ie\)](#)

Head 3: Incitement to Hatred

- a) The inclusion of 'being reckless' under Head 3 paragraph 1 is welcomed and should be retained, as a test for recklessness is well established in other criminal law such as the Non-Fatal Offences Against the Person Act 1997.
- b) Consideration of a 'body corporate'
- Paragraph 5(b) references 'dissemination of material by a body corporate'. Paragraph 3, which is subject to paragraph 5, describes 'a person' rather than 'a body corporate'.
 - It is unclear whether a corporate body could as such be subject to criminalisation under this Bill. If a corporate body is to have the capacity to commit criminal offences under Head 3, it should be named alongside 'a person' at paragraph 3.
 - This Bill should complement other legislation, namely the upcoming Digital Services Act,⁷ the Online Safety and Media Regulation Bill,⁸ and the Harassment, Harmful Communications and Related Offences Act 2020,⁹ to ensure the protection of persons online and accountability on the part of corporate bodies, including social media companies.
- c) Paragraph 5(a)
- The terms 'reasonable' and 'genuine' should be defined.
 - Contributions to 'political, scientific or academic discourse' should include clear qualifications as it is currently too broad. The term 'discourse' should be narrowly defined if not replaced also.
 - This revision is particularly important in light of comments made by the UN Committee on the Elimination of Racial Discrimination in 2020, which noted the "frequent incidents of racist hate speech made by politicians [in Ireland], especially during election campaigns."¹⁰
- d) Paragraph 5(b)
- 'reasonable and effective measures' which a body corporate is expected to put in place to prevent the dissemination of hate speech are not defined in the Bill.

⁷ <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

⁸ <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>.

⁹ [Harassment, Harmful Communications and Related Offences Act 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2020/si/1022/2020-01-01)

¹⁰ Paragraph 16, Concluding observations on the combined fifth to ninth reports of Ireland. Available at: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies_Download)

- This highlights the further need for an independent body to regulate online material and the companies which host it, as discussed in further detail at point 2 in 'Further Recommendations'.

Head 4: Amendment of the Non-Fatal Offences Against the Person Act 1997

- a) The following suggestions should be considered for each of the 7 criminal law offences detailed under Head 4.
- b) Aggravated by prejudice
 - As noted previously, the term 'prejudice' is not currently defined within the Heads of Bill. It should be defined under Head 2.
 - The new sections pertaining to aggravated offences for each of the 7 offences under Head 4 should be updated to read 'aggravated by detestation, ill will, hostility or prejudice'.
- c) Against a protected characteristic
 - The current wording for new aggravating sections under Head 4, 'against a protected characteristic' is inconsistent with the offence detailed under Head 3, 'against another person or group of people due to their real or perceived association with a protected characteristic'.
 - Each section under Head 4 should be updated to read '...against another person or group of people due to their real or perceived association with a protected characteristic.'
 - This inclusion is important for the correct application of the Act, i.e., the prosecution should not have to prove that the alleged offender knew for a fact that the alleged victim was associated with a protected characteristic.
 - It is also important that there be no burden on alleged victims to 'prove' their association with a protected characteristic. This issue arose in our consultation with young people. Many voiced concern that there would instead be an onus on the victim of the hate crime to prove their identity which would further contribute to harm suffered by the victim and their community. This potential issue was highlighted regarding trans people in particular, who under no circumstances should be required to undergo

assessments, provide medical documentation, or partake in intrusive questioning.

- d) To be discussed in detail at point 3 in 'Further Recommendations', consideration should be given to broad-based restorative justice practices and education or awareness initiatives under this Head.

Head 5: Amendment of the Criminal Damage Act 1991

a) Aggravated by prejudice

- As per observations on Head 4, 'aggravated by prejudice' should be updated to read 'aggravated by detestation, ill will, hostility or prejudice'.

b) Against a protected characteristic

- As per observations on Head 4, 'against a protected characteristic' should be updated to read 'against another person or group of people due to their real or perceived association with a protected characteristic'.

- c) To be discussed in detail at point 3 in 'Further Recommendations', consideration should be given to broad-based restorative justice practices and education or awareness initiatives under this Head.

Head 6: Amendment of the Criminal Justice (Public Order) Act 1994

a) Aggravated by prejudice

- As per observations on Head 4 and 5, 'aggravated by prejudice' should be updated to read 'aggravated by detestation, ill will, hostility or prejudice'.

b) Against a protected characteristic

- As per observations on Head 4 and 5, 'against a protected characteristic' should be updated to read 'against another person or group of people due to their real or perceived association with a protected characteristic'.

- c) To be discussed in detail at point 3 in 'Further Recommendations', consideration should be given to broad-based restorative justice practices and education or awareness initiatives under this Head.

Head 7: general provision where a scheduled offence is aggravated by prejudice

- a) The provision that prejudice does not have to be the sole factor motivating the offence is welcomed.
- b) It is welcome that other offences which are not named under the Heads of Bill come within the provisions of Head 7. However, it is unclear why some criminal offences, such as sexual offences, are not specifically named within the Heads of Bill. The inclusion of further offences within the Heads of Bill should be considered.
- c) Aggravated by prejudice
 - As per observations on Head 4, 5 and 6, where the term 'prejudice' is used within this Head, it should be updated to read 'detestation, ill will, hostility or prejudice'.
- d) Against a protected characteristic
 - As per observations on Head 4, 5 and 6 'against a protected characteristic' should be updated to read 'against another person or group of people due to their real or perceived association with a protected characteristic'.
- e) To be discussed in detail at point 3 in 'Further Recommendations', consideration should be given to broad-based restorative justice practices and education or awareness initiatives under this Head.

Head 8: determining whether an offence was motivated by prejudice

- a) Establishing motive
 - The Report on the Public Consultation 2020 published by the Department of Justice acknowledges the "difficulty of proving the hate motive", thus requiring "clear measures" to deal with this challenge, without which it is viewed as "unlikely that any new legislation to deal with hate crimes would be successful."¹¹

¹¹ See p. 46 [Legislating for Hate Speech and Hate Crime in Ireland Web.pdf \(justice.ie\)](#)

- During the focus group with young people, the issue of “whose side is believed” regarding the intent of the alleged perpetrator against the alleged victim was raised.
- This was connected to the issue of proving motivation. As succinctly surmised by one young person: “People that commit hate crimes don't generally admit to it”.
- Reflecting on previous targeted experiences of hate based on their LGBTI identity, one young person echoed the Department’s concern, stating that “I can't know, I can never say that this is... truly what they felt about me and that's why they did that.”
- A broad-based consultation with all stakeholders, including victims, affected communities, offenders and members of the public, should ideally be conducted so as to establish the most effective means of establishing motivation.
- We note the approach taken to proving motivation in hate crimes prosecuted in the jurisdiction of England and Wales. There, hate crime is defined as “a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim's disability, race, religion, sexual orientation or transgender identity”.¹² Further consideration should be given to the integration of this approach to the Criminal Justice (Hate Crime) Bill, in the context of both the effectiveness of the legislation and the principle of proportionality.

b) Bias indicators

- Bias indicators should be removed from the legislation as they are intended as a tool of investigation only.¹³
- We cannot foresee every circumstance within which a hate crime may be committed, and the potential motivations that might exist. As such, the inclusion of bias indicators in law risks the law being interpreted only through these indicators, excluding potential future cases which do not fit neatly into categories defined by the existing bias indicators.
- Bias indicators should instead be included in guidelines for Gardai, the DPP and judges only.

¹² For further information, see: [Hate crime | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk/hate-crime/)

¹³ OSCE, Using Bias Indicators: A Practical Tool for Police, 2019. Available at: https://www.osce.org/files/f/documents/8/9/419897_0.pdf.

- The current list of bias indicators should be reviewed prior to their inclusion in guidelines for Gardai, the DPP and judges to ensure they are expansive and do not themselves suggest discriminatory or biased arrest and prosecution of certain individuals.
- Regarding the above, Bias Indicator 3 'Ethnic, religious or cultural differences between the perpetrator and the victim' is a particularly weighted and problematic inclusion. A person's views, motivations or beliefs should not be deduced from their ethnic, religious or cultural background.

Head 9: denial or gross trivialisation of crimes of genocide

No observations on Head 9.

Head 10: Repeal

No observations on Head 10.

Head 11: Consequential Amendments to other Acts

No observations on Head 11.

Further Recommendations

1. Garda Bias, Conduct and Over policing

Existing Positive Practices

BeLonG To has engaged positively with the Garda National Diversity and Inclusion Unit. Along with other LGBTI organisations including LGBT Ireland, we are working with An Garda Síochána on the implementation of their Diversity and Integration Strategy 2019-2021. A key element of the Strategy is the improved identification, reporting, recording and investigating of crimes motivated by hate or prejudice. This Strategy has seen a number of positive developments, including the recently launched Online Hate Crime Reporting Facility. This facility is intended to enhance the accessibility of reporting 'hate crimes' to Gardaí in a safe and secure manner for victims who have previously been reluctant to report.¹⁴

The effectiveness of this portal should be reviewed in consultation with representative organisations and community groups. Additionally, the introduction of the Criminal Justice (Hate Crime) Bill must be accompanied by the full implementation of the Garda Síochána Diversity and Integration Strategy 2019-2021. Successful initiatives implemented under this Strategy should also be applied to the wider criminal justice system.

Garda and DPP Training

The investigation of reported hate crimes, and the manner in which those reporting should be treated, must be an integral element of the updated Garda Diversity and Inclusion Strategy, to be introduced in 2022. Comprehensive training should be provided to all Gardai and the DPP on recognising, investigating and prosecuting hate crimes in a way that is respectful to alleged victims, and complies with the EU Victims' Rights Directive.¹⁵ During the focus group, young people cited training as essential, but also noted that the culture in An Garda Síochána towards minority communities, particularly the Black community, must fundamentally change.

¹⁴ Further details available at: [An Garda Síochána Online Hate Crime Reporting Facility Launch 21/7/21 - Garda](#)

¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>.

Relationships of Gardaí with Minority Communities

Victims of Hate Crime who are Undocumented

In accordance with the EU Victims' Rights Directive, the rights of victims contained therein are “not conditional on residence status”, and “legal protection” must be afforded “vulnerable persons including those who are not nationals or residents of the Member State”.¹⁶ As such, an immigration firewall is required to ensure that persons who are not legally resident in the State can report crimes committed against them to Gardaí without fear that their immigration status will be investigated.

Over-policing and Racial Profiling of Marginalised Communities

At the focus group young people spoke about how working-class, Black and Roma communities are over-policed. Additionally, young people named that there was a risk of these communities being further over-policed as a result of the introduction of hate crime legislation. In 2020, the UN Committee on the Elimination of Racial Discrimination expressed concern at the “high incidence of racial profiling by the Irish police (Garda) targeted at people of African descent, Travellers and Roma, and the disproportionately high representation of these ethnic minority groups in the prison system”.¹⁷ Among other recommendations, the Committee highlighted the need for legislation prohibiting racial profiling by Gardaí,¹⁸ and an independent complaints mechanism to handle racial profiling.¹⁹

In light of these concerns, it is vital that the introduction of the Criminal Justice (Hate Crime) Bill is accompanied by comprehensive legislation tackling racial profiling by Gardaí, training in accordance with the Garda Síochána Diversity and Integration Strategy 2019-2021 and the suggested independent complaints mechanism. Without these measures we are concerned that hate crime legislation may be unfairly applied, owing to prejudice on the part of some Gardaí and/or the over-policing of certain marginalised communities.

¹⁶ See recitals 10 and 38, [EUR-Lex - 52020DC0188 - EN - EUR-Lex \(europa.eu\)](#).

¹⁷ Paragraph 15, Concluding observations on the combined fifth to ninth reports of Ireland. Available at: [Treaty bodies Download \(ohchr.org\)](#)

¹⁸ Paragraph 16(a), Concluding observations on the combined fifth to ninth reports of Ireland. Available at: [Treaty bodies Download \(ohchr.org\)](#)

¹⁹ Paragraph 16(b), Concluding observations on the combined fifth to ninth reports of Ireland. Available at: [Treaty bodies Download \(ohchr.org\)](#)

Under-reporting of Crimes by Marginalised Communities

The young people involved in the focus group collectively shared a concern regarding under reporting of crimes of victimisation by marginalised communities. Similarly young people shared that they overall distrusted the Gardai and they themselves would not feel safe or comfortable reporting if they were victims of hate crime, unless it was a “life or death situation”. Young people also shared that they felt if they reported their experience of hate crime to the Gardai it would not be taken seriously.

These concerns are reflected by data collected by the Irish Network Against Racism’s ‘iReport’ human rights monitoring tool. In 2020, 43% of crimes reported on iReport were also reported to Gardaí.²⁰ In 2019, this figure was 30%.²¹ Only 27% of those who had reported a crime or racist incident to Gardaí felt they received a satisfactory response.²² Half of those who did not report a racist crime to Gardaí chose not to do so as they did not believe that Gardaí would do anything; a further 25% indicated that they had a previously reported a crime but the response from Gardaí was poor.²³ While related only to incidents of racist hate crime, these figures indicate a reluctance among some in marginalised communities to engage in formal reporting processes, which limits their ability to access the supports available to victims of crime.

Alternative Reporting

Almost a third of those who recorded racist crimes on iReport in 2020 also reported these crimes to other bodies, including NGOs, migrant organisations, and citizens’ advice centres.²⁴ This desire for a process of third-party reporting, through NGOs or community groups, was also voiced by the young people in our focus group. An Garda Síochána have indicated that a formalised approach to third-party referrals of hate crime from NGOs and civil society groups has been developed and will be communicated in the coming weeks.²⁵ It is vital that this option is communicated widely to the public, along with the online reporting facility. Once it has been established, the effectiveness of this referral mechanism should also be reviewed with input from key stakeholders.

²⁰ See p.14 [iReport 2020 - version 2.indd \(inar.ie\)](#)

²¹ See p.15 [2019 iReport Final.pdf \(inar.ie\)](#)

²² See p.14 [iReport 2020 - version 2.indd \(inar.ie\)](#)

²³ See p.15 [iReport 2020 - version 2.indd \(inar.ie\)](#)

²⁴ See p.15 [iReport 2020 - version 2.indd \(inar.ie\)](#)

²⁵ Further details available at: [An Garda Síochána Online Hate Crime Reporting Facility Launch 21/7/21 - Garda](#)

2. Harmonisation of Related Legislation

Is it important that the Criminal Justice (Hate Crime) Bill is consistent with and complements the Online Safety and Media Regulation (OSMR) Bill,²⁶ the Harassment, Harmful Communications and Related Offences Act 2020²⁷ and the upcoming Digital Services Act.²⁸ We are concerned that the provisions of the Criminal Justice (Hate Crime) Bill are not appropriate in dealing with the vast majority of harmful, hateful and prejudicial content published online, particularly on social media sites. The above-listed suite of legislation should be reviewed to ensure that it together creates clear obligations for social media companies, sufficient protections for victims of online abuse, and effective remedies for such harm.

Currently Part 4 of the OSMR Heads of Bill provides for Media Commissioners for online safety. Head 52b also has a 'systemic complaints system' for the notification of systemic issues with relevant and designated online services from nominated bodies, such as NGOs. The Children's Rights Alliance has highlighted the need for both an Online Safety Commissioner and an individual complaints mechanism under the OSMR Bill, which we support also in the context of hate crime legislation. Without such amendments to the OSMR Bill, there exists a protection gap for harms committed against persons associated with protected characteristics that do not reach a criminal threshold, or do not fall within the remit of the Criminal Justice (Hate Crime) Bill but are nevertheless damaging to both the individual and their wider community.

As noted under the discussion of Head 3, the 'reasonable and effective measures' which a body corporate is expected to put in place to prevent the dissemination of hate speech are not defined in the General Scheme of the Bill currently under consideration. It could be the role of an Online Safety Commissioner to define such measures. Further details of proposals by the Children's Rights Alliance are cited in the below footnote.²⁹

In this regard we would like to draw attention to the German NetzDG which was adopted in 2017 and generally aims to hold social media platforms more responsible for the content spread within them. The NetzDG obliges social networks to implement a notice-

²⁶ <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>.

²⁷ [Harassment, Harmful Communications and Related Offences Act 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2020/act/12/section/1)

²⁸ <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>.

²⁹ See: [Online Safety Individual Complaints Mechanism Concept Paper 0.pdf \(childrensrights.ie\)](#); and p 12-13 [Children's Rights Alliance Submission on the General Scheme of the Online Safety and Media Regulation Bill.pdf \(childrensrights.ie\)](#)

and-action procedure for handling complaints concerning illegal content.³⁰ For this to be effective in the Irish context, it is vital that abusive, threatening, hateful and prejudicial content spread online is considered illegal. We do not believe that much of this content would come within the scope of the Criminal Justice (Hate Crime) Bill. It is therefore necessary to consider the outlawing of such content under the Online Safety and Media Regulation (OSMR) Bill and/or the upcoming Digital Services Act.

3. Alternative Sentencing, Restorative Justice and a Wholistic Approach

Restorative Justice and Awareness Raising

Meaningfully young people shared that they felt there needed to be some form of restorative justice considered within the legislation or in the policy frameworks surrounding the legislation. The European Parliament has endorsed a restorative justice approach to tackling hate crimes.³¹ The option of restorative justice is available in Ireland, in accordance with Section 26 of the Victims of Crime Act 2017.³² We believe that a broad-based restorative and reparative approach would suit this type of crime. This approach could help both victim and perpetrator and could reduce re-offence.

Within this framework, it is recommended that some consideration be given to alternative sanctions. This may include participation in an equality and diversity awareness course, or community-based mediation. One such course currently in operation with a restorative justice framework is the 'Accepting Differences' intervention run by the Probation Board for Northern Ireland.³³ Genuine engagement with such initiatives could allow for a portion of an individual's sentence to be suspended, at the discretion of the Courts.

An Action Plan on Hate Crime

This option should be considered within a broad 'Action Plan on Hate Crime', which should address the root causes of prejudice, discrimination and harm against minority communities in Irish society. In the context of racist hate crime, Ireland has already

³⁰ For further information on NetzDG, see p. 25, 69 [Hate speech and hate crime in the EU and the evaluation of online content regulation approaches \(europa.eu\)](#)

³¹ See p. 108-109 [Hate speech and hate crime in the EU and the evaluation of online content regulation approaches \(europa.eu\)](#)

³² [Criminal Justice \(Victims of Crime\) Act 2017 \(irishstatutebook.ie\)](#)

³³ See p.24 [2021-Guide-to-Groupwork-Programmes-and-Interventions.pdf \(pbni.org.uk\)](#)

committed at UN-level to not only ensure accountability for hate crime, but also to combat its causes.³⁴ Within this framework, a public education campaign should be considered to acknowledge the impact of hate crime. It is important to also consider how the effectiveness of this legislation will be measured by the Department; by the number of prosecutions secured, or an overall reduction in the number of hate crimes occurring.

Young people shared that they think this legislation needs to be part of a broader suite of actions by the government to end hate and violence against marginalised communities. This suite of actions needed to include a national action plan against hate crime, a regular review of the legislation in consult with stakeholders and affected communities. They also felt the government should have held public consultations on this legislation and should be more forthcoming with the fact that the legislation is being actualised, for many young people they were unaware of the proposed legislation until this focus group. They spoke about the importance of education within schools about marginalised communities and identities, their experiences and how to support them. One young person highlighted that the education model in Ireland doesn't "give the opportunity to understand" the impact of hate crime and prejudice. Another young person criticised the parallels the legislation draws with approaches to bullying in schools:

"when you see bullying in schools, I mean we say don't bully people, but we don't say, well, why are you bullying this person, what is it about this person that makes you dislike them and then work from there."

³⁴ UPR 2016 Recommendation 135.115: Combat hate speech and prosecute perpetrators of xenophobic acts; UPR 2016 Recommendation 135.116: Ensure accountability for hate crimes; UPR 2016 Recommendation 135.117: Take measures to eliminate racial discrimination and combat hate crime.

Appendix 1: Hate Crime Legislation Focus Group with LGBTI+ young people carried out by BeLong To

Young people overall supported the idea of hate crime legislation but were unconvinced it would change anything materially for LGBTI+ people and other marginalised communities regularly effected by violence, hate and prejudice in Ireland.

"You know I think it's a good thing it exists, but in practice I don't think it will make a meaningful difference because like a lot of these communities already underreport crimes, you know you need to figure out why they don't report crimes and then help them report crimes before you can help them get justice."

"I think it's good they're bringing it in like years ago when the gay man Declan Flynn was murdered like his murderers were kind of told like oh you're just cleaning up the area, so I think it's good to like have that sort of recognition that like there are crimes that are motivated purely by prejudice."

Young people collectively shared a concern regarding under reporting of crimes of victimisation and over policing of marginalised communities. Similarly young people shared that they overall distrusted the Gardai and they themselves would not feel safe or comfortable reporting if they were victims of hate crime. Young people also shared that they felt if they reported their experience of hate crime to the Gardai it would not be taken seriously.

"If I were to be a victim of a hate crime I wouldn't report it unless it was a life or death situation where the Gardai not getting involved is something that isn't possible."

"Of course, it would be lovely for it to like work and everything, but people won't report and even when people do if the guards don't consider it a hate crime then you get told well actually that might not be as bad as you as you think is when you report something, then what was the point you know."

As a response to this young people felt that communities and key stakeholder organisations who work with and support these affected communities should play a key role in reporting, where individuals can report to a community organisation rather than the Gardai. It also was suggested that training for the Gardai is essential though several young people named that training is not enough to shift the culture within a historically racist and homophobic institution like the Gardai.

"We can't bother with doing all of this hate crime legislation and then leave the Gardai in the state that they're currently in like most minority groups don't trust the Gardai and they have ample evidence not to."

"Yeah like the Gardai themselves admitted they are institutionally racist like there are reports out there from the Gardai saying we are racist so how do they [the state] expect minorities to trust the Gardai."

"I don't think trainings enough to solve, you know institutionalized racism."

Young people also expressed a concern around proving motivation for hate crime in how do you prove intent or motivation unless someone actively admits that hate/prejudice was a motivating factor in the crime. Related to this young people expressed a concern that there would instead be an ownness on the victim of the hate crime to prove their identity which would further contribute to harm suffered by the victim and their community.

"People that commit hate crimes don't generally admit to it, you know, unless it was specific to like really to hurt marginalised communities."

"I would worry that for trans people does this involved more like going to assessments and having to have some kind of gender dysphoria diagnosis, which we're already trying to move away from in order to prove you're trans and the victim of a hate crime as a result of your identity."

"If, like, I was spontaneously attacked by someone to me that's a hate crime but to them that's not you know so who whose side is believed. It's something in their mind you know I mean I can't know I can never say that this is really what this is truly what they felt about me and that's why they did that."

Young people shared a concern that hate crime may be used against marginalised communities, specifically communities that are already overpoliced in an Irish context namely Black, Roma and travelling communities. This concern came from the inability of the legislation to account for power structures and structural prejudice and discrimination namely that the legislation does not consider how Black and Brown individuals are those who experience racism yet in theory and has been demonstrated in international law white people could rely on the legislation to claim racism or hate crime.

"I also fear that it might be used against marginalized communities."

Additionally young people spoke about how people have misconceptions about working-class, Black and Roma communities with the general population assuming that these communities are more likely to commit crimes when in reality they are overpoliced. Additionally young people named that many people assume that these communities are more homophobic, biphobic and transphobic than the general Irish population which may result in them being further policed as a result of the introduction of hate crime legislation. Young people agreed collectively that this is not true and there is little evidence to say that these communities are any more or less homophobic, biphobic and transphobic than white, settled Irish people.

Young people also shared a concern regarding the gravity of crime for offence committed namely that while something may be a hate crime where is the recognition that physical assault is more harmful than someone offhand in anger saying a slur etc.

Intersectionality was also named as something young people felt meaningful to capture within the legislation. They raised the question of how it would be accounted for if a victim was covered under multiple protected characteristics, would this mean that each characteristic needed to be proven or that motivation of hate was driven by one aspect of the person's identity, would there be increased sentencing for an individual who

committed a hate crime against an individual or a group who were at the intersection of multiple forms of marginality?

"Is there any space for kind of intersectionality like say if I was to be attacked like I'm a trans man but I'm a gay trans man. Unless do police basically have to say, well, this happened because your trans or this happen because you're gay or can you combine them, and then does that increase the sentencing, is that the same?"

Young people shared that they think this legislation needs to be part of a broader suite of actions by the government to end hate and violence against marginalised communities. This suite of actions needed to include a national action plan against hate crime, a regular review of the legislation in consult with stakeholders and affected communities. They also felt the government should have held public consultations on this legislation and should be more forthcoming with the fact that the legislation is being actualised, for many young people they were unaware of the proposed legislation until this focus group.

They spoke about the importance of education within schools about marginalised communities and identities, their experiences and how to support them. Young people felt that if the general public was educated from a young age there would be more credence to say that an incident was potentially not motivated by hate because this person has done education and awareness training about marginality and performed well or was engaged in process etc.

"We don't have any education model or system to say that well this person has been given the opportunity to like understand this and that and the other and they still did this so maybe it's a hate crime we don't have anything like that it's just it's my word against yours."

They also felt that this legislation needed to be accompanied by a large awareness campaign which educated the general public about the legislation and the harm caused by prejudice and violence against marginalised communities.

"You know marginalized experiences like when you see bullying in schools, I mean we say don't bully people, but we don't say, well, why are you bullying this person, you know I mean like what is it about this person that makes you dislike them and then work from there. We just go don't bully people it's not right it's not nice I mean we all know that, but like what is it that people disliked about each other."

Meaningfully young people shared that they felt there needed to be some form of restorative justice considered within the legislation or in the policy frameworks surrounding the legislation, where by the individual if they felt able supported by their community would work to educate the perpetrator and the perpetrators community support structure in order to bring legitimate change to prevent reoffence. It was named that potentially this was education based in the aftermath of conviction but there was a concern regarding how this would be managed and how would the perpetrator be held to account to ensure they engaged in this process.

"I don't even necessarily think that, like, I think you know, like minor hate crimes, you know I don't personally even think jail time or so is necessary, but there is no other options, you know I mean like there is no other option presented by this legislation or the government. Like let's say this person threw rocks at my house that's a hate crime, but like you're not personally injured you go to the Gardai and they go well look you hardly want his life ruined over that and like it's true you do hardly want someone's life over, but like what is the other option, you know yeah. You'd rather someone be helped and change and grow, you know, but like what is the option to help them do that there's nothing so then nothing happens."

"There should be like a mandatory course or something you know it's still mandatory, it's still like part of like the sentencing. But maybe jail time isn't even necessary in all cases, but people need to be educated after like there's no point if they're kind of getting off scot free."

"I think if like the perpetrator is told to do a mandatory course like if they're not doing jail time and stuff and like are free to just walk around

and do stuff they could just refuse to go to these things and just go and like what would happen if they don't go? What are the repercussions of not going and doing these courses?"

Young people also shared that they felt their needed to be support systems in place for the victim as they move through the trail particularly if their identity or the legitimacy of the harm they suffered is continuously questioned by the defence.