

AN GARDA SÍOCHÁNA



CHILD RESCUE IRELAND ALERT

CRI ALERT

25/5/2012

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1.1 POLICY STATEMENT

Child Rescue Ireland Alert (CRI Alert) is a system that enables An Garda Síochána to seek the assistance of the public where a child has been abducted and there is a reasonable belief that there is an immediate and serious risk to the health or welfare of a child.

CRI Alert is an agreement between An Garda Síochána, the media and information broadcasters to alert the public to a child abduction in order to seek their help. Information relating to the Alert will be broadcast via several media, including but not limited to: Radio, Television, Internet and Electronic Road Signs. The primary goal of the CRI Alert is the safe and early recovery of the child unharmed.

1.2 POLICY RATIONALE

A warning system for child abductions originated in the USA following the 1996 kidnap and murder of nine (9) year old Amber Hagerman. Broadcasters developed the idea of rapidly relaying child abduction information to the public resulting in the establishment of America's "Amber Alert" programme. The word 'Amber' is officially an acronym for "America's Missing: Broadcasting Emergency Response".

In September 2008, members of the European Parliament adopted a declaration calling on Member States to introduce a child alert system and to establish cooperative agreements allowing cross border alerts to be triggered. In November 2008, the Council of the European Union called on Member States to introduce and develop national mechanisms for alerting the general public in the event of alleged or actual abduction of children in circumstances where there appears to be a serious risk to their safety or to designate an existing structure to do so.

Many European Countries have an alert system in place – such as France, Greece, Italy and the Netherlands. An alert system was introduced in the United

Kingdom in 2006 called “Child Rescue Alert” (CRA). The PSNI introduced CRA in Northern Ireland in 2011.

An Garda Síochána is fully committed to the fundamental principle of protecting the human and constitutional rights of all those it interacts with in everyday policing as set out in section 7(1) of the Garda Síochána Act 2005. This document represents An Garda Síochána’s Policy in respect of issuing an Alert to the public in the case of child abductions. It takes into account:

- The Constitution of Ireland, 1937
- Domestic law
- The principles of the European Convention on Human Rights (ECHR), which is incorporated into Irish law, by virtue of the European Convention on Human Rights Act 2003 (the 2003 Act)
- The United Nations Convention against Torture which is incorporated into Irish Law, by virtue of the Criminal Justice (United Nations Convention Against Torture) Act 2000
- The United Nations Convention on the Rights of the Child
- An Garda Síochána Code of Ethics
- The UN Code of Conduct for Law Enforcement Officials
- The European Code of Police Ethics

This demonstrates An Garda Síochána’s commitment to providing a lawful, necessary, proportionate accountable and non-discriminatory response to policing difficult, confrontational and threatening situations. This Policy has been drafted in accordance with the Constitution of Ireland, 1937 and the legislative human rights requirements of the 2003 Act.

1.3 POLICY AIMS

The aim of this Policy is to:

- Develop an Alert system to rapidly engage the entire community via the media and information broadcasters in the search for the abducted child, offender or any specified vehicle by reporting sightings and information to the Gardaí.

- Ensure that members of An Garda Síochána can effectively carry out their duties when a child has been abducted
- Ensure that members of An Garda Síochána have the appropriate tools to effectively deal with persons or incidents which pose a threat to children

1.4 CRITERIA FOR LAUNCHING A CRI ALERT

A CRI Alert will only be launched when all the following criteria exist.

- 1. The child is under the age of eighteen (18) years**
- 2. There is a reasonable belief that the child has been abducted**
- 3. There is a reasonable belief that there is an immediate and serious risk to the health or welfare of a child**
- 4. There is sufficient information available to enable the public to assist An Garda Síochána in locating the child**

1.5 LEGAL BASIS

The following provides a summary of the legal basis governing the use of a CRI Alert. The Law relating to the protection of children is principally contained in the Constitution of Ireland 1937, the European Convention on Human Rights (ECHR) and various child based legislative provisions as explained below.

These explanations are designed to provide practical legal guidance to members of An Garda Síochána, so that they are aware of their rights and responsibilities in relation to protection of children who have been abducted and whom it is feared may be at risk of serious harm. They will set out the main legal (including human rights) provisions, and give some practical examples, referring to relevant legislation, leading cases and other sources of law, as necessary.

Members of An Garda Síochána carrying out their functions must do so in accordance with the:

- Constitution of Ireland, 1937

- Irish Statute and Common Law
- European Convention on Human Rights
- European Convention on Human Rights Act 2003
- United Nations Convention Against Torture
- Criminal Justice (United Nations Convention Against Torture) Act 2000
- Declaration of Professional Values and Professional Standards
- An Garda Síochána Code
- Crime Investigation Techniques Manual

This Policy has also been prepared with regard to the following instruments:

- The UN Convention on the Rights of the Child
- Children First: National Guidance for the Protection and Welfare of Children
- The European Code of Police Ethics
- The UN Code of Conduct for Law Enforcement Officials

The function of An Garda Síochána is set out in section 7(1) of the Garda Síochána 2005 Act which is to provide policing and security services for the State with the objective of:

- (a) preserving peace and public order
- (b) protecting life and property
- (c) vindicating the human rights of each individual
- (d) protecting the security of the State
- (e) preventing crime
- (f) bringing criminals to justice, including by detecting and investigating crime
- (g) regulating and controlling road traffic and improving road safety

Section 7 sets out a general duty to protect life and preserve peace and public order. As set out in section 7(1)(c) of the 2005 Act, the function of An Garda Síochána is to provide policing and security services for the State with the objective of vindicating the human rights of each individual. Section 7(3) of the 2005 Act also provides that An Garda Síochána and its members have such

functions as are conferred on them by law including those relating to immigration.

In addition to the obligations contained in section 7(1) of the 2005 Act, the 2003 Act, which came into force on 31 December 2003 and which incorporated the ECHR into Irish law, provides that *"every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."* An Garda Síochána is an *"organ of the State"* for the purposes of the 2003 Act.

Section 3 of the 2003 Act obliges An Garda Síochána, as an organ of the State, to perform its functions in a manner compatible with the State's obligations under the ECHR provisions. In this regard there are a number of seminal findings of the European Commission on Human Rights and judgments of the European Court of Human Rights that outline clearly the duty placed on the Member States. This duty is commonly known as *"the positive obligation"* and once a positive obligation on a Member State exists, an *"omission"* by a public authority, or the absence of a legal remedy against another individual, may constitute a violation under the ECHR.

Child Abduction in the context of this Policy refers to taking or detaining a child **under the age of eighteen (18) years** without lawful authority or reasonable excuse.

The legislation applicable to the term abduction includes:

- Section 15 Non Fatal Offences against the Person Act 1997 (False Imprisonment)
- Section 16 Non Fatal Offences against the Person Act 1997 (Parental Abduction)
- Section 17 Non Fatal Offences against the Person Act 1997 (Abduction)

In particular, the legislation in relation to parental abduction refers to taking a child **out of the State** (Section 16 1997 Act). In circumstances where a child is taken by a parent/guardian **within the jurisdiction** and there is serious and

immediate risk of harm to the child then members of An Garda Síochána should consider the provisions of Section 12 Child Care Act 1991.

Section 12 Child Care Act 1991 provides that:

- (1) Where a member of An Garda Síochána has reasonable grounds for believing that –
 - (a) There is an immediate and serious risk to the health or welfare of a child, and
 - (b) It would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by the Health Service Executive under section 13 **or an application for a warrant under section 35,**

the member, accompanied by such other persons as may be necessary, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

- (2) The provisions of subsection (1) are without prejudice to any other powers exercisable by a member of An Garda Síochána.
- (3) Where a child is removed by a member of An Garda Síochána in accordance with subsection (1), the child shall as soon as possible be delivered up to the custody of the Health Service Executive.
- (4) Where a child is delivered up to custody of the Health Service Executive in accordance with subsection (3), the Health Service Executive shall, unless it returns the child to the parent having custody of him or a person acting in loco parentis **or an order referred to in section 35 has been made in respect of the child**, make application for an emergency care order at the next sitting of the District Court held in the same District Court District or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of the Health Service Executive, at a sitting of the District Court, which has been specially arranged under section 13(4), held within the said three days,

and it shall be lawful for the Health Service Executive to retain custody of the child pending the hearing of that application.

Section 37 Child Abduction and Enforcement of Custody Orders Act, 1991 permits a member of An Garda Síochána to detain a child who he/she reasonably suspects is about to be or is being removed from the State not only in circumstances where a custody order is in existence but also where an application for a custody order is pending or is about to be made.

The domestic legislation outlined above relates primarily to the powers available to the Gardaí in respect of persons suspected of child abduction. However, a decision to launch a CRI Alert will not be based on a breach of any legislative provisions but will be based **solely** on the criteria as set out above for launching a CRI Alert.

CONSTITUTION OF IRELAND 1937

Article 40.1 of the Constitution of Ireland provides that *"All citizens shall, as human persons, be held equal before the law"*. Article 40.3.1 of the Constitution of Ireland provides that *"The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."*

The right to bodily integrity was upheld by the Supreme Court in **Ryan v A.G.** as being one of the unremunerated rights protected by Article 40.3. However, the Supreme Court also stated that the State had the duty of protecting its citizens from dangers to health in a manner compatible with the rights of these citizens.

In **State (C) v Frawley** the High Court held that the right to bodily integrity did not just apply to legislation (**Ryan v A.G.**), but also operated to prevent acts or omissions of the Executive which, without justification, would expose the health of a person to risk or danger including persons in prison/custody. Any excessive and non consensual interference with a person's physical security, which is not authorised by law, will be considered constitutionally impermissible and evidence obtained in an unlawful personal search may be inadmissible in criminal proceedings.

Article 40.5 provides that *“the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law”*. In this regard, the use of force in effecting an entry to a dwelling in accordance with law will not engage the constitutional right to the inviolability of a dwelling as such entry is lawfully authorised. There may be circumstances where members of An Garda Síochána may have to balance these constitutional rights. In the case of **DPP v Delaney** O’Flaherty J. ruled that, where entry to a dwelling was gained in the absence of a warrant in an ‘extremely fraught situation’, the Gardaí were fulfilling the requirements of the Constitution when they chose to act in defence of the life and limb of others and to subordinate the right of another to inviolability of the dwelling. There was a necessity for the Gardaí in the circumstances to balance these constitutional rights. Therefore the justification for entering a dwelling without a warrant will be the defence of the life and limb of others.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The object and purpose of the ECHR is the protection of individuals’ human rights. The State’s general duty under Article 1 of the ECHR is to *“secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”*.

Human Rights are integral to all the Garda functions. This is of great significance in relation to the protection of life. The relevant Articles of the ECHR as explained in paragraphs 8 to 10 below set out the legal requirements for any member of An Garda Síochána to justify the protection of life.

The ECHR is a living instrument and seeks to account for changes in society and its values. Therefore, State actions that were considered necessary and proportionate in the past may not be viewed as necessary and proportionate today.

It is recognised within ECHR law that the responsibilities of the police extend not only to refraining from acts which violate individual rights but also to taking positive action to protect these rights and freedoms. It is therefore vitally important that the legal parameters of each of these rights and freedoms must be carefully considered.

In carrying out their functions members of An Garda Síochána shall act with due respect for the personal rights of persons and their dignity as a human being and shall not subject any person to ill-treatment of any kind.

There is a presumption that the ECHR can only be interfered with by any kind of State action where the ECHR expressly allows it. These conditions are set out within the legitimate aims contained within each of the qualified rights, i.e. Articles 8-11.

In general terms, the rights can be only interfered with: -

- Where the action is prescribed by law; and
- It is 'necessary in a democratic society'; and
- The aim is legitimate to protect one of the interests below as per Articles 8(2)-11(2):
 - national security;
 - territorial integrity;
 - public safety;
 - preventing disorder or crime;
 - protecting health;
 - protecting morals;
 - protecting the rights of others.

In deciding whether the action is 'necessary in a democratic society' it will be necessary to show that the action: -

- fulfilled a pressing social need; and
- pursued a legitimate aim; and
- There was a reasonable relationship of proportionality between the means employed and the aim pursued. This means that the action was designed to:
 - impair as little as possible the right or freedom in question;
 - meet the objectives of the domestic law in question; and
 - not be arbitrary, unfair or based on irrational consideration; and
 - be balanced against the severity of the effect that the measure has on the individual or group. The more severe the adverse effects of the

measure, the more important the objective must be if it is to be classified as legitimate.

Article 2 ECHR – The Right to Life

Article 2 of the ECHR states: -

- “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.***
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:***
- a. in defence of any person from unlawful violence;***
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;***
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection”.***

Article 2 provides that *“Everyone’s right to life shall be protected by law”*. Therefore, the right to life of everyone is protected by the State. Article 2 imposes an obligation to *“refrain from intentional and unlawful taking of life”*, an obligation to take positive steps to protect life and a duty to conduct an *“effective official investigation”* when State agents have taken life through the use of force. While the procedural duty is not expressly provided for in Article 2 it is implied to ensure the effectiveness of the substantive right to life in practice.

The right to life is one of the basic values of the democratic societies making up the Council of Europe. The European Court of Human Rights has interpreted Article 2 as imposing on Member States *“the obligation to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life”*.

The protection in Article 2 is similar to that as provided for in other instruments as for example, *“Every human person has an inherent right to life . . . No one shall be arbitrarily deprived of his life”* and *“Everyone has the right to life”*. The

European Court of Human Rights held that the right to life ranks at the top of the human rights hierarchy. In this regard, if the right to life is not protected all other rights as provided for in the ECHR cannot be enjoyed.

Obligation to Protect Life

It has been held that the first sentence of Article 2(1) *“enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The State’s obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”*.

The obligation that requires appropriate action to be taken by the State to protect life is known as a positive obligation. A positive obligation may be implied from Article 2 on authorities to take preventative measures to protect persons in certain circumstances whose lives are at risk from the criminal acts of others. The European Court of Human Rights held that this duty applies only where *“the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”*. The positive obligation contained in Article 2 to ensure the right to life not only applies to the general population but also to suspects.

The authorities must show that they *“did all that could reasonably be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge”*.

The Court pointed out that due to the unpredictability of human conduct, the difficulty of policing modern societies and resource issues, the duty must be interpreted in a manner, which does not impose an impossible or disproportionate burden on the authorities.

Accordingly, An Garda Síochána may be under an obligation to take operational measures to protect a person's life in certain situations. The main issues for members of An Garda Síochána are: -

- Establishing what is a real and immediate threat; and
- If such a threat is established, what steps must be taken to seek to avert it?

Real and Immediate

Guidance can be gleaned from the leading case in the United Kingdom concerning a "*real and immediate*" threat which is in **Re. Officer L**. In this case, the House of Lords said that a real and immediate threat is one that is: -

- objectively verified, and
- present and continuing

The threshold is a high one. In making this assessment, members of An Garda Síochána should consider all relevant sources of information and ensure that all decisions are justified and recorded. The immediacy of the risk will increase the degree of the obligation.

Feasible Operational Steps

In the event that it is established that a real and immediate threat exists the next issue is what, if anything, members of An Garda Síochána are required to do. The legal requirement is for members of An Garda Síochána to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk to life. Accurate and detailed recording of relevant decisions and the decision-making process can assist in this regard.

United Nations Convention on the Rights of the Child

Members of An Garda Síochána should give special consideration to the heightened vulnerabilities of children and members of other vulnerable groups. Although not incorporated into domestic law members of An Garda Síochána should have regard to the UN Convention on the Rights of the Child. This Convention identifies four core principles: -

- The best interests of the child must be paramount (Article 3)
- Children have a right to be heard (Articles 12 and 13)

- Children have a right not to be discriminated against (Article 2)
- The State has a duty to protect children (Article 19)

The European Commission of Human Rights in **Z v United Kingdom** opined that *"the protection of Children who by reason of their age and vulnerability are not capable of protecting themselves requires not merely that criminal law provides protection against Article 3... of the ECHR but that, additionally, this provision will in appropriate circumstances imply a positive obligation on the authorities to take preventative measure to protect a child who is at risk from another individual. It should be noted in this regard the international recognition accorded to this principle in Article 19 of the United Nations Convention on the Rights of the Child which enjoins States to take all appropriate measures to protect the child from all forms of physical and mental violence, injury or abuse"*. This opinion has been endorsed by the European Court of Human Rights.

The Human Rights as outlined in this Policy Document should be considered and applied in all Garda interactions with children.

Due to the vulnerable nature of children, it is extremely important that all members of An Garda Síochána engaging with them ensure that every effort is made to inform children of their rights.

In carrying out their functions in accordance with this Policy Document members of An Garda Síochána shall act with due respect for the personal rights of the child and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability.

This Policy is deemed to be Human Rights compliant.

1.6 MONITORING AND REVIEW

In the event of a CRI Alert being issued a review will be conducted by Crime Policy & Administration, Garda Headquarters, which are also responsible for reviewing the contents of this Policy on an annual basis.

1.7 DISCLAIMER

"This document is not intended to, and does not represent, legal advice to be relied on by members of the public on the subject matter considered herein. This publication should not be used by members of the public as a substitute for professional legal advice."

2.1 FREQUENTLY ASKED QUESTIONS

What does CRI Alert mean?

CRI Alert is an acronym for Child Rescue Ireland Alert.

What is CRI Alert used for?

CRI Alert is a system that enables An Garda Síochána to seek the assistance of the public where a child has been abducted and there is a reasonable belief that there is an immediate and serious risk to the health or welfare of a child. CRI Alert is based on the same principle as Amber Alert.

What is Amber Alert?

Amber Alert is a warning system for child abductions which originated in the USA following the kidnap and murder of nine (9) year old Amber Hagerman. Broadcasters developed the idea of rapidly relaying child abduction information to the public resulting in the establishment "Amber Alert". The word 'Amber' is an acronym for "America's Missing: Broadcasting Emergency Response".

How do CRI Alerts work?

Once An Garda Síochána has been notified about an abducted child, they must first determine if the case meets their CRI Alert criteria, which are:

1. The child is under the age of eighteen (18) years
2. There is a reasonable belief that the child has been abducted
3. There is a reasonable belief that there is an immediate and serious risk to the health or welfare of a child
4. There is sufficient information available to enable the public to assist An Garda Síochána in locating the child

A senior member of An Garda Síochána will assess whether these criteria have been met before authorising the CRI Alert.

How is the CRI Alert message communicated to the public?

If the above criteria are met, alert information is assembled for distribution to the public via several media, including but not limited to: Radio, Television, Social Network Sites and Electronic Road Signs. This information **may** include descriptions and pictures of the missing child, the suspected abductor, and a suspected vehicle along with any other information available which may be valuable in identifying the child and suspect. Only An Garda Síochána can initiate and release CRI Alerts for initial distribution. All media relations for a CRI Alert will be managed by the Garda Press and Public Relations Office.

What should you do when a CRI Alert is issued?

The CRI Alert message encourages the public to look for the abducted child or suspected offender. The public effectively become the eyes and ears of An Garda Síochána. If you see the child, suspected abductor, or vehicle fitting the CRI Alert description, immediately call 112 and provide An Garda Síochána with as much information as possible.

Can CRI Alerts be issued across jurisdictions?

Most European Countries, including the UK and Northern Ireland have a similar child abduction alert system in place. In all cases with an international dimension, the services of INTERPOL will be utilised. More information regarding the role of INTERPOL can be found at www.interpol.int.

Are CRI Alerts issued for all missing children?

No. CRI Alerts are issued for **abducted** children when the situation meets the CRI Alert criteria. When a child is missing, An Garda Síochána will act swiftly to help recover the child, by developing search teams and by utilising all necessary investigative actions. CRI Alerts are reserved for those cases that specifically meet the CRI Alert criteria.

What if the child abduction refers to a custody dispute or is a parental abduction?

Regardless as to whether the abduction is a parental abduction or is as a result of a custody dispute a CRI Alert can be issued if the CRI Alert criteria are met.

Will CRI Alerts be issued regularly?

CRI Alerts will be issued on a case by case basis and will depend on the specific circumstances of each case. However, National and International Statistics indicate that the majority of abductions don't fulfill the criteria needed to launch a CRI Alert.

What is the main objective of a CRI Alert?

The aim of CRI Alert is to quickly engage the entire community via media and information broadcasts in the search for the child, offender or any specified vehicle by reporting sightings and information to the Gardaí. The primary goal of the CRI Alert is the safe and early recovery of the child unharmed.

Will images of the child be issued in all CRI Alerts?

Where a photograph of the abducted child is available, it may be published with the CRI Alert.

Will the names of the children be issues in all CRI Alerts?

The name of the child may be used in the CRI Alert.

Will images of the abductor be issued in all CRI Alerts?

Where a photograph of the suspected abductor is available, it may be published with the CRI Alert.

Will the names of the abductor be issued in all CRI Alerts?

The name of the suspected abductor may be used in the CRI Alert.

What other organisations have a role in a CRI Alert?

The National Roads Authority, the Health Service Executive, Dublin Bus, Railway Procurement Agency, Dublin City Council, Iarnród Éireann, and the Emergency Call Answering Service have partnered with An Garda Síochána, to date, in the CRI Alert Policy.