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An Comhchoiste um Dhlí agus Ceart, Gnóthaí Baile agus Imirce

Tuarascáil maidir leis an nGrinnscrúdú Réamhreachtach ar Scéim Ghinearálta an Bhille um an Dlí Coiriúil agus an Dlí Sibhialta (Forálacha Ilghnéitheacha) 2025

Samhain 2025

Joint Committee on Justice, Home Affairs and Migration

Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025

November 2025

34/JC/04

Table of Contents

CATHAOIRLEACH'S FOREWORD 3

COMMITTEE MEMBERSHIP 4

COMMITTEE RECOMMENDATIONS 7

CHAPTER 1 - Introduction 9

Purpose of the Bill 9

Procedural basis for scrutiny 9

Engagement with stakeholders 10

CHAPTER 2 - Summary of Written Submissions 12

1. Disclosure and examination of counselling records in sexual offence cases (Head 19) 13
2. The use of electronic technology in court proceedings (Heads 5, 6, 7) 15
3. The introduction of incapacitant spray into Irish prisons (Head 20) 17
4. The empowerment of Garda members to direct a person to remove a face covering (Head 26) 18
5. The criminalisation of "sex for rent" (Head 39) 19
6. The presentation of certificates setting out the results of presumptive drug testing (Head 17) 20

CHAPTER 3 - Summary of Oral Evidence 21

1. Counselling notes in sexual offence trials (Head 19) 21
2. Prison overcrowding and Community Service Orders (Head 25) 24
3. Use of incapacitant spray in prisons (Head 20) 26
4. Remote hearings (Heads 5, 6, 7) 27
5. Proposals to allow for the direction to remove face coverings (Head 26) 28

APPENDICES 29

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE 29

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS 37

CATHAOIRLEACH'S FOREWORD

In May 2025, the Minister for Justice, Home Affairs and Migration, Mr Jim O'Callaghan TD, forwarded the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 to the Joint Committee on Justice, Home Affairs and Migration in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

This General Scheme contains provisions to change a large and diverse range of existing legislation. The Committee noted the particular interest in Head 19, which deals with the issue of counselling notes in sexual offence trials. The Committee is of the view that it is less than satisfactory to have such a range of issues which are significant in their own right contained within a single Miscellaneous Provisions Bill. Miscellaneous Bills should be used for minor and technical issues rather than significant and far-reaching policy changes such as are contained in this legislation.

The Committee welcomes certain aspects of this legislation, such as provisions that will allow court proceedings to be undertaken more efficiently. However, following its hearing on the General Scheme, the Committee wishes to highlight other areas within the legislation, including the provisions set out in Head 19, the human rights implications of using incapacitant spray, and how prison overcrowding is being addressed.

In undertaking pre-legislative scrutiny, the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. Among the areas identified for further examination within the General Scheme include the issue of remote hearings, the use of incapacitant spray in prisons, extending the use of Community Service Orders and proposals to allow Gardaí the direction to remove face coverings.

The Committee has made a number of recommendations and a copy of this report will be sent to the Minister for Justice, Home Affairs and Migration. I would like to express my appreciation to all the stakeholders for their contributions and to the Members of the Committee for their engagement on this subject. In particular I want to express the Committee's thanks to Hazel Behan, a victim and survivor whose evidence had a significant impact on the Committee members.

Finally, I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Matt Carthy TD (SF) [Cathaoirleach]
November 2025

COMMITTEE MEMBERSHIP

Joint Committee on Justice, Home Affairs and Migration

Deputies



Matt Carthy TD (SF) [Cathaoirleach]



Tom Brabazon TD (FF)



Paula Butterly TD (FG) [Leaschathaoirleach]



Michael Cahill TD (FF)



Catherine Callaghan TD (FG)



Gary Gannon TD (SD)



Alan Kelly TD (LAB)



Pádraig O'Sullivan TD
(FF)



Mark Ward TD
(SF)

Senators



Robbie Gallagher
(FF)



Garrett Kelleher
(FG)



Michael McDowell
(IND)



Anne Rabbitte
(FF)



Lynn Ruane
(IND)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 7 May 2025.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 13 May 2025.
3. Deputy Paula Butterly elected as Leas-Chathaoirleach on 27 May 2025.

COMMITTEE RECOMMENDATIONS

During the course of the Pre-Legislative Scrutiny, a number of important points were raised, and based on the Committee's engagement with the witnesses and written submissions received, the following recommendations are proposed:

1. The Committee recommends the inclusion of a subsection in Head 6 requiring that the consent of the accused be secured for each application for a remote hearing, in particular, when it is envisaged to conduct a trial remotely.

2. The Committee recommends that a direction be included that remote hearings, as set out in Head 6, should not be extended to jury trials, and to summary trials involving the potential for imprisonment. If remote proceedings are permitted for such trials, it is recommended that these will be exceptional and not normative.

3. The Committee recommends that regulations are provided on the use of remote proceedings as set out in Head 6, and that a human rights review of the operation of remote proceedings takes place within a three-year period of commencement of the legislation.

4. Regarding the provisions set out in Head 17, the Committee recommends that only officers of the Forensic Science Ireland Laboratory may sign Section 10 of the 1984 Act certificate as provided by subsection (1).

5. The Committee recommends that Head 19 sets out a complete and unconditional ban on the use of counselling records in sexual offence trials.

6. The Committee recommends removing Head 20 in full, and that Prison Officers are not armed with incapacitant spray.

7. The Committee recommends that Head 25 is amended to ensure that there is proportionality between the custodial sentence and the Community Service Order hours.

8. The Committee recommends the inclusions of a provision under Head 25 that would enable individuals subject to higher hours of community service to carry them out in a manner that takes into account the time they might need to dedicate to employment and childcare responsibilities, as well as therapeutic appointments.

9. Regarding the provision set out in Head 25 obliging the Court to provide reasons for decisions to impose custodial sentences rather than community sentences, the Committee recommends that a mechanism is established to collect this data and monitor sentencing trends.

10. The Committee recommends the allocation of additional funding to the Probation Service to enable the proposed expansion of alternatives to custodial sentences under Head 25.

11. The Committee recommends, as a matter of urgency, the publication of the Review on the Criminal Justice (Community Sanctions) Bill 2014.

12. Regarding the provisions set out in Head 25, the Committee recommends the inclusions of a provision that prohibits the use of Community Service Orders in place of other more appropriate non-custodial sentences.

13. The Committee recommends the inclusion, in Head 25 of the General Scheme, of a Probation Order where a Community Service Order is not made.

14. The Committee recommends Head 26 is subjected to extensive human rights scrutiny and review. The review should include an impact assessment on how this provision might affect individuals who wear face coverings for legitimate reasons such as health, religious, cultural and solidarity purposes.

15. The Committee recommends that a review is conducted to assess the intended impact of the provisions set out in Head 26, and to ascertain if such powers are already proscribed within the Criminal Justice (Public Order) Act, 1994 or other statutory provisions.

16. The Committee recommends that a review is conducted to assess if the provisions set out in Head 39 are working as intended, and a report should be produced and published regarding such a review.

17. The Committee recommends that the following actions are covered by the provisions of Head 39:

    - Extending tenancy protections to those in informal or licensee housing arrangements,
    - Strengthening regulation and moderation by online platforms hosting rental advertisements,
    - Clarifying the rights and supports available to licensees, and
    - Rolling out a targeted public information campaign to raise awareness.

CHAPTER 1 - Introduction

This is the report on pre-legislative scrutiny of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, which was approved by the Government on 6 May 2025. It provides for a wide range of reforms to the criminal law and also includes a number of important civil law provisions.

The proposed legislation responds to a range of pressing challenges for the criminal justice system, many of which are reflected in Programme for Government commitments.

Purpose of the Bill

The General Scheme develops existing policies to improve the efficiency of courts, aims to free up more Garda time for frontline policing, changes legislation in relation to the disclosure of counselling notes in sexual offence trials, encourages greater use of non-custodial sanctions in suitable cases, addresses sexually exploitative practices in the rental market and the use of face coverings to intimidate other persons or evade justice, and introduces legislation to allow prison officers to deploy incapacitant spray in certain circumstances in prisons.

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Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 181, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

Engagement with stakeholders

The Joint Committee on Justice invited submissions from stakeholders on the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025.

On 30 September 2025, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of witnesses that attended the public engagement

Organisation/ Individual	Representative(s)	Capacity
Irish Penal Reform Trust	Ms Saoirse Brady, Executive Director	**Witness**
	Ms Niamh McCormack, Legal Policy and Public Affairs Manager	**Witness**
Individual	Ms Hazel Behan	**Witness**
Individual	Dr Susan Leahy, Associate Professor in Law, University of Limerick	**Witness**
One in Four	Ms Deirdre Kenny, Chief Executive Officer	**Witness**
The Bar of Ireland	Mr Michael Hourigan SC	**Witness**
	Ms Aoife O'Leary BL	**Witness**
Irish Human Rights and Equality Commission	Mr Liam Herrick, Chief Commissioner	**Witness**
	Ms Maria Mullan, Assistant Principal	**Witness**
The Courts Service	Ms Angela Denning, Chief Executive Officer	**Witness**
	Mr Owen Harrison, Chief Information Officer	**Witness**

Department of Justice, Home Affairs and Migration	Ms Marisa Gomez, Principal Officer	**Advisor**
	Ms Rosaleen Killian, Principal Officer	**Advisor**
	Mr Paul O'Farrell, Principal Officer	**Advisor**

The primary focus of this meeting was to allow for an engagement between the Members and the stakeholders to discuss the General Scheme.

This report summarises the engagement and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found here.

CHAPTER 2 - Summary of Written Submissions

This note summarises the key issues raised in the submissions received in relation to the General Scheme.

The Committee received submissions from the following stakeholders:

- National Women's Council of Ireland
- Dr Susan Leahy
- Dublin Rape Crisis Centre
- The Courts Service
- One in Four
- Law Society
- Irish Penal Reform Trust
- Ms Hazel Behan
- Irish Council for Civil Liberties (ICCL)
- The Bar of Ireland
- Irish Human Rights and Equality Commission (IHREC)
- Mr Vivian Geiran
- Rape Crisis Ireland
- Lisa Murray, Paula Doyle
- Senator Lynn Ruane

Key Issues raised in the submissions

The following issues were common to multiple submissions received:

1. Disclosure and examination of counselling records in sexual offence cases (Head 19).
2. The use of electronic technology in court proceedings (Heads 5, 6, 7).
3. The introduction of incapacitant spray into Irish prisons (Head 20).
4. The empowerment of Garda members to direct a person to remove a face covering (Head 26).
5. The criminalisation of “sex for rent” (Head 39).
6. The presentation of certificates setting out the results of presumptive drug testing (Head 17).

1. Disclosure and examination of counselling records in sexual offence cases (Head 19)

- Head 19 of the General Scheme states that 'a judicial examination of the counselling records and subsequent disclosure hearing will automatically take place wherever such records are sought by the accused'.

- Most submissions to the Committee on the General Scheme gave observations in relation to Head 19. While stakeholders differed in their recommended approach to dealing with the issue of the disclosure and/or admission of counselling records in sexual offence cases, there was a consensus on the following matters in multiple submissions:
    - the new legislation risks creating additional delays to trials,
    - the legislation should be reformed to protect all personal records of survivors, such as medical, psychiatric and social work records,
    - additional court proceedings can be deeply distressing and re-traumatising for survivors,
    - the prospect of the disclosure of counselling records may discourage survivors from seeking the help they need, or deter survivors from ever reporting in the first place.

- Implications, due to possible delays caused by the provision within Head 19, that were indicated by stakeholders include:
    - The potential to deter survivors from reporting at all, if already lengthy trial delays are compounded by a disclosure hearing,
    - Further delays to counselling, if some survivors put-off counselling until after the conclusion of the trial, which could set them back therapeutically/from healing,
    - significant difficulties arising from the increased demand on the resources available to the Legal Aid Board.

- In response to potential delays arising, one submission suggested that where a particular record is almost certainly going to be determined to be disclosable by the court, this could be explained to a complainant by an independent legal advisor and to allow the complainant to provide informed consent to disclosure where s/he wishes to rather than holding an unnecessary hearing.

- Another submission called for a fully resourced plan to ensure the proposed Head 19 will not lead to further delays in the justice system, to include the appointment of additional specialist judges as in the Programme for Government, and that an early review of the legislation is built in so that there can be certainty it is having the intended positive effect.

- Multiple submissions believed that reforms to Irish legislation in this area should be informed by relevant provisions of the Canadian Criminal Code, which:
    - provides that personal records are inadmissible unless the judge determines that it 'is relevant to an issue at trial and has significant

probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice'.
    - requires that the judge provide reasons for his/her decision regarding admissibility,
    - provides that 'if evidence is admitted at trial on the basis of a determination made under [these provisions], the judge shall instruct the jury as to the uses that the jury may and may not make of that evidence.'

- Some stakeholders indicated that the absolute prohibition of the disclosure of counselling notes in sexual offence cases would be optimal from the perspective of protection of the complainant's privacy interests, stating that such notes are used to discredit survivors as unreliable and untrustworthy witnesses. However, several submissions were concerned that prohibiting the disclosure of counselling notes would be constitutionally vulnerable.

- Several stakeholders highlighted the Supreme Court decision of DPP v AM [2025], with one submission noting that the Supreme Court found that the rights of victims, including the rights protected by Article 8 of the European Convention on Human Rights, are not to be swept away in the name of ensuring a fair trial.

- One submission outlined the importance of providing complainants with legal advice and representation at disclosure hearings brought before the courts.

- One stakeholder believed there was a clear case to be made for regulating admissibility separately to disclosure, thereby ensuring that disclosure does not result in unregulated use of this material as evidence at trial. Another stakeholder called into consideration whether Section 19A will be sufficiently robust to ensure that disclosure occurs only when absolutely necessary.

- One submission noted that since Section 19A of the Criminal Evidence Act 1992 has been in force, it has seldom been relied upon, and pointed to research finding that the disclosure scheme in respect of S.19A has been used in few cases because complainants generally tend to consent to the disclosure of their records and waive their statutory entitlements to refuse.

- One stakeholder noted that complainants are routinely asked to sign the disclosure waiver at the early stages of the garda investigation, often when making a statement, and that there is very little awareness on the part of investigators of the implications for survivors, which often leads survivors to signing the waiver without fully understanding the implications.

- Another stakeholder outlined the view that nothing less than a complete and unconditional ban on the use of counselling records in criminal trials will protect the rights, safety, and wellbeing of survivors.

2. The use of electronic technology in court proceedings (Heads 5, 6, 7)

Many submissions focused on Part 2 of the General Scheme, particularly on Heads 5, 6 and 7. Several stakeholders raised the following concerns arising from the measures set out in these Heads:

- The right for an accused to be present at their trial is protected by Article 6(1) of the European Convention on Human Rights, Articles 47 and 48 of the European Charter of Fundamental Rights, and arguably Article 40 of the Constitution.

- Prisons are not equipped with enough video conference facilities to allow timely appearance of those in custody at court hearings, which could be overwhelmed by adding remote hearings.

- The role of interpreters at remote trial needs to be considered in more detail, and whether the interpreter would be in the same room as the accused.

- The current system presents challenges for legal representatives to access their clients when they are presented remotely. One submission pointed to studies which demonstrated that contact between an accused and their Counsel occurs less frequently in a remote setting.

- The continued use of the Digital Audio Recordings of court proceedings needs to be clarified.

- The provision in subhead (5) of Head 5 that permits either party to the proceedings to apply *ex parte* for a remote hearing does not sit well with the right to apply to dispense with the remote hearing direction where it is contended that the safeguarding conditions are not satisfied.

- Trials on indictment involving multiple witnesses, some of which will be of crucial importance to the issue of whether an accused person is guilty of the most serious offences, are not suitable for fully remote hearing.

- Witnesses may give evidence from a location where there may be other unknown people present in the room or nearby; where the witness may be subject to pressure or interference and where the court and the jury cannot observe fully the conditions in which the evidence is being given.

- The provisions within Head 7 tend to prioritise the efficiency of administration, rather than the interests of justice or indeed the interests of the court users affected by these proceedings.

However, a number of submissions on the General Scheme outlined the following potential benefits arising from the measures set out in Heads 5, 6 and 7:

- The integration of technology, such as enabling survivors to give evidence or participate in hearings remotely, can reduce the burden on survivors, and

reducing the need for in-person appearances can assist women for whom travelling to a court may be unsafe or unfeasible.

- The provisions within Head 5 will reduce unnecessary travel to and from courthouses thereby saving time, money, demands on staffing, and supporting prisoner wellbeing, and will considerably lower security risks at courthouses creating a safer working environment for all court users, staff and judges.

3. The introduction of incapacitant spray into Irish prisons (Head 20)

- Stakeholders raised serious concerns at the intention in Head 20 to provide an exemption for prison officers to use incapacitant sprays in the course of their duties.

- While it was acknowledged that Ireland is one of the few European countries where Prison Officers are not permitted to carry incapacitant spray or any other weapons, stakeholders pointed to studies which demonstrated that the use of chemical irritants can cause severe injury, permanent disabilities, and, in rare cases, death.

- One of the submissions pointed to statistics, from a six-month pilot programme in which incapacitant spray was used in four English and Welsh prisons, which showed that:
    - one-in-three instances involved spray use without appropriate justification,
    - one-in-four involved its use where alternative interventions were available.
    - 24 per cent of instances involved unsafe use, and
    - guidance had not been observed in almost two-thirds of all instances.

  The submission underlined its concern in light of these statistics that, if incapacitant spray were to be introduced, it will not always be used as a necessary or proportionate intervention, thereby in breach of fundamental human rights principles. Another submission was concerned that an over-reliance on incapacitant sprays could lead to potential misuse and an abuse of power.

- Several submissions raised the example of *Tali v Estonia*, in which the ECHR held that the cumulative effects of the use of pepper spray and restraint led to a prisoner being subjected to inhuman and degrading treatment, in violation of Article 3 of the ECHR.

- One submission stated the proposal to arm prison officers with incapacitant spray was a response to perceived safety concerns in the context of the current overcrowding crisis currently facing Irish prisons, noting that the prison system was operating at 117% capacity. However, the submission went on to underline successive decreases in prisoner on staff direct physical assaults in 2023 and 2024. The submission pointed to a significant rise in prisoner on prisoner assaults as one of the main consequences of the overcrowding in prisons, with an increase of 74 per cent between 2022 and 2023, and a further 31 per cent increase between 2023 and 2024.

- In light of these statistics, stakeholders were concerned that the introduction of incapacitant spray into Irish prisons will do little to solve safety concerns or reduce the incidence of these assaults, and may even exacerbate prison violence by negatively impacting relationships and reducing trust between prisoners and prison officers.

4. The empowerment of Garda members to direct a person to remove a face covering (Head 26)

- While one submission observed that much of the behaviour that Head 26 seeks to proscribe is likely to already be proscribed by sections 5, 6 and 8 of the Criminal Justice (Public Order) Act, 1994, several stakeholders outlined their deep concerns with the proposed legislation.

- Another stakeholder believed that sections 6 and 8 of the 1994 Act contain sufficiently expansive powers under criminal law to address anti-social behaviour or criminal acts at protests.

- Stakeholders believed that if the assessment of a potential threat to safety, intimidation, or commission of a crime rests on the individual judgement of Gardaí ('reasonable cause' as outlined in Head 26), this could lead to misuse and inconsistent application as there is currently no definition of reasonable cause in Irish law.

- Submissions considered that Head 26 is highly problematic as it could have a potentially chilling effect on free speech and the freedom of expression on individuals who wear face coverings during peaceful protest, in that it may dissuade such individuals from enjoying their fundamental right to protest.

- One stakeholder was of the view that the provision in the Constitution for the right to privacy, freedom of expression, assembly and association is potentially threatened by the introduction of the proposed amendment.

- Stakeholders highlighted the broad definition of face covering in Head 26, stating that this would include items such as medical masks, face coverings worn for religious expression, alongside face coverings worn in political solidarity. Submissions believe such an expansive definition would cast a wide net and may result in increased contact between Gardaí and margnialised and over-policed communities, and that the proposed new power will disproportionately affect specific members of society such as Muslim women and structurally vulnerable individuals including disabled people who may not feel comfortable in public places without wearing a face covering.

- Another stakeholder pointed to a review of public order policing published in March 2025, in which the Policing Authority noted that this new power "will require clear guidelines for Garda members and for the public as to the parameters within which removal of a mask might be compelled", and agreed that such guidelines would be necessary to provide clarification of the circumstances for when it will be used.

- In the absence of such guidelines, stakeholders suggested that members of An Garda Síochána will be faced with the difficult and somewhat impossible task of having to distinguish between those who are wearing face coverings to

conceal their identity for criminal purposes and those who are wearing face coverings to protect themselves for health reasons, religious, cultural or otherwise.

5. The criminalisation of “sex for rent” (Head 39)

- Stakeholders welcomed the introduction of a new offence through Head 39 to criminalise exploitative “sex for rent” arrangements, stating that such arrangements disproportionately affect people in vulnerable housing situations.

- Submissions underlined that while these reforms have the potential to meaningfully improve victim/survivors’ experiences of the justice system and reduce the risk of further harm or exploitation, the effectiveness of this legislation will depend on robust implementation and targeted supports for those most at risk. Stakeholders called for the reforms to be properly resourced, trauma-informed and victim-centred from the outset.

- One stakeholder is concerned that the application of the Criminal Justice (Sexual Offences) Act 2017, including section 45, has been limited overall, in terms of challenges in enforcement, very low prosecution numbers for public sexual misconduct offences and underreporting. The submission highlighted the need for further research and data collection to assess the impact of this provision and to improve it for the implementation of this amendment, and tackle “sex for rent” exploitation overall.

6. The presentation of certificates setting out the results of presumptive drug testing (Head 17)

- While one submission welcomed the provisions set out in Head 17, stating it should increase efficiency across the criminal justice system, several stakeholders had concerns about the wording of provisions in Head 17.

- Stakeholders suggested that only officers of the Forensic Science Ireland Laboratory of the Department of Justice should be allowed to sign a certificate pursuant to Section 10 of the Misuse of Drugs Act 1984, as the staff of Forensic Science Ireland are widely accepted to have the necessary expertise and independence to provide expert opinion.

- As Forensic Science Ireland are independent from An Garda Síochána, stakeholders believe that it is not appropriate to permit Garda personnel to present certificates with the same evidential presumption that attaches to one issued by an officer of Forensic Science Ireland as they do not enjoy the same presumption of independence and consequently will not attract the same degree of confidence.

- One submission stated that Head 17 should limit the extension of the power to sign relevant certificates to members of An Garda Síochána, rather than all Garda personnel or staff.

CHAPTER 3 - Summary of Oral Evidence

In the course of the public hearing, a number of important points were raised.

A summary of the main areas discussed in evidence to the Committee follows.

1. Counselling notes in sexual offence trials (Head 19)

- Ms Behan, in her opening remarks, shared quotes from survivors who:
    - felt 'stripped bare' by the justice system,
    - believed that 'the way survivors are treated is unacceptable and needs to change',
    - spoke about 'a brutal victim blaming system', and
    - outlined that 'reporting is worse than the experience itself by a million'.

  Members were struck by these quotes and believed that these should inform the approach to legislating around the aspects of Head 19.

- One in Four added that routine court practices, such as requests for and disclosure of personal records, lengthy hearings and a lack of agency, can compound trauma and, in some cases, deter individuals from seeking justice and therapeutic support, and carries a risk of compounding harm.

- Ms Behan told Members that she did not believe this practice has a place in a 'trauma informed' justice system, but rather that this results in re-traumatisation sanctioned by the system, which appears to be a 'perpetrator-friendly' one. Ms Behan stated that survivors are forced to self-censor, stay silent or carry their trauma alone instead of finding safety in counselling.

- Dr Leahy believed that the current section 19A of the Criminal Evidence Act, 1992 has failed to achieve its intended objective of preventing inappropriate disclosure of counselling notes, and that the use of counselling notes is particularly problematic as it impacts directly the healing process for victims of sexual offences. During exchanges with Members, Dr Leahy pointed to her research which found that complainants were waiving their right to non-disclosure of their counselling notes because they did not want a delay, and that the delay endemic in the system is a massive source of trauma for victims in the process.

- Multiple witnesses highlighted that any protections given to counselling notes should be extended to include all personal records, such as medical, psychiatric and advocacy notes, in order to offer optimum protection to complainants' privacy. Dr Leahy also believed this would minimise any potential that personal records may be inappropriately admitted in trials and relied upon to unfairly discredit a complainant's testimony.

- Ms Behan pointed to the third-party nature of counselling notes, underlining that the counsellor will not have been present at the time of the crime and therefore cannot speak to the facts of what happened. Members agreed with this assessment, raising a distinction between these records and a medical record that sets out clearly on an evidentiary basis what might have been presented, and cannot be compared to counselling records containing a subjective viewpoint.

- Ms Behan outlined that she would not have gone to counselling if she knew that her records would be used against her in court years later, and found out that her records would be used two weeks before they were taken. Ms Behan stated she was told that if she did not give over those notes, she would not have a fair trial. Ms Behan raised the question ‘for whom is it fair?’

- Ms Behan told Members that she would not be there today if she had not gone to counselling and therapy, and that 99% of the conversations she had with her therapist did not concentrate on what happened but were about navigating life after what happened. Ms Behan implored Members and legislators to listen to survivors, and encouraged the Committee to invite other victims, survivors and therapists and listen to what they have to say.

- The Bar of Ireland was concerned that the proposals outlined in Head 19 would divert judicial resources into conducting such hearings and away from the conduct of trials themselves. The Bar of Ireland suggested strengthening the requirement for the provision of independent legal advice to complainants to ensure that any consent to the disclosure is informed consent. Members agreed that it would be better for the stress levels of survivors, rather than having to wait on a hearing application, to have that informed consent put to them, preferably privately.

- During the hearing, Members asserted that, instead of the proposals outlined in Head 19, counselling notes should be excluded from sexual offence trials. Members spoke about the issue of retraumatising victims and were struck by the testimony from the witnesses that survivors are forced to self-censor and stay silent, or to carry their trauma along. Members were of the view that this goes against anything intended by counselling.

- The Bar of Ireland outlined that a part of the right to a fair trial is the duty on the prosecution to disclose material which may undermine the prosecution case and which may assist the defence. The Bar of Ireland highlighted that if material available in a counselling record would meet that test, and where a judge determined that the correct thing to do to uphold the fair trial rights of the accused would be to disclose the record, that is the basis for that disclosure.

- Members believed the use of counselling notes in a sexual offence trial is a standard mechanism of a defence team to simply be a chilling factor to try to scare off a victim or further add to the trauma of the victim, to find a crack in

the prosecution's case. Members also wished to put further testimony from survivors on the record, who talked about the psychological harm of the disclosure of their counselling notes, and that it was another form of gender-based violence, but this time in the courts system, against women.

- When asked by Members as to whether the provisions in Head 19 would make things worse or better, or if the *status quo* would remain, Ms Behan believed that anything less than a ban would act as a deterrent to seeking justice. IHREC outlined to the Committee that it is very clear from a human rights perspective that the *status quo* violates women's rights.

- In conclusion, Members underlined the need to listen to survivors, to have a trauma-informed system, and the importance of a right to healthcare and a right to privacy. Members believed the provisions in Head 19 take the decision regarding the disclosure of counselling records out of the hands of the survivor and hand it to a judge. Members highlighted the need to have a victim-centred approach in the criminal justice system, that victims of crime need to have confidence and feel supported.

2. Prison overcrowding and Community Service Orders (Head 25)

- IPRT informed the Committee that the proposals in Head 25, to expand the use of Community Service Orders (CSOs) as an alternative to custodial sentences, must be considered in the context of a severe prison overcrowding crisis, stating that almost 5,500 people are in custody living in unacceptable and, in some instances, inhumane and degrading conditions.

- While IPRT was of the view that the proposals take us one step closer to realising the principle of prison as a last resort, and welcomed the obligation on the court to provide reasons for its decision to impose a custodial rather than a community sentence, it outlined several issues that should be considered regarding CSOs.

- IPRT told the Committee that, where used ineffectively, CSOs can have low completion rates, and that to address recidivism, this requires access to adequate and appropriate supports, services and employment. IPRT underlined that CSOs cannot be used in place of other non-custodial sentences - for example, fines where that would currently be the sanction.

- Members discussed recidivism rates for people who have been through community service orders as opposed to those who have received custodial sentences. IPRT highlighted that international evidence demonstrates people who serve prison sentences of 12 months or less are more likely to reoffend in the future because they are not getting necessary supports. IPRT went on to state that in the context of a prison overcrowding system, people do not even get to the top of queue for assessment for the mental health, addiction or other therapeutic supports they might need in prison before they are back out into community.

- While IPRT welcomes the provision expanding CSOs to 480 hours, they raised concerns around how effective this would be in practice. IPRT told the Committee that an individual’s personal responsibilities, for example, childcare, employment, or therapeutic appointments, might limit their opportunities to carry out the community service hours. This would result in non-completion, and, even if they had completed 320 of those hours, they would risk having to go to prison. IPRT highlighted the need to ensure supports are in place to enable people to carry out the hours, while acknowledging other commitments that are crucial to their rehabilitation and personal development.

- Members engaged further on the topic of overcrowding in prisons, and asked witnesses to give their suggestions to address this matter. IPRT suggested a number of solutions to the Committee. IPRT believed that the high rate of remand needs to be dealt with, highlighting that one in five people in prison are currently on remand. IPRT pointed to the Prison Overcrowding Response Group report, which suggested solutions such as a review and expansion of the drug treatment court, a temporary release scheme for women which has been piloted, and bail support schemes.

- When Members asked whether the Probation Service is sufficiently resourced enough to carry out bail supervision, IPRT did not believe so, and stated that the Service will need to be significantly resourced especially if there is talk of expanding it past Dublin, Limerick and Cork. IPRT highlighted that outside of these three locations, a lot of young people come into the system for very minor crimes that could be better dealt with using therapeutic supports through the bail supervision scheme.

- IPRT raised further concerns around the unintended consequences of increasing the hours under CSOs, specifically that where a person convicted of an offence which would have garnered a lower level of hours before the introduction of this provision would then be subject to high hours of community service. IPRT advised that there must be proportionality between the custodial sentence and the community service order.

- The Committee heard that investment is a crucial aspect of expanding alternatives to custodial sentences. In its evidence to the Committee, IPRT noted that in Budget 2025, the allocation made to the probation service totalled €16 million, while the Irish Prison Service received an additional €79 million.

- Regarding alternatives to custodial sentences, the Committee heard that Judges do not feel that they have enough options available to them. IPRT urged the Committee to look at the Community Sanctions Bill 2014, which would expand the options available to judges.

3. Use of incapacitant spray in prisons (Head 20)

- A number of witnesses expressed strong opposition to the proposals in Head 20 to arm prison officers with incapacitant spray. Both IPRT and IHREC outlined their concerns regarding the human rights implications of using incapacitant spray.

- IPRT believed that arming prison officers will not meaningfully address safety concerns and may in fact exacerbate tensions, and cited recent data indicating a reduction in prisoner-on-staff direct physical assaults. IHREC underlined that the use of incapacitant spray in confined spaces, such as prisons, is particularly dangerous.

- Members and witnesses alike were agreed that incapacitant spray should not be used in Oberstown and youth detention centres.

- When asked by Members whether it was concerned about the use of incapacitant spray on vulnerable people, IPRT underlined the risk that these vulnerabilities would not be considered in the heat of the moment if a violent situation arises in a prison setting, given the overcrowding situation, and that there was also a risk to staff members in such a crowded space.

- The IPRT noted that, at present, it is only members of An Garda Síochána that are allowed to use incapacitant sprays, and that there is very clear policy guidance around that. These conditions, for example, the use of these sprays outdoors and requirement for immediate healthcare access, may not apply in prisons due to overcrowding, confined spaces and overstretched healthcare resources. The Committee heard that, in typical situations, the use of pepper spray would dissipate a crowd, however in a prison setting, this would not be possible.

- Members asked what is driving the need for such a chemical irritant in prisons and what the evidence is saying regarding the impact of introducing such measures. Witnesses could not identify any particular reason why the introduction of such measures was being proposed, and IPRT pointed to reports from prison authorities in Britain that there is no evidence to suggest this reduces violence in prison.

- The IPRT also noted the lack of clarity in the legislation regarding the availability of incapacitant sprays among prison staff, noting that a superintendent must grant Gardaí permission for it to be used. The Committee acknowledges that operational guidelines on the use of incapacitant sprays in prisons must be explicitly clear, and that data should be recorded to ensure there is a robust mechanism for monitoring and reporting how and when it is used.

4. Remote hearings (Heads 5, 6, 7)

- In their respective opening remarks to the Committee, both IHREC and the Bar of Ireland addressed the issue of vulnerable people, such as those who may have cognitive difficulties, who suffer from addiction issues, or who are neurodivergent, facing difficulties during a remote hearing. Both organisations underlined its concerns about the impact of remote hearings on the fundamental right to a fair trial.

- The Committee heard from IHREC that remote proceedings can create a sense of isolation and make it difficult for an accused person to communicate confidentially and effectively with their legal team during a hearing. IHREC stated there is a risk that remote participation of an accused person appearing from custody could be prejudicial, undermining the presumption of innocence.

- The Bar of Ireland noted to the Committee its concerns about witnesses giving evidence from a remote location, which is uncontrolled, not secure and where there may be other individuals present and where they may be subject to interference or intimidatory behaviour.

- While Members agreed with the benefits outlined by the use of remote hearings in certain circumstances including efficiencies in the court process, they underlined the benefits of having witnesses in the room and that technical difficulties may arise. Members believed there were particular concerns with remote hearings in the context of criminal trials.

5. Proposals to allow for the direction to remove face coverings (Head 26)

- Echoing its statement in its submission, IHREC believed the proposal to give An Garda Síochána the power to direct a person to remove a face covering in a public place could have a chilling effect on the right to protest, highlighting in its view legitimate reasons, including health, religious, cultural or solidarity purposes, that people wear face coverings.

- Members had an exchange with IHREC relating to this Head during the hearing. Members spoke about people wearing masks intimidating local communities and being involved in criminal activity and antisocial behaviour, and raised the question as to whether there were any alternatives to the proposal in the legislation that might also tackle these issues.

- IHREC agreed that the issue of public order and crime in the city centre must be reviewed; however, it believed that the proposal in the General Scheme does not seem to address the matter, and that the provisions within the Head risks capturing another category of behaviour which should not be criminalised.

- Members underlined the lack of means through which An Garda Síochána can pursue those engaged in antisocial or criminal behaviour, and that if perpetrators put on a face covering, they would not be identifiable and there would be no consequences.

- While IHREC shared the sentiment that certain types of criminality that have a real effect on many communities are not being dealt with and don't have consequences, it did not agree that a lack of a law, specifically allowing the gardaí to direct people to remove face coverings, is the most important part of that problem, and pointed to resourcing issues as a part of the problem.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 102, 103 and 104 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

102.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

*(*a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(*b*) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(*c*) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 134(1); and

(*d*) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department, or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

103. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(*a*) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(*b*) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(*a*) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or
(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: Provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,
(b) Estimates for Public Services, or
(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 142, including the compliance of such acts with the principle of subsidiarity,
(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,
(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(*a*) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
(*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 139 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Powers of Committees.

104. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and
(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(*a*) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory instrument, or
(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and

(*b*) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(*b*) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of relevant meetings of the Council of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 204;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(*a*) State body within the responsibility of a Government Department or

(*b*) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(*a*) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 130(5)(*a*).

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

Attached are links to submissions received by the Committee from the following stakeholders:

- National Women's Council of Ireland
- Dr Susan Leahy
- Dublin Rape Crisis Centre
- The Courts Service
- One in Four
- Law Society
- Irish Penal Reform Trust
- Ms Hazel Behan
- Irish Council for Civil Liberties (ICCL)
- The Bar of Ireland
- Irish Human Rights and Equality Commission (IHREC)
- Mr Vivian Geiran
- Rape Crisis Ireland
- Lisa Murray, Paula Doyle
- Senator Lynn Ruane

[Submissions are available in the online version of the Committee's Report, which will be accessible at https://www.oireachtas.ie/en/committees/34/justice-home-affairs-and-migration/].

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