Submission by the Irish Penal Reform Trust on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025

23 June 2025

Irish Penal Reform Trust

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's principal independent nongovernmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. We advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through conducting research, campaigning, and changing attitudes.

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Introduction

1. The Irish Penal Reform Trust (IPRT) welcomes the opportunity to make a submission on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 ('the Bill').

2. IPRT is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. Our mission is to advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration.

3. This submission focuses on aspects of the Bill which relate to IPRT's work in the criminal justice system, in particular on sentencing reform and the introduction of incapacitant spray.

4. Separately, IPRT welcomes the amendment to section 99 of the Criminal Justice Act 2006 allowing for Governors to take recognisance which will allow for greater staffing efficiencies and reduce unnecessary escorted court trips which impinge on Prison Officers' time during a time of overstretched services in a prison overcrowding crisis.

5. IPRT is also concerned regarding the potential effects that remote hearings could have on the accused's right to a fair trial. Where a person is attending court from a prison, there is a risk that the presumption of innocence is interfered with. IPRT believes it is important to ensure adequate facilities are provided for in prison, which are non-descript and do not appear to be an obvious prison setting. The equipment used must also be fit-for-purpose to ensure that the person can fully participate in the remote hearing.

Head 20: Amendment of Firearms Act 1925

6. At Head 20, the Bill contains a provision to amend the Firearms Act 1925 to provide an exemption for prison officers to use incapacitant sprays in the course of their duties, where so specified by the Minister under the Prison Rules.

7. While all people in prison, including prison staff, have the right to a safe environment, IPRT strongly opposes the introduction of incapacitant spray for general use by Prison Officers in Irish prisons.

8. Incapacitant sprays, such as oleoresin capsicum spray (pepper spray) pelargonic acid vanillylamideor (PAVA spray), are chemical irritants designed to cause severe pain and inflammation of contaminated skin and tissue, primarily in the facial area and the respiratory tract. Studies have demonstrated that the use of chemical irritants can cause severe injury, permanent disabilities, and, in rare cases, even death.[1] At present, An Garda Síochána is the only body authorised to use incapacitant spray in Ireland,[2] in line with its *Incapacitant Spray Policy*.

9. Ireland is one of the few European countries where Prison Officers are not permitted to carry incapacitant spray or any other weapons.[3] To date Prison Officers have been able to de-escalate conflict and manage challenging situations without recourse to weapons and this should be viewed as an achievement of prison staff and the Irish Prison Service (IPS) in humane prison management. Therefore, any decision to introduce weapons into the prison environment should not be taken lightly.

10. All staff working in Irish prisons have the right to work in a safe environment and to return home unharmed at the end of each day, and IPRT is deeply concerned about reports of prison staff feeling increasingly unsafe in their day-to-day duties. However, **IPRT does not believe that arming Prison Officers with incapacitant spray will meaningfully address safety concerns within Irish prisons** and may even provoke tension and hostility towards prison staff, thereby undermining staff safety. Further, as an intervention specifically designed to cause severe pain, the use of incapacitant spray has significant impacts on the rights of prisoners, particularly on the right to be free from torture and inhuman or degrading treatment or punishment. Our concern with this proposal is, therefore, twofold: the potential for incapacitant spray to be

[1] Faculty of Forensic & Legal Medicine, *Irritant sprays: clinical effects and management* (2024) <https://fflm.ac.uk/wp-content/uploads/2025/01/Irritant-sprays-clinical-effects-and-management-Prof-J-Payne-James-December-2024.pdf>

[2] As provided for at section 2(3)(b) of the Firearms Act 1925.

[3] An exception to this is prison staff working in the National Violence Reduction Unit and the Prison Service Escorts Corps, who are issued batons as standard equipment due to the increased risk associated with both duties.

misused in a way that leads to ill-treatment in Irish prisons, and that the introduction of incapacitant spray is unlikely to contribute meaningfully to upholding staff safety and reducing prison violence. Each of these points is discussed in turn, below.

Incapacitant spray and human rights

11. The use of incapacitant spray engages a number of human rights protected under the European Convention on Human Rights (ECHR),[4] including the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment (Article 3) and the right to private life including physical integrity (Article 8). Where a right is limited or infringed upon, such as the right to physical integrity through the use of force in a custodial setting, this must be legal, there must be valid justification for the limitation (i.e. it must be necessary), it must be a proportionate response, there must be accountability, and it must be applied non-discriminatorily. These five principles form the basis for allowing any use of force (including the use of weapons) in Irish prisons.

12. IPRT is concerned about the potential for incapacitant spray to be misused if it were to be introduced, including in situations where it may be neither necessary nor proportionate. Such concerns have already been raised by the European Committee for the Prevention of Torture (CPT) in relation to the use of physical force in Ireland: in its seventh periodic visit report to Ireland (published in 2020), the CPT expressed concerns related to "a small number of officers [who] seem to be inclined to use more physical force than is necessary".[5]

13. In 2018, a six-month pilot programme to use PAVA spray was introduced in four English and Welsh prisons. Following the pilot, the UK NGO, the Prison Reform Trust (PRT) found in its analysis of data and the evaluation report provided to it by the Prisons Minister that one in three instances involved PAVA spray use without appropriate justification, and one in four involved its use where alternative interventions were available.[6] PRT also found that 24 per cent of instances involved unsafe

[4] Council of Europe, *European Convention on Human Rights*
[5] CPT, *Report to the Government of Ireland* (2020), CPT/Inf (2020) 37, <https://rm.coe.int/1680a078cf>
[6] Penal Reform Trust, *PAVA Spray in Prison: a Prison Reform Trust position paper* (2018), <https://prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/PAVA%20PRT%20position%20paper.pdf>

use, concluding that PAVA spray guidance had not been observed in 32 instances – almost two thirds of all instances of its use.

14. In its own review of the pilot programme, HM Prison & Probation Service's Operational Resilience and Response Unit found that some staff were developing an over-reliance on PAVA spray as a way of resolving conflict, rather than using other de-escalation and safety techniques.[7] Given the outcome of the UK pilot programme and existing concerns regarding use of force in Irish prisons, IPRT is concerned 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.

15. Further, given that incapacitant spray is specifically designed to cause severe pain, its use in some circumstances can amount to cruel, inhuman or degrading treatment or punishment, or even torture, prohibited absolutely by Article 3 of the ECHR[8] and a number of other human rights agreements Ireland is party to.[9] Notably, in *Tali v Estonia*, 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.[10]

16. The CPT, UN Committee against Torture (CAT), Office of the UN High Commissioner for Human Rights (OHCHR), and the UN Special Rapporteur on Torture have all reiterated the dangers inherent in the use of incapacitant spray, and have highlighted circumstances where its use may amount to ill-treatment or should otherwise be prohibited. These include when used against people with certain characteristics or vulnerabilities (including children, pregnant women, people with a severe learning disability or mental illness, and people with health issues that may be exacerbated by the use of incapacitant spray), or when used in cases of passive resistance or on people already under the

[7] *Ibid.*
[8] Article 3 – Prohibition of Torture of the ECHR states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
[9] Including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16), the Universal Declaration of Human Rights (Article 5), and the International Covenant on Civil and Political Rights (Article 7).
[10] European Court of Human Rights, Chamber, Application No 66393/10, 13 February 2014 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9290%22]}>

control of prison staff.[11] Further, the UN Special Rapporteur on Torture has stated that the use of otherwise permissible weapons "in order to intentionally and purposefully inflict pain or suffering on a powerless person, always amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment or even torture".[12] Similarly, the CAT has advocated for the use of incapacitant spray in places of detention to be restricted, and has called for its use to be prohibited in confined spaces and against vulnerable persons.[13] As such, given the very limited circumstances in which incapacitant spray can legitimately be used whilst complying with international human rights guidance, and the high likelihood of its misuse, IPRT maintains that other interventions must be considered to improve staff and prisoner perceptions of safety within prisons.

Effectiveness of incapacitant spray at improving safety concerns and reducing violence

17. The proposal to arm Prison Officers with incapacitant spray must be understood in the context of the current overcrowding crisis currently facing Irish Prison. On 23 June 2025, the prison system was operating at 117 per cent capacity, with 421 people sleeping on mattresses placed on floors.[14] This contravenes both the CPT's and the IPS' own safe operating capacities of 90 per cent and 95 per respectively.[15] Overcrowding has led to perceived safety concerns for Prison Officers and vulnerable prisoners, and the introduction of incapacitant spray is clearly a response to this and to calls from the Prison Officers Association to be provided with Personal Protective Equipment including incapacitant spray.[16]

[11] Office of the United Nations High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement* (2020) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf>
[12] United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 2017, A/72/178, < https://docs.un.org/en/A/72/178>
[13] United Nations, *Committee against Torture, Seventy-seventh session, Summary record of the first part (public) of the 2036th meeting* (2023), CAT/C/SR.2036 <https://digitallibrary.un.org/record/4017809/files/CAT_C_SR.2036-EN.pdf>
[14] See Irish Prison Service, *Prisoner Population on Monday 23rd June 2025* <https://www.irishprisons.ie/wp-content/uploads/documents_pdf/23-June-2025.pdf>
[15] Department of Justice, *Submission DJE 01212-23: Prison Overcrowding* (2024), p. 2 <https://www.iprt.ie/site/assets/files/7498/prison_overcrowding_response_group_report_web.pdf>
[16] Prison Officers' Association, *Assaults Have Become Part of Our Prison Culture* (2025) < https://poa.ie/assaults-have-become-part-of-our-prison-culture/>

18. However, notwithstanding reports of heightened safety concerns from prison staff, data released by the IPS indicates a 14 per cent decrease in prisoner on staff direct physical assaults between 2022 and 2023, and a further three per cent decrease between 2023 and 2024.[17] There was also a 25 per cent decrease in physical interventions (use of force) between 2023 and 2024.[18] Whilst data has not yet been published for the first half of 2025, the clear decrease in staff assaults raises questions as to the necessity and timing of this proposal.

19. Despite the decrease in staff assaults, however, IPRT notes the significant rise in prisoner on prisoner assaults, with an increase of 74 per cent between 2022 and 2023,[19] and a further 31 per cent increase between 2023 and 2024.[20] This is not unique to Ireland, as recent analysis released by the UK Ministry of Justice clearly links the rise in prisoner on prisoner assaults in English and Welsh prisons to overcrowded prison conditions. Its analysis shows that prisoners in overcrowded cells were **19 per cent more likely** to be involved in an assault over a 12-month period compared to those in non-overcrowded cells.[21]

20. In the face of overcrowded prisons and an increase in prisoner on prisoner assaults, IPRT is concerned that the introduction of incapacitant spray into Irish prisons will do little to solve safety concerns or reduce the incidence of these assaults. In its *PAVA in Prisons Project Evaluation Report,* HM Prison & Probation Service's Operational Resilience and Response Unit stated that it was unable to

[17] In 2022 there was a total of 128 prisoner on staff direct assaults, 110 in 2023, and 107 in 2024. See Irish Prison Service, *Table of assaults on prison staff and prisoners 2012 – 2023* <https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Table-of-assaults-on-prison-staff-and-prisoners-2012-%E2%80%93-2023.pdf> and Irish Prison Service, *Assaults on prison staff and prisoners 2023 – 2024* <https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Table-of-assults-on-prison-staff-and-prisoners-2023-2024.pdf>

[18] In 2023 there was a total of 118 physical interventions, and 89 in 2024. *Ibid.*

[19] In 2023 there was a total of 663 prisoner on prisoner direct physical assaults, compared with 380 in 2022. *Ibid.*

[20] In 2024 there was a total of 874 prisoner on prisoner direct physical assaults, compared with 663 in 2023. *Ibid.*

[21] Ministry of Justice, *Transparency data: The impact of overcrowding on assaults in closed adult public prisons* (2025) <https://www.gov.uk/government/publications/the-impact-of-overcrowding-on-assaults-in-adult-public-prisons/the-impact-of-overcrowding-on-assaults-in-closed-adult-public-prisons>

conclusively demonstrate that the use of PAVA spray **had any direct impact on levels of prison violence**.[22] The Irish Department of Justice's own *Incapacitant spray and the Irish Prison Service Policy paper* states that "International evidence also suggests that the number of 'use of force' incidents will increase when pepper spray is introduced",[23] seemingly counter to the policy aim of ensuring safer prisons. We are concerned that the introduction of incapacitant spray may even exacerbate prison violence by negatively impacting relationships and reducing trust between prisoners and Prison Officers and increasing reliance on the use of incapacitant spray, rather than verbal de-escalation and conflict resolution skills.

21. In order to ensure safe prisons that are free from violence against both staff and prisoners, the Department of Justice and the IPS must, as a matter of urgent priority, address the prison overcrowding crisis and implement effective policy solutions that will have a tangible impact on prison violence. This should include immediately reducing the number of people in prison, and ensuring all prisoners are accommodated in single-bed cells.

22. Further, there are a number of other measures and programmes that have a proven impact on reducing violence in prisons, including in the Irish context: for example, the Peer Mediation programme run by the Traveller Mediation Service, and workshops run by Alternatives to Violence Project Ireland. In addition to ensuring Irish prisons are operating at safe capacity levels, IPRT would encourage the Department of Justice and IPS to undertake research into violence reduction measures, including, for example, enhanced staff training in de-escalation and conflict management, that IPRT maintain would have a greater impact on the safety of all people in prison than the introduction of incapacitant spray.

IPRT recommends that Head 20 is removed in full and that Prison Officers are not armed with incapacitant spray.

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[22] HM Prison & Probation Service, *PAVA in Prisons Project Evaluation Report* (2018), p. 1 <https://prisonreformtrust.org.uk/wp-content/uploads/2022/02/2018.11.20-Rory-Stewart-to-PD-PAVA-with-evaluation.pdf>

[23] Department of Justice, *Incapacitant Spray and the Irish Prison Service: Policy paper* (2024), p 16 <https://s3.documentcloud.org/documents/25921413/department-of-justice-briefings-on-prison-overcrowding-and-use-of-personal-protection.pdf>

Head 25: Amendment of Criminal Justice (Community Service) Act 1983

23. IPRT welcomes the proposed reforms to community service orders and the expansion of their application. The community service order ('CSO') was introduced to Ireland in 1983 as an alternative to custody in order to address concerns relating to prison overcrowding and rising crime rates.[24] IPRT has long campaigned for the increased use of non-custodial sentencing options to tackle the overcrowding crisis and reduce the use of short-term custodial sentences, which can have long-lasting negative effects, including disruption to family relationships, contact with social or community services, and loss of employment. We believe this Bill takes us one step closer to placing the principle of prison as a last resort on statutory footing.

24. Community service orders, when used effectively, can benefit the individual and broader society through participation in the community, improving self-esteem and maintaining links with families and support networks. However, where used ineffectively, community service orders can have low rates of completion and contribute to the cycle of offending. Research has shown that that the use of community service orders can address recidivism, however it must go hand in hand with access to supports, services and employment.[25] In 2021, the Central Statistics Office statistics on recidivism demonstrated that almost 45 per cent of those who served a prison sentence re-offended within a one-year period, compared with 29 per cent for those who served their sentence in the community.[26]

25. While an increased use of community-based sanctions is a welcome step, IPRT has concerns regarding the practicality of serving long community sentences, and the type of activities being prescribed. A 2022 Probation Service report recommended that community service policy, practice and structural innovations are informed by a tripartite strategy that advances the principles of desistance, restorative justice and social justice and that gaps in the options of community-based

[24] Eoin Guilfoyle, 'What Exactly is a Community Service Order in Ireland?' (2017) 14 Irish Probation Journal 189.
[25] Review of Policy Options for Prison and Penal Reform 2022–24.
[26] Central Statistics Office, Prison Re-offending Statistics (2021).

sanctions are identified and analysed by the Probation Service.[27] Community service orders should be targeted at addressing the underlying issue connected to the offence. For example, there is a need for more therapeutic options in community sanctions for those who have been convicted of minor drugs offences, or have addiction issues connected to their offending behaviour. There are also barriers to people completing their community service hours, people should be supported to do so with care responsibilities, access to childcare and engagement in employment accounted for and accommodated. Community service orders should be proportionate and be made with the practicalities of their completion in mind.

26. IPRT in particular welcomes the obligation on the court to provide reasoning for its decision to not grant a community service order. A 2024 Department of Justice report looking at judicial perspectives on community service orders found that the Criminal Justice (Community Service) (Amendment) Act 2011 has not had the 'desired policy effect' of increasing the use of community service orders.[28] While research demonstrates that there was an increase in community service orders for non-payment of fines following the Fines (Payment and Recovery) Act 2014 (discussed below), there is no evidence that the 2011 Act increased the number of community service orders as an alternative to short prison sentences at first instance. The report includes judicial testimony reflecting their understanding that the impact of the 2011 Act on sentencing practices is limited to the requirement to consider a community service order. IPRT welcomes the obligation on the court to provide reasoning as a step towards reaching the policy objective of the 2011 Act, and recommends that the reasoning be collected as a dataset so that trends and patterns in sentencing can be monitored and inform any further legislative proposals.

27. IPRT is also concerned that community service orders may be used in place of other non-custodial sanctions, such as fines. Fines are more frequently used in summary offences, and the commencement of the

[27] Dr Louise Kennefick, Dr Eoin Guilfoyle 'An Evidence Review of Community Service Policy, Practice and Structure', The Probation Service (November 2022).
[28] Dr Niamh Maguire, Prof Nicola Carr 'Community or Custody? A Review of Evidence and Sentencers' Perspectives on Community Service Orders and Short-Term Prison Sentences', Department of Justice (November 2024).

Fines (Payment and Recovery) Act 2014 saw the introduction of options available to judges where there has been failure to pay a fine, including community service orders. In a 2021 evidence review published by the Probation Service,[29] it was found that there was an increase in the number of community service orders issued following the commencement of the Act in 2016. This legislative framework establishes a sliding scale, whereby at first instance the penalty is a fine, with non-payment of that fine resulting in a community service order. IPRT believes this model should not be interfered with and that all possible alternatives to imprisonment should be considered, including Probation Orders as well as suspended sentences where proportionate and appropriate.

28. IPRT recommends an amendment to Head 25 to ensure that there is proportionality between the custodial sentence and the community service order hours. Without this, there may be unintended consequences where a person convicted of an offence which would have garnered a lower number of hours before the introduction of this provision would then be subject to higher hours of community service.

IPRT recommends that Head 25 is amended to ensure proportionality in the calculation of community service order hours.

Conclusion

29. We hope that the Committee will find this submission useful in its pre-legislation scrutiny process. While IPRT is concerned about the proposed introduction of incapacitant spray, we also acknowledge the progress this Bill would make in extending the use of community service orders with the intention of reducing the number of people in prison on sentences of less than two years. In particular, judges having to provide reasons will provide a solid evidential basis to inform future work in this area.

30. Finally, IPRT reiterates our willingness to further assist the Committee in its work on this Bill and would very much welcome the opportunity to meet with the Committee to discuss the Bill in further detail.

[29] 'An Evidence Review of Community Service Policy, Practice and Structure', Probation Service (November 2022).