Overview of UNCRPD Article 13 in Ireland

Access to Justice

October 2022



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# Background to the UNCRPD Article review papers

This paper is one in a series which the National Disability Authority (NDA) is developing on individual United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) articles. These papers detail the main data available relevant to specific Articles and provide an overview of key policies, programmes, services, supports and data that exist in the Irish context. They are not a critique of what is currently in place but rather a record of what exists. Nevertheless, there are instances where certain gaps or concerns are highlighted, including those advised by the NDA or other stakeholders.

These papers were primarily developed through desk research. However, the papers were also informed by the NDA’s own work, updates and discussions at Departmental Disability Consultative Committees, the National Disability Inclusion Strategy Steering Group, and other relevant committees. They were also informed by interactions with the Disability Stakeholders Group and with persons with disabilities, particularly through participation on a range of working and advisory groups across Government Departments on areas related to NDIS actions. Given their factual nature, a more direct consultation process with persons with disabilities was not conducted. However, the NDA conducts periodic consultations on issues related to articles of the UNCRPD and seeks to include the lived experience of persons with disabilities individually and through their representative bodies in our work.

The purposes of the papers are multiple. They were developed initially to support the development of the State Party report to the UNCRPD Committee. In line with the NDA’s anticipated new statutory function under the UNCRPD, they are also intended to be useful to support the development by the Irish Human Rights and Equality Commission (IHREC) of the State’s parallel report to the UNCRPD Committee. They will also be used internally as reference papers within the NDA. The NDA has published these documents on our website to make them available to a wider audience to support any work underway to develop shadow reports on implementation of UNCRPD in Ireland.

Due to the changing nature of policies, programmes, services, supports and data these reports will date and we will endeavour to update them periodically to reflect any changes. The papers are not intended to be exhaustive but seek to provide a broad overview of the main issues of relevance to each article.

# Introduction

Ireland ratified the UNCRPD in 2018. Article 13, which focuses on equal access to justice, involves the removal of barriers to ensure access to legal proceedings to seek and obtain appropriate remedies on an equal basis with others. The Article also seeks to promote the involvement and participation of persons with disabilities in the administration of justice, and the appropriate training of persons working in the field of justice.

Following the Convention text below, this paper examines the legislation, policies and services in place for disabled persons accessing justice. It also looks at data available to give further context to the realisation of this Article in Ireland. Article 12, Equal recognition before the law, has some overlap with Article 13 particularly in relation to capacity. A separate paper on Article 12 will be developed over the next year.

# UNCRPD context

## UN Convention text

UNCRPD Article 13 (Access to Justice) states that

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The UNCRPD includes economic, social, cultural and civil and political rights. States Parties that ratify the Convention commit themselves to immediate delivery of civil and political rights, and to progressive realisation of social and economic rights. Article 13 is primarily a civil and political right, which should be delivered as soon as practicable.

## Comments from the Committee on the Rights of Persons with Disabilities

In its Concluding Observations following an examination of a State Party, the Committee on the Rights of Persons with Disabilities frequently comments on the “lack of procedural and age-appropriate accommodations” in judicial proceedings for persons with disabilities. Other comments the Committee has made repeatedly include:

* The lack of training for the judiciary, lawyers and other members of the judicial system
* The absence of accessible measures of communication such as sign language, Braille or easy read documents
* The lack of procedural accommodations in States Parties’ legal systems
* Reasonable accommodation is referred to many times by the Committee to ensure accessible and non-discriminatory access to justice
* Accommodation should also be age-specific and gender-appropriate to combat a lack of access to the justice system faced by women and girls with disabilities
* While training of prison staff is extensively discussed in a number of Concluding Observations, physical and information barriers for persons with disabilities in prisons do not receive much attention

Interestingly, the Committee’s focus is very much on the court system, as opposed to quasi-judicial systems. In recent years, the Committee has often referred to Target 16.3 of the Sustainable Development Goals, which obliges countries to“Promote the rule of law at the national and international levels, and ensure equal access to justice for all”.[[1]](#footnote-1)

## International Guidance

In 2020, the UN High Commissioner on Human Rights and the UN Special Rapporteur on the Rights of Persons with Disabilities published the ‘International Guidelines and Principles on Access to Justice for Persons with Disabilities’.[[2]](#footnote-2) This document was drafted following consultation by the Special Rapporteur and Office of the High Commissioner with an expert group made up of UN entities, regional mechanisms, national justice systems, judicial academies, training centres, civil society and academia.

Following this consultation, the Special Rapporteur commissioned a study aiming to identify relevant principles, interventions and strategies to ensure effective access to justice of persons with disabilities on an equal basis with others. The study maps legislation, policy and practice developed or implemented at national, regional and international level to improve access to justice of people with disabilities. It provides a systematisation of all the different elements that would make a system CRPD-compliant and disability-inclusive. The draft guidelines and principles were drafted on foot of this consultation and study.

The document includes 10 principles and provides guidance on what countries should do to ensure implementation of those principles. The principles are as follows:

1. All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability
2. Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
4. Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.
5. Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
6. Persons with disabilities have the right to free or affordable legal assistance.
7. Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.
8. Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.
9. Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.
10. All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

## Indicators

The European Union worked with the Office of the High Commissioner for Human Rights on a project entitled ‘Bridging the Gap’.[[3]](#footnote-3) The aim of this project is to support the implementation and the monitoring of the UNCRPD, and to contribute to the attainment of the Sustainable Developments Goals inclusive of disabled persons. The project aims to develop tools that promote the rights, participation and inclusion of persons with disabilities in the implementation of the SDGs, in line with the CRPD. One such tool that has been developed is a suite of human rights-based indicators on the UNCRPD.

There are 22 illustrative indicators for the effective implementation of Article 13, including structure, process, and outcome indicators. Four of these indicators relate to the section of Article 13 that obliges a State Party to ensure participation of persons with disabilities in the justice system, while the other 18 indicators relate to ensuring equal access to the justice system.

# Legislative and Policy Context in Ireland

Below is an outline of various pieces of Irish and international legislation and policy that relate to the realisation of Article 13 of the UNCRPD.

In considering the matter of access to justice by people with disabilities, it is useful to consider the 1996 Report of the Commission on the Status of People with Disabilities, which called for a range of measures to ensure the right of access to the law and the legal system for all Irish citizens. The Report suggested that such measures include:

* An action programme by the Department of Justice to make all courts fully accessible to people with disabilities,
* Consultation with the legal professional bodies in relation to access for people with disabilities to legal advice and to training as lawyers
* The provision of all public documents in a range of appropriate formats, including large print, braille and computer disc, and
* A general raising of awareness amongst the legal professions towards disability issues.

An assessment of whether these suggestions have been implemented, and if so, to what extent, has not been carried out.

## Irish legislation and policy

The list of legislation and policy outlined below is not exhaustive.

### Bunreacht na hEireann

Article 40.1 of the Irish Constitution enshrines a right for all citizens to “be held equal before the law”.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

### Criminal Evidence Act 1992

The Criminal Evidence Act 1992 provides for the following important support measures for witnesses for certain offences under Part III of the Act, including:

* The use of live video link for vulnerable witnesses
* The use of intermediaries
* The use of recorded testimony

In addition, victims have available to them the optional use of court accompaniment through victim support services, a Garda liaison officer, and use of the witness suite within the Criminal Courts of Justice.

### Criminal Justice (Hate Crime) Bill 2021

The General Scheme of the Criminal Justice (Hate Crime) Bill was approved at Cabinet and published in April 2021. The Bill was referred to the Oireachtas Joint Committee on Justice for pre-legislative scrutiny, which took place in November 2021 and the report of the Committee was published in April 2022.[[4]](#footnote-4) The General Scheme has been referred to the Office of Parliamentary Counsel for drafting. It is intended that disability will be a protected characteristic under this proposed legislation. A report on the public consultation ‘Legislating for Hate Speech and Hate Crime in Ireland’ and the submissions received are available on the Department of Justice website.[[5]](#footnote-5)

To assist with preparation for the introduction of this legislation, An Garda Síochána’s Diversity and Integration Strategy 2019-2021 includes several strategic priorities whose implementation has resulted in the following relevant considerations:

* The introduction of a working definition of a Hate Crime / Hate Incident, which includes disability as a protected characteristic
* The development of Policy and Procedures - Responding to Hate Crime and Non-Crime Hate Incidents to set out the processes to be followed when responding to Hate Crimes and Hate Incidents and to establish the roles and responsibilities associated with recording, investigating and prosecuting Hate Crime.
* The development of an Online Hate Crime Training, which includes contributions from advocates on behalf of disability-related Hate Crime
* The launch of an Online Hate Crime Reporting mechanism in July 2021, available via www.garda.ie
* The establishment of a National Diversity Forum to monitor and review the implementation of the strategy, and to act as a critical friend. The Forum is made up of 15 representatives of various communities (including a disability representative) and other key stakeholders.

### Criminal Justice (Victims of Crime) Act 2017

This Act transposes the EU Victims’ Rights Directive, and broadly mirrors the content of the EU legislation. It sets out the minimum rights, supports and protections for victims of crime, including, in Part 2:

* The right to be given detailed information about the criminal justice system
* The right to be given information on victim support services
* The right to be kept informed of the progress of the investigation and any court proceedings
* The right to have protection needs assessed and have measures put in place to stop further victimisation and intimidation
* The right to be told of a decision not to prosecute and the right to ask for a review of that decision
* The right to be given information in clear language and to have access to interpretation and translation services if needed.

Section 22 of the Act stipulates that communication with a victim must be made in ‘simple and accessible language’, and have regard to the personal characteristics of the victim, including any disability. Section 30 amends the Criminal Evidence Act 1992 to expand upon the current use of video link evidence, intermediaries and screens by permitting their use in circumstances where a victim has special protection needs and having regard to the victim’s vulnerability to repeat and secondary victimisation, retaliation and intimidation. The Act places obligations on key state agencies, such as An Garda Síochána, the Director of Public Prosecution, the Courts Service and the Irish Prison Service.

Section 15(2) outlines a list of factors which An Garda Síochána should have regard to when conducting an individual assessment of the victim. One such factor is “the personal characteristics of the victim, including his or her age, gender, gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, communications difficulties…” Another factor is ‘whether the alleged offence appears to have been committed with a bias or discriminatory motive, which may be related to the personal characteristics of the victim [outlined above]”. Finally, An Garda Síochána must consider the “particular vulnerability of […] victims with disabilities.”

### S.I. No. 119/1987 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987

The Custody Regulations legislate for support for people who are vulnerable because they are under 18 years of age or over 18 years of age and ‘are or are suspected to be mentally handicapped’. This support comes from another person who is variously referred to in the Custody Regulations as an ‘adult’, a ‘responsible adult’ and an ‘appropriate adult’.

The term ‘appropriate adult’ is used in two of the Custody Regulations. Firstly, Regulation 12(8) states that the written consent of an appropriate adult is required before a person under the age of 18 and who is deaf can be interviewed without an interpreter. Regulation 22 of the Custody Regulations requires that the provisions of the regulations that apply to children also apply to a person of any age who is or is suspected to be ‘mentally handicapped’. This regulation goes on to specify that the responsible adult referred to in Regulation 13 should ‘where practicable be a person who has experience in dealing with the mentally handicapped’.

It should be noted that these provisions of the Custody Regulations- which group children and persons with disabilities together - are not aligned with the UNCRPD, which explicitly states that ‘age-appropriate’ accommodations should be made available in order to ensure equal access to justice. This legislation continues to use out-dated terminology which uses the phrase ‘mentally handicapped’.

### Criminal Law (Sexual Offences) Act 2017

Persons with disabilities are covered by criminal law in the same way as other citizens, but in some pieces of legislation, such as Part 3 of the 2017 Act, provisions are included to provide extra protection for people with mental or intellectual disabilities.

### Criminal Procedure Act 2021

Section 6 of this Act provides for the use of preliminary trial hearings, where such a hearing would be conducive to the expeditious and efficient conduct of the proceedings. In other jurisdictions, where the use of an intermediary is more established, preliminary trial hearings play an important role in ensuring the judge and other legal professionals are made aware of the needs or special requirements of the accused person.

### Domestic Violence Act 2018

This Act consolidates previous domestic violence legislation. It recognises and attempts to address the fact that violence and abuse can often occur in situations and locations hidden from public view, such as the home. It provides a range of safeguarding measures that aim to deter and prohibit the continuation of violence and abuse, and it introduces the criminal act of coercive control.

However, the focus of the Act is primarily on violence perpetrated by intimate partners and provides inadequate legislative protection for people who are subject to abuse or coercive control from an extended family member or friend. Safety orders can only be made against a spouse or civil partner, a parent or a person residing with the victim. Safety orders cannot be made against children of the victims, siblings, extended family members nor non-family persons unless they are living with the victim. A person living with the victim on a contractual basis cannot be subject to a safety order.

### Irish Sign Language Act 2017

Section 4 of this Act enshrines a person’s right to use Irish Sign Language in court. The Act states that every court has the duty to do all that is reasonable to ensure that any person appearing in court or giving evidence, may choose to communicate in Irish Sign Language. It is the court’s responsibility to make available such facilities for the simultaneous or consecutive interpretation of proceedings into Irish Sign Language.

### Mental Health Act 2001

Section 12 of the Mental Health Act 2001 gives a member of the Garda Síochána the power to take into custody a person who is suffering from a ‘mental disorder’ and, as a consequence, is likely to cause immediate and serious harm to themselves or others. This provision has been criticised as, under it, people taken into Garda custody for this reason must be brought to a Garda station rather than a medical facility, even though they may not have committed a criminal offence.

In its 2020 Annual Report, the Mental Health Commission noted that there were 1,919 admission orders for involuntary detention from the community in 2020, the largest percentage of which (32%) were initiated by An Garda Síochána. The Mental Health Commission expressed concern at this development, stating that applications by authorised officers had decreased and applications by An Garda Síochána had increased for the second year in a row.[[6]](#footnote-6)

Both the Mental Health Commission in its Annual Report, and the Expert Review Group, in its 2015 review of the Mental Health Act, recommended that all applications be made by authorised officers. Amending legislation is currently under development by the Department of Health.

### Assisted Decision-Making (Capacity) (Amendment) Bill 2022

The 2022 Amendment Bill intends to amend the Juries Act 1976 to allow persons who are deaf and who require the services of an interpreter to be eligible for jury duty. The Bill also somewhat amends the grounds on which a person with a mental health issue may serve on a jury.

### National Disability Inclusion Strategy 2017-2022

The National Disability Inclusion Strategy 2017-2022 (NDIS) is the key framework for policy and action to address the needs of people with disabilities. Its overarching objective is to improve the lives of people with disabilities both in a practical sense, and also in creating the best possible opportunities for people with disabilities to fulfil their potential. It contains several actions relating specifically to improving access to justice for disabled persons.

* Action 8: We will implement proposals, once agreed by Government, arising from recommendations of the Interdepartmental Group tasked to examine issues relating to people with mental illness who come into contact with the criminal justice system.
* Action 14: We will implement the EU Victims of Crime Directive. The transposing Bill will take account of the specific needs of vulnerable witnesses, and provide a framework for targeted actions to be developed (e.g. statutory guidance for assessment of vulnerable witnesses.
* Action 15: We will ensure that the needs of people with disabilities are central to our review of the Prohibition of Incitement to Hatred Act 1989 and in our development of legislation on hate crime. This will include the development and implementation of guidelines for Gardaí and other relevant personnel in relation to engagement with people with disabilities.
* Action 18A: We will ask the Policing Authority to monitor the actions taken by An Garda Síochána to make its services and information accessible to, and supportive of, people with disabilities.
* Action 18B: We will integrate a focus on the needs of people with disabilities in our initiatives to enhance access to justice.

In respect of Action 8, a High Level Taskforce to consider the mental health and addiction challenges of people interacting with the criminal justice system was established by Minister Helen McEntee in April 2021. The Taskforce aims to progress the Government’s commitment to ensure the critical mental health needs for people in prison are met, addiction treatments are provided and primary care support is available on release.

The Taskforce is chaired by former Minister Kathleen Lynch and its membership includes representatives from the HSE, Central Mental Hospital, the Irish Prison Service, the Probation Service, An Garda Síochána, the DoJ, DHLGH and DCEDIY. The Taskforce met five times since its establishment and established three expert subgroups on diversion, prison and central mental hospital capacity and community through-care. Its final report, including a number of recommendations from each subgroup, is expected to be approved by Cabinet in late September 2022.[[7]](#footnote-7)

Updates on several of the others actions are noted in the NDA’s annual assessment of progress under the NDIS.[[8]](#footnote-8)

### Department of Justice Statement of Strategy 2021-2023

The second goal of the Department of Justice Statement of Strategy 2021-2023 is to improve access to justice and modernise the courts system.[[9]](#footnote-9) Its accompanying Action Plan for 2021 included a number of actions in that regard, such as a commitment to reviewing the civil legal aid scheme. The establishment of a working group to lead this review was announced in June 2022.[[10]](#footnote-10) The Justice Plan 2022 continues these commitments and includes the reform of the family justice system, including the establishment of a family court, and a modernisation of the Courts Service.[[11]](#footnote-11)

The Courts Service is undertaking a ten-year Modernisation Programme, which aims to bring new digital technology and modern ways of working to the administration of justice, making access to justice easier and quicker to navigate, better responding to the needs of court user. It has engaged with stakeholders and users in this regard.

### Criminal Justice Sectoral Strategy

The Criminal Justice Sectoral Strategy 2022-2024 sets out a vision of a joined-up criminal justice system that protects human rights, builds public confidence and trust, and works together to improve efficiency and the experience of those who rely on the relevant stakeholders to support a safe, fair and inclusive Ireland. It contains obligations and goals for a number of justice agencies, including the Department of Justice, An Garda Síochána, the Courts Service, Irish Prison Service, Legal Aid Board, Office of the DPP, Irish Probation Service and Forensic Service Ireland.

The Strategy sets out five strategic pillars - strengthening strategic collaboration; improving the user experience; data as a driver; building workforce capability; and increasing public understanding of the work of the sector. Structured around those five strategic pillars, an implementation plan contains 58 actions to be delivered over the lifetime of the Strategy.

### Youth Justice Strategy

The Youth Justice Strategy 2021-2027[[12]](#footnote-12) aims to provide services to children and young people who come into contact with the criminal justice system or who are in situations that may result in offending behaviour in order to help them develop and stop offending behaviours. The Strategy is conceived largely as a developmental framework, which provides a starting point for a range of actions and initiatives. It is grounded on child welfare principles, deriving in particular from the UN Convention on the Rights of the Child. The Objectives in the Strategy are premised on the need to maximise opportunities to promote positive behavioural change, and it includes a wide range of issues relevant to children and young people at risk of coming into contact with the criminal justice system, including:

* early intervention and preventative work
* family support
* diversion from crime
* court processes
* supervision and support in the community
* detention and support post release

### Victims Charter

The Department of Justice published a new and expanded Victims Charter in 2020.[[13]](#footnote-13) The updated Charter takes account of the Criminal Justice (Victims of Crime) Act 2017, which sets out the rights of victims of crime, and seeks to assist victims of crime in locating services available to them. The Charter was developed by the Department of Justice in consultation with all relevant State agencies and organisations including An Garda Síochána, the Courts Service, the DPP, as well a wide range of non-governmental organisations and groups representing victims themselves.

The Victims Charter outlines the rights of victims throughout the different stages of the criminal justice system, following the reporting of a crime. It provides information on the services available to victims and sets out:

* The role of each relevant service
* What victims can expect from that service (the services they offer victims and how they can expect to be treated)
* What a victim can do if a service does not meet their expectations

The Charter recognises that reporting a crime may be a daunting prospect and for many people it might be the first time they have had to interact with the criminal justice system. The Charter provides information on every step a victim may encounter, including:

* How to report a crime to An Garda Síochána;
* What to expect during the investigation;
* How a decision is made to whether or not to prosecute;
* What to expect from the court process;

The Charter outlines the supports that are available for victims at each point throughout the criminal justice process, including after a trial has ended. Information is provided on the various organisations offering support and the options for recourse a victim has if they feel they have not been treated appropriately. The Charter website also has a dedicated section providing specialist information for victims of sexual offences.

The development of the Victims Charter and its associated website is seen as a key deliverable in ‘Supporting a Victim’s Journey’[[14]](#footnote-14) which sets out a detailed roadmap for implementing the recommendations of the O’Malley Report (Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences).[[15]](#footnote-15)

### Supporting a Victim’s Journey

On 7 September 2018, the Terms of Reference for the review of the investigation and prosecution of sexual offences were published. This Review was prompted by widely shared concerns about the experiences of vulnerable witnesses in criminal proceedings for sexual offences. The Review was designed to examine key aspects of the criminal justice process as it relates to vulnerable witnesses and to identify ways which the treatment of such witnesses might be improved. Tom O’Malley BL was appointed to chair the working group tasked with undertaking the review. The Review was published on 6 August 2020 and contains 52 actions under four overarching recommendations:

* Promoting better awareness of victims’ rights legislation;
* Promoting education about the meaning and importance of consent;
* Improving inter-agency co-operation and exchange of information, especially in relation to services for victims; and
* Ensuring consistency in service delivery.

An implementation group was created to consider the recommendations contained in the review and the necessary steps required to effectuate their implementation. The implementation plan, ‘Supporting a Victim’s Journey’ was published in October 2020. The Minister for Justice secured €2.3 million in budget 2021 to fund the reforms outlined in Supporting a Victim’s Journey

Key actions within the implementation plan include:

* A range of initiatives will be taken to educate people around the meaning of consent including a major awareness campaign, dedicated website and a number of actions within primary, secondary and third level education.
* Measures to raise awareness of victims’ rights provided for in law by the Victims of Crime Act 2017.
* Support for the provision of intermediaries, including by developing a training and accreditation framework for intermediaries and increased grant funding for court accompaniment and other supports for victims.
* New legislation to give effect to the recommendations on preliminary hearings to help reduce delays which will be published before the end of December 2020.

A number of sub-groups were subsequently established by the Department of Justice to develop the implementation of a number of the key actions. The sub-groups brought together relevant stakeholders to examine the following topics:

#### A review of the supports and funding of civil society organisations providing frontline services/map the journey that faces the victim (these will be linked and carried out as one subgroup)

This group mapped the victim’s journey, identifying the types of support the victim had received through all stages of the criminal justice system and identifying any gaps in support through the process. To support this a funding call was placed in December 2020 for frontline support services for domestic abuse, sexual crime, human trafficking and victims of crime generally to map where these services are available. Seventy organisations submitted applications for proposed funding in 2021, and the application were examined to ensure appropriate coverage, across geographic areas and categories of victims, is available. An expert consultation analysed and categorised the supports provided with grant funding, in order to identify gaps in supports and unmet needs of victims. The Department then contacted identified NGOs to arrange to distribute extra funding to provide additional emergency services.

The NGOs who sat on this subgroup were asked to examine the journey of a typical client or user of their services and map their journey. This was intended to provide the Department with an understanding of the full complexity of the journeys that face individual victims. The NGOs made submissions setting out the journey faced by a victim of domestic, sexual or gender-based violence and a victim of trafficking.

#### The use of Intermediaries and establishment of a pilot

The O’Malley Report commits to the introduction of intermediaries whose role is to assist in the communication process, whether between lawyers and witnesses during trial or, earlier, during police interviews.  In this respect, their role is somewhat akin to that of an interpreter and the intermediary’s loyalty is to the court. This sub-group was tasked with:

* Developing a framework for the operation and training of intermediaries
* Managing/supervising the roll-out of the pilot
* Managing/supervising the long-term goal of a full roll out across the State including management of the intermediaries register

In May 2022, the Department of Justice announced that the University of Limerick had been successful in tendering for the development of an accredited post-graduate course to train intermediaries. The one-year Professional Diploma in Intermediary Studies will commence in September 2022.

#### Development of an approach to meeting training needs of a wide range of front-line staff and professionals, including legal professionals

The role of this sub-group is to:

* Design a framework for provision of a range of training and awareness raising measures for those engaging with victims of sexual crime and vulnerable witnesses, and the categorisation of headings for specific types of training needed;
* Identify gaps in current provision; and
* Recommend measures to meet the needs and gaps identified.

The range of training needs to be considered include training for members of An Garda Síochána, legal professionals and other front-line staff. The Department has engaged a consultant to conduct a mapping exercise to establish what training is already being provided.

### Review of the Administration of Civil Justice

In March 2017, a Review Group was established to review and reform the administration of civil justice in the State.[[16]](#footnote-16) Justice Peter Kelly’s report featured a paragraph on access to civil justice for persons with disabilities, which noted that Courts Service policy requires that all newly constructed or refurbished buildings wholly reflect the specific requirements and objectives of relevant law and Universal Design good practice.

## International law and policy

### European Convention on Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR) is the basis of the European human rights system.[[17]](#footnote-17) It was drafted by the Council of Europe in 1950 and has been in force since 1953. It was the first regional treaty designed to protect human rights, democracy and the rule of law. All 47 Council of Europe Member States have signed the Convention. Ireland ratified the ECHR in 1953.

The ECHR does not specify any particular rights for persons with disabilities, but emphasises in Article 1 that contracting states must “secure to everyone within their jurisdiction the rights and freedoms defined in … this Convention.”

Article 6 (Right to a fair trial) of the ECHR states:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The ECHR was transposed into Irish law through the European Convention on Human Rights Act 2003.

### EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights was declared in 2000, and became legally binding on the European Union with the entry into force of the Treaty of Lisbon in December 2009.[[18]](#footnote-18) The Charter brings together the most important personal freedoms and rights enjoyed by citizens of the EU into one legally binding document, under six titles including Dignity, Freedoms, Equality, Solidarity, Citizens’ Rights, and Justice.

The Charter contains four Articles relevant to UNCRPD Article 13, including Article 47 (Right to an effective remedy and to a fair trial), 48 (Presumption of innocence and right of defence), 49 (Principles of legality and proportionality of criminal offences and penalties) and 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence).

### International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty that commits States Parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.[[19]](#footnote-19)

It was adopted by United National General Assembly Resolution 2200A (XXI) on 16 December 1966 and entered into force on 23 March 1976. As of September 2019, the Covenant has 173 parties. Ireland ratified the ICCPR in December 1989.

Compliance with the ICCPR is monitored by the United Nations Human Rights Committee, which reviews regular reports of States Parties on how the rights are being implemented.

Article 14 of the ICCPR states that

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

### EU Victims’ Directive

The EU Victims’ Directive establishes minimum standards on the rights, support and protection of victims of crime.[[20]](#footnote-20) The Directive aims to ensure that all victims of crime receive appropriate information, support and protection, are able to participate in criminal proceedings and are recognised and respected.[[21]](#footnote-21)

The Directive sets out broad provisions on the right to access information. Article 3 requires Member States to take appropriate measures to ensure effective communication with victims. Such communication should be in a simple language and with a consideration of personal characteristics of the victim, including any disability. Article 7 provides for a right to interpretation and translation.

### EU Strategy for the Rights of Persons with Disabilities 2021-2030

In March 2021, the European Commission adopted the Strategy for the Rights of Persons with Disabilities 2021-2030.[[22]](#footnote-22)

The Strategy builds on the results of the previous European Disability Strategy 2010-2020, and it gives due consideration to both the UN Convention on the Rights of Persons with Disabilities (which the EU ratified in 2011) and the United Nations 2030 Agenda for Sustainable Development. It contains a number of priorities, flagship initiatives, and opportunities for Member States to work together to improve the lives of disabled people across the EU.

Under the pillar of ‘Equal Access and Non-Discrimination’ in the new Strategy, Section 5.1 looks at ‘Improving access to justice, legal protection, freedom and security’. The Strategy recognises both legal and practical barriers to persons with disabilities accessing justice.

The European Commission has developed initiatives around the digitalisation of justice systems, protection of victims’ rights and training for professionals. Digitalisation of judicial systems is essential for improving access to justice, including for persons with disabilities when accessibility is provided. The Commission notes that women with disabilities are two to five times more likely to face violence than other women and will give this due regard in its initiatives. It will also give special consideration to persons with disabilities living in institutions. Within its training strategy for justice professionals, the Commission will focus on the protection of individuals’ rights in the digital space and to upscale training of legal professionals on EU disability legislation including the UNCRPD.

Highlighted initiatives under this pillar commit the Commission to:

* Work with Member States to implement the 2000 Hague Convention on the international protection of vulnerable adults in line with the UNCRPD, including by way of a study on the protection of vulnerable adults in cross-border situations, notably those with intellectual disabilities, to pave the way for its ratification by all Member States;
* Launch a study on procedural safeguards for vulnerable adults in criminal proceedings, and assess the need for legislative proposals strengthening the support and protection of vulnerable adults who fall victims of crime, in line with the EU Victims’ Rights Strategy (2020-2025);
* Provide guidance to Member States on access to justice for persons with disabilities in the EU, building on international guidance provided by the United Nations;
* Develop measures to support Member States in boosting the participation of persons with disabilities as professionals in the justice system and collect good practices on supported decision-making.

# Procedural measures and supports

## Intermediaries

In 2020, the National Disability Authority (NDA) published an Independent Advice Paper on the use of Intermediaries in the Irish justice system targeted at implementing a model of supports for persons with disabilities who have communication difficulties, building on research and practice in other jurisdictions and discussion with a wide range of stakeholders in the Irish justice system.[[23]](#footnote-23) The role of the proposed intermediaries would be to enable the provision of accommodation to people who may have communication difficulties affecting their ability to give evidence and to communicate with officials at different stages of the justice system. The use of intermediaries is regarded as critical to ensuring equal access to justice for persons with disabilities and/or communication difficulties.

A sub-group established under the O’Malley Review examined the issue of provision of intermediaries in the Irish justice system (outlined earlier). In March 2022, the Minister for Justice announced that the University of Limerick were successful in winning the contract to roll out an accredited training course for intermediaries. In September 2022, there were 20 students enrolled in the inaugural delivery of the Professional Diploma in Intermediary Studies. These students will complete the programme by Summer 2023 and UL is contracted to provide the programme for a further two years.

Other jurisdictions that have well-established and evaluated intermediaries’ schemes include England and Wales, Northern Ireland and New Zealand.

## Legal Advice

FLAC (Free Legal Advice Centres) is an independent legal, equality and human rights organisation, which exists to promote equal access to justice. In 2021, discrimination and/or equality matters constituted one of the largest categories of total case files dealt with by FLAC (36.4%). Of the Equal Status Act case files dealt with by FLAC, 12.5% related to the ground of Disability.

PILA (Public Interest Law Alliance) is a project of FLAC that promotes the use of law in the public interest in Ireland, by engaging the legal community and civil society in using the law to advance positive social change. PILA runs the Pro Bono Referral Scheme, which facilitates access to pro bono legal services for social justice organisations. In 2021, PILA’s network of 52 law firms, 350 barristers and 9 in house legal teams delivered direct legal assistance to 110 NGOs, community organisations and independent law centres. In three such instances, the area of law in question was disability.

In 2021, FLAC launched a new remote free legal advice clinic for the Deaf community, with Irish Sign Language interpretation provided through the Irish Remote Interpreting Service (IRIS).

Community Law & Mediation is an independent community law centre providing free legal advice, advocacy, mediation and education services. It annual reports show that the centre has assisted persons with disabilities in cases and complaints across a wide range of issues, including education, reasonable accommodation and housing.

The National Advocacy Service for Persons with Disabilities (NAS) is an issues based and professional representative advocacy service. NAS is funded and supported by the Citizens Information Board (CIB), which has a mandate under the Citizens Information Act 2007 and the Comhairle Act 2000 to provide advocacy for people with disabilities. NAS has a particular remit to work with people with disabilities who are in particularly vulnerable situations. This includes people with disabilities who live in residential services, who attend day-services, who live in inappropriate accommodation, who have communications differences, who are isolated from their communities or who have limited natural supports.

In 2021, NAS provided 3,833 instances of advocacy, with 1,006 cases of full representative advocacy support. NAS also published a report entitled “Advocating for People Regarding Access to Justice and Decision-Making during the Covid-19 Pandemic”.[[24]](#footnote-24)

## Translation and Interpretation

In 2010, the European Parliament and the Council of the European Union adopted Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. Member States were required to introduce laws, regulations and administrative provisions necessary to comply with the provisions of the Directive, which ‘lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings. As the Directive recognises, the right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the European Convention on Human Rights (ECHR), and the purpose of the Directive is to facilitate the application of that right in practice.

The JUSTISIGN Project stemmed from this Directive, and looked at how Europeans who are deaf, sign language users, engage with the justice systems in their respective countries, particularly with police forces. It was coordinated by TCD’s Centre for Deaf Studies and comprised deaf and hearing experts, researchers and interpreter practitioners from organisations across Europe. Each partner engaged with their national/regional police force, local Deaf communities, and interpreters, to explore key issues that arise in day-to-day engagement. Empirical data led to the development and piloting of training materials that have been rolled out across Europe and shared internationally.[[25]](#footnote-25)

JUSTISIGNS 2 builds on the JUSTISIGNS project to create training resources and tool kits for the policing services who serve as the first point-of-contact legal professionals when dealing with non-native language users who are victims of domestic, sexual or gender-based violence. The JUSTISIGN 2 project is led by a consortium of European experts from Ireland, Belgium, Spain and the UK who are collaborating and undertaking research within the deaf, migrant, refugee and asylum-seeking community to investigate the experiences of domestic, sexual and gender-based violence and their interactions with support agencies.**[[26]](#footnote-26)**

### Legal Aid

If a person feels they have been discriminated against on the grounds of disability under the Equal Status Acts or the Employment Equality Act, they may make a complaint to the Workplace Relations Commission. However, despite the complex areas of law often involved, the severity of complaints brought, and the fact that respondents to such complaints often have access to legal representation, legal aid is not available in cases of discrimination brought to the WRC. This barrier to accessing justice has been criticised by several human rights and public interest organisations in Ireland, including the Irish Human Rights and Equality Commission, and FLAC, as well as international bodies such as the UN Committee on Economic, Social and Cultural Rights.[[27]](#footnote-27)

A review of the Civil Legal Aid Scheme was announced by the Minister for Justice in June 2022.

Under the Mental Health Act 2001, if a person is admitted to hospital against their will (involuntary patient), they are entitled to have a mental health tribunal within 21 days of their admission. The tribunal will listen to the facts surrounding the case, and make sure that a person is only detained in hospital in keeping with the law. Patients have the right to be represented at the mental health tribunal by a legal representative who is appointed by the Mental Health Commission. The Assisted Decision-Making (Capacity) Act 2015, once commenced, will transfer the responsibility for legal aid for representation at mental health tribunals to the Legal Aid Board.

## Victim Support

Victim Support at Court, or V-SAC, is the only service whose sole function is to provide court accompaniment for all victims of crime, regardless of the type of offence. It has a permanent presence in the Criminal Courts of Justice, also operates in Tallaght District Court, Blanchardstown District Court and the Eastern and South Eastern regional courts. In 2021, V-SAC provided support 3,720 times to 1,271 people across the different criminal courts in Ireland.[[28]](#footnote-28) V-SAC is funded on an annual basis by the Department of Justice and works closely with An Garda Síochána, the Probation Service, the Office of the DPP and other related crime victims’ organisations in the justice system.

Several organisations, including the Dublin Rape Crisis Centre and the Sexual Violence Centre Cork offer services to victims including counselling, assistance with victim impact reports and accompaniment to court, Garda stations and Sexual Assault Treatment Units.

# Training and Development

As outlined above, States Parties must promote appropriate training for those working in the field of administration of justice under the UNCRPD. The Criminal Justice Sectoral Strategy (outlined above) includes an action to support and develop a diverse, empathetic and trauma-informed workforce. A sub-action of this is to “develop and roll out joint training programmes to address a number of identified cross-cutting sectoral issues including, but not limited to:

* Collaboration and multi-agency working;
* Understanding the role of trauma and Adverse Childhood Experiences (ACEs) in the criminal justice system;
* Victims’ Rights;
* Restorative Practice;
* Diversity & Inclusion;
* The Public Sector Duty;
* Mental Health Awareness; and
* Disability Awareness.[[29]](#footnote-29)

## An Garda Síochána

In 2020, An Garda Síochána Human Rights Sections worked with the University of Limerick to create a bespoke Certificate in Policing and Human Rights Law in Ireland. This 8-week course is accredited at Level 8 on the National Framework of Qualifications and lectures are delivered by staff of the School of Law in UL and senior staff in An Garda Síochána. The aim of the course is to provide participants with an introduction to the workings and jurisprudence of the European Convention on Human Rights, particularly as it relates to policing in Ireland. The course also examine relevant Irish jurisprudence and case law across various topics including:

1. Introduction: Rights and the Rule of Law
2. Human Rights and Equality
3. Human Rights and Stop, Search and Entry
4. Human Rights and Arrest and Detention
5. Surveillance and Privacy
6. Rights and the Gathering of Evidence
7. Rights and the Use of Force
8. Rights and Victims of Crime
9. Rights and Vulnerable Witnesses and Suspects
10. Rights, Public Order, and Protest
11. Diversity and Human Rights
12. Hate Crime and Policing

On successful completion of the course, it is expected that students will be able to:

* Examine the concept of human rights;
* Outline the different human rights norms and mechanisms which are part of international and domestic law;
* Apply human rights norms to policing in Ireland;
* Demonstrate a clear understanding of the human rights mechanisms provided by the United Nations and the European Convention on Human Rights systems;
* Critique a range of discrete contemporary human rights issues within a legal framework;
* Appraise the efficacy of human rights law across several jurisdictions through focusing on pertinent case-law;
* Assess the role and future of human rights in the international legal landscape and utilise this learning to embed human rights across the Garda organisation and to encourage continued development of human rights initiatives.

The first set of students completed the Policing and Human Rights Law in Ireland course in May 2021, and since then, over 1000 Garda personnel of all ranks and grades have completed the course and have become Human Rights Champions. In addition, An Garda Síochána opened up the course to external stakeholders, and to date, over 30 participants have undertaken the course from organisations including:

* The Police Service of Northern Ireland
* The Defence Forces
* The Garda Inspectorate
* The Policing Authority
* GSOC

The Human Rights Champions go on to complete a series of bespoke learning sessions, which are a series of mixed media learning experiences produced in partnership with external stakeholders. They cover specific topics including mental health, unconscious bias and neurodiversity including autism. The aim of these learning sessions is to equip Garda personnel with an understanding of the practical application of a human-rights based approach to policing.

The most recent intake of students (September 2022) comprises mostly first responders and front line personnel.

The Irish Criminal/Civil Justice and Disability Network (ICJDN) was established in 2016, and it exists as a national platform whereby disability organisations and advocates and criminal justice agencies can be facilitated to improve the experience of those with an intellectual, learning or physical disability who engage with the Irish justice system. The ICJDN developed and delivered a disability awareness training pilot to An Garda Síochána in 2019.

## Judiciary

The Judicial Council is an independent body that was established in December 2019 and whose membership comprises all judges in Ireland. Amongst its pillars is the commitment to achieve excellence in the performance of judicial functions. To achieve this, the Council recognised the need to provide modern and consistence training programmes across a wide range of topics, and established the Judicial Studies Committee to carry out this work. Prior to the establishment of the Judicial Studies Committee, judicial training was offered by hosting annual conferences and regular seminars and by courses provided externally. Since its establishing in February 2020, the Committee has developed and/or organised training on a number of topics, including the Assisted Decision-Making (Capacity) Act 2015, the concept of unconscious bias, how to accommodate vulnerable witnesses and how to avoid the re-traumatisation of victims.

## Legal Professionals

The Law Society’s 2022 Professional Practice Course for trainee solicitors includes an advanced elective module on Disability Law.

The DisAbility Legal Network was established by a group of legal professionals in April 2021. Its mission is to promote equal opportunities for people with disabilities within the legal sector. Its inaugural event, in March 2022, was entitled “Fostering a Disability-Inclusive Culture in the Irish Legal Sector” and looked at how businesses can create a diverse and inclusive work culture. Over 100 participants attended the event.[[30]](#footnote-30)

Several law firms and representative bodies in the legal sector have signed up to become an ‘ally’ to the Network, in order to promote equal opportunities for [people with disabilities](https://www.lawsociety.ie/gazette/top-stories/2021/12-december/law-society-calls-for-progress-on-disability-rights/) within the legal sector. Allies are asked to incorporate disability awareness training into their annual training programmes, and to promote a culture within their organisation where employees feel comfortable to self-declare their disability.

## Collaboration and cross-agency development

The Courts Service in collaboration with the Irish Prison Service and the Dublin Coroners Court received funding of €25,000 from the Public Service Innovation Fund in 2021 for the JAM (Just a Minute) Card project. The JAM Card allows people with a learning difficulty, autism or communication barriers to tell others they need ‘Just A Minute’ discreetly and easily.

Under ‘Supporting a Victim’s Journey’, a number of justice agencies and bodies were tasked with actions, including:

* The Judicial Council will ensure the completion of training for judges on how vulnerable victims will be treated during sexual offence trials.
* The Bar Council will develop a course within its Continuing Professional Development framework to train barristers on how to treat victims, including how they should be questioned, and to gain a better understanding of the victim’s experience.
* The Law Society will examine if its current training structures can be adapted to provide updated training.
* The Department of Justice will ensure that all personnel in State Agencies who are likely to have to deal with victims of sexual crime should have appropriate training. It was envisaged that specific proposals would be developed as part of the 3rd National Strategy on Domestic, Sexual and Gender-Based Violence.
* All serving members of An Garda Síochána engaged in front line policing will receive specialist training for engaging with victims of sexual crime and vulnerable witnesses.

## Other resources and guidance

In 2018, the NDA published a document entitled ‘Assisting People with Autism: Guidance for Justice Professionals in communicating with people with autism’.[[31]](#footnote-31) This short, practical guide was developed in consultation with a range of stakeholders as it was recognised that there was a need for guidance to support understanding of autism in the justice sector. The guide provides background information about autism and aims to assist those working in the civil and criminal justice system, on how to communicate with and support people who have autism. This includes public service officials such as An Garda Síochána, the Courts Service, the judiciary, the Prison Service, the Probation Service and members of the legal profession such as solicitors and barristers.

In 2020, the NDA’s Annual Conference was entitled “Facilitating the effective and equal participation of persons with disabilities in the Irish criminal justice system (Article 13 UNCRPD)”.

The event considered Article 13 across the various stages of the justice process including related policy and programme activities such as rehabilitation, education, moving on to employment and life in the community from prison. It discussed issues regarding the Assisted Decision-Making (Capacity) Act 2015 in the context of Article 13, children with disabilities in the youth justice system and safeguarding. The conference also provided an opportunity to share valuable Irish and international experience and good practice, and to learn from other countries who have explored different approaches to the implementation of Article 13, including effective collaboration across all relevant departments and agencies.

Biographies, presentations and a number of useful resources including relevant academic literature can be found on the NDA website.[[32]](#footnote-32)

## Accessibility

#### Plain English

The National Adult Literacy Agency (NALA), Sheehan & Partners and Fair Trials (global criminal justice watchdog) developed free training on clear legal language in criminal justice. This training was funded by the European Commission, as a European-wide project to advocate for plain language in criminal justice. It invited solicitors, Gardaí, judges, academics, and other criminal justice actors to take part in learning communication techniques to put complicated legal information into plain English, and helping those participants to create an improved version of the c72 Notice of Rights Form that is given to suspects held in police custody. NALA, in 2017, published ‘Plain English and the law. The legal consequences of clear and unclear communication’. This document presents case studies showing how clear communications can save time and money.

#### Customer Communications Toolkit

The Customer Communications Toolkit for the Public Service - A Universal Design Approach[[33]](#footnote-33), has guidance to inform the design and procurement of customer communications across the Public Service. The Toolkit is based on a Universal Design approach promoted by the Centre for Excellence in Universal Design at the National Disability Authority. This toolkit can be helpful in developing communications materials around accessing justice.

#### EU Web Accessibility Directive

This Directive was transposed into Irish law on September 23rd 2020 and requires public sector bodies to take necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust. The first monitoring report was published at the end of 2021[[34]](#footnote-34) and included a number of public bodies concerned with justice in the simplified reviews. The accessibility scores for key agencies are listed below. This is not a rating of a website’s compliance but a weighted scoring of the number of issues identified:

* The Garda Síochana – 45%
* Courts Service – 27%
* Department of Justice – 7%
* Workplace Relations Commission – 30%

#### Part M 2010 of the Building Regulations

Section 25 of the Disability Act requires all departments and public bodies to ensure that the parts of their buildings which are accessed by the public, apart from heritage sites, are brought into compliance with Part M 2010 of the building regulations, which deals with accessibility, by 1 January 2022. An Operational Review of the Effectiveness of Section 25 of the Disability Act 2005[[35]](#footnote-35) was published by the NDA in 2019 providing guidance on how public bodies can comply with Section 25.

# Reports, Research and Data

Statistics on interaction between the Irish justice system and persons with disabilities, as either victims or perpetrators of crime, are sparse, fragmented and quite often out-dated. Where data are more available or up-to-date, those studies often focus on one particular cohort of disabled persons, for example persons with intellectual disabilities.

The Oireachtas Joint Committee on Disability Matters Report, *Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities*,[[36]](#footnote-36) expressed concern (Paragraph 197) about the lack of up-to-date Irish data in respect of people with psychosocial disabilities in the criminal justice system.[[37]](#footnote-37)

## Census

Census 2016 data shows that 17.1% of all prisoners (n=3791) reported a disability in Census 2016 (n=650).[[38]](#footnote-38) The breakdown of the type of disability collected in Census 2016 can be seen in the table below.

Disability type of prisoners[[39]](#footnote-39)

| Type of disability | Number |
| --- | --- |
| All prisoners | 3791 |
| All prisoners with a disability | 650 |
| Blindness or a serious vision impairment | 56 |
| Deafness or a serious hearing impairment | 69 |
| A condition that substantially limits one or more basic physical activities | 152 |
| An intellectual disability | 101 |
| Difficulty in learning, remembering or concentrating | 307 |
| Psychological or emotional condition | 235 |
| Other disability, including chronic illness | 262 |
| Difficulty in dressing, bathing or getting around inside the home | 52 |
| Difficulty in going outside home alone | 73 |
| Difficulty in working or attending school/college | 175 |
| Difficulty in participating in other activities | 121 |

Census 2016

## Department of Justice, Equality and Law Reform,

In 1999, the Department of Justice Equality and Law Reform commissioned a piece of work entitled ‘A Survey of the Level of Learning Disability among the Prison Population in Ireland’.[[40]](#footnote-40) The authors of the survey completed psychological assessments on 264 prisoners, which represented 10% of the total prisoner population in Ireland at the time. In each of the 14 prisons, 10% of inmates were randomly selected for inclusion in the study. The authors carried out a number of assessments, including the Kaufman Brief Intelligence Test (KBIT), the Wide Range Achievement Test (WRAT), the Vocabulary sub test from the Weschler Adult Intelligence Scale Revised (WAIS-R), and the National Adult Prisoner Survey (NAPS).

The NAPS was developed specifically for this study, and was an individually administered questionnaire designed to elicit social functioning indicators from respondents regarding a number characteristics, including demographic status, educational history, employment record, prison record, involvement in training/education/leisure activities.

Results showed that 28.8% of the sample population scored below 70 on one particular assessment (the KBIT), which suggested a “significant degree of intellectual disability/mental handicap”.[[41]](#footnote-41)

The survey made a number of recommendations around:

* Early Identification and Support
* Development of Diversion Services
* Specialised Prison Programmes
* Post-release Support Services
* Priorities, including training for Gardaí, Probation Officers and Wardens; screenings for all offenders upon first contact with the justice system; and development of educational programmes in prisons.

A 2018 study highlighted the lack of existing data on the prevalence of intellectual disabilities among the prison population in Ireland also noted the need to improve screening tools and develop care pathways for prisoners with intellectual disabilities.[[42]](#footnote-42) However, the 2018 research noted that the study outlined above, which was the only cross-sectional survey that estimated nationwide prevalence in a prison setting available, was subject to a major limitation- the “lack of standardized tests of functional performance”.

The method used in the 1999 study was “not a standardized or research validated tool measuring adaptive functioning”. As such, the study states that it is difficult to know what proportion of those identified would meet the diagnostic threshold as defined in an accepted clinical diagnostic manual and “may point to a potential overestimation in the reported prevalence of 28%, which is higher than international studies”.[[43]](#footnote-43)

## Research on Access to Justice for People with Disabilities as Victims of Crime in Ireland

Research on Access to Justice for People with Disabilities as Victims of Crime in Ireland[[44]](#footnote-44) carried out in 2012 noted that Ireland appeared to share much in common with other common law jurisdictions in terms of the challenges faced by people with disabilities as victims of crime. The study comprised two components: a literature review drawing on both national and international resources, and thirteen semi-structured interviews with key stakeholders in the arena of disability and justice, including representatives of the agencies of the criminal justice system.

The study looked at three sequential stages of the criminal justice process, namely the reporting of a crime; accessing justice through the courts; and experiences after the trial, and the barriers encountered at each stage. The identified barriers were grouped into four types – structural, procedural, attitudinal and barriers in the built environment and information.

The study noted that an overarching issue in the Irish context was the absence of data and any systematic recording of cases of disability. This differs to other jurisdictions, such as the UK and US, both of which include (or did, at the time of the study) a disability sub-group in national crime surveys.

The study contains recommendations around making justice more accessible, including through collecting and using data, improving access to information, identifying and providing individualised supports, creating opportunities for communication between criminal justice agencies to share good practice, and harmonising different legislative and policy contexts which shape the responses of the criminal justice system to disabled persons as victims of crime.

## Irish Penal Reform Trust

In January 2020, the Irish Penal Reform Trust (IPRT) published a report entitled ‘Making Rights Real’.[[45]](#footnote-45) Through an international literature review, legislative analysis, stakeholder interviews, and interviews with prisoners and prison staff, the report aims to examine the rights and experiences of people with disabilities in Irish prisons.

The research was conducted by NUIG, who carried out 31 semi-structured interviews with stakeholder groups, including 16 prisoners with disabilities from different settings, representative organisations of persons with disabilities, prison officers, civil servants and public officials working in justice and the prison system, and advocates for prison reform. The interviews with prisoners included: people with physical and/or mobility impairments, people with psychosocial (mental health) disabilities, people with intellectual and/or learning disabilities (including neurodivergent or autistic prisoners), people with acquired brain injuries, deaf people, hard of hearing people, and visually impaired people. The age profile of prisoners interviewed spanned from those in their early 20s to those in their early 60s. Many prisoners identified multiple disabilities, and several had experiences of other chronic or long-term health conditions in addition to their disability, including experiences of addiction. The research team interviewed both male and female prisoners.

The report looks at a number of trends that emerged from the interviews, including accessibility of the prison environment; knowledge of prisoners’ rights; non-discrimination in prison services; identification of disability, privacy and support; and prison rules, discipline and regime. It makes 16 recommendations, some of which are as follows:

* Implement the Public Sector Equality and Human Rights Duty across the prison system
* Provide accessible information on rights, regimes and complaint systems in prison
* Introduce human rights based disability assessments
* Deliver peer-led training in disabilities to all people working in prisons
* Ensure continuity and equivalence of care between community and prison
* Plan for the implementation of the Assisted Decision-Making (Capacity) Act 2015 in prisons

## Child Law Project

The Child Law Project examines and reports on judicial child care proceedings.[[46]](#footnote-46) It provides information to the public on the operation of the child care system in the courts with the aim of promoting transparency and accountability. Reporters from the Child Law Project attend cases in District Courts around the country selected on a random basis, and cases in the High Court involving children and young people in secure care and those made Wards of Court. The Project’s archive of case reports is a rich source of data on disabled parents and disabled children engaging with the courts system, and often sets out barriers encountered by persons with disabilities.

## Delivering Custody Services – A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations

This report, published by the Garda Síochána Inspectorate in 2021, examines the standard of treatment, safety and wellbeing provided to persons in custody in Garda Síochána stations.[[47]](#footnote-47) It is based on a self-initiated inspection which adopted a rights-based approach with particular consideration given to the arrangements for children and vulnerable adults. Important elements of the inspection included engagement with people in custody, a detailed examination of custody records, and for the first time, unaccounted visits to Garda stations.

The inspection identified that there was no legal definition of the terms “vulnerable” or “vulnerability” in the context of custody, although the Custody Regulations require members to have regard for ‘the special needs of a person with a physical or mental disability’. The primary tool for identifying and recording vulnerabilities is the custody record risk assessment form. The form in use at the time of this inspection included questions that were aimed at helping the member to identify if a person is vulnerable. The Inspectorate’s examination of the risk assessments in the sample of 318 custody records found that 24% showed that the person was suffering from poor mental health or had engaged in self-harm, while 5% identified a learning disability. Both vulnerabilities were identified in a small number of records, while others contained no information or stated that the person had refused to provide this information. In addition, 20% of the people in custody spoken to by the Inspectorate disclosed that they had poor mental health or a learning difficulty.

As outlined earlier in this paper, a person with an intellectual disability who has been taken into custody has the right to support from an ‘appropriate adult’ under the Custody Regulations. During the examination of custody records, the Inspectorate found that support from an adult was rarely obtained for people over the age of 18 who the custody record showed to have a learning difficulty or poor mental health or to have engaged in self-harm. Although a number of those with identified vulnerabilities requested that a third party be notified of their being in custody, few records showed that an appropriate adult had been called. While the third party may be a suitable person to act as an appropriate adult, the records did not indicate that they undertook this role.

During inspection visits, the Inspectorate found that gardaí were well aware of the requirement to have an adult present when a child is in custody. There was, however, a lesser degree of awareness or consideration of the need to provide support to a person who has an intellectual disability or learning difficulty. There is no document explaining the role of the adult that could be given to the person in custody and to the adult to ensure that they understand what they should or should not do.

The Inspectorate made a number of recommendations, including:

* That the Department of Justice establish a broader and more contemporary statutory definition of vulnerability
* That An Garda Síochána continue to work in partnership with relevant experts to further develop guidance documents and provide training to help members to identify persons in custody who are vulnerable and to safeguard their rights
* That the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody, which
* Standardises the definition of the adult whose role is to assist or support children or vulnerable adults in custody;
* Defines the adult’s role and describe who can perform it; and
* Sets out the circumstances in which this adult is required.
* That the Department of Justice introduce a formal scheme consisting of suitably trained and vetted individuals who are available to support children and vulnerable adults in Garda custody.

## Access to Mental Health Services for People in the Criminal Justice System

The Inspector of Mental Health Services published a report entitled Access to Mental Health Services for People in the Criminal Justice System in 2021.[[48]](#footnote-48) The report identifies shortcomings that exist in mental health services for prisoners and offenders.

The report explores the particular barriers faced by persons with intellectual disabilities and ADHD in prisons, and outlines findings from visits the Inspector carried out to nine prisons, including Mountjoy Women’s Prison. It also sets out a pathway towards diversion away from prison and towards mental health services. The report includes 11 recommendations to improve access to mental health services for persons in the criminal justice systems, including:

* Prisoners with severe mental illness in prison should have timely access to treatment in appropriate clinical settings
* There should be adequate and safe staffing of all forensic mental health teams
* Mental health advice, training and assistance to Gardaí at pre-arrest, arrest, custody and initial court hearing stages should be provided
* A comprehensive pre-arrest and court diversion service should be provided nationwide, and this should be adequately staffed
* There should be a specialist team to accept referrals for assessment of people with intellectual disability in the prisons. This team should have a national remit and liaise with service providers to arrange diversions and/or release planning.

## Future Research

In the Review of Policy Options for Prison and Penal Reform 2022-2024, published in August 2022, the Government set out a commitment to develop diversity-sensitive policy approaches in relation to marginalised populations who are disproportionately represented among those who offend or may be at risk. This includes the Traveller community, people with disabilities, and other diverse cohorts. In order to understand the need for this diversity-sensitive policy approach, an associated action is to “commission research on the prevalence of disability (intellectual, physical, sensory, psychosocial) in the Irish prison population and among people engaged with the Probation Service, and develop discrete policies in response to research findings.” The Review indicates that this action is set to be commenced in Q3 2023.[[49]](#footnote-49)

# Conclusion

This document provides a general overview of information on the Irish context in relation to Article 13 of the UNCRPD. Ireland has and is making several reforms and improvements to the justice system that should result in improved access to Justice for persons with disabilities. The forthcoming Assisted Decision Making (Capacity) Amendment Act should further strengthen the rights of disabled people who may access the justice system.

There are gaps in robust national data and information on the experiences and outcomes of disabled people and their interactions with the justice system and these need to be addressed in order to measure the effectiveness of various interventions.

1. These comments were compiled by the NDA through a desk research exercise which looked at the Committee’s examinations of (mostly European) States Parties over a number of recent years. [↑](#footnote-ref-1)
2. https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities [↑](#footnote-ref-2)
3. <https://bridgingthegap-project.eu/crpd-indicators/> [↑](#footnote-ref-3)
4. https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\_committee\_on\_justice/reports/2022/2022-04-08\_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-criminal-justice-hate-crime-bill-2021\_en.pdf [↑](#footnote-ref-4)
5. https://www.justice.ie/en/JELR/Pages/Legislating\_for\_Hate\_Speech\_and\_Hate\_Crime\_in\_Ireland\_Report [↑](#footnote-ref-5)
6. <https://www.mhcirl.ie/sites/default/files/2021-06/MHC-Annual-Report-2020.pdf> Page 5 [↑](#footnote-ref-6)
7. As of 15 September 2022. [↑](#footnote-ref-7)
8. https://nda.ie/publications/justice-and-safeguarding/national-disability-inclusion-strategy/ [↑](#footnote-ref-8)
9. <https://www.justice.ie/en/JELR/Department_of_Justice_Strategy_Statement_2021_-_2023.pdf/Files/Department_of_Justice_Strategy_Statement_2021_-_2023.pdf> [↑](#footnote-ref-9)
10. <https://www.justice.ie/en/JELR/Pages/PR22000107#:~:text=The%20Review%20of%20the%20Civil,justice%3B%20an%20independently%20chaired%20Judicial> [↑](#footnote-ref-10)
11. <https://www.justice.ie/en/JELR/DOJ_Justice_Plan_2022.pdf/Files/DOJ_Justice_Plan_2022.pdf> [↑](#footnote-ref-11)
12. <https://www.gov.ie/en/publication/3670e-youth-justice-strategy-2021-2027/> [↑](#footnote-ref-12)
13. <https://www.victimscharter.ie/> [↑](#footnote-ref-13)
14. <https://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey> [↑](#footnote-ref-14)
15. <https://www.victimscharter.ie/wp-content/uploads/2020/04/Victims-Charter-22042020.pdf> <https://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf> [↑](#footnote-ref-15)
16. <https://www.justice.ie/en/JELR/Review_of_the_Administration_of_Civil_Justice_-_Review_Group_Report.pdf/Files/Review_of_the_Administration_of_Civil_Justice_-_Review_Group_Report.pdf> [↑](#footnote-ref-16)
17. <https://www.echr.coe.int/documents/convention_eng.pdf> [↑](#footnote-ref-17)
18. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN> [↑](#footnote-ref-18)
19. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [↑](#footnote-ref-19)
20. [Directive 2012/29/EU](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1448897836346&uri=CELEX:32012L0029) [↑](#footnote-ref-20)
21. A [guide to the Victims’ Directive (pdf)](http://www.eujusticia.net/images/uploads/pdf/KYR_Victims_Directive_single_page.pdf) is available on the [JUSTICIA European Rights Network website](http://eujusticia.net/). [↑](#footnote-ref-21)
22. <file:///H:/Downloads/KE0221257ENN_002%20proof%202.pdf> [↑](#footnote-ref-22)
23. https://nda.ie/publications/justice-and-safeguarding/access-to-justice/nda-independent-advice-paper-on-the-use-of-intermediaries-in-the-irish-justice-system.html [↑](#footnote-ref-23)
24. <https://advocacy.ie/app/uploads/2021/10/NAS-Impact-of-COVID-Report-2-of-4-Final-web.pdf> [↑](#footnote-ref-24)
25. <http://www.justisigns.com/JUSTISIGNS_Project/About.html> [↑](#footnote-ref-25)
26. <https://justisigns2.com/hello> [↑](#footnote-ref-26)
27. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [↑](#footnote-ref-27)
28. There is no further information on this figure, including its disaggregation by disability. [↑](#footnote-ref-28)
29. Criminal Justice Sectoral Strategy 2022-2024 Implementation Plan, Action 4.1.2 [↑](#footnote-ref-29)
30. https://www.irishlegal.com/articles/two-thirds-of-disabled-lawyers-not-disclosing-status-at-work [↑](#footnote-ref-30)
31. <https://nda.ie/publications/justice-and-safeguarding/assisting-people-with-autism-guidance-for-justice-professionals/> [↑](#footnote-ref-31)
32. <https://nda.ie/policy-and-research/conference-reports/nda-annual-conferences/nda-conference-2020-facilitating-the-effective-and-equal-participation-of-persons-with-disabilities-in-the-irish-criminal-justice-system-article-13-uncrpd-.html> [↑](#footnote-ref-32)
33. [Customer Communications Toolkit for the Public Service - A Universal Design Approach | Centre for Excellence in Universal Design](https://universaldesign.ie/products-services/customer-communications-toolkit-for-the-public-service-a-universal-design-approach/) [↑](#footnote-ref-33)
34. [Ireland's EU WAD Monitoring Report 2021 (nda.ie)](https://nda.ie/publications/communications/eu-web-accessibility-directive/monitoring%20reports/monitoring-report-eu-wad-ireland-2021.pdf) [↑](#footnote-ref-34)
35. NDA (2019) ‘[An Operational Review of the Effectiveness of Section 25 of the Disability Act 2005 | The National Disability Authority (nda.ie)](https://nda.ie/Publications/Environment-Housing/Environment-Publications/An-Operational-Review-of-the-Effectiveness-of-Section-25-of-the-Disability-Act-2005.html#:~:text=An%20Operational%20Review%20of%20the%20Effectiveness%20of%20Section,far%20as%20practicable%2C%20accessible%20to%20persons%20with%20disabilities.) [↑](#footnote-ref-35)
36. Joint Committee on Disability Matters Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities <https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_disability_matters/reports/2022/2022-03-10_report-on-ensuring-independent-living-and-the-united-nations-convention-on-the-rights-of-persons-with-disabilities_en.pdf> [↑](#footnote-ref-36)
37. Houses of Oireachtas. Joint Committee on Justice debate (September 28, 2021) <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice/2021-09-28/2/?highlight%5B0%5D=act&highlight%5B1%5D=act&highlight%5B2%5D=act&highlight%5B3%5D=act&highlight%5B4%5D=disability&highlight%5B5%5D=act&highlight%5B6%5D=2005> [↑](#footnote-ref-37)
38. Figures from Census 2022 were not yet released at time of drafting. [↑](#footnote-ref-38)
39. Note that number do not add to the total as some people have more than one disability. [↑](#footnote-ref-39)
40. https://www.iprt.ie/site/assets/files/5983/learning\_disability\_report.pdf [↑](#footnote-ref-40)
41. It should be noted that much of the language and terminology used in this study, which was carried out in 1999, would be considered outdated today. [↑](#footnote-ref-41)
42. Gautam Gulati et al, “Intellectual disability in Irish prisoners: systematic review of prevalence” (2018) 14(3) International Journal of Prisoner Health 188. [↑](#footnote-ref-42)
43. Ibid, page 13. [↑](#footnote-ref-43)
44. Claire Edwards, Gillian Harold, and Shane Kilcommins (2012), *Access to Justice for People with Disabilities as Victims of Crime in Ireland,* Accessed at <https://nda.ie/nda-files/access-to-justice-for-people-with-disabilities-as-victims-of-crime-in-ireland1.pdf> [↑](#footnote-ref-44)
45. https://www.iprt.ie/iprt-publications/making-rights-real-for-people-with-disabilities-in-prison/ [↑](#footnote-ref-45)
46. https://www.childlawproject.ie/ [↑](#footnote-ref-46)
47. https://www.gsinsp.ie/delivering-custody-services/ [↑](#footnote-ref-47)
48. Finnerty, S. (2021) *Access to mental health services for people in the criminal justice system*. Dublin. Mental Health Commission. https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system [↑](#footnote-ref-48)
49. [Review of Policy Options for Prison and Penal Reform (justice.ie)](https://www.justice.ie/en/JELR/Review_of_Policy_Options_for_Prison_and_Penal_Reform.pdf/Files/Review_of_Policy_Options_for_Prison_and_Penal_Reform.pdf) [↑](#footnote-ref-49)