

Rethinking Remand

An assessment of pre-trial
detention in Ireland

Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and reform of penal policy. Our mission is to advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration.

IPRT commissioned Gemma McLoughlin-Burke BL to lead primary research in the courts, engage with external stakeholders and we would like to thank her for her contribution to the report's findings.

IPRT would like to particularly acknowledge and thank Niamh McCormack for authoring this report and its recommendations, and Martha Lewis for providing research support and data analysis.

We would also like to acknowledge and thank Aoife Mutch BL and Nathan O'Regan BL for research coordination and court observers Karen Maher BL, Olivia Dowling BL, Anna Miskelly BL, Chloe Feighery BL and Dove Curpen BL. The contributions provided by interview participants are deeply appreciated and have provided guidance throughout this project.

While the primary research was conducted externally, the analysis and final report have been prepared by IPRT. The lead primary researcher and IPRT have made every effort to ensure that the information contained herein was correct at the time of publication, neither the researcher nor IPRT assumes any liability for any damage or disruption caused by errors or omissions, whether such errors or omissions result from negligence, accident, or any other cause.

This report is presented in good faith to inform and stimulate wider debate and reform on this topic.

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Foreword

At a time when the prison population in Ireland is about to reach 6,000 people in custody, IPRT is particularly concerned that daily, one in five people in prison are awaiting trial or sentencing. Pre-trial detention – particularly for people who are eventually found not guilty of an offence, or who do not go on to receive a custodial sentence – is a traumatic experience that can have untold consequences for their family relationships, their employment or accommodation prospects and their overall wellbeing, all important factors to prevent reoffending. People in remand are twice as likely to self-harm as people who are sentenced. In 2025, almost three out of four people held on remand did not go on to serve a sentence because they were found not guilty, they did not receive a custodial sentence or because the judge considered the time already served in custody matched the sentence they would have been given.

The constitutional rights to both liberty and the presumption of innocence are cornerstones of Irish law. Imprisonment should only ever be used as a sanction of last resort yet looking at the daily prison figures, the apparent overuse of remand detention would suggest otherwise. IPRT has undertaken this research to explore a question we ask time and time again: in light of the presumption of bail in Irish law, why do we see so many people remanded into custody for seemingly minor offences? We hope this report will serve to answer it in part and spark a public debate about the use of pre-trial detention building on our 2016 research findings.

Following its 2024 visit, the European Committee on the Prevention of Torture called on the Irish Government to address the overuse of pre-trial detention calling out “more frequent and longer use of remand detention”. And while we welcome the State’s response on setting up a bail support scheme for women, this will do little to address the issue of remand for men in prison and does not address the underlying issues leading to a relatively high rate of remand.

The cases observed in the District Court and High Court for this research, alongside the interviews with stakeholders including people with lived experience of pre-trial detention, paint a picture of a system that is at times unfair and disproportionately impacts marginalised communities. In fact, the Chief Inspector of Prisons has described Cloverhill – the remand prison – as acting as a “social safety net” for people experiencing homelessness, mental health challenges and addiction. Affordability of bail appears to be a factor driving remand rates during a cost-of-living crisis and subjective perceptions around what is deemed affordable differ. We know of people unable to pay €30 cash bail which

to many of us would seem an insignificant sum but to others, it means a family choosing between feeding their children or allowing their family member to come home from prison.

In 2024, the Prison Overcrowding Response Group comprising officials from criminal justice agencies, the Courts Service and the Department of Justice, recommended to the then Minister for Justice that there should be a reduction in the number of people remanded to custody instead of remanded on bail. The report referenced people having to go through the prison committal process only to be released mere hours or days later on payment of cash bail. The pressure this exerts on the prison system, which is already creaking at the seams, along with the costs involved, points to an inefficient and antiquated system.

The current Minister for Justice wants to improve systems in the best interests of people coming before the courts and progress efficiencies. This is welcome but proposals to expand non-custodial alternatives for judges including a bail support scheme for women, alongside enshrining the principle of prison as a last resort in law must be prioritised and delivered as a matter of urgency. Dealing with

the overuse of remand for minor offences would have a positive impact on overcrowding and lead to fewer people in prison overall. We welcome many of the recommendations in the Staines Review on bail laws and hope that real reform and progress can be made during the lifetime of the current Government.

Ultimately, IPRT envisions a criminal justice system where pre-trial detention is used sparingly and fairly, leading to a reduction in overcrowded prisons, more efficient use of resources, and a justice process that upholds the dignity and rights of all individuals involved.

IPRT would like to express our gratitude and appreciation to the individuals and organisations who participated in stakeholder interviews for being so generous with their experience and expertise. We particularly want to thank people with lived experience of pre-trial detention for sharing their own experiences and insights, which we know can often be difficult and retraumatising. We also want to extend our thanks to Gemma McLoughlin BL who designed and oversaw the courts research and conducted insightful

interviews with stakeholders to shed light on what is often an overlooked corner of the criminal justice system.

Our thanks also to her colleagues at the Bar, Aoife Mutch BL and Nathan O'Regan BL for research coordination and court observers Karen Maher BL, Olivia Dowling BL, Anna Miskelly BL, Chloe Feighery BL and Dove Curpen BL.

This research would not have been possible without funding from Community Foundation Ireland (CFI) which continues to support the work of IPRT to deliver on our mission of a just, humane Ireland where prison is a last resort. This essential support allows us to highlight areas of law and practice that particularly impact marginalised communities and propose workable solutions to achieve our shared goal of a safe and thriving society.

Executive Summary

This report examines pre-trial detention practices in Ireland, evaluating how Ireland's bail framework operates in practice and the extent to which it complies with domestic constitutional standards and international human rights obligations. The central purpose is to interrogate why, despite a legal presumption in favour of bail, so many individuals, particularly those from marginalised communities, continue to be remanded into custody for minor offences.

The research was conducted during an unprecedented escalation in Ireland's prison population, which has increased by 28.7 per cent between 2023 and June 2026, with the total population nearing 6,000 people in custody despite a bed capacity of 4,736. Ireland ranks sixth among Council of Europe member states for prison overcrowding, classified as 'severe' at 112 per cent capacity, with approximately 500 people regularly sleeping on mattresses on the floor. The cumulative effect of prison conditions in these circumstances amounts to inhuman and degrading treatment and raises a serious concern of violations under Article 3 of the European Convention on Human Rights and Article 40.3 of the Constitution. Against this backdrop, one in five people in prison on any given day is awaiting trial or sentencing. The proportional rate of remand as a share of the prison population has risen from 13 per cent in July 2016 to 19 per cent in June 2026.

Findings and analysis

Perhaps the most striking statistic in this report is that in 2025, 74 per cent of the 3,379 individuals remanded to custody were released without receiving a custodial sentence, because they were not convicted, did not receive a custodial sentence, or because the court considered time already served to be sufficient. Through the triangulation of available data, meta-analysis of previous studies on the remand population and the issues identified through qualitative research, this report points to a number of underlying factors which indicate that remand custody is being applied in cases where the Court simply has no appropriate alternative. This is particularly prevalent in cases involving people experiencing serious mental health conditions, addiction, homelessness and poverty. The findings in this report indicate a manifestation of the Penrose effect, whereby as psychiatric institutions in Ireland closed, there has been a corresponding and steady increase in the prison population.

The findings fall into two intersecting categories of concern: legal and sociological. On the legal side, the research indicates a pattern of inappropriate use of objections

under section 2 of the Bail Act 1997, which permits the refusal of bail only where there is a risk of the commission of a further 'serious offence', a term narrowly defined within that section and offences scheduled to the Act. The research also highlights the phenomenon of 'overcharging', whereby individuals are charged with multiple offences arising from a single incident, which risks inflating the apparent severity of cases presented to the Court. In one quarter of the cases observed, a section 2 objection was raised, and 55 per cent of those concerned charges for summary and hybrid offences which had not yet received directions on whether they would be tried on indictment or summarily, indicating a grey area in what principles should be applied. The report highlights concerns surrounding the potential erosion of evidentiary standards in bail applications, particularly given the length of bail lists and the risk of Garda court presenters inadvertently raising inappropriate legal objections and disproportionate bail conditions. This aligns with concerns raised by judgments of the Superior Courts on the importance of the State raising factually and legally accurate arguments and the judge satisfying themselves that the appropriate standard of evidence has been met. For this reason, the report

recommends removing the responsibility of prosecution of bail applications from An Garda Síochána and that this function should be reserved for trained legal professionals, in line with recommendations made in the Staines Review.

On the sociological side, this research demonstrates that the current bail framework disproportionately affects marginalised communities and that social and structural factors drive the high rate of remand. Unaffordable cash lodgements, sometimes as low as €30, effectively deny bail to individuals living in poverty, with women and members of the Traveller community identified as being particularly impacted. The Traveller community, comprising less than one per cent of the general population, accounted for at least eight per cent of the prison population in June 2026, with systemic and structural bias in bail proceedings well documented. The requirement for an approved address similarly penalises individuals experiencing homelessness, who accounted for 11.6 per cent of all prison committals in 2024.

Recommendations

While acknowledging the primary purpose of bail being to ensure a person stands trial without interference with the process, absconding or, in narrow circumstances, is at risk of committing a further serious offence, this report recommends providing more alternatives to custody where it is decided bail is not appropriate.

Key recommendations include the development and introduction of a bail supervision scheme for adults, modelled on the successful youth justice pilot which has had consistent results in significantly reducing reoffending since its establishment in 2016. IPRT calls for legislative reform to facilitate the diversion of individuals with mental health conditions and addiction from prison and into appropriate treatment facilities, including through therapeutic bail underpinned by legislation. Importantly, the report recommends the abolition of s.3 of the Misuse of Drugs Act 1977, which makes it an offence to possess drugs for personal use, particularly given it is a minor offence which is commonly ‘over-charged’ with s.15 for sale and supply, an offence which may be tried summarily or on indictment. It also recommends amending the Bail Act 1997 to include a provision that where no direction has been received as to whether an offence will be tried summarily or on indictment, that offence shall not be treated as an indictable offence

for the purpose of bail applications unless the Court satisfies itself of the likelihood of the offence being tried on indictment based on relevant facts, including the value of the drugs in possession.

Other key recommendations include compiling comprehensive, disaggregated data on pre-trial detention through collaboration with An Garda Síochána, the Courts Service, and the Irish Prison Service. This report further recommends dispensing with cash bail requirements or at the very least, reform of cash lodgement practices to ensure they are proportionate and do not operate as a de facto denial of bail. It also makes the case for removing the Garda-approved address requirement where it serves no legitimate purpose connected to court attendance. The principle of prison as a last resort should be enshrined in law in line with existing government commitments and include the position that pre-trial non-custodial alternatives should be the default position for pregnant women and primary caregivers regardless of the offence in question, requiring a meaningful consideration of the impact of parental imprisonment on children.

Conclusion

This report envisions a criminal justice system in which pre-trial detention is truly used as a last resort, leading to a reduction in overcrowded prisons, more efficient use of resources, and a criminal justice process that upholds the dignity and rights of all individuals who come before the courts. The findings and recommendations contained in this report warrant serious and timely consideration by legislators, policymakers, the judiciary, and the legal profession, and should inform the ongoing reform agenda during the lifetime of the current Government.

I. Introduction

I. Introduction

The publication of this report coincides with the anniversary year of two watershed moments in Irish bail law: the 1966 *O’Callaghan* judgment and the 1996 referendum on bail, which introduced ‘preventative bail’ under strict circumstances into Irish law.¹ The law on bail in Ireland has remained largely the same since, with the grounds set out in *O’Callaghan* being so fundamental to the criminal justice system that nearly every person who comes before the criminal courts accused of an offence will, on their first appearance in court, have their eligibility for bail assessed on those grounds. This report interrogates the realities of how 60 and 30 years on, these principles are being applied, how this plays out in the demographics of who ends up in Irish prisons, and the effect it has on the lives of those people. The findings provide an insight into the legal and sociological issues arising from the practice of bail in Ireland in 2026.

The prevalence of mental illness among people in remand custody in Ireland indicates the real implications of the Penrose effect, which demonstrates that as the number of psychiatric facilities decreases, the numbers of people in prison increase. In 1966, the same year as the *O’Callaghan* judgment, the *Report of the Commission of Inquiry on Mental Illness* noted that the rate of psychiatric beds in Ireland per 1,000 was one of the highest in the world.² Between 1963 and 2003, Ireland closed over 80 per cent of its psychiatric hospital beds and in that same time, the number of people in prison increased by nearly 500 per cent.³ The findings arising from the primary research underpinning this report highlight the criminalisation of people with mental illness through charges for minor offences, including minor public order and theft offences, with those people being remanded to custody in overcrowded prisons that do not meet their needs.

Bail applications in Ireland are an adversarial process, where on one side a legal team acts on the part of the defendant in the best interests of their client and on the other the State represents the best interests of the public and injured party. Ó Dálaigh C.J.’s comments in *O’Callaghan* set out the purpose of bail as being an assurance that the person will stand trial, with custody as a last resort. This report addresses, in reality, what this looks like in 2026. At the time of

the *O’Callaghan* judgment the State relied on a range of institutions to house people experiencing poverty and those with mental illness away from society. Since then, the asylums and many other institutions have closed and people experiencing a deficit in social and health supports are being swept into the criminal justice system, however the legal framework governing bail has not been updated to reflect this reality. In 2026, prisons are performing the role of the old institutions to such an extent that they have been described by the Chief Inspector of Prisons as providing a ‘social safety net’ for the issues that other systems are failing to care for.

By examining remand practices in Ireland, this report seeks to address systemic inequalities within the justice system, particularly the disproportionate impact of pre-trial detention on marginalised individuals. People experiencing poverty, early school leavers and people with addiction, mental health issues or disabilities and migrant and ethnic minority communities continue to be overrepresented in the criminal justice system. IPRT’s work starts where the work of other social justice advocates ends as the penal system is often left to respond to failures of other social, educational, and health services.

1 *The People (Attorney General) v O’Callaghan* [1966] IR 501.
Referendum Ireland, *Referendum on the Sixteenth Amendment of the Constitution Bill 1996 (Bail)* <https://www.referendum.ie/archive/referendum-on-bail-sixteenth-amendment-of-the-constitution-bill-1996/> accessed 1 July 2026.

2 Report of the Commission of Inquiry on Mental Illness (1966).

3 Kelly BD, ‘Penrose’s Law in Ireland: An Ecological Analysis of Psychiatric Inpatients and Prisoners’ (2007) 100(2) *Irish Medical Journal* 373–374.

The three main objectives of the report were:

1. To conduct a comprehensive analysis of current remand practices in Ireland, identifying key issues, disparities, and their impact on individuals and the justice system and assess Ireland's compliance with human rights standards relating to pre-trial detention.
2. To develop evidence-based recommendations for policy and legislative reforms that minimise the use of remand, promote alternative measures, and protect the rights of individuals awaiting trial.
3. To raise awareness and engage stakeholders, including policymakers, legal professionals, and the public, in a dialogue about the need for remand reform, fostering support for actionable changes in the justice system.

The fundamental purpose of this research is to peek behind the opaque veil of the remand system in Ireland, examining the practice and perspectives of people in and affected by that system and to recommend alternatives that address the deficits and modernise Ireland's approach to pre-trial proceedings.

II. Methodology

II. Methodology

The overarching ambition for this research was to determine the frequency of people being held unnecessarily in pre-trial detention and subsequently influence a reduction in this number if found to be the case. This report used a mixed-methods approach, combining desk-based research with data gathering in the courts and stakeholder interviews. This research methodology was designed to facilitate a multifaceted assessment of the practice of pre-trial detention in Ireland, with a particular focus on the day-to-day practice of bail applications, perspectives of stakeholders in the system, and the lives and characteristics of people who are placed in remand detention.

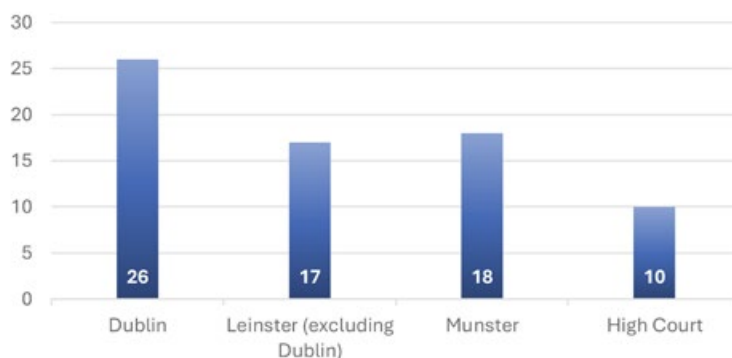
The desk-based research included a literature review of existing evidence and research on pre-trial detention in Ireland, including IPRT's 2016 report on pre-trial detention, as well as reviewing reports from the Office of the Inspector of Prisons, the Irish Prison Service, Oberstown detention campus, and other state agencies. As part of the review, domestic and international human rights standards were analysed alongside relevant jurisprudence, paying particular attention to relevant caselaw of the Irish superior courts setting out constitutional principles and judgments of the European Court of Human Rights as they pertain to prison conditions and treatment that could amount to inhumane or degrading treatment. The official reports and recommendations of the European Committee for the Prevention of Torture or Inhumane or Degrading Treatment or Punishment (CPT) following its periodic visits to Ireland in 2019 and 2024 proved particularly useful.

To set the context for this report, data published by the Irish Prison Service (IPS) was particularly relevant, including daily prison population statistics, monthly information notes, quarterly census reports, snapshot statistics, and annual reports. While these data provided an important overview of the current position in Irish prisons, there were some limitations in terms of the lack of disaggregated data on certain aspects of pre-trial detention or remand. Unless otherwise stated, in terms of using snapshot data to calculate and compare different aspects of prison data by year, the first working date in July of each year was used, other than in 2026 when figures from 18 June 2026 were used.

One of the clear limitations for research on bail in Ireland is the lack of available published data from the Courts Service on the use of remand detention and the reasons for that detention. This lack of data renders it difficult to assess how the law is being applied on a macro level. To address this data gap, the Lead Primary Researcher selected five first and second year criminal law barristers as data gatherers to attend bail hearings in the District Court and High Court who were overseen by research coordinators. The data gatherers used a template case report seeking anonymised information on:

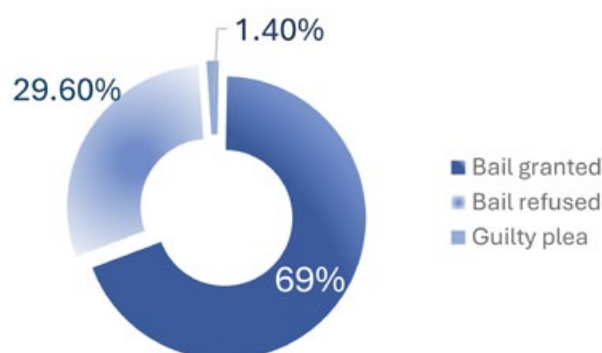
- the personal circumstances of the accused including ethnicity, housing status, mental health and/or addiction concerns;
- the offence(s) they were charged with;
- any objections to bail being granted;
- the outcome, including the reasons why bail was refused or the conditions attached when bail was granted.

Over the course of two months in late 2025 and early 2026, the data gatherers attended District Courts in Dublin, Leinster and Munster as well as bail lists in the High Court. This was a difficult and often slow process, as a District Court sitting outside major urban areas may not hear a single bail application in a day and data gatherers could not determine whether a relevant bail application would be heard in advance of travelling to a particular District Court. For this reason, no cases were observed in Connacht as no bail hearings took place on the dates attended. In total 71 bail hearings were observed.

Figure 1: Distribution of the 71 bail hearings observed by court location

While the case notes provided useful information, they provide merely a snapshot of bail hearings rather than comprising a comprehensive analysis of the reasons

people are remanded into custody or not. The following represents the outcomes of the bail hearings observed.

Figure 2: Outcome of bail hearings observed

In addition to the data gathering in court, the Lead Primary Researcher conducted exploratory discussions with one Junior Counsel in Dublin who practices in the Drug Treatment Court and the Children's Court, one Junior Counsel in the West of Ireland, a member of An Garda Síochána and one Senior Counsel.

The Lead Researcher also invited 120 individuals and organisations to take part in semi-structured interviews to outline their experiences with pre-trial detention in either a professional or personal context. In total, semi-structured interviews took place with 30 stakeholders, including:

- 7 legal practitioners
- 1 judge
- 1 medical practitioner
- 2 people working in the prison system
- 10 people working in support organisations
- 9 people with lived experience of pre-trial detention.

It was not possible to engage with all of the criminal justice agencies that are involved in the administration of bail and pre-trial detention due to the limited nature of the research.

The responses and views expressed by interview participants have been anonymised and included throughout the report in the relevant sections, and illustrate particular issues or points of note relating to bail practices and the individuals most impacted. These perspectives provide a valuable insight into the reality of bail hearings and the pre-trial process in Ireland from people within the system, however they are not reported as conclusive findings. The qualitative data collected through stakeholder interviews contributed to analysis of the quantitative and empirical data gathered through cases and desk research. This mixed-methodology research has been used to paint a picture of contemporary practice of remand in Ireland, piercing the veil of an opaque and chaotic area of the criminal justice system which lacks a cohesive legal framework and comprehensive publicly available data.

III. Context

III. Context

Ireland's Prison System

Ireland's prison estate consists of 14 institutions, including 11 traditional closed institutions, nine of which are medium-security prisons, one high-security prison, one semi-open prison (Mountjoy Training Unit) and two open prisons. Cloverhill Prison is a purpose-built remand prison in Dublin which holds the majority of the men who are remanded into custody in the Leinster region. While Cloverhill is the only purpose-built remand prison in the State, the majority of prisons in the State accommodate people on remand, including: Mountjoy, Wheatfield, Midlands, Portlaoise, Cork, Limerick, and Castlereagh. For women in remand custody, both Limerick Women's Prison and the Dóchas Centre (Mountjoy Women's Prison) are used to accommodate women on remand.

Rule 71 of the Irish Prison Rules 2007 provides that individuals who have not been convicted of an offence should be accommodated separately from individuals who are serving a sentence, "in so far as practicable and subject to the maintenance of good order and safe and secure custody".⁴ However, in practice, people on remand are not always separated from those who are sentenced. Ireland retains a reservation to Article 10(2)(a) of the International Covenant on Civil and Political Rights (ICCPR) which states:

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

In its 2020 report to the UN Human Rights Committee, the State reported that "Where possible, remand prisoners are held separately from sentenced prisoners however due to increasing numbers this is not always possible".⁵

Prison overcrowding

This report follows a 2016 IPRT report on the practice of pre-trial detention in Ireland. Ten years on, Ireland's prison system and the challenges facing it have changed drastically. Overcrowding in prisons affects all aspects of prison life and raises serious human rights concerns, particularly the right to be free from torture, inhuman and degrading treatment. The test for assessing a violation of Article 3 of the European Convention on Human Rights (ECHR) acknowledges this, with the European Court of Human Rights (ECtHR) in *Muršić v. Croatia* setting out the 'cumulative effects' assessment, whereby the totality of the conditions and treatment in prison, including access to healthcare, hygiene, out of cell time and meaningful human interaction, are considered.⁶ The Irish courts have adopted a similar approach, with the Supreme Court in *Simpson v. Governor of Mountjoy Prison* outlining the issues for assessment:

In carrying out an assessment as to whether there has been an infringement of rights under Article 40.3, a court will have particular regard to features such as the duration of detention, the space in a cell, overcrowding, the linked issues of sanitation and hygiene, lighting, heat, ventilation, as well as predictable out-of-cell time, out-of-cell activities, and access to showers, in addition access to education and work.⁷

International and domestic courts have found that the threshold for the violation of this right does not require intent on the part of the State.⁸ In *Romanov v. Russia*, the European Court of Human Rights held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.⁹ The Court held that the applicant's conditions of detention, in particular the severe overcrowding and its detrimental effect on the applicant's

4 Prison Rules 2007 (SI No 252/2007), r 71 <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article71> accessed 1 July 2026.

5 Human Rights Committee, *Fifth Periodic Report Submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights* (CCPR/C/IRL/5, 31 January 2020) <https://assets.ireland.ie/documents/Ireland-5th-Periodic-Report-under-the-ICCPR.pdf> accessed 1 July 2026.

6 *Muršić v Croatia* App No 7334/13 (GC, 20 October 2016).

7 *Simpson v Governor of Mountjoy Prison* [2019] IESC 81, 96.

8 *Ibid*, 81.

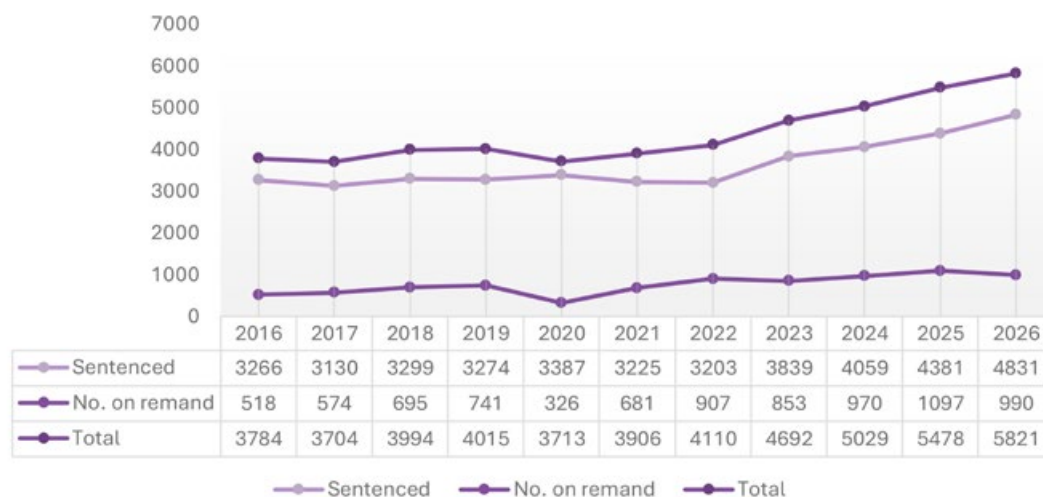
9 *Peers v Greece* App No 28524/95 (ECtHR, 19 April 2001).

9 *Romanov v Russia* App No 63993/00 (GC, 20 October 2005).

well-being, combined with the length of the period during which he had been detained in such conditions, had amounted to degrading treatment. While there was no indication that there had been a positive intention of

humiliating or debasing the applicant, the Court nevertheless considered that these conditions of detention must have undermined the applicant's human dignity.¹⁰

Figure 3: Snapshot of prison population statistics 2016 - 2026



In the Irish context, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has noted that overcrowding can turn a prison into a 'human warehouse' and undermines any efforts to give practical meaning to the prohibition of torture and other forms of ill-treatment.¹¹ The resultant lack of personal space and privacy puts all people in custody at risk, especially the most vulnerable. This reflects the Grand Chamber judgment in *Muršić*, where the Court stated that:

[w]hen the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. [...] In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of

conditions of detention.¹²

Following its official visit to Ireland in 2019, the CPT recommended that the Irish authorities take steps to tackle the phenomenon of local overcrowding in prisons through promoting greater use of alternatives to imprisonment and remand detention, notably as regards short sentences.¹³ In 2024, after a subsequent visit, the Committee stated it was not convinced that sufficient steps have been taken in this regard.¹⁴

The IPS targets 95 per cent capacity as a safe limit, while the CPT recommends that prison populations should not exceed 90 per cent of total capacity to operate safely.¹⁵ The CPT recommends that whenever a prison in the Irish prison estate has reached its official bed capacity, no further persons should be admitted to that prison and that use of alternative measures to custody at pre-trial stage should be a matter of priority.¹⁶ Yet since 2023, the prison population has far exceeded bed capacity meaning that neither IPS nor CPT safe operating levels have been met.

¹⁰ Ibid.

¹¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Irish Government on the Visit to Ireland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (2025))* 31.

¹² (n6).

¹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Irish Government on the Visit to Ireland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) CPT/Inf (2020)* 37.

¹⁴ (n11) para 31.

¹⁵ Department of Justice, *Prison Overcrowding Response Group Report* (6 March 2024) 12.

¹⁶ (n11) para 32.

Figure 4: Bed capacity and safe operating levels 2016-2026

Based on its 2024 visit to Ireland, the CPT assessed that:

Chronic overcrowding continues to plague the entire prison estate, with severe consequences for prison life in terms of the adequacy of living conditions and access to a regular regime of purposeful out-of-cell activities. In all facilities visited, the CPT observed overcrowded cells where three or four prisoners were held in cramped, squalid spaces with insufficient ventilation. Many prisoners, including mentally ill individuals, were forced to sleep on mattresses or flimsy camp beds.¹⁷

Of the 51 prison systems in the Council of Europe (CoE) in 2024, Ireland had the sixth most overcrowded prisons and was classified as having ‘severe overcrowding’ (defined as over 110 inmates per 100 places), with a rate

of 112 per cent.¹⁸ This figure has since rapidly increased; the average daily prison population in 2025 was 5,417, an increase of 9.6 per cent on the 2024 figure of 4,941,¹⁹ meaning that there was an 18.2 per cent increase between 2023 and 2025. Comparing the daily population in June 2026 to the 2023 average daily population, the increase is 28.7 per cent.²⁰

IPS census data indicates that in July 2025, there were 267 people in prison who were sharing a cell with three or more other people.²¹ This problem was worst in Cloverhill, with 312 people in custody there being held with at least three others, and in Midlands this was the case for 40 people in custody.²² The shortfall of beds for the number of people being sent to prison means that there are regularly more than 500 people sleeping on mattresses on the floor.²³

17 (n11) 5.

18 Council of Europe, *Prisons and Prisoners in Europe 2025: Key Findings of the SPACE I Survey* (2025) 19.

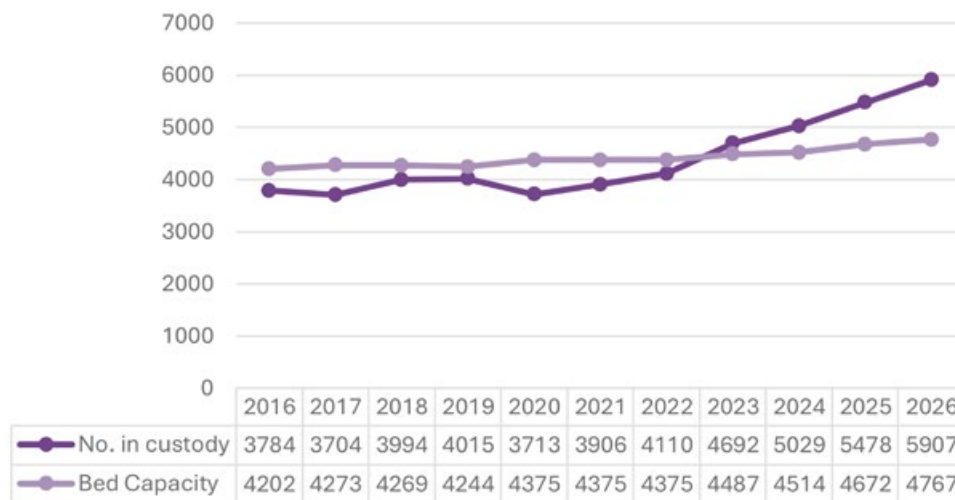
19 Irish Prison Service, *Annual Report 2024* (2025).

20 Irish Prison Service, *Prisoner Population on Tuesday 23 June 2026* (23 June 2026).

21 Irish Prison Service, *Census Prison Population July 2025: Cell Occupancy – In-Cell Sanitation* (July 2025).

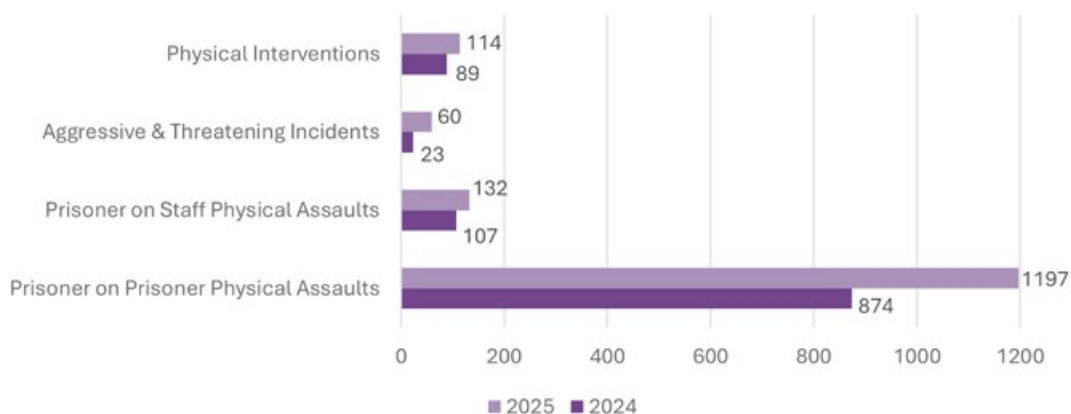
22 Ibid.

23 Irish Prison Service, *Prisoner Population on Monday 29 June 2026* (29 June 2026).

Figure 5: Prison population versus bed capacity 2016 – 2026

While this research indicates that bail is often granted in Irish courts, challenges to meaningfully reduce the prison population remain, including regional variances, overly restrictive or unattainable bail conditions and the lack of available alternatives for diverting vulnerable people from remand custody. Data gathered through court visits and stakeholder interviews confirm the prevalence of these challenges. As previously mentioned, the impacts of overcrowding are pervasive – including the safety of both people in prison and the staff working there. In line with the increase in the prison population, there has been an increase in the number of physical assaults recorded.²⁴ In 2025, direct assaults

between people in custody increased by 37 per cent from 2024, with 1,197 incidents recorded, up from 874 the previous year.²⁵ Prisoner on staff physical assaults increased by 23 per cent, from 107 recorded in 2024 to 132 recorded in 2025, while significantly, aggressive and threatening incidents increased by 161 per cent in 2025, up from 23 to 60 recorded incidents.²⁶ The number of physical interventions recorded also increased from 89 in 2024 to 114 in 2025.²⁷ Overcrowding increases risk and directly impacts on the safety and well-being of people in prison, including those being held on remand.

Figure 6: Physical Assaults in Prison, 2024 versus 2025

²⁴ Irish Prison Service, *Assaults on Prison Staff and Prisoners 2024–2025* (2025).

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

Rates of remand detention

Rates of people in remand detention, and the length of time spent on remand, have been increasing annually.

Snapshot of total prison population vs. remand prison population numbers in the decade

	Prison Population	Remand Population	Proportional Rate of remand vs. sentenced
July 2016 ²⁸	3784	518	13%
June 2026 ²⁹	5875	1122	19%
Increase	+64.4%	+46.16%	+6%

In his 2023 annual report, the Inspector of Prisons stated that Cloverhill Prison was acting as a social safety net as a result of wider systemic failures to address causes of offending, such as drug addiction and homelessness, stating that these root issues must be addressed.³⁰ This phenomenon was raised consistently throughout literature and stakeholder interviews and is discussed in chapter VI of this report.

Figure 7: Snapshot of sentenced and remand statistics 2016 – 2026



In 2024, 38 per cent of committals to prison that year were on remand.³¹ The annual rate considers the total number of individuals committed on remand that year while the IPS daily population figures record the number of people in prison on remand on a given day. Short stays in prison – due to no conviction or counting time already served – mean that people may move through the system quickly. On an annual basis, the rate of remand amongst men and women being committed to prison is relatively equal, based on available data.³² Out of the men committed to prison in 2024, 40 per cent were on remand, whilst the rate for women was 39 per cent.³³ However,

examining the daily population rates, a gender disparity is evident and is discussed in more detail in Chapter VI.

The reasons underpinning the rise in rates of remand detention have been considered in several reports, including *An Assessment of the Efficacy of Bail Laws in Ireland (the Staines Review)*, where it was indicated that one of the drivers behind increased remand numbers and prison population is a higher number of District Court judges and cases being heard. While this may be a contributing factor, the number of incoming cases to the District Court has been decreasing, with 406,480 incoming offences in

28 Irish Prison Service, *Prisoner Population on Friday 1 July 2016* (1 July 2016).

29 Irish Prison Service, *Prisoner Population on Tuesday 9 June 2026* (9 June 2026).

30 Office of the Inspector of Prisons, *Annual Report 2023* (2024).

31 (n19), 62.

32 Ibid, 63.

33 (n19).

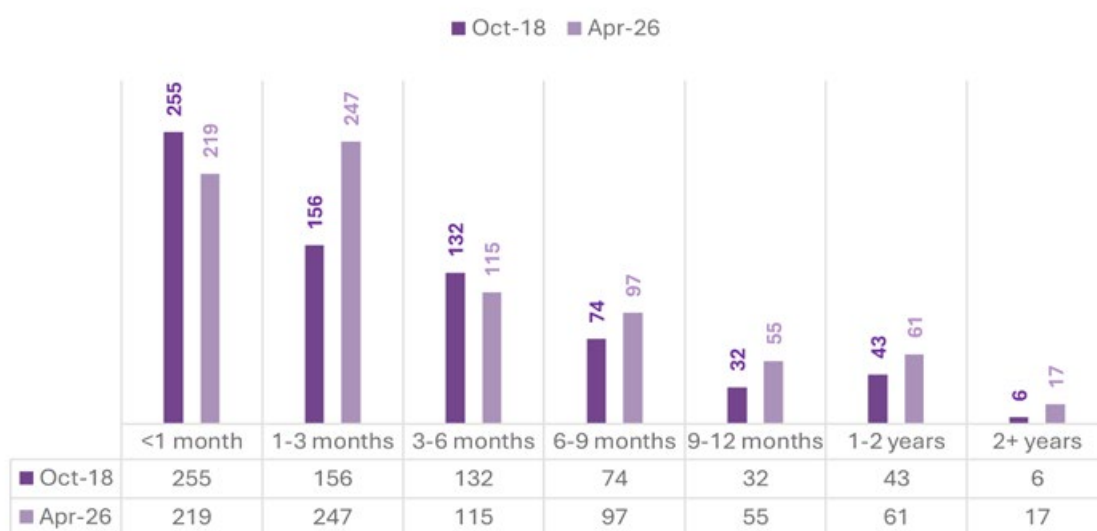
2019 compared to 350,852 offences in 2024.³⁴ Conversely, the relatively low number of judges per capita in Ireland has been pointed out as contributing to backlogs in caseloads and delays in the courts, leading to longer trial times and longer periods spent in remand custody. In 2022, Ireland had the lowest number of judges per capita in Europe.³⁵

In Ireland, there is currently no statutory time limit on the total length of time an adult can be held in custody while awaiting trial. However, there are strict time periods surrounding the periods of time that a person can be held on remand. Remand prisoners cannot be held for longer than 15 to 30 days at a time without being brought back before a judge to extend the remand.³⁶ While the judiciary generally gives credit for time spent

on remand when calculating a final sentence, the decision to do so is at the judge's discretion.

In April 2026, 61 people were on remand for 1-2 years, while 17 were on remand for more than two years, yet there is no indication of exactly how long.³⁷ Yet from figures released previously, in June 2024, it was recorded that there were 12 people in prisons in Ireland who had spent more than two years on remand.³⁸ Of this group of 12, two individuals had been on remand for a period of 3-4 years, whilst two other individuals had been on remand for a period ranging from 4-5 years.³⁹ One person had been recorded as having been on remand for more than five years.⁴⁰

Figure 8: Length of time spent in remand custody October 2018 (first record)⁴¹ vs. April 2026 (most recent record)⁴²



34 Courts Service, *Incoming Offence Category Breakdown: 2024, District Court, Criminal* (Courts Service 2026) https://data.courts.ie/en/apps/courts-data/reports?year=2024&area_of_law=criminal&jurisdiction=districtcourt accessed 30 June 2026.

35 Irish Council for Civil Liberties, *Towards Best Practice: ICCL Press Briefing on the Judicial Council Act 2019* (Irish Council for Civil Liberties 2022) 1 <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-ICCL-press-briefing-on-Judicial-Council-Act-2019.pdf> accessed 30 June 2026.

36 Criminal Procedure Act 1967, s. 24.

37 Irish Prison Service, *Monthly Information Note – April 2026* (April 2026).

38 Minister for Justice, *Written Answer to Parliamentary Question No 207*, Dáil Éireann Deb, 27 June 2024, PQ 27750/24 <https://www.oireachtas.ie/en/debates/question/2024-06-27/207/> accessed 30 June 2026.

39 Ibid.

40 (n28).

41 Irish Prison Service, *Monthly Information Note – October 2018* (October 2018).

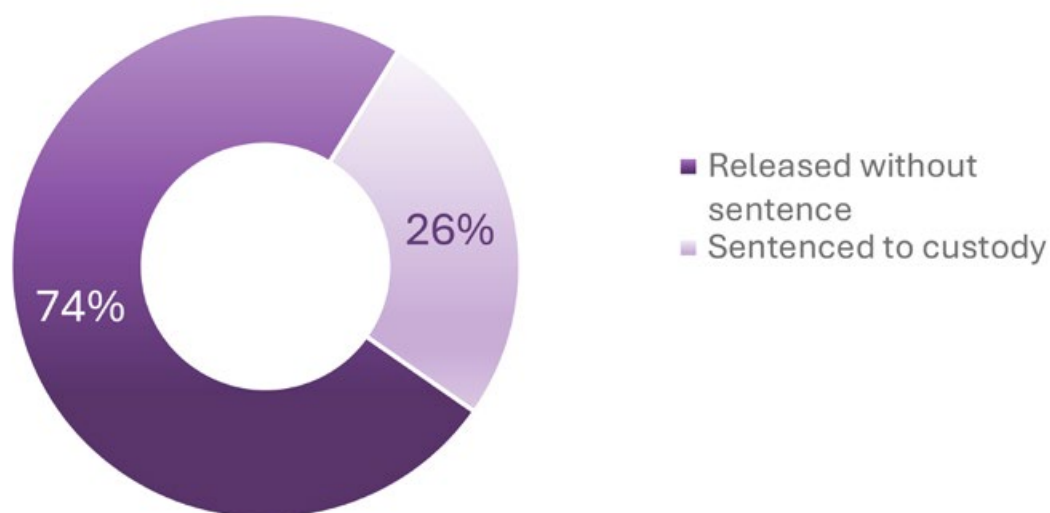
42 (n37).

The number of people released from remand custody without receiving a custodial sentence is of particular concern. In 2025, of 3,379 people remanded to custody, 2,500 people were released from remand without being sentenced to custody, representing 74 per cent of that population.⁴³ Figures from the IPS indicate that there has been a 19 per cent increase in the number of people released from remand custody without sentence or due to credit for time served.⁴⁴ These figures raise questions surrounding the type of offences people are being remanded in custody for, as well as the reasons they were placed in custody under circumstances where they either

were convicted of a minor offence that did not result in a custodial sentence or were not convicted at all.

The data gathered over the course of this research, alongside literature review and stakeholder interviews, indicate that certain cohorts of the population, particularly marginalised groups and people experiencing mental health or addiction issues, are more likely to be remanded in custody for minor offences. This issue is discussed throughout this report.

Figure 9: Number of people released from remand custody without a custodial sentence in 2025



⁴³ Figures provided to IPRT on 22 June 2026, on foot of a data request to the Irish Prison Service.

⁴⁴ Lorcan Staines, *An Assessment of the Efficacy of Bail Laws in Ireland* (Department of Justice 2025) 39.

IV. Bail Practice and Procedure

IV. Bail Practice and Procedure

Key stakeholders and jurisdictions

An Garda Síochána

An Garda Síochána play several roles at the pre-trial stage: they are responsible for carrying out the arrest, bringing charges, and presenting to the court. Upon charge, a person may be released on station bail at the Garda station. Research carried out by IPRT in 2016 demonstrated that the majority of people charged with an offence are released on 'station bail' and do not come before the courts to make a bail application.⁴⁵ Section 31 of the Criminal Procedure Act, 1967 as amended by the Criminal Justice (Miscellaneous Provisions) Act 1997, provides that a person may be granted station bail "whenever a person is brought in custody to a Garda Síochána station by a member of the Garda Síochána, the sergeant or other member in charge of the station may, if he considers it prudent to do so and no warrant directing the detention of that person is in force, release him on bail". Release on station bail may be with or without a surety (guarantee), but the Gardaí cannot impose bail conditions. Notably, no routine data is available on the number of people released on station bail.

Where the prosecution raises objections to bail, they are usually offered by a member of An Garda Síochána as court presenter, providing evidence on oath, who is then cross-examined by the defence. The role of An Garda Síochána in bail proceedings was a recurring issue raised in research and is discussed throughout this report. It also featured in the Staines Review.

The District Court

Where a person is charged with an offence and not released on station bail, they will be brought before a District Court as soon as possible.

The District Court judge may either remand the accused in custody or release them conditionally, whereby the accused will enter into a bail bond with or without surety.⁴⁶ The court in which the application is made depends on the nature of the underlying charges. In

most cases, a judge of the District Court decides whether to grant bail and on what terms. In practice, the District Court will hear bail applications where:

- the Court remands the accused to a later sitting;
- the Court sends the accused forward for trial or sentencing;
- the Court remands the accused to a sitting of the Court in another district for the purpose of taking further evidence of an indictable offence charged against them;
- the Court adjourns the trial of the accused;
- the accused is appealing against a conviction to the Circuit Court; and
- the Court remands an accused for the preparation of reports relevant to sentencing.

The High Court

The High Court has original jurisdiction to grant bail to a person accused of any of the offences listed in section 29 of the Criminal Procedure Act 1967. This includes where the accused has been charged with an offence under the Offences Against the State Act 1939, the Official Secrets Act 1967, murder, attempted murder, conspiracy to murder, piracy, genocide, and treason.

Other scenarios where the High Court has jurisdiction over bail applications include:

- (i) where a person is appealing a bail decision from the District Court;
- (ii) where a person has served notice of appeal to the Circuit Court from a conviction in the District Court;
- (iii) where a person is being tried in the Special Criminal Court;
- (iv) where an application is made seeking an order of certiorari to quash a District, Circuit or Special Criminal Court conviction; or
- (v) where a person has been convicted on indictment and has sought leave to appeal their conviction.

45 Irish Penal Reform Trust, *The Practice of Pre-trial Detention in Ireland* (2016) 9 https://www.iprt.ie/site/assets/files/6382/ptd_country_report_ireland_final.pdf accessed 1 July 2026.

46 (n36), s. 22.

V. Legal Framework

V. Legal Framework

People (AG) v. O'Callaghan

The foundational principles governing bail in Ireland are set out in a 1966 Supreme Court decision in *People (AG) v. O'Callaghan*.⁴⁷ The decision adopted a rights-based approach to bail in Ireland, founded on the importance of protecting the right to the presumption of innocence and the right to liberty.

Ó Dálaigh CJ, in his judgment, refers back to earlier jurisprudence on bail, summarising the fundamental legal position:

The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every [person] is deemed to be innocent until tried and duly found guilty.

It is from these judgments that the so-called 'O'Callaghan principles' are derived, which guide the Court in assessing an application for bail. The objections that derive from *O'Callaghan* are:

- (i) that the accused is a flight risk / at risk of absconding, and / or
- (ii) possible interference with witnesses or jurors and / or
- (iii) possible destruction of evidence.

In assessing whether such objections are made out, the Court can consider the following:

1. The nature and seriousness of the charge;
2. The strength of the evidence;
3. The likely sentence to be imposed if convicted;
4. Any past failures to answer bail / bench warrants history;
5. Whether the individual was "caught red-handed";
6. Any evidence relating to the possibility of the disposal of evidence; and
7. Any evidence relating to the possibility of interference with witnesses and / or jurors.

Importantly, save for numbers 6 and 7, the above principles are simply guidance for a judge when considering one of the three objections to bail (flight risk, witness interference, and destruction of evidence). Court data and interviews with professional stakeholders indicate that occasionally disproportionate focus in bail applications is placed on either the seriousness of the offence or the strength of the evidence, despite the fact these do not by themselves form a basis for the refusal of bail and are outlined under the *O'Callaghan* judgment as being factors for consideration in assessing the substantive objection made.

In his judgment in *O'Callaghan*, Walsh J emphasised the fundamental importance of bail in the context of the presumption of innocence, stating 'the presumption of innocence until conviction is a very real thing and is not simply a procedural rule taking effect only at the trial'. To give effect to these rights, bail must be granted in every case unless it is necessary, on a sound legal and evidential basis, to refuse bail. The judgments delivered by the Supreme Court in *O'Callaghan* are a considered analysis of the constitutional rights to both liberty (Article 40.4.1) and the presumption of innocence (Article 38.1), stressing the importance of not using the refusal of bail as a punitive or preventative measure.

Section 2

The *O'Callaghan* judgment made it clear that preventative detention was impermissible in Irish law, ultimately resulting in an amendment to the Constitution⁴⁸ and the subsequent introduction of the Bail Act 1997 ("the Act"). Section 2 of the Act sets out the strict parameters of preventative bail, providing that:

Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.

⁴⁷ *State (O'Connell) v Fawsitt* [1966] IR 501.

⁴⁸ Sixteenth Amendment of the Constitution Act 1996. (n1).

Section 2 of the 1997 Act allows for the refusal of bail when there is a risk of further offences being committed while on bail, but only if the offence(s) constitute a ‘serious offence’. This means an offence specified in the schedule to the Act for which a person of full capacity and not previously convicted may be punished by a term of imprisonment of five years or by a more severe penalty.

It is important to note the restrictions on the application of s.2 set out in the legislation:

1. First, it is an exception to the general rule against preventative detention, therefore it must be strictly adhered to.
2. Second, it relates only to *serious offences* and can therefore not be utilised for summary offences or offences for which a direction of summary disposal has been given.
3. Third, where there is a fear that further offences will be committed, this is confined to further *serious offences*. Finally, where the evidential basis for a section 2 objection is prior convictions of the defendant, those convictions must be for serious offences only.

These restrictions rule out the application of s.2 of the Act to the type of persistent low-level offending which is prevalent in the cases that come before the District Court, and yet, as will be seen further on in this report, this provision is commonly invoked as a basis for objecting to bail in the District Court.

The European Convention on Human Rights

The European Court of Human Rights (ECtHR) has developed general principles on the implementation of Article 5 that should govern pretrial decision-making. These standards have developed over a large body of ever-growing case law, particularly around Article 3, the right to be free from inhuman and degrading treatment, Article 5, the right to liberty of the person, and Article 6, the right to due process.

Article 5 ECHR is perhaps the most often cited right in this context as it places an obligation on the State to ensure no person is deprived of their liberty in an arbitrary manner. It also contains a positive obligation to take active steps to provide protection against unlawful

interference with the right to liberty. The right to liberty along with the right to life, prohibition of torture, inhuman and degrading treatment, and the prohibition of slavery are the core fundamental rights under the Convention and are absolute.

Given that Ireland operates a dualist legal system, the rights-based approach adopted by Irish courts is founded in constitutional principles, generally without reference to the ECHR or the jurisprudence of the European Court of Human Rights. Although the ECHR was incorporated into domestic law through the ECHR Act 2003, that Act has been repeatedly found by the Irish courts to not superimpose ECHR principles on constitutional principles, and so interpretation of the rights protected under the Constitution does not necessarily follow the same line of reasoning as those protected under the ECHR. The Supreme Court in *Simpson v. Governor of Mountjoy Prison* clarified the interaction between the ECHR and the Constitution in the context of examining inhuman and degrading treatment under the ECHR, and the right to bodily integrity under Article 40.3 of the Constitution.⁴⁹ The Court clarified that while ECtHR jurisprudence is a useful tool in interpreting unenumerated constitutional rights, the ECHR does not automatically apply or replace constitutional provisions. O'Donnell J set out the legal basis for this:

While it is to be expected that the two instruments guaranteeing rights considered fundamental would tend to cover much of the same ground, and the interpretation of one is often helpful in understanding similar provisions contained in the other, they are different instruments and there will be many areas, particularly at the margins (which are often the subject of litigation) where the approach, or substance, may be different.⁵⁰

While the Court has made it clear that the ECHR cannot be superimposed on constitutional principles, the rights it protects and the extensive jurisprudence of that Court remain relevant and are discussed throughout this report.

49 (n7).

50 Ibid, para 6.

The burden of proof and standard of evidence

The burden of proof supporting objections to a bail application lies with the prosecution.⁵¹ For objections made under the *O'Callaghan* principles, the Court in that judgment set out that the standard of proof required is a matter of 'probability'. This standard was set out in further detail by Denham J in *The Director of Public Prosecutions v. McLoughlin*, stating that the test is not whether the members of An Garda Síochána have a fear or apprehension that the ground for objection might occur (in this case being interference with witnesses), but that the Court must be satisfied that there is a probability that the risk raised will occur, and that finding should be set out expressly.⁵²

In *Vickers v. Director of Public Prosecutions*, the Supreme Court confirmed that the standard of proof required under section 2 of the Bail Act 1997, being that the refusal of bail is 'reasonably considered necessary' differs from the 'probability' standard required under *O'Callaghan*.⁵³ The section 2 objection, that there is a real risk that a serious offence may be committed must be considered by assessing the specific likelihood of the commission of an offence, which can only be determined by a careful review of the evidence.

In terms of presenting evidence in bail applications, some interview participants noted the practice of the prosecution relying on CCTV footage to underpin the objections to bail without the footage being made available on the day. In a case observed in Dublin District Court (DUB-13), the prosecution relied on CCTV evidence which was not played to the Court. In another case (DUB-18), the prosecution argued that there was a risk of witness interference without providing evidence. In that case, the Court rejected that argument on the basis that there were no witnesses present to give evidence, however accepted an objection under section 2.

Several professional interview participants expressed concern that members of the judiciary can be deferential to the assertions of Gardaí. Effectively, many stated that no matter how much evidence a client may have to support their application for bail, if the

Gardaí objected, the Court would often defer to their position and refuse the application or impose conditions with a view to alleviating the concerns of the Garda. In one of the observed cases (LEI-04), one of the reasons provided for the refusal of bail was that the Gardaí had indicated that there were no bail obligations that would satisfy them. One participant noted that there can be a symbiosis in the way in which Gardaí and judges interact. In other words, if the Gardaí are aware that a certain judge is likely to refuse bail if the prosecution objects, this will give them the impetus to object to bail in cases where they otherwise would not object, due to the weakness of the evidential basis underpinning their objection(s).

These reflections raise questions regarding the standard and burden of proof for bail applications in practice. There are two central elements in the decision-making process: firstly that the prosecution must establish their objection to bail as a matter of probability and secondly that the court then satisfies itself that the standard of probability has been met. In the context of section 2 objections, the court is required to satisfy itself that there is a likelihood that a serious offence will take place.

The importance of this decision-making process has been addressed by the Superior Courts. In *The People (Director of Public Prosecutions) v. McGinley*,⁵⁴ Keane J emphasised the risk of the Court abdicating its duty in bail applications, stating:

If the court could deprive a person of liberty simply by noting that the government, or the Director of Public Prosecutions, or one or more Gardaí sincerely believe that the objection is made out, then the court would be abdicating its duty in favour of those persons or bodies.⁵⁵

The role of the prosecution in advancing legally sound arguments to aid the court in making its decision was raised by the Supreme Court in *The Director of Public Prosecutions v. Mulvey*, with Dunne J setting out the importance of the accuracy of objections and corresponding evidence, particularly in the context of the high volume of applications heard on a bail

51 *People (AG) v. Gilliland* [1985] IR 643.

52 *DPP v. Gormley*; *DPP v. White* [2010] 1 IR 590.

53 *Vickers v. DPP* [2010] 1 IR 548.

54 *DPP v. McGinley* [1998] 2 IR 408.

55 *Ibid.*, para 59.

list.⁵⁶ She went on to note that it is not unduly burdensome to ask that such a practice be adopted when the State intends to object to bail.⁵⁷ These judgments set out the position of the Superior Courts on many of the issues raised by participants and data collection in the course of this research, namely the importance of the Court satisfying itself that the basic standard of proof has been met, and the role of the prosecution in accurately presenting objections in a manner that assists the Court in making this finding.

Categories of offences

A criminal offence can either be a summary, hybrid, ‘either way’, or an indictable offence. The distinction is crucial as it determines which court will ultimately decide the case, which in turn affects any potential sentence. In the context of bail, the category of the offence is important as it has implications for certain arguments relating to the seriousness of the charge or the applicability of section 2 of the Act.

Summary offences

Summary or ‘minor’ offences are less serious criminal matters heard by a judge in a local District Court without a jury, as prescribed by Article 38.2 of the Constitution.

The majority of offences observed in the court research conducted for this report were summary offences, including failure to appear in court and breach of bail conditions. Data shows that the majority of offences committed while on bail are minor offences.

Indictable offences

In Ireland, an indictable offence is a serious criminal act that is generally tried before a judge and a jury (a “jury trial”) in a higher court, such as the Circuit Court or the Central Criminal Court.

Hybrid or ‘either-way’ offences

There are many offences which may be tried either summarily or on indictment. Apart from the relatively narrow situation covered by section 13 of the Criminal Procedure Act 1967, these offences may be indictable offences with a right of election, where the offence will be tried on indictment unless the DPP, District Court and defendant consent to summary disposal, or ‘either-way’ offences, where the offence will be tried on indictment unless

the DPP and District Court judge consent to summary disposal.

In the context of bail applications, none of the cases observed involving a hybrid offence had received instruction on whether the case would be dealt with summarily or on indictment. Given that making a bail application is the first court appearance, it is highly unlikely that the prosecution would have received instructions on this at the point of the application stage. This raises a grey area in terms of the objections which the prosecution may advance, particularly given the ‘seriousness of the charge’ being a contributing factor for the Court to consider in making its decision. In this context, there was a notable practice of “overcharging” observed during court visits and interviews with participants. In one quarter of the cases observed, there was a section 2 objection, 55 per cent of which concerned charges of summary and hybrid offences.

For example, almost every individual who was charged with an offence under s.15 of the Misuse of Drugs Act 1977, possession of a controlled substance for sale and supply, was also charged under s.3, possession of a controlled substance for personal use. Importantly, s.3 is a summary offence and s.15 is a hybrid offence. In 70 per cent of the cases observed, where a person was charged under the Misuse of Drugs Act, this included a charge under both sections 3 and 15, with only one instance of a single charge under section 3. Of the cases where both section 3 and 15 of the 1977 Act were concerned, nearly 60 per cent invoked a section 2 objection to bail. These figures align with the concerns raised by interviewees regarding “overcharging” and the impact it has on the objections raised to the Court, particularly when there is no indication that the offence will be tried summarily or on indictment.

Observations on section 2 objections

It is important to note the distinction between an objection made under the *O’Callaghan* principles with reference to the ‘seriousness of the offence’ and the parameters of section 2, whereby a ‘serious offence’ within the meaning of the 1997 Act is concerned. The issue of misapplication of section 2 was observed in court attendance and through interviews with professional stakeholders.

⁵⁶ *DPP v Mulvey* [2014] IESC 18.

⁵⁷ *Ibid.*

One example was observed in MUN-05, where the applicant was charged with four counts of shoplifting goods totalling €560 in value. The prosecution objected to bail on the sole ground of section 2, on the basis that the applicant had 88 prior convictions for offences committed on bail, was serving suspended sentences, and the strength of the evidence owing to CCTV footage, which was not played to the court. Upon bail being refused, the applicant pleaded guilty and asked to be sentenced that day. The matter was adjourned owing to the fact there were no directions in respect of one count on the charge sheet. Crucially, in response to this, the Court noted that each offence was clearly a summary matter. This example indicates how section 2 can be misapplied, even inadvertently, to offences which do not meet the basic qualifying threshold to be deemed a serious offence for section 2 purposes, and supported by grounds that do not correspond with the grounds listed under section 2.

Another example of the prosecution inappropriately raising a section 2 objection was observed in MUN-01, where the applicant was charged with a summary offence under the Public Order Act 1994. The prosecution raised a flight risk objection under *O'Callaghan* and stated a fear that the accused would commit

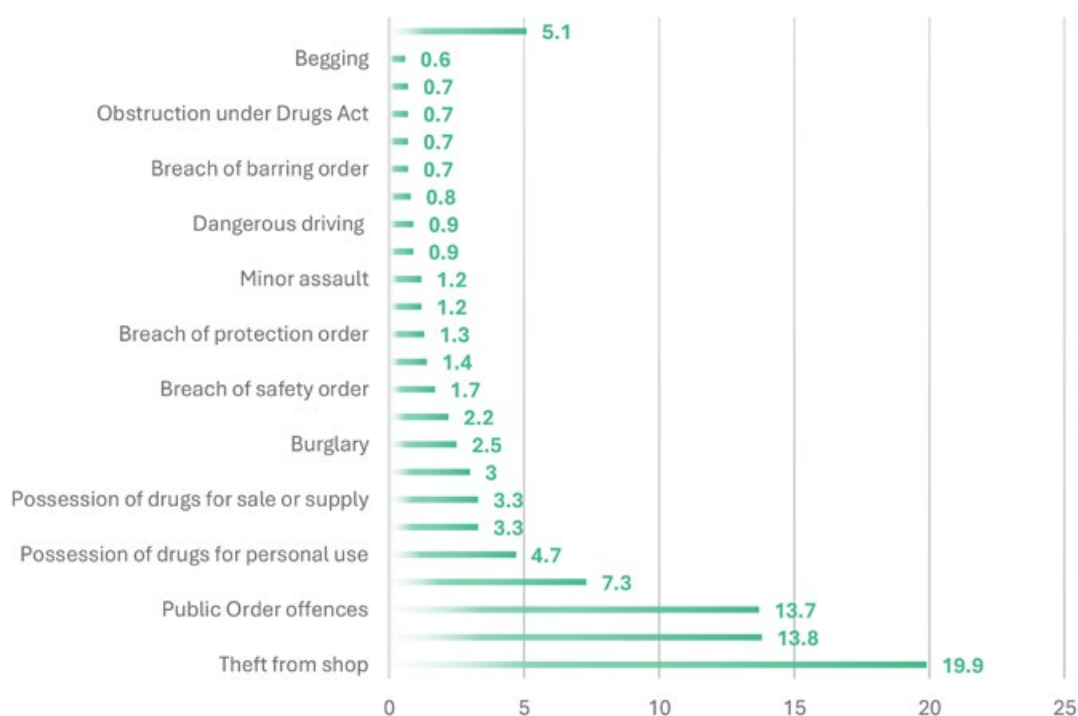
further serious offences under section 2. While the Court rejected the section 2 objection on the grounds that it was inapplicable to a summary offence, the fact it was raised inappropriately by the prosecution aligns with the concerns raised in interviews that there is a phenomenon of prosecutors incorrectly raising section 2 objections.

Regional variants in bail practices across Ireland have been flagged in previous research carried out on pre-trial detention, including IPRT's 2016 report.⁵⁸ Regional variations were observed during the course of this research both through court visits and interviews with participants. It is noteworthy that one of the regional variants observed was the higher use of section 2 objections in the Munster region.

Bail conditions

Nearly all participants reported that the granting of bail is not the most pressing issue, but the setting of unrealistic or unattainable bail conditions, which often leads to breaching bail orders. In 2024, breaching bail conditions accounted for the second highest proportion of offences committed while on bail at 13.8 per cent of total offences, with theft from a shop (19.9 per cent) being the highest.

Figure 10: Percentage of offence type committed by those on bail in 2024⁵⁹



58 (n.45).

59 Dáil Éireann Debates, Question 119 – Departmental Data [Crime] [14284/25] (26 March 2025) https://www.oireachtas.ie/en/debates/question/2025-03-26/119/#pq_119 accessed 1 July 2026.

One participant stated:

“The Court is offering them bail without taking into account their personal circumstances”.

Whereas another participant viewed it as judges giving the appearance of granting bail without any real expectation that the accused will be in a position to take it up. In one case observed (LEIN-05), a man in his early 20s was before the Court for breaching bail conditions, namely not signing on with the Gardaí, not providing a mobile number and being in the county in which the offence was alleged to have occurred. The defendant accepted that he had not complied with conditions, however provided the explanation that he was homeless and couch-surfing in friends’ houses, did not own a phone and had no means to purchase one, and did not have the means to travel to the next county to sign on. His application for bail was refused.

The use of non-financial conditions to bail is welcome where the applicant is of little means, however participants reported the overly cumbersome bail conditions which are either impossible or extremely difficult for the applicant to meet. The UN Working Group on Arbitrary Detention has noted that when non-financial conditions are overly burdensome or impossible to fulfil, they merely substitute one form of arbitrary detention for another, which in turn undermines the purpose of remand detention.⁶⁰

The Office of the Inspector of Prisons’ thematic report on mental health in prisons, provided an example of a person who had been convicted of 100 minor offences.⁶¹ The feedback loop of committing summary offences, being released on bail, breaching bail conditions and committing further summary offences leads to a rapid build-up of offences and bench warrants, which can affect future opportunities to avail of bail and alternatives to custodial sentences.

Cash lodgement

“Poverty blocks their freedom”.

The requirement for a cash lodgement was raised by interviewees as the most prevalent issue affecting people’s ability to take up bail. Many participants highlighted inability to

take up bail, even where that bail has been set at what the Court considers a relatively low sum. Notably, it is not the requirement for a *substantial* cash lodgement, but the requirement for any kind of lodgement that is prohibitive for many people. Accounts were given of women in the Dóchas Centre on remand for weeks or months at a time due to their inability to pay small sums of money, mostly around €50; the lowest amount being a woman unable to pay €30 in order to take up bail. Examples of this cropped up with participants across the board.

“Judges put €50 bail on and these people find themselves in custody for prolonged periods because they don’t have anyone to pay this small amount of money, you’re effectively trapping them in prison”.

Many participants felt there was a real disconnect between the judiciary and legal profession, the people they represent, and in particular, a complete inability to comprehend the levels of poverty that large sections of the community experience:

“You have someone detained for the sake of €30, but €30 to that woman could be €3000 to another middle-class family”.

One participant, who viewed the practice as discriminatory, stated

“I have come across judges who are incredulous at people who have no income at all, for example, people seeking asylum, they have so little income”.

One participant pointed out that often it is those charged with theft, non-payment of a fine or some other offence where lack of money is the catalyst that are required to make a cash lodgement to take up bail. They stated that if someone is arrested for the non-payment of insurance, for example, if they had the money to pay the cash lodgement, they would have the money to pay for the insurance.

In simple terms, one participant referred to the immediate financial impact that the incarceration of an individual has on the rest of the family.

60 Report of the UN Working Group on Arbitrary Detention, A/HRC/60/26 (22 July 2025) para 51 <https://docs.un.org/en/A/HRC/60/26> accessed 1 July 2026.

61 Office of the Inspector of Prisons, *Thematic Inspection: An Evaluation of the Provision of Psychiatric Care in the Irish Prison System* (2023) para 3.81 https://www.oip.ie/wp-content/uploads/2024/02/OIP-Thematic-Inspection-Report-on-Provision-of-Psychiatric-Care-in-Prisons_Feb-2024-Publish.pdf accessed 1 July 2026.

“You have a drop in income right away, either because they are in employment or because they no longer have whatever social welfare the other person is entitled to. If a husband is imprisoned, you are not entitled to lone parent allowance for three months. You then have travel costs if you want to visit them in prison... And the costs at home are the same. Even if it’s one person gone from the home, the rent is the same, the bills are the same, maybe there’s a little less expenditure on food but that difference is minimal... This is why such small levels of bail have such a prohibitive effect”.

Another stated that for those from low socio-economic areas, judges should be considering where this money is coming from:

“By being asked to pay €100 to take up bail, this is coming out of social welfare, this is coming out of the family food budget, or worse still, it is coming from a money lender who is going to expect them to pay €200-300 back”.

Two groups were identified as being particularly impacted by the cash lodgement requirement: women and members of the Traveller community.

This was a view shared by two other interview participants who pointed to the Women Bail Support Service set up in January 2026 to assist women on remand in the Dóchas Centre to pay their cash lodgements. The Scheme has established a Bail Fund to offer cash lodgements to those women who have been brought before the District Court for minor offences and cannot pay their bail. Individual private donors support the Fund and by July 2026 had supported nine women with cash bail amounts between €30 and €500.⁶²

Members of the Scheme reported that women are being remanded for minor crimes and that the majority of the women they had dealt with were being remanded for their inability to pay €50 to €100 cash bail. Examples of minor offences are failing to obey an order of a Garda, begging aggressively, petty theft, shoplifting, and being drunk and disorderly.

They pointed to a wide range of gender-based reasons for the disproportionate impact on women, including stigma, lack of income and lack of support networks.

“Women in particular are very vulnerable in terms of making bail, people aren’t as quick to show up for money for women than men”.

In relation to members of the Traveller community, one participant practising in the West of Ireland indicated that in that part of the country, very high cash lodgements were being imposed on members of the Traveller community.

“You have someone on social welfare and the Court is imposing a €10,000 bail? Then you go to the High Court and it’s reduced”.

They similarly reported very high bail bonds being imposed in one particular county which were frequently reduced on appeal. They stated that it was often for minor offences with disproportionately high sums for lodgement, with one participant giving the example of an obstruction of a peace officer charge under section 9 of the Public Order Act with a lodgement set at €1,500.

Another participant referred to judges setting cash lodgement of €2,000 to €3,000 on people experiencing homelessness. For these individuals, this condition is tantamount to refusal.

Another participant stated that some judges had started imposing cash lodgement requirements on appeal bonds. The effect is that people without means are not in a position to appeal their conviction or sentence, no matter how meritorious their case. This participant stated that this occurred even where individuals were not required to make a cash lodgement to take up bail originally, and that in their view this practice is discriminatory.

Further, the potential impact of setting such unattainable cash lodgements on those who cannot afford it was described as very serious. One participant referred to people who should not be imprisoned in the first place, finding themselves unable to cope in the prison setting:

“It has resulted in very serious self-harm incidents where people are placed in prison, and all the fear, shame and stigma that attaches to that... a daunting situation for someone just because they are not able to come up with a bail bond”.

Another participant pointed out that for families reliant on social welfare, *“it is the children who are unfairly impacted.”* Even if the individual can come up with the money, that money is coming out of money for food, clothing, bills and rent. In a High Court appeal observed for this project, the applicant’s mother, who was parenting alone, offered €1,000 by way of cash lodgement for her son, before the Court intervened to ask how much more she could offer, to which she indicated the maximum would be €1,500. The Court went on to set bail at €1,500 despite the clear financial strain this was placing on the mother of the accused.

The principle that cash lodgements or sureties must not be prohibitively excessive is well documented in both domestic and European case law. In *Neumeister v. Austria*, the ECtHR held that a financial surety must not be excessive and must be fixed according to the purpose for which it is intended, which ultimately is to secure the accused person’s attendance at trial.⁶³ In *Mangouras v. Spain*, the Court set out that the amount of money must never be set solely on the basis of the seriousness of the charge, but must also take into account the accused’s financial circumstances.⁶⁴ The Supreme Court in *DPP v. Broderick* established that the cost of bail must not be set at an impossibly high, unattainable level. The Court ruled that excessively high bail effectively denies a defendant’s right to bail and undermines the constitutional presumption of innocence.⁶⁵

The issue of cash lodgements was considered by the Prison Overcrowding Response Group, who recommended that the Courts Service make better provision to discharge bail at court, negating the need to process a person through the committal process in a prison only to be released hours or days later when the cash bail has been lodged.⁶⁶

Approved address

According to interview participants, the second most prohibitive or problematic condition imposed was an address to be approved by the Gardaí.

There were 12 cases observed in which an approved address was included as a condition for bail, and in four of these cases the individual was documented as being

homeless or having no fixed address (DUB-13, MUN-10, MUN-12, HCA-04). Another notable bail condition was an area restriction, with this being imposed in seven cases (DUB-01, DUB-04, DUB-15, DUB-21, DUB-26, LEI-05, MUN-07). In three of these seven cases the individual requesting bail was recorded as being homeless. Imposing an area restriction on an individual already living in a situation of significant precarity raises questions around the necessity of such a restriction. In one case (LEI-05), the individual’s bail was revoked, due to not having abided by a previous area restriction for bail, yet that area restriction was applicable to an entire county. This individual was also recorded as being homeless.

Several interview participants stated that a lack of a residence was a frequent reason for people not being able to take up bail, and all participants agreed that this shouldn’t be the case.

“Not having an address is not a reason to deprive someone of their liberty.”

Many felt that the address requirement had become almost standard even though it has no real legal basis, as stated by one participant:

“You aren’t concerned that they’re not going to come to Court? Then why are you refusing them bail until they provide you with an address?”

Some judges were described as being less than empathetic and requiring an address as standard. An example was given of counsel for an accused attempting to use the practice of providing the street where the individual is residing in lieu of a formal home address. The judge stated that they were *“refusing to bail someone to a laneway”* and the accused was denied bail on this basis.

Bailing persons to hostels and homeless shelters also poses problems in some areas. One participant pointed out that there is no guarantee at these facilities that a person will get a bed. If they do not get a bed on a particular night due to a hostel being full, they then find themselves in breach of their bail conditions.

63 *Neumeister v Austria* (App no 1936/63) (ECtHR, 27 June 1968) paras 13–14.

64 *Mangouras v Spain* (App no 12050/40) (ECtHR, 28 September 2010).

65 *Broderick v DPP* [2006] IESC 34.

66 Prison Overcrowding Response Group, *Submission DJE 01212-23: Prison Overcrowding* (2024) 28.

When asked whether homelessness was a concern in terms of securing attendance at court, most participants were of the opinion that there were workarounds:

“You know where the person lives? Do you have any issue picking them up on a bench warrant? No. So there may be an issue of forgetfulness or disorder but Simon Community or the Gardaí will know their begging spot so Gardaí can find them easily”.

Another participant stated:

“For homeless offenders it is common for curfews to be placed on them, they will put down the address of where their tent is situated in the city as the place to be bailed to and usually are obligated to sign on twice a day”.

Other interviewees stated that the Gardaí often insist on approving an address when they know that the person cannot provide it, particularly for an accused person who is homeless:

“They demand a residence when they know the one thing they can’t provide is a residence”.

However, homelessness is not the only issue that arises in this context.

“I have clients who are Romanians and Brazilians, and they may not be undocumented but they might be living with a number of undocumented people, family or friends who’ve come over on a student visa that’s expired or whatever, and they are too afraid to give that address in case it causes harm to those people”.

Many participants questioned the power afforded to Gardaí in approving addresses for bail, querying whether they are the appropriate decision-maker.

“It’s too much power for Gardaí and it’s abused regularly... this power should be removed from them because it’s an easy way for them to frustrate that bail - remember, they are the ones objecting in the first place”.

In one observed case (MUN-10), a man was granted bail on a number of conditions, including to provide an address for approval of An Garda Síochána within 48 hours, however he indicated that despite being granted bail, he would not be able to take up bail as he had no address to offer.

Bail supervision scheme

The number of people in prison awaiting trial can be reduced with relatively simple, practical supports introduced through bail conditions. In the youth justice system, the Bail Supervision Scheme (BSS) began as a pilot in Dublin in 2016, with the 2019 evaluation demonstrating that there was a 72 per cent reduction in reoffending (six months post-scheme versus six months pre-scheme).⁶⁷ Of the young people who successfully completed the programme, 85 per cent were given a non-custodial sentence. The scheme was rolled out to Greater Dublin, Cork and Limerick in 2021. The project evaluation found that the BSS enabled young people at high risk of bail denial to adhere to bail conditions and reduce reoffending by effectively supporting their caregivers.

There is currently no bail supervision scheme in operation in the adult criminal justice system. The Department of Justice *Review of Policy Options for Prison and Penal Reform 2022-2024* recommended developing a pilot Bail Supervision Scheme for women and other vulnerable members of the prison population, including those with mental health needs.⁶⁸ Analysis of a similar scheme in Scotland found that the net benefits of supervised bail as an alternative to remand over the three years examined were between £2 million and £13 million.⁶⁹ This analysis aligns with the findings of the Irish youth justice Bail Supervision Scheme evaluation in and builds on a previous proposal in a 2021 report by the Probation Service, *Towards a ‘Best Practice’ Approach to Working with Women who Offend* to ascertain the feasibility of a structured bail supervision and support programme for women.⁷⁰

67 Department of Children and Youth Affairs, *Evaluation of the Bail Supervision Scheme for Children* (2019) <https://assets.gov.ie/static/documents/evaluation-of-the-bail-supervision-scheme-for-children-pilot-scheme.pdf> accessed 1 July 2026.

68 Department of Justice, *Review of Policy Options for Prison and Penal Reform 2022-2024* (2022) <https://assets.gov.ie/static/documents/review-of-policy-options-for-prison-and-penal-reform-2022-2024.pdf> accessed 1 July 2026.

69 Ibid, p 43.

70 The Probation Service, *Towards a ‘Best Practice’ Approach to Working with Women who Offend* (2021) 5 [https://www.probation.ie/EN/PB/0/B28AE56C0ED49C06802588AF005FB514/\\$File/Towards%20a%20Best%20Practice%20approach%20to%20Working%20with%20Women%20who%20Offend%20\(June%202021\).pdf](https://www.probation.ie/EN/PB/0/B28AE56C0ED49C06802588AF005FB514/$File/Towards%20a%20Best%20Practice%20approach%20to%20Working%20with%20Women%20who%20Offend%20(June%202021).pdf) accessed 1 July 2026.

VI. Social and Structural Drivers of Remand Detention

VI. Social and Structural Drivers of Remand Detention

The over-reliance on remand for certain cohorts of society was consistently raised throughout this research. The UN Working Group on Arbitrary Detention has found that poverty and social marginalisation affect the likelihood of being released on bail. People with stable accommodation, employment, financial security and the means to provide a bail bond are well-established criteria to satisfy the court that the accused person is a good candidate for bail.⁷¹ These criteria are more difficult to meet for the most marginalised in society, particularly those experiencing addiction, mental health issues, poverty, homelessness and chronic unemployment. Court data, desk research and stakeholder interviews repeatedly raised this issue, highlighting the intersectionality of marginalisation and social deprivation with either a refusal of bail or an inability to take up bail even where it is granted by the court.

Mental health and addiction

The prevalence of people experiencing mental health issues and addiction in remand detention is a major theme that emerged throughout the course of this research. This issue has been raised repeatedly by various oversight bodies and human rights organisations, including the Office of the Inspector of Prisons,⁷² the Committee on the Prevention of Torture⁷³ and IPRT.⁷⁴ According to IPS data, in 2024 ‘remand prisoners were engaging in self-harm at more than double the rate of sentenced prisoners, underscoring their continued status as a high-risk group’.⁷⁵ Internationally, suicide rates among people in remand tend to be higher than those who are serving a sentence.⁷⁶ Previously, studies comparing the rates of psychosis in prisons in multiple jurisdictions found that while psychosis among sentenced prisoners is comparable to other jurisdictions, the rates of psychosis among remand prisoners in Ireland were much higher than other countries and almost ten times the level in the community.⁷⁷

71 Open Society Justice Initiative and United Nations Development Programme, *The Socioeconomic Impact of Pretrial Detention* (February 2011) <https://www.opensocietyfoundations.org/sites/default/files/socioeconomic-impact-pretrial-detention-02012011.pdf> accessed 1 July 2026.

72 (n61).

73 (n11).

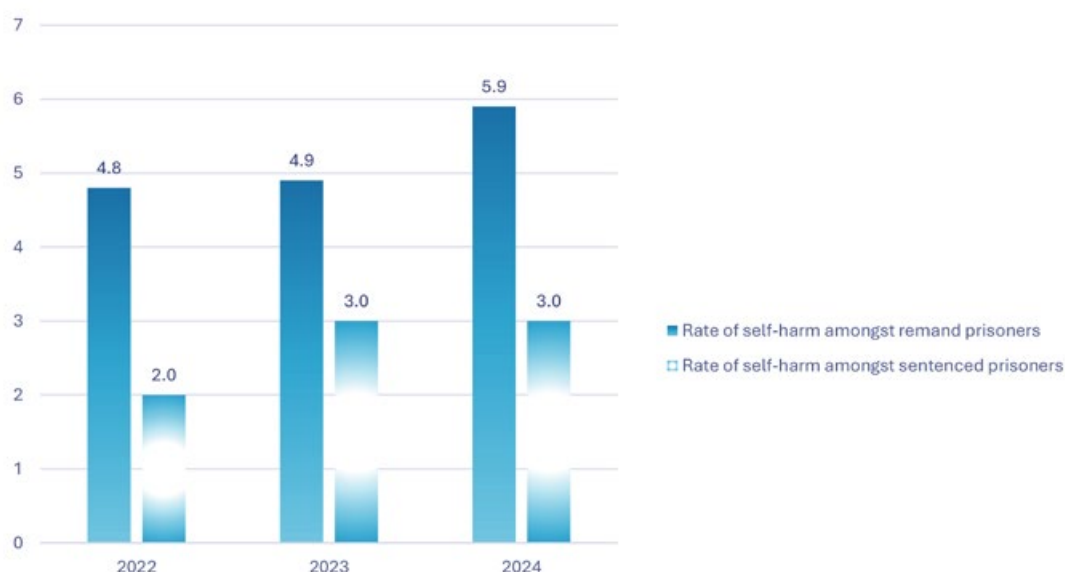
74 Irish Penal Reform Trust, *IPRT Opening Statement to the Joint Committee on the Future of Mental Healthcare* (23 May 2018) https://www.iprt.ie/site/assets/files/6469/iprt_opening_statement_to_cfmh_23_may_2018_updated.pdf accessed 1 July 2026.

75 Irish Prison Service, *Sixth Report from the Self-Harm Assessment and Data Analysis (SADA) Project* (Irish Prison Service 2025) 23.

76 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Remand Detention: Extract from the 26th General Report of the CPT* (CPT/Inf(2017)5-part, 2017) 1 <https://rm.coe.int/168070d0c8> accessed 1 July 2026.

77 Linehan et al ‘Psychiatric morbidity in a cross-sectional sample of male remanded prisoners’ (2005) 22(4) *IR Journal on Psychological Medicine* 128; as cited in Mental Health Commission, *Access to Mental Health Services for People in the Criminal Justice System* (2021).

Figure 11: Rate of self harm per 100 people in prison, 2022-2024. Source: Irish Prison Service, Sixth Report from the Self-Harm Assessment and Data Analysis (SADA) Project (Irish Prison Service 2025)



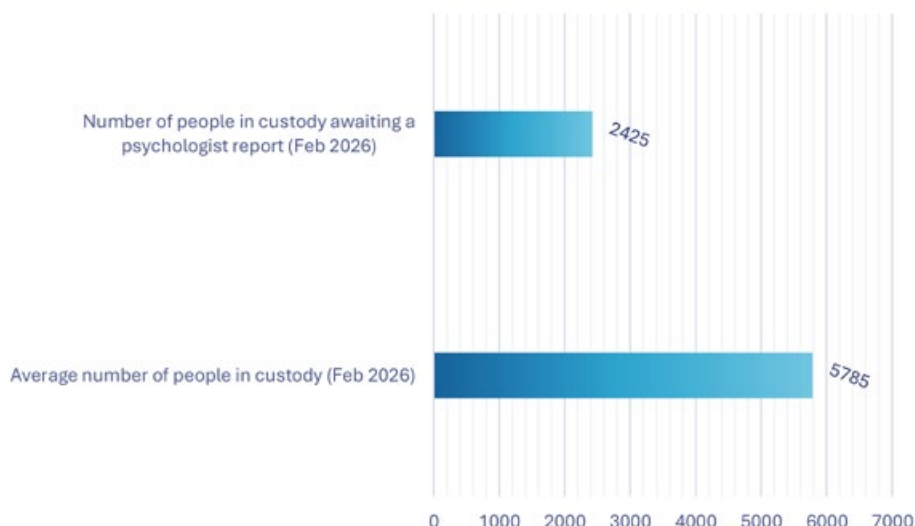
Information on the level of mental health difficulties in the prison population is derived from studies completed in 2003 and 2005, which found that drug and alcohol dependence were by far the most common issues, present in between 61 per cent and 79 per cent of prisoners.⁷⁸ Typically, people in prison were using multiple intoxicants, including alcohol, benzodiazepines, opiates, cannabis and stimulants. For the more severe mental health conditions, rates of psychosis were 3.9 per cent amongst men committed to prison, with 7.6 per cent amongst men on remand and 2.7

per cent amongst sentenced men. More than five per cent of imprisoned women experienced psychosis. There is evidence, supported by multidisciplinary healthcare staff in all prisons, of an increase in the numbers of persons committed to prison presenting with severe and enduring mental illness.⁷⁹ In February 2026, 2,425 people were on a waiting list to access psychology services in prison – this means that 42 per cent of the average prison population that month were waiting to see a psychologist.⁸⁰

78 Kennedy H, Monks S, Curtin K, Wright B, Linehan S, Duffy D, Teljeur C and Kelly A, *Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners* (2005) http://www.drugsandalcohol.ie/6393/1/4338_Kennedy_Mental_illness_in_Irish_prisoners.pdf accessed 1 July 2026.

79 Department of Justice and Department of Health, *Final Report of the High Level Task Force to Consider the Mental Health and Addiction Challenges of Those Who Come into Contact with the Criminal Justice Sector* (2022) <https://assets.gov.ie/static/documents/final-report-of-the-high-level-task-force-to-consider-the-mental-health-and-addiction-.pdf> accessed 1 July 2026.

80 Dáil Éireann Debates, Question 194 – Departmental Data [Addiction and Prison] (25 March 2026) <https://www.oireachtas.ie/en/debates/question/2026-03-25/194/> accessed 1 July 2026.
Irish Prison Service, *Monthly Information Note – February 2026* (February 2026) https://www.irishprisons.ie/wp-content/uploads/documents_pdf/FEBRUARY-2026.pdf accessed 1 July 2026.

Figure 12: Proportion of people in custody in February 2026 awaiting a psychologist appointment

The High Level Task Force to consider the mental health and addiction challenges of those who come into contact with the criminal justice sector, highlighted in its 2022 report that people with mental health and addiction issues should be diverted from the criminal justice system at the earliest point, including at the pre-trial stage.⁸¹ As a result of these difficulties, homeless, mentally ill people on remand (often with schizophrenia) who had committed minor offences, were frequently not accepted for psychiatric hospital admission at the time of arrest or during the trial process, and therefore remained in prison without the benefit of in-patient psychiatric hospital treatment.⁸² Such persons were then released directly into the community, often with no reliable psychiatric follow-up, into fragile settings, frequently exposed to substance misuse, only to find themselves homeless and without treatment, before offending again and re-entering the criminal justice system. The high rate of offending and bench warrant history among this cohort was observed throughout this research. A disproportionate number of these people who are acutely psychotic experience homelessness and impoverishment, and very often have difficulty in meeting standard bail conditions, resulting in frequent and possibly prolonged periods in custody, even when charged with relatively minor offences.⁸³ This is reflected in the cases

observed to inform this report and interviews with participants.

People experiencing acute mental health crisis and psychosis in remand detention continue to be placed in overcrowded cells in conditions that have been described by the CPT as meeting the threshold of inhuman and degrading.⁸⁴ This raises questions about the State's obligations under Article 3 of the European Convention on Human Rights. In the case of *Stawomir Musiat v. Poland*, the European Court of Human Rights found that the applicant, who had been suffering from epilepsy since his early childhood and more recently had been diagnosed with schizophrenia and other serious mental health conditions had been subjected to inhuman and degrading treatment owing to the fact that the conditions he was detained in were not appropriate for any prisoner, even less so for a vulnerable person in need of specialised treatment.⁸⁵ In one Irish example of people with mental health conditions being held on remand, in June 2026, in Cloverhill Prison one man lost an eye as a result of being stabbed with a pen by the man he was sharing a cell with.⁸⁶ Both men were reportedly mentally ill, and had been placed in the same cell due to overcrowding, and both were being held on remand.⁸⁷

The obligations on the State under Article 3

81 (n79), 156.

82 Ibid.

83 Ibid, 163.

84 (n11).

85 *Stawomir Musiat v Poland* (App no 28300/06) (ECtHR, 20 January 2009).

86 The Irish Times, 'Mentally ill prisoner (70s) loses eye after being stabbed with pen by cellmate' (18 June 2026) <https://www.irishtimes.com/crime-law/2026/06/18/mentally-ill-prisoner-70s-loses-eye-after-being-stabbed-with-pen-by-cellmate/> accessed 1 July 2026.

87 Ibid.

are not only to refrain from subjecting people to inhuman and degrading treatment, but to take positive steps to protect people from Article 3 violations.⁸⁸ Bail applications where the Court is made aware of the applicant's mental illness, psychosis or addiction indicate the vulnerability of the applicant and the consequential heightened obligation on the State, once on notice of that fact, to take proactive measures to ensure that person is not subjected to inhuman and degrading treatment, which as noted in *Musiak*, may include inappropriate prison settings for their condition.

The Irish courts have taken a narrower approach to this issue. In *S.M. v The Governor of Cloverhill Prison*, a habeas corpus application was made on the grounds that the applicant's detention was invalid because it failed to vindicate his right to bodily integrity and/or his right to medical treatment.⁸⁹ This was in circumstances where the evidence disclosed that he required a place in the Central Mental Hospital (CMH) due to his psychotic state with homicidal ideation, but where there was no bed for him due to pressure on resources. The Court rejected the application and held that the breach of the applicant's rights of bodily integrity by the failure to admit him to the Central Mental Hospital must be egregious, or exceptional, or fundamental in order to render his detention unlawful. However, it is important to note that the evidence in this case demonstrated that, if the applicant had been released from custody, he would not have engaged with community services, and so he was more likely to get treatment and continuity of care in prison than in the community.⁹⁰

Therapeutic bail

In Ireland, the Central Mental Hospital (CMH) is the only psychiatric hospital to which the majority of people in prison requiring psychiatric treatment can be transferred. However, a transfer depends on the CMH accepting the transfer and the availability of an appropriate bed there.

The Mental Health Commission has stated possible reasons for the disproportionately high rate of major mental illness in Irish remand settings include the lack of a formal legal mechanism for court diversion, the absence of mental health courts and inadequate investment in psychiatric services.⁹¹ The practice of 'therapeutic bail', whereby an accused person is granted bail on the condition that they receive treatment at an appropriate facility under section 12 of the Mental Health Act 2001, has been described as operating as a 'release valve' for the lack of available beds in the CMH, whereby the person is diverted from prison to a healthcare facility.⁹²

The ECtHR has found that the obligation under Article 3 to provide adequate medical care includes a duty to transfer a detainee to a hospital or specialised unit if they cannot access treatment in prison.⁹³ Until recently, the practice of 'therapeutic bail' was used as a workaround for the lack of available beds in the Central Mental Hospital. A Judicial Review challenge to this practice in December 2025 appears to have brought about a suspension of its use which has in turn resulted in those people instead being remanded into custody.

The question of therapeutic bail was raised in a case observed (DUB-17). In that case, the applicant had a long-term drug addiction but was engaging with the Coolmine Drug Rehabilitation Centre which provides a range of services to provide treatment and support for those struggling with addiction. The application for therapeutic bail was refused on the ground that the applicant's engagement with the centre was in its 'infancy', and the applicant was placed in remand custody. The conclusion reached in this case does not align with basic aspects of early stages of addiction recovery including achieving safe medical detoxification and developing coping strategies to prevent relapse.⁹⁴ Interrupting the applicant's engagement with the drug rehabilitation centre, even if it was in its infancy, risked detrimental effects for the applicant's recovery and welfare.

88 *X and Others v Bulgaria* (App no 22457/16) (GC, ECtHR, 2 February 2021); *O'Keeffe v Ireland* (App no 35810/09) (GC, ECtHR, 28 January 2014).

89 *SM v Governor of Cloverhill Prison* [2020] IEHC 639.

90 *Ibid*, para 24.

91 Mental Health Commission, *Access to Mental Health Services for People in the Criminal Justice System* (2021).

92 The Irish Times, 'Central Mental Hospital at capacity with all 111 beds occupied and of 38 waiting, court hears' (17 February 2026) <https://www.irishtimes.com/crime-law/2026/02/17/central-mental-hospital-at-capacity-with-all-111-beds-occupied-and-of-38-waiting-court-hears/> accessed 1 July 2026.

93 *Rooman v Belgium* (App no 18052/11) (GC, ECtHR, 31 January 2019) paras 147–148.

94 Mertinelli, Roeg DPK, Bellaert L, van de Mheen D and Nagelhout GE, *Understanding the Process of Drug Addiction Recovery Through First-Hand Experiences: A Qualitative Study in the Netherlands Using Lifeline Interviews* (2023) 33(10) *Qualitative Health Research* 857 <https://pmc.ncbi.nlm.nih.gov/articles/PMC10426251/> accessed 1 July 2026.

The lack of availability of alternatives to prison for a person under these circumstances raises questions under Article 3 ECHR, which imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care.

Criminalisation of behaviour associated with mental health crises

The criminalisation of people with mental health issues is an area of concern. Behaviour conducive to psychosis and severe mental illness such as paranoia, aggression, erratic and disruptive behaviour can lead to that person being charged with public order or assault offences, even where they are clearly lacking capacity.

Numerous instances of defendants with addiction and mental health issues were observed during this study. In the case of MUN-01 discussed above, a woman charged with a public order offence was not granted bail due to the risk of her not attending trial because of her mental health issues. She was in custody, attending the hearing remotely, having refused to leave her cell. The case was adjourned pending medical treatment.

In another case (DUB-03), a man had been charged with offences under the Public Order Act following an incident while intoxicated in public, using expletives, attempting to spit on a Garda, soiling himself and running into a shop, knocking over cups of tea. For this incident he was charged with the following offences under the Public Order Act 1994:

- Section 4, intoxication in public place;
- Section 6, threatening, abusive or insulting behaviour in public place;
- Section 24, refusal to give name and address;
- Section 19(1), assault or obstruction of a police officer.

The man was noted as being homeless, staying at a Peter McVerry Trust facility, a ward of court with a severe brain injury and addiction issues, on methadone and due to start a step-up step-down programme the following week. Following an indication from the judge that he was not likely to be granted bail, the accused decided to enter a guilty plea to avoid custody and was given a suspended sentence. This case

demonstrates some of the key factors linking mental illness and addiction to the criminal justice system and the pre-trial process. Had that man been placed in custody, he would have lost his emergency accommodation, his place on the step-up step-down recovery programme and access to treatment. The suite of public order offences he was charged with following a single incident, despite the severity of his condition being such that he is a ward of court, raises the question of the purpose of criminalising the behaviour of a vulnerable person experiencing a mental health crisis rather than providing them with the support and services they need to address their underlying mental health issues.

Remanding someone experiencing serious mental health issues, including psychosis, can have catastrophic outcomes. This is demonstrated in the case of Ivan Rosney (Mr J). Mr Rosney, who suffered from schizophrenia, died in prison while on remand after he was arrested during an episode outside his house while he was in the midst of a mental health crisis.⁹⁵ It was reported that Gardaí had attempted to have him admitted to Portlaoise hospital, where he had previously received treatment, but he was turned away so he was remanded into custody to Cloverhill Prison where he later died. The death in custody report by the Office of the Inspector of Prisons indicates that he was experiencing an acute mental health episode and in extreme distress at the time of his death, when he was resisting being brought to attend a remote court hearing and was physically restrained by prison staff.⁹⁶ The circumstances and nature of his death highlight the wholly inappropriate and harmful nature of placing a person experiencing acute mental illness in a prison setting resulting in tragic consequences.

Prison In-reach and Court Liaison Service (PICLS)

In 2006, the Prison In-reach and Court Liaison Service (PICLS) was established in Cloverhill Prison. The service is a diversion policy to transfer mentally ill people away from the criminal justice system and into appropriate psychiatric care. The main objective of PICLS is to improve the identification of mentally ill people when they are remanded to prison. The scheme aims to assist patients, the

95 RTÉ News, 'Cloverhill Prison Death' (9 February 2026) <https://www.rte.ie/news/investigations-unit/2026/0209/1557389-cloverhill-prison-death/> accessed 1 July 2026.

96 Office of the Inspector of Prisons, *Death in Custody Report: Mr J* <https://www.oip.ie/wp-content/uploads/2026/02/Office-of-the-Inspector-of-Prisons-Death-in-Custody-Report-Mr-J-2020.pdf> accessed 1 July 2026.

criminal justice system and local psychiatric services by ensuring a rapid response and by systematically identifying prisoners with a primary diagnosis of psychotic illness.⁹⁷ People in prison identified as vulnerable or requiring urgent assessment are placed on a high-support landing known as D2, which has psychiatric support five days weekly.⁹⁸

The National Forensic Mental Health Service provides PICLS and screens everyone newly remanded to Cloverhill for the presence of major mental illness and performs comprehensive assessments for persons thus identified or following referral. Psychiatric reports may be provided for the courts regarding issues such as fitness to be tried, the presence or otherwise of mental illness, and treatment arrangements in the event of the imposition of a custodial or non-custodial sanction. Such reports can aid the courts in diverting people with mental illness away from prison by ensuring that such persons can access appropriate treatment following the imposition of a non-custodial sanction.

Mental health services in prisons can find it difficult to organise community mental health follow-up for their patients on their release to the community. This is particularly the case in remand settings where time spent in custody can be brief, and release may be unexpected.⁹⁹ Inadequate discharge/release planning by prison mental health services has been found to compound the problems associated with transition of care to the community. In Cloverhill, Mountjoy and the Dóchas Centre, HAIL Housing provides a service to help source accommodation for men and women with mental health difficulties on remand or serving sentences.¹⁰⁰

Drug Use and Addiction

The Irish Prison Service estimates that 70 per cent or more of individuals committed to prison in Ireland face addiction issues.¹⁰¹ There are currently no addiction nurses working in Irish prisons but Merchants Quay Ireland (MQI) provides 19 addiction counsellors across the prison estate, with one vacancy in Cork Prison.¹⁰² Each addiction counsellor operates a caseload of 30 people and the Therapeutic and Recovery Programme (TARP) works with 45 men annually in Mountjoy Prison but there is no equivalent programme for women.¹⁰³ In February 2026, 920 people were on a waitlist to access MQI addiction services.¹⁰⁴ The reality is that given the long waiting lists and the high rate of both remand custody and short sentences, many people cannot engage with addiction services in prison. In June 2026, the Joint Committee on Drugs Use called for the “ending of short prison sentences for nonviolent and drug-related offences, instead taking a health-led approach to helping drug users”, for the Department of Justice, Home Affairs and Migration to invest in and respond to “the need for an adequate number of addiction-specific nurses across the Irish prison campus” and “urgent attention and resourcing be given to prison-based addiction counselling supports to address the large waiting lists in prisons across Ireland”.¹⁰⁵

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- 97 European Commission, Directorate-General for Health and Food Safety, *EU Public Health Best Practice Portal* <https://webgate.ec.europa.eu/dyna/bp-portal/best-practice-file/79> accessed 1 July 2026.
- 98 Walsh J, Smith D, Byrne F, Hickey P, Taylor E, Caddow M, Reynolds O and O'Neill C, *Transfer to Community and Prison Mental Health Care from Ireland's Main Remand Prison over Three Years: 2015–2017* (2024) 15 *Frontiers in Psychiatry* 1392072, doi:10.3389/fpsy.2024.1392072 <https://pmc.ncbi.nlm.nih.gov/articles/PMC11294197/> accessed 1 July 2026.
- 99 Hopkin G, Evans-Lacko S, Forrester A, Shaw J and Thornicroft G, *Interventions at the Transition from Prison to the Community for Prisoners with Mental Illness: A Systematic Review* (2018) *Administration and Policy in Mental Health and Mental Health Services Research* <https://pmc.ncbi.nlm.nih.gov/articles/PMC5999162/> accessed 1 July 2026.
- 100 Housing Association for Integrated Living (HAIL), *Support Services* <https://hail.ie/support-services/> accessed 1 July 2026.
- 101 Irish Prison Service, Caron McCaffrey, *Director General, Irish Prison Service Speaks at the Citizens' Assembly on Drug Use* (2 September 2023) 3.
- 102 Email from the Irish Prison Service (IPS) to the Irish Penal Reform Trust (IPRT), 12 June 2026.
- 103 Joint Committee on Drugs Use, *Joint Committee on Drugs Use Debate* (5 February 2026) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_drugs_use/2026-02-05/2/ accessed 1 July 2026.
- 104 (n80).
- 105 Joint Committee on Drugs Use, *Final Report of the Joint Committee on Drugs Use* (24 June 2026) Recommendations 76, 160 and 161 https://data.oireachtas.ie/ie/oireachtas/committee/dail/34/joint_committee_on_drugs_use/reports/2026/2026-06-24_final-report_en.pdf accessed 1 July 2026.

The CPT's 2017 focus on remand detention in its general report noted for people remanded into custody who are substance-addicted, particular attention should also be paid to withdrawal symptoms resulting from the use of drugs, medication or alcohol, and opiate substitution treatment which has started prior to their admission to the prison should be continued in prison.¹⁰⁶

Drug Treatment Courts

The Drug Treatment Court is a District Court that provides supervised treatment, education and rehabilitation for people who have either pleaded guilty or been convicted of minor crimes committed as a consequence of drug misuse and was set up under the principles of therapeutic justice. The primary aim and purpose of the Court is 'the reduction of crime through rehabilitation of the offender but not excluding punishment should the circumstances so warrant'.¹⁰⁷ It is a full criminal court, but operates differently from any other court in that the person before it is obliged to comply with terms of a programme tailored to their needs and circumstances. The programme is delivered by a multi-agency team, monitored regularly by the judge, and comprising a court co-ordinator, probation officer and Garda officer.

Participants of programmes in the Drug Treatment Court gain points through compliance with set conditions and lose them if they do not comply with the terms of the programme. These points lead to progression through a three-phase system: Phase 1, Phase 2 and Phase 3. If a participant fails Phase 1 they are returned to the criminal courts for sentencing. If they progress to and complete Phase 2, a recommendation is made that their sentence is suspended, while successful completion of Phase 3 will result in any charges they faced being struck out completely. Research on practice and outcomes of the court have yielded mixed results, with some describing it as a 'failed experiment'¹⁰⁸ and others pointing out that the success of the

Court in Ireland, while varied, is nuanced and could be drastically enhanced with improved relationships between criminal justice and health sectors,¹⁰⁹ a sentiment that was echoed by interviewees in this study.

Given the person needs to have been convicted of or pleaded guilty to the relevant offence, it is not available to people who are at pre-trial stage. Interviewees with experience of the system had a positive view on the outcomes and potential of the Drug Treatment Court and its expansion to pre-trial stage, with one participant saying:

"Many of these people are just crying out for treatment, the drugs court can give that to them. It helps them with housing and education and addiction treatment, it gives them services, it focuses on community Gardaí and positive relationships with the authorities."

The *Final Report of the Prison Overcrowding Response Group* to the then Minister for Justice in 2024, recommended a review of "the processes and eligibility for the Drug Treatment Court to increase catchment of individuals sentenced to low-level drugs-related crimes".¹¹⁰ However, a full evaluation has not yet been completed or published. The *Final Report of the Joint Committee on Drugs Use*, launched in June 2026, called for the publication of the evaluation and recommended that:

... the Department of Justice, Home Affairs and Migration place the Dublin Drug Treatment Court on a statutory, national footing and expand its availability to all regions, ensuring that every county has access to a Drug Treatment Court as an effective alternative to custodial sentencing and as a structured pathway to treatment and recovery.¹¹¹

¹⁰⁶ (n76).

¹⁰⁷ National Advisory Committee on Drugs and Alcohol, *An Overview of Drug Use in Ireland* (2007) <https://www.drugsandalcohol.ie/5257/1/1240-0992.pdf> accessed 1 July 2026.

¹⁰⁸ The Irish Times, 'Drug treatment court a failed experiment imported from the US' <https://www.irishtimes.com/news/ireland/irish-news/drug-treatment-court-a-failed-experiment-imported-from-the-us-1.3934948> accessed 1 July 2026.

¹⁰⁹ Gavin P and Kawalek A, *Viewing the Dublin Drug Treatment Court through the Lens of Therapeutic Jurisprudence* (2020) 11(1) *International Journal for Court Administration* 5, doi:10.36745/ijca.298 <https://doi.org/10.36745/ijca.298> accessed 1 July 2026.

¹¹⁰ (n15)

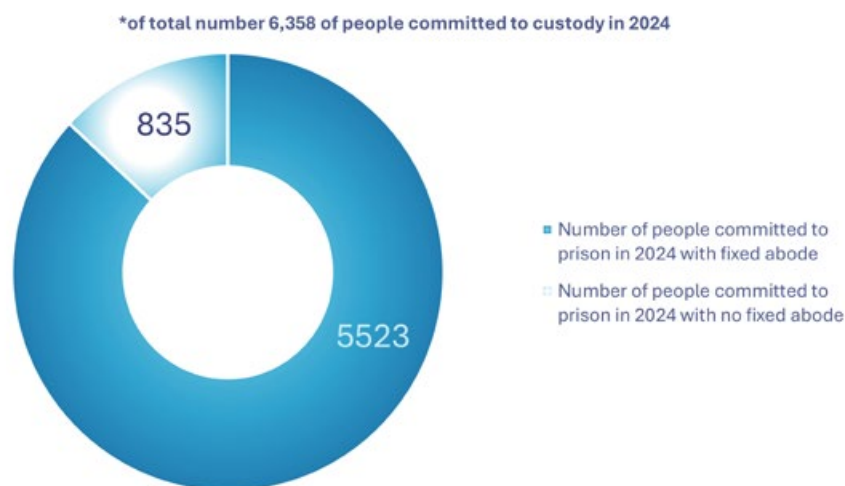
¹¹¹ (n103) 53.

The Committee emphasised that the Court should:

[...] adopt a broad and person-centred definition of success, recognising a range of health, social and behavioural outcomes. These should include

stabilisation, abstinence where desired by the person, reduced use, improved physical and mental health, sustained engagement with services, reduced offending, housing stability, and family reconciliation.¹¹²

Figure 13: Rates of homelessness among the prison population in 2024. Source: Irish Prison Service, Annual Report 2024 (2025)



Housing insecurity and resettlement

The prevalence of individuals experiencing homelessness within the prison population is significant. In Ireland, people who declared they had no fixed abode accounted for 11.6 per cent (835) of all committals in 2024.¹¹³ This disproportionately impacts women, with nearly 30 per cent of women committed to prison identifying as homeless.¹¹⁴ A systemic review and meta-analysis found higher rates of people experiencing homelessness in Irish prisons compared to the UK or US.¹¹⁵

A five-year study of men in all Irish prisons, requiring psychiatric admission, found that 48 per cent of this cohort were experiencing homelessness.¹¹⁶ This study also found that of those remanded for minor offences but requiring acute psychiatric admission to non-forensic hospitals, 58 per cent were experiencing homelessness at the time of their committal. A significant contributing factor to this is the move away from

inpatient psychiatric facilities through deinstitutionalisation, which in many countries has meant an increase in prison committals known as the Penrose effect.¹¹⁷ These findings align with the issues raised by interviewees, whereby vulnerable people who are experiencing homelessness are denied bail due to the fact that there is no alternative available to the Court.

Various interview participants referred to this cohort as often being “chaotic” or coming from circumstances which make it difficult for them to organise themselves. One participant described it as penalising transience, where a person gets a date on a piece of paper which they put into their pocket and forget about, or else give an address but find themselves continuously moving around due to the current housing crisis.

“It’s not just homeless people, it’s transient people.”

¹¹² Ibid.

¹¹³ (n19) 64.

¹¹⁴ Irish Prison Service *Annual Report 2023 (2024)*.

¹¹⁵ Gulati G, Keating N, O’Neill A, Delaunoy I, Meagher D and Dunne CP, *The Prevalence of Major Mental Illness, Substance Misuse and Homelessness in Irish Prisoners: Systematic Review and Meta-Analyses* (2019) 36(1) *Irish Journal of Psychological Medicine* 35–45, doi:10.1017/ipm.2018.15.

¹¹⁶ O’Neill CJ, Kelly BD and Kennedy HG, *A 25-Year Dynamic Ecological Analysis of Psychiatric Hospital Admissions and Prison Committals: Penrose’s Hypothesis Updated* (2021) 38(3) *Irish Journal of Psychological Medicine* 182–185, doi:10.1017/ipm.2018.40.

¹¹⁷ Ibid.

Another participant stated that this is also true of those with mental health and addiction issues; it is the inherent disorder of their own personal circumstances which makes it difficult for them to keep track of court dates, as opposed to any lack of respect for the system:

“Then a bench warrant is issued and suddenly they have 20 and now their chances of getting bail are greatly diminished.”

‘A Vision for Change’, the national mental health policy framework from 2006, proposed to mitigate the risk of homelessness among this population through the provision of sheltered mental health accommodation and intensive care rehabilitation units (ICRUs), which would allow for the admission of patients with higher forensic risk from both prison and community settings.¹¹⁸ Irish mental health services, however, have suffered from decades of under-resourcing, which has limited development on the recommendations in ‘A Vision for Change’ and ‘Sharing the Vision’, Ireland’s new mental health policy strategy.¹¹⁹ Recommendation 54 is the key goal for people in prison as it states that every person who enters the justice system should have access to tiered, recovery-oriented mental health support and a care plan.

Following its inspection of Cloverhill Prison in 2023, the OIP recommended that, in line with Ireland’s commitment to the *Lisbon Declaration on Combatting Homelessness*,¹²⁰ and the Government’s *Housing for All Strategy*, steps must be taken in partnership with relevant agencies to ensure that every person leaving prison has access to housing and pledged ‘intensive supports’.¹²¹

The OIP also recommended that resettlement services should be formally extended to support (i) people held on remand, and (ii) people serving short sentences.¹²²

Travellers

The over-representation of certain ethnic minorities, particularly Travellers, featured heavily in stakeholder interviews and desk research. The 2022 Census indicated that Irish Travellers represent less than one per cent of the population,¹²³ yet limited available data indicates they are overrepresented in all parts of the criminal justice system. In June 2026, Travellers accounted for eight per cent of all people in custody.¹²⁴ There is even greater disparity in women’s prisons, where in August 2024, 16 per cent of detained women identified as Travellers.¹²⁵

The *Irish Travellers’ Access to Justice Report* revealed deep distrust between Travellers and Irish criminal justice bodies, including the judiciary, based on a perception of anti-Traveller bias and lived experience of discrimination.¹²⁶ While some interviewees recounted experiences of overt anti-Traveller sentiment, the systemic and structural bias against the Traveller community has been built into institutions through tradition, custom, and convention which influence the way state decision-makers such as public officials, the judiciary and An Garda Síochána engage with Travellers. This institutional bias perpetuates the marginalisation and criminalisation of the Traveller community and has had a devastating impact.¹²⁷

The *Irish Travellers’ Access to Justice Report* found a difficult relationship between Travellers and An Garda Síochána rooted in

118 Department of Health, *A Vision for Change: Report of the Expert Group on Mental Health Policy* (2006) <https://assets.gov.ie/static/documents/a-vision-for-change.pdf> accessed 1 July 2026.

119 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (2025).

120 Office of the Inspector of Prisons, *Unannounced General Inspection of Cloverhill Prison 2023* https://assets.gov.ie/static/documents/74477bec/Inspection_Report_-_Unannounced_General_Inspection_of_Cloverhill_Prison_2023.pdf accessed 1 July 2026;

Office of the Inspector of Prisons, *Cloverhill Prison Inspection Report 2023 Action Plan* (2026) https://assets.gov.ie/static/documents/8606961b/Cloverhill_Prison_Inspection_Report_2023_Action_Plan.pdf accessed 1 July 2026.

121 Ibid.

122 Ibid.

123 Central Statistics Office, *Census 2022 Results Profile 5 – Diversity, Migration, Ethnicity, Irish Travellers and Religion* (26 October 2023) <https://www.cso.ie/en/csolatestnews/pressreleases/2023pressreleases/pressstatementcensus2022resultsprofile5-diversitymigrationethnicityirishtravellersreligiondublin/> accessed 1 July 2026.

124 Information provided by the Irish Prison Service on foot of a Freedom of Information Request (June 2026).

125 Ibid.

126 Sindy Joyce, Olive O’Reilly, Margaret O’Brien, David Joyce, Jennifer Schweppe and Amanda Haynes, *Irish Travellers’ Access to Justice* (European Centre for the Study of Hate, University of Limerick, 2022) https://www.drugsandalcohol.ie/36509/1/ITAJ_Final.pdf accessed 1 July 2026.

127 Gearty MR, Schweppe J, Haynes A and Joyce S, *Irish Travellers’ Access to Justice: Are You the Fairest of Them All?* (2024) 8(2) *Irish Judicial Studies Journal* 94 <https://irishjudicialstudiesjournal.ie/assets/uploads/images/2024%20edition%202/7.%20Gearty%20and%20Ors.pdf> accessed 1 July 2026.

mutual suspicion and the historical role of the Gardaí in policing the culture and nomadic life of Irish Travellers dating back to the foundation of the State.¹²⁸ While there have been efforts to improve this relationship, including the principle of non-discrimination in the Garda Code of Ethics, and some progress between Traveller organisations and particular Gardaí, institutional, systemic and personal bias persists. This was reflected in interviews with Traveller participants, who emphasised the “overwhelming” lack of trust in their community of the Gardaí and the judiciary. Reference was made to illegal stop and search of halting sites by Gardaí, general over-policing, more frequent objections to bail, longer sentences being imposed on Travellers and Roma, and Travellers finding it far more difficult to be granted temporary release. Interviewees were also of the view that any previous convictions, even those dating 10 to 15 years previously, seemed to have a disproportionate impact on both bail applications and sentences handed down, compared to the settled community. There was also a concern raised that the prior convictions associated with a family name would impact on the outcome of a bail application for a member of the Traveller community.

A 2012 study highlights the policing of nomadism as an issue, noting that efforts to improve relations between An Garda Síochána and the Traveller community are undermined by the policing of nomadism and the acute marginalisation of Travellers.¹²⁹ One example given by an interviewee highlighted the nomadic nature of Traveller life being used as a basis for objecting to bail, with them being deemed a flight risk.

“[E]thnicity, and nomadism being a key part of that ethnicity, has been used against them when seeking bail. Well, you know, they’re Travellers, they’ll be here today, gone tomorrow, you know, they’ll be untraceable, they’re of no fixed abode. All of this has been used to deny bail to Travellers which for a similar offence within the settled community, they would get bail.”

It was pointed out that in fact, although nomadism is a key feature of Traveller life,

Travellers are often far more family and community oriented, meaning their likelihood of fleeing the jurisdiction is far lower than their settled counterparts. Another example given by a settled participant who frequently represents members of the Traveller community concerns a situation where there are accusations of domestic violence and the Court imposes a condition on their bail that they have to provide an alternative address. For Travellers living at a halting site with their family and community, often the caravan of another family living at that halting site will be offered as an alternative residence for the purposes of bail, but this will be refused by the Court. It was indicated that for many Travellers, obtaining another address outside of the halting site is entirely unrealistic given their lack of income and connections outside of their community and discrimination in accessing housing more generally. One participant stated:

“You’re supposed to meet people where you find them in Court but isn’t happening for members of the Traveller community.”

Another interviewee referred to these issues as system failures caused by structural racism, noting that even for judges and lawyers acting in good faith, it is the system itself by design which fails to take account of cultural differences and the impact that these constructs have on those from different walks of life.

These perspectives highlight a systemic and structural bias against Travellers based on fundamental cultural aspects of Traveller ethnicity. A 2020 study found that prison and probation risk assessment and indicators frequently result in higher risk scores for Travellers based solely on their nomadism and frequent change of address, with the assessment metrics not accounting for cultural issues.¹³⁰

The overrepresentation of Traveller children in the youth justice system indicates the inter-generational persistence of anti-Traveller bias. One in five children admitted to Oberstown Detention Campus between 2017 and 2025 were members of the Traveller community, making up 20 per cent of the boys’ population

128 (126).

129 Mulcahy A, ‘Alright in Their Own Place’: Policing and the Spatial Regulation of Irish Travellers (2012) 12(3) *Criminology & Criminal Justice* 307–327, doi:10.1177/1748895811431849.

130 Denis C Bracken, *Interactions with the Traveller Community by Prison and Probation Staff* (Irish Probation Journal, Vol 17, October 2020). <https://www.probation.ie/EN/PB/0/3CDB16EB640E47818025862C00597FA0/%24File/Denis%20C.%20Bracken.pdf> accessed 1 July 2026.

and 36.9 per cent of the girls' population.¹³¹ The offences which account for the highest number of admissions of Traveller children were theft offences.

Several participants felt that discrimination against the Traveller community was particularly overt in the West of Ireland. One participant stated that "Dublin is fairer" but in the West Travellers were being denied bail where practitioners believed it should be granted. Another stated that in their view there is a clear bias against their Traveller clients on the Western circuits, stating that there was suspicion around the origins of the money being offered to the Court and dissatisfaction with general conditions proposed,

"I just find that the presumption is against them."

The experiences and perspectives given by interviewees on Traveller experiences of bias in courtrooms align with other research in this area. The All-Ireland Traveller Health Study found that the risk of a Traveller being imprisoned was 11 times that of a non-Traveller and for Traveller women the risk was 22 times that of non-Traveller women.¹³²

The above-mentioned 2020 study found a high level of distrust between the Traveller community and criminal justice authorities, including the judiciary and An Garda Síochána, with probation officers indicating that even bringing a Traveller's ethnicity to the attention of the court may not be in the best interest of the defendant.¹³³ Interview participants stated that there is concern across the country about how members of the Traveller community are dealt with. Complaints ranged from explicit racism to a general sense that Travellers were being more harshly treated than their settled counterparts. Participants indicated that over the years, they are aware of a range of derogatory comments judges have made about both the Traveller and Roma communities.

These findings raise serious human rights concerns which have been highlighted by domestic and international human rights bodies, including the UN Committee on the Elimination of Racial Discrimination (CERD) and the UN Committee on the Elimination of Discrimination Against Women (CEDAW) In its 2025 Concluding Observations on Ireland, CEDAW recommended the State address the root causes of the overrepresentation of Traveller women in places of deprivation of liberty and expand non-custodial alternatives, ensuring gender-responsive prison services developed in consultation with Traveller and ethnic minority women.¹³⁴

People from outside the State

Research has demonstrated that people from outside the State are more likely to be refused bail on the grounds of flight risk.¹³⁵ For people seeking international protection, recent research indicates that they are being refused station bail because they do not have a fixed abode and when brought before the courts are regularly denied bail due to being deemed a flight risk.¹³⁶

ECtHR case law has consistently emphasised the importance of ensuring that these grounds for refusal be rooted in fact. In *Panchenko v. Russia*, which concerned whether the continued detention was justified on the grounds of a perceived risk of absconding, the Court noted that it was the absence of any specific facts, and the use of generic terms supporting the perceived flight risk as well as a failure to properly take into account family ties, his permanent address and the fact that the applicant had no criminal record, which amounted to a breach of his Article 5(4) rights.¹³⁷

The fact that the suspect is not a national of, or has no other links with, the state where the offence is assumed

131 Oberstown Children Detention Campus, *Oberstown Quick Facts 2024* (2024) <https://www.oberstown.com/clipart/PDF/Oberstown%20Quick%20Facts%202024.pdf> accessed 1 July 2026.

132 All Ireland Traveller Health Study Team, *All Ireland Traveller Health Study: Our Geels – Summary of Findings* (Department of Health and Children, 2010) <https://assets.gov.ie/static/documents/all-ireland-traveller-health-study-our-geels-summary-of-findings.pdf> accessed 1 July 2026.

133 (n130) 238-252.

134 Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Eighth Periodic Report of Ireland* (CEDAW/C/IRL/CO/8, 10 July 2025) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=NNMfx/+ufFlt67gl+dLtaD3TOTEo7keAeF+fcF8XbVnUPTd4uWvfbBDBCu588/iu accessed 1 July 2026.

135 Irish Council for Civil Liberties, *Improving Judicial Assessment of Flight Risk* (2024) <https://www.iccl.ie/wp-content/uploads/2024/05/Improving-Judicial-Assessment-of-Flight-risk-WEB-1.pdf> accessed 1 July 2026.

136 Dr Bríd Ní Ghráinne and Chunyan Chon, *Criminalising Asylum in Ireland: Prosecuting Asylum-Seekers without a Valid Passport or Equivalent Document* (Maynooth University, 2026) <https://www.maynoothuniversity.ie/sites/default/files/assets/document/Report.pdf> accessed 1 July 2026.

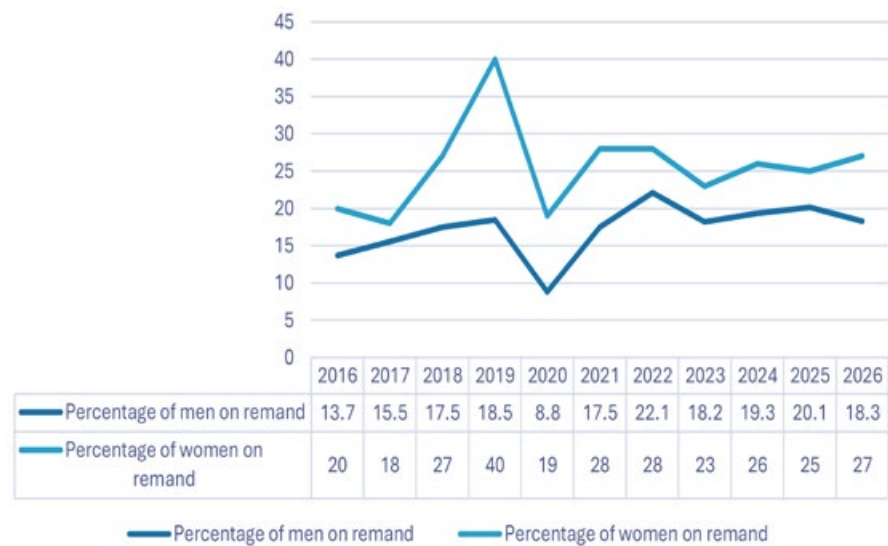
137 *Panchenko v Russia* (App no 45100/98) (ECtHR, 8 February 2005).

to have been committed is not in itself sufficient to conclude that there is a risk of flight.¹³⁸

and that there must be a probability that an applicant will abscond based on the evidence under the O’Callaghan principles.

Under domestic law, the Irish courts have made clear that in flight risk cases the prosecution objecting to bail must prove that there is more than a possibility of a flight risk

Figure 14: Snapshot of percentage of people on remand by gender 2016 - 2026



Gender

The rate of committals to prison for women for pre-trial detention in 2023 was almost 60 per cent, a nine per cent increase since 2017. Gender-based discrimination featured in the majority of interviews with participants. This related to everything from the types of offences for which women find themselves remanded in custody, to their ability to lodge cash to take up bail, to the impact on their families. In 2025, the Irish Prison Service indicated there is an increasing trend within the female prison population of ‘remands for welfare purposes’ where underlying reason for remanding her is more due to the level of destitution she experiences in the community than the nature or level of offending behaviour.¹³⁹ In 2024, the overall rate of remand for girls in Oberstown was 62.7 per cent, and 33.8 per cent of girls were admitted to Oberstown for theft offences, more than twice the number admitted for assault, which was the next highest offence.¹⁴⁰

“Women are being remanded for minor crimes...and losing their homes and children in the process.”

Of the cases observed, 15.5 per cent concerned a female applicant. Of those, 40 per cent (n=6) had been charged with minor theft offences.

One participant referred to women being held on remand for very petty crimes, in some cases directly related to poverty but in others where they have acted to protect a partner, or been the victim of coercive control, taking blame for the crimes of others. Other participants spoke of women being far more stigmatised and being treated much more harshly than men.

“There are lots of women in prison for theft of groceries and beauty products... one woman refused bail only has two convictions for the theft of groceries.”

Interview participants referred to lower levels of violence in women’s prisons compared to men’s prisons but far higher levels of self-harm.¹⁴¹ Women were described as being incredibly isolated with little to no visits, save

138 Committee of Ministers of the Council of Europe, Recommendation Rec (2006)13 of the Committee of Ministers to Member States on the Use of Remand in Custody, the Conditions in Which It Takes Place and the Provision of Safeguards against Abuse (adopted 27 September 2006) <https://search.coe.int/cm?i=09000016805d7437> accessed 1 July 2026.

139 Irish Prison Service, *Note for Information in Response to Letter from Lorcan Staines SC dated 20 June 2025* (Irish Prison Service 2025).

140 Ibid.

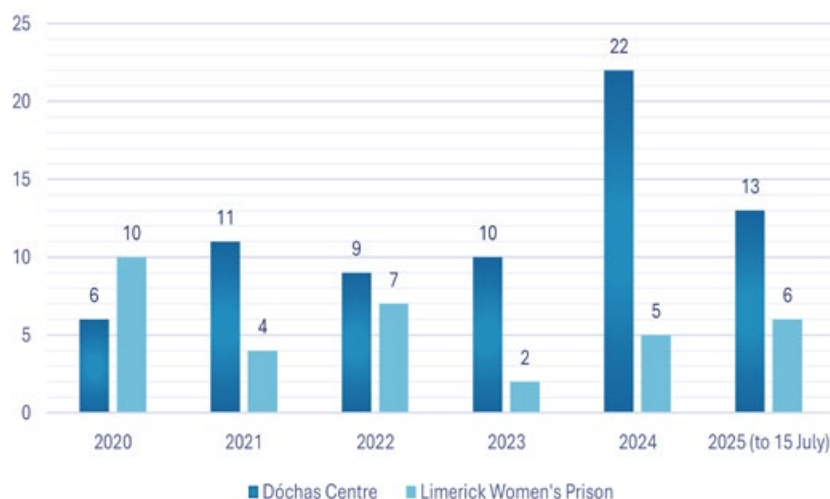
141 (n75).

for professional visits. Reference was also made to the fact that in the women's prisons sentenced prisoners and those on remand were mixed; this was described as a severe

violation of prisoner rights and something that caused serious fear for many women.

Pregnancy and newborn infants in prison

Figure 15: Number of pregnant women in prison 2020 – 2025



The issue of women who are pregnant or have recently had a baby was also raised by participants. The number of pregnancies and newborn infants in Irish prisons has increased in recent years.¹⁴² In 2024, four women gave birth while in custody and by July 2025, three women had given birth in custody that year.¹⁴³ In 2024, three babies under 12 months were accommodated with their mothers in the Dóchas Centre and by July 2025, three babies were accommodated in the Dóchas and one in Limerick.¹⁴⁴ Research has demonstrated that women in prison who are pregnant are at a higher risk of pregnancy loss and birth complications, and that the brain development of a fetus in utero and newborn infant is affected by the mother being in custody.¹⁴⁵ The European Parliament has noted that 'the repercussions of isolation and distress for the health of pregnant women prisoners could also have, in turn, harmful, or even

dangerous, consequences for the child' and has urged careful consideration of a term of imprisonment.¹⁴⁶

Interviewees suggested that remand in custody should be deferred until after the mother has given birth, with another stating that sending pregnant women to prison should be a measure of last resort. It appeared from conversations with participants that there were pregnant women in prison for minor offences and at least one woman who gave birth while remanded for shoplifting offences.

The UN Committee on the Rights of the Child has recommended that the best interests of the child, including the need to maintain direct contact with the mother, must be carefully and independently considered by competent professionals and taken into account in all decisions pertaining to detention, including pre-trial detention, sentencing and the placement of the child.¹⁴⁷ In the context of

¹⁴² Dáil Éireann Debates, Questions 737, 738, 740, 741, 742, 767, 768, 770 and 772 (15 July 2025) <https://www.oireachtas.ie/en/debates/> accessed 1 July 2026.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Baldwin L, 'Mothers in Prison' (2017) 181 *Criminal Law & Justice Weekly* 45 <https://www.nicco.org.uk/userfiles/downloads/5ac5cb6cad237-mothers-in-prison.pdf> accessed 1 July 2026.

¹⁴⁶ European Parliament, *Resolution of 13 March 2008 on the Particular Situation of Women in Prison and the Impact of the Imprisonment of Parents on Social and Family Life* (2007/2116(INI)) [2009] OJ C 66 E/49 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008IP0102> accessed 1 July 2026.

¹⁴⁷ Committee on the Rights of the Child, *Concluding Observations: Thailand* (CRC/C/THA/CO/2, 17 March 2006) <https://digitallibrary.un.org/record/575783> accessed 1 July 2026.

bail applications, pregnancy and caregiving responsibility should be considered as a factor for consideration when deciding whether to grant bail. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the Bangkok Rules) echo this, with Rule 64 stating that:

When sentencing or deciding on pre-trial measures for a pregnant woman or a child's sole or primary carer, priority should be given to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interest of the child.

The issue of the best interests of the child was considered by the European Court of Human Rights in *Deltuva v. Lithuania*.¹⁴⁸ The Court emphasised the necessity of considering the child's perspective, highlighting that authorities must protect a child's right to maintain an emotional bond with their imprisoned parent. The Court based its ruling on Article 8 of the European Convention on Human Rights, which protects the right to private and family life. It also referred to the Council of Europe Recommendation concerning children with imprisoned parents.¹⁴⁹ In particular, this recommendation provides that the child's right to maintain contact with a remanded parent should be respected and that:

Without prejudice to the independence of the judiciary, before a judicial order or a sentence is imposed on a parent, account shall be taken of the rights and needs of their children and the potential impact on them. The judiciary should examine the possibility of a reasonable suspension of pre-trial detention or the execution of a prison sentence and their possible replacement with community

sanctions or measures.

While women in prison, including mothers in prison, are not a homogenous group, the structure of women's lives differs from men's in the criminal justice system, including the remand process. Very often women coming before the courts are charged with minor offences and may not expect to be remanded into custody at the initial hearing. There are accounts of women being remanded without having made arrangements for the care of their child or children.¹⁵⁰ IPRT's 2023 report on *Maternal Imprisonment in Ireland* outlined the different mechanisms that can be provided to the Court to assess a family situation and make an informed decision.¹⁵¹ These include pre-sanction reports and the use of non-custodial sentences. It highlighted that in relation to the impact of parental imprisonment on children "it is well established that the impact of pre-trial detention can be equally damaging, including in relation to health, socio-economic and criminogenic factors".¹⁵² As in other jurisdictions, sentencing guidelines should be developed in Ireland to include three key principles: (1) imprisonment as a last resort; (2) presumption in favour of a community sentence where a primary caregiver is being sentenced; and (3) a requirement to consider the impact of imprisonment on the child in circumstances where the primary caregiver may be imprisoned including in pre-trial detention.

148 *Deltuva v Lithuania* (App no 38144/20) (ECtHR, 21 March 2023).

149 Committee of Ministers of the Council of Europe, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to Member States concerning Children with Imprisoned Parents* (adopted 4 April 2018) <https://edoc.coe.int/en/childrens-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html> accessed 1 July 2026.

150 Joint Committee on Key Issues affecting the Traveller Community (2023) debate - Thursday, 26 September 2024. <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_key_issues_affecting_the_traveller_community_2023/2024-09-26/2/>

151 Irish Penal Reform Trust, *Maternal Imprisonment in Ireland: A Scoping Study* (2023) https://www.iprt.ie/site/assets/files/7194/maternal_imprisonment_in_ireland- a_scoping_study - edited - web.pdf accessed 1 July 2026.

152 Ibid.

VII. Conclusion

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This report examined how Ireland's bail laws are operating in practice, 60 years on from the seminal *O'Callaghan* judgment setting out the purpose and legal principles governing bail and the subsequent 1996 referendum. The mixed methodology approach drew on doctrinal legal research and a systematic literature review to underpin an empirical evaluation of the law in action through case studies and qualitative stakeholder interviews. The resulting findings paint a picture of an opaque, chaotic practice and procedure that disproportionately places marginalised people in prisons.

At a time when Irish prisons are experiencing record overcrowding, resulting in inhuman and degrading conditions, the question of the rates of remand, and the demographic factors of those in remand custody, is increasingly important. A consistent thread throughout this research is the impact the current remand framework has on marginalised groups and the intersection between healthcare, housing and the criminal justice systems.

The findings in this report fall into two overarching categories: legal and sociological. The law in this area is at first glance relatively straightforward, with a single seminal judgment and a specific legislative provision setting out the basic legal principles to be applied. However, the law in practice demonstrates the patchwork tapestry that has emerged through decades of custom which risks eroding the fundamentals of those legal principles, particularly regarding the misapplication of section 2 of the Bail Act 1997. The conflation of 'seriousness of the offence' under the *O'Callaghan* principles and 'serious offence' within the scope of section 2 may seem innocuous yet it risks inadvertently misapplying a provision for preventative bail which was strictly designed within the confines of the 1996 referendum. IPRT's 2016 report on pre-trial detention raised the issue of Garda court presenters conducting the case for the prosecution in bail applications as problematic because it potentially places the State at a disadvantage as it is not represented by a qualified legal professional. This report builds on that finding, notably that the central role of An Garda Síochána in all aspects of the pre-trial process, including bail applications, risks deference and dynamics that can undermine the presumption of innocence and standards of evidence.

The report raises questions about the grey area of hybrid or 'either-way' offences at a stage when directions have not been given on whether they will be tried summarily or by indictment. This affects the objections that can be raised by the prosecution and how those objections are considered by the Court. The phenomenon of 'overcharging', whereby a person is charged with several offences resulting from a single incident, in drug possession cases and theft offences illustrates this issue in practice.

While research indicates the majority of people who apply for bail are granted bail by the Courts, a central concern is the imposition of unattainable bail conditions and the inability of people experiencing poverty, homelessness, addiction and mental illness to meet what are known to be basic bail conditions, such as cash lodgements and residing at an approved address. The practice of therapeutic bail, which evolved as a way of diverting a person into a mental health facility at the point of remand, was identified in research as a promising practice which has suddenly halted due to a judicial review in 2025. The informality of therapeutic bail illustrates a central finding of this research that arose at every point: bail and pre-trial procedures in Ireland are operating in an often disorganised and over-stretched system that is disproportionately affecting the most marginalised in society.

Limitations of this research must be noted. The quantitative element was constrained by a lack of available systemic data on bail decisions across the country, and the relatively small sample size of in-court data collection cannot be inferred to be representative. The data collected in courtrooms and stakeholder interviews were used to indicate trends and provide case studies, which are supplemented by reference to meta-analysis and underpinned

by doctrinal research to evaluate established legal principles and practice. Given the lack of available data, this report is not intended to be a comprehensive study on the outcomes of bail applications across Ireland, and instead is an evaluation of bail law in practice, triangulating available data on rates of remand custody, the prevalence of certain characteristics and demographics within that population, and qualitative analysis of the underlying phenomena.

In conclusion, the data demonstrates that the prison population in Ireland has increased rapidly, more rapidly than the general population. There are also higher rates of remand custody and an increase in the time spent on remand. Within that, the rates of addiction, mental illness, homelessness, and women in remand custody are high and indicate a trend of marginalised groups disproportionately being denied bail for minor offences. The research demonstrates clear

pathways into remand custody, particularly regarding poverty and mental illness, illustrating the use of remand custody in Ireland as an indicator of the Penrose effect, whereby the closure of old psychiatric institutions without investment in adequate community and residential alternatives leads to an increase in the prison population. This is not necessarily a conscious bias or policy, however current practice, legal framework, and the tests set out in the *O'Callaghan* principles do not account for the realities of poverty, gender, ethnicity and mental health. A fundamental change in the law and viable alternatives to remand custody for these cohorts must be introduced if these issues are to be resolved.

VIII. Recommendations

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Prison conditions and remand detention

1. The State should remove its reservation to Article 10(2) of the International Covenant on Civil and Political Rights and, as part of its ongoing review of the Irish Prison Rules 2007, should insert language into Rule 71 that guarantees, without exception, the separation of remand from sentenced prisoners in Irish prisons.
2. The State should implement the recommendation of the European Committee on the Prevention of Torture (CPT) to introduce an enforceable ceiling on the number of people who may be accommodated in prison in line with actual prison capacity.
3. The principle of prison as a last resort should be enshrined in law in line with existing government commitments.
4. The Bail Act 1997 should be amended to provide that prison capacity and material conditions should be considered as a key factor when determining whether it is appropriate to remand a person to custody, given the impact imprisonment would likely have on the accused individual, particularly anyone with particular vulnerabilities including severe mental illness.

Judicial training

5. The Judicial Council should provide regular judicial training and guidance in bail matters, for both newly appointed judges and periodic continuous professional development training, should incorporate the evolving jurisprudence of the European Court of Human Rights in respect of bail and pre-trial detention.
6. Where a fresh bail application is made, the ongoing presumption in favour of release should apply unless there are necessary and proportionate reasons under the circumstances that the presiding judge decides to continue to remand a defendant in custody and these should be documented.

An Garda Síochána

7. Members of An Garda Síochána should not be responsible for the prosecution of offences and should not act as court presenters objecting to bail in court proceedings, in line with recommendations in the Staines Review. This function should be reserved for and conducted by legal professionals.
8. While responsibility for presenting bail objections continues to lie with the Gardaí, all members should be provided with training, including refresher courses by way of Continuous Professional Development (CPD) about the legal and constitutional basis for objecting to bail. An Garda Síochána should develop clear official guidelines for prosecuting Gardaí and court presenters, e.g. regarding bench warrant history, section 2 objections etc. This training could include the obligation to observe bail hearings.

Categories of offences

9. The Bail Act 1997 should be amended to include a provision that where the accused individual has been charged with an offence that may be tried on indictment or summarily, that offence may not be considered an indictable offence for the purpose of bail applications unless the Director of Public Prosecutions issues a direction or recommendation, or the nature of the evidence satisfies the Court that the offence is likely to be tried on indictment.
10. Introduce statutory guidance on the use of public order offences. The guidance should require Gardaí, the Director of Public Prosecutions and the courts to consider vulnerability, homelessness, and poverty as mitigating factors before prosecution.

Bail conditions

11. Any requirement for cash bail should be dispensed with but in the interim, the Courts Service should be required to implement the recommendation of the Prison Overcrowding Response Group to reduce the number of people remanded to custody instead of remanded on bail by making provisions to discharge bail at the Court rather than following the person's committal to prison.
12. When attaching conditions to bail, the Court must take into account the circumstances of the accused, in particular any vulnerabilities or their specific needs, the offence(s) they are charged with and the objections raised. The judge should only attach strictly necessary and proportionate conditions to meet those objection(s) and avoid the imposition of conditions which may be impossible to fulfil.
13. Judges should be required to give clear, comprehensive reasons for their bail decisions with specific reference to the objection(s) and the supporting evidence that influenced the decision. Where bail is granted with conditions attached, judges should record why each condition is necessary and proportionate, as well as the consequences of any breach.
14. The Bail Act 1997 should be amended to place therapeutic bail on a statutory footing so that the Court can grant bail on the condition that the accused individual receives treatment at an appropriate healthcare facility on either mental health grounds or in relation to accessing appropriate addiction support.
15. An independent review of the practice of 'approved address' conditions should be conducted by the Department of Justice to determine if there is a legal basis for this type of requirement and if it is deemed necessary, the prosecuting member of An Garda Síochána should not be responsible for approving it.

Mental health

16. Legislate to remove barriers to diverting people on remand and to facilitate hospital transfer on sentencing in line with recommendations from the Mental Health Commission's *Report on Access to Mental Health Services for People in the Criminal Justice System*.
17. Legislate for diversion from prison at the pre-trial stage for people experiencing mental illness, in line with the recommendation in 'A Vision for Change'.
18. Open Intensive Care Rehabilitation Units ('ICRUs') to facilitate provision of appropriate care, as recommended in 'A Vision for Change' and by the CPT. This will assist in providing alternatives to custody and divert people from prison at remand stage.
19. Operationalise all beds at the Central Mental Hospital with adequate staffing to ensure adequate provision of care and removal of people in need of psychiatric treatment from prison settings.
20. Implement the recommendations of the High Level Task Force to consider the mental health and addiction challenges of those who come into contact with the criminal justice sector, and the Office of the Inspector of Prisons to invest in and expand the Prison In-reach Court Liaison Service (PICLS) nationwide. This should include funding for a housing support worker on each team.

Drug use and addiction

21. In bail applications where the accused has alcohol or drug addiction issues, bail supports and wrap-around community-based supports should be provided, where the accused can access treatment for underlying addiction or mental health issues or both, as well as accessing assistance in attending court. This may improve adherence to bail conditions.
22. Implement recommendations of the Joint Oireachtas Committee on Drug Use, including repeal of s.3 of the Misuse of Drugs Act 1977 to reduce the prosecution of people for possession of drugs for personal use. To ensure a truly health-led response, people must not be required to enter the criminal justice system before being offered the necessary support.

Housing insecurity and resettlement

23. No one should be remanded into custody due to a lack of housing or because they cannot provide an address. The Court should accept interventions from housing or homelessness bodies where possible and should refer accused individuals experiencing homelessness to these bodies to access accommodation unless it is necessary and proportionate to remand the accused individual to custody.
24. In line with Ireland's commitment to the *Lisbon Declaration on Combatting Homelessness*, and the Government's *Housing for All Strategy*, the Irish Prison Service and relevant agencies should ensure that every person leaving prison has access to housing and pledged 'intensive supports'.

Traveller Community

25. The Department of Justice should conduct a review of the disproportionate effects of bail laws on Travellers, in particular inherent discrimination based on nomadic culture.

People from outside the State

26. In bail applications involving non-Irish national defendants the Court should always consider granting bail with conditions such as residence requirements, reporting conditions and surrendering passports etc., before remanding them in custody.

Gender

27. Establish and operationalise a Bail Support Scheme for women as a matter of priority, building in monitoring and evaluation from the outset to ensure it can be adapted to meet the needs of people involved in the scheme and if successful, to inform the expansion of the scheme to other cohorts including young adults and other marginalised persons, including those with severe and enduring mental illness, as a meaningful and more effective alternative to remand in custody.

28. Legislate to ensure that pre-trial non-custodial alternatives should be the default position for pregnant women and primary caregivers regardless of the offence in question, requiring the Court at bail application stage to give meaningful consideration of the impact of parental imprisonment on children and taking their best interests into account in making a decision.
29. Bodies such as the Judicial Council, Law Society and Bar Council should consider incorporating training on the impact of maternal imprisonment so that judges and other relevant criminal justice officials have sufficient insight into these issues to properly weigh it as a factor in decision making including in decisions around remand.

Data and Evidence

30. The Department of Justice in conjunction with An Garda Síochána, the Courts Services, the Director of Public Prosecutions, the Irish Prison Service and the Central Statistics Office should compile and share more comprehensive statistics relating to the use of remand, with a view to enhancing knowledge and understanding of statistical trends in this complex area of law and practice.
31. The Government, the Courts Service and the Irish Prison Service should conduct a regular analysis of how many people remanded in custody go on to receive a custodial sentence to assess the necessity of using this measure to the extent it is currently used.
32. The Courts Service should record the written reasons of judges for the denial of bail and store this information centrally, in a manner similar to that proposed in the Civil Law and Criminal Law (Miscellaneous Provisions) Bill 2025.



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