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## CONCLUSION

### The Future of Police Custody in Ireland

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#### Introduction

One discrete aspect of policing in Ireland has been the central focus of this book – police custody. This is one of the most important components of operational policing. The consequences which flow from police custody can have significant and far-reaching impacts on the lives of those who have been detained. As noted previously, 90% or more of prosecutions relating to serious crime result in guilty pleas, meaning that what’s happened, been said, or experienced in the pre-trial investigative stage of the process is not reviewed in any detail or subject to significant individualised oversight.<sup>1</sup> On a broader level too, there are significant concerns around a lack of oversight of police custody in Ireland,<sup>2</sup> and, even in the context of a contested trial, the courts seem to be redrawing the line between what happens in the station and the consequences of that at trial.<sup>3</sup>

While there have been positive developments within the custody experience in Ireland, such as the refurbishment or building of some new garda custody suites, the introduction of specific garda training for the conduct of investigative interviews,<sup>4</sup> and the recognition of at least an entitlement, if not a right, to

1 See Chapters 1 and 6.

2 See Chapter 8.

3 In *DPP v JD* [2022] IESC 39, the Supreme Court emphasised that while a person under garda investigation is entitled to fairness in the course of that investigation, the right to a trial in due course of law, under Article 38 of the Irish Constitution, is a right to be vindicated at the trial, and by the trial. Accordingly, any pre-trial, investigative unfairness might not necessarily have consequences or remedies within the trial.

4 See Chapter 5.

have one's lawyer present throughout garda interviews,<sup>5</sup> the contents of this book have shown that there is much yet to do. A summation of all chapters would be misplaced here and would not do justice to the complexities of each individual contribution, or the depth of analysis provided in each chapter. What follows then is simply a pulling on certain threads which traverse the book as a whole, in order to provide an overarching perspective on where we are and where we might be going. The themes which are discussed include:

- the need for data-driven policies and interventions;
- the need to provide additional supports and safeguards for particularly vulnerable persons in garda custody;
- the need for financial and regulatory support to ensure the complete fulfilment of individual's rights;
- the need to see the garda station through fresh eyes as a place where different professionals come to work, not merely as the domain of An Garda Síochána (AGS); and
- the need for a new, more open approach to research on operational policing in Ireland.

Across all of this, there is an ongoing need for managerial and political commitment to the ideal of offering the very best that a police service can provide to the communities that it serves. This is particularly important in the context of the future of police custody in Ireland.

### **Data-Driven Policies and Interventions**

There is a distinct lack of data available on operational policing in Ireland, and this needs to change. If we do not measure where we are, we cannot plan for where we want to be. As discussed in this book, we do not have a clear picture of those who find themselves in garda custody. For example, what is the average age of a detainee?; are Travellers, members of other ethnic groups, or racialised minorities any more or less likely to be arrested and detained than others?;<sup>6</sup> are persons with mental ill-health, addiction, Adverse Childhood Experiences (ACEs), intellectual disabilities, or neurodiverse conditions more likely to be held in custody than others?<sup>7</sup> None of this is clear. We also do not know exactly how many people are held in garda custody in the course of an average year, what the average detention period is, or, for example, what the average period of waiting for access to legal advice is and

<sup>5</sup> See Chapter 6.

<sup>6</sup> See Chapters 9 and 10.

<sup>7</sup> See Chapters 4, 12 and 13.

the reasons for this. All of this information would be extremely beneficial in terms of understanding police custody in Ireland and planning for its future. While the absence of an electronic custody record is a factor, this is not insurmountable and immediate steps could be taken to collate information across divisions at the end of each month, for example.

Important data on the operation of garda custody should not be hidden from view. One example of a lack of clarity in data collection and dissemination was the failure of the Garda Síochána Ombudsman Commission (GSOC), until 2021, to disaggregate the circumstances giving rise to referrals from AGS under s 102 of the Garda Síochána Act 2005, as amended.<sup>8</sup> This meant that it was not possible to show what number of individuals died while in garda custody or soon after release from garda custody, as opposed to those who suffered serious harm as a result of garda conduct (whether in custody or otherwise).<sup>9</sup> Given the importance of this information it is concerning that it was not more clearly collated by GSOC, so that a clear picture of the level of deaths in, or subsequent to, detention was apparent and related lessons could be learned.

Another extremely important area where we simply do not have the necessary information is the arrest and detention of racialised and ethnic minorities.<sup>10</sup> As noted in Chapter 9, the Garda Commissioner has on a number of occasions stated categorically that Ireland's police do not engage in ethnic profiling.<sup>11</sup> There is simply no data to prove this one way or the other. Such data are urgently needed, in our increasingly diverse society. We need to be sure that all persons are being treated equally, and fairly, and if this is not the case, then we need to design interventions to make it so. Without verifiable data, we are simply daydreaming about what might be the case.

Much of this comes back to the sense that garda custody – which lies at the heart of our criminal process – is happening every day, but nobody is over-seeing it. AGS have lacked managerial oversight of custody<sup>12</sup> and while the

8 Section 102 provides for independent investigation of any matter that appears to indicate that the conduct of a member of the Garda Síochána may have resulted in the death of, or serious harm to, a person. See Garda Síochána Ombudsman Commission Annual Reports <[www.gardaombudsman.ie/publications/statutory-reports/](http://www.gardaombudsman.ie/publications/statutory-reports/)> accessed 31 July 2023.

9 AGS Annual Reports had given a figure for deaths in custody for many years, but this did not include those who died soon after garda detention.

10 See Chapters 9 and 10.

11 See Chapter 9.

12 Garda Síochána Inspectorate, 'Delivering Custody Services: A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations' (2021) <[www.gsinsp.ie/wp-content/uploads/2022/06/Garda-Inspectorate-Delivering-Custody-Services.pdf](http://www.gsinsp.ie/wp-content/uploads/2022/06/Garda-Inspectorate-Delivering-Custody-Services.pdf)> accessed 27 July 2023, see p I where Chief Inspector Mark Toland noted that, in relation to police custody, AGS lacked any "organisational vision or strategy beyond adherence to the legal requirements."

Garda Inspectorate report on *Delivering Custody Services*<sup>13</sup> has pushed the issue forward,<sup>14</sup> it was largely focused on the material conditions of custody and the safety and well-being of detainees. While those are extremely important considerations,<sup>15</sup> there is more to be considered, as discussed throughout this book.

It is hoped that unannounced inspections of garda stations will become part of the oversight mechanism once the Inspection of Places of Detention Bill 2022 is enacted, and the Optional Protocol to the UN Convention against Torture (OPCAT) is ratified.<sup>16</sup> This would be a significant improvement of the oversight structures but should not usurp the duty of AGS itself to ensure robust monitoring, oversight, and spot-checking of garda custody, including garda interviewing techniques.

### **Additional Supports and Safeguards for Particularly Vulnerable Persons in Custody**

Vulnerability has been a significant theme across the chapters of this book. While everyone is vulnerable in police custody to a certain extent, detainees with particular vulnerabilities are in need of additional supports and safeguards.<sup>17</sup> Suspects with intellectual disabilities,<sup>18</sup> autism spectrum disorder or other neurodiversities,<sup>19</sup> those for whom English is not their first language,<sup>20</sup> D/deaf suspects,<sup>21</sup> and children<sup>22</sup> all need to be considered in the context of the physicality of being detained and in terms of the impact of investigative interviewing techniques. Chapters within this book looked at the right to legal assistance for all detainees<sup>23</sup> and the right to an interpreter for those with language needs.<sup>24</sup> While there are significant challenges yet to be met to ensure the practical and effective protection of those rights, other supports are also needed in the system for particularly vulnerable individuals. We have no systematic approach to the provision of appropriate adults to assist suspects with intellectual disabilities, neurodiverse conditions, or mental ill-health,

13 Ibid.

14 At the time of writing, July 2023, a draft implementation plan in response to the Inspectorate report is with the Garda Commissioner.

15 See further Chapter 2.

16 See Chapter 8.

17 See Chapter 3.

18 See Chapter 12.

19 See Chapter 13.

20 See Chapter 7.

21 Ibid.

22 See Chapter 11.

23 See Chapter 6.

24 See Chapter 7.

for example, and while intermediaries are currently being trained it is not clear if they will be allowed to assist suspects in police custody in Ireland.<sup>25</sup> Our system of access to medical assistance in police custody is also in need of improvement, as it is haphazard and cannot provide speedy access to specialist knowledge relating to complex conditions.<sup>26</sup>

Action is needed to agree on a strategy for supporting particularly vulnerable detainees in garda custody. A regulatory framework is needed which makes space for appropriate adults and intermediaries, and financial support will be necessary to ensure equitable access to such supports. A review of garda interview training is also necessary, to ensure that it is fit for purpose in relation to specific cohorts of potential interviewees, and to make adjustments as necessary.

### Financial and Regulatory Support

While there have certainly been improvements in recent years in terms of access to legal assistance throughout garda interviews, and the recognition of the right to an interpreter, the financial and regulatory support needed to move these, and other necessary safeguards, from being theoretical and illusory rights to being truly practical and effective has been absent. Running a criminal justice system which is procedurally fair and accepted as legitimate by the public costs money. The Irish government (and indeed the media and wider public) needs to accept the value of expenditure on supporting the criminal process through the provision of legal assistance to those who cannot afford to pay privately, through paying interpreters (and criminal defence solicitors) a decent wage so that they will be available for garda station work, through financing the transcription of garda interviews so that gardaí no longer have to take a contemporaneous note, and through investing in wider supports for particularly vulnerable detainees.

Proper regulation of the system is necessary too, which does not mean codes of practice outsourced for creation to the Garda Commissioner.<sup>27</sup> The Minister for Justice should establish a committee including representatives from AGS, criminal defence solicitors, interpreter representatives, medical experts including specialists in intellectual disabilities, neurodiversity, mental ill-health, and addiction, and academics to design an appropriate regulatory framework for garda custody which could include statutory codes of practice, internal disciplinary protocols, oversight structures, and a review mechanism.

<sup>25</sup> See Chapter 12.

<sup>26</sup> See Chapter 12. See also V Conway and Y Daly, *Criminal Defence Representation at Garda Stations* (Bloomsbury 2023) 119–24.

<sup>27</sup> See discussion in Chapter 6 on the General Scheme of the Garda Síochána (Powers) Bill 2021.

### A New Image of Garda Custody

What is needed at this point, 40 years from the introduction of legislation allowing for detention in custody for a wide range of serious offences is a new image of garda custody. The garda station can no longer be seen as the domain of AGS alone. Stations, and custody suites/areas in particular, need to be opened up to other professionals including lawyers, interpreters, doctors, psychiatrists, mental health specialists, intermediaries, youth workers, and so on. Each of these can support those who are detained in police custody, and thus support AGS in being the best it can be, serving its communities, and protecting the human rights of all.

Garda detention can no longer be seen as existing solely for the purpose of getting a confession from a suspect. It is simply a step in the criminal justice system, wherein gardaí can gather information, to be passed on to the next stage in the process. It can be more than that too though, it can be a site of intervention for the most vulnerable amongst us. We should be using it as a point in the system where we, as a society, can disrupt the chaotic trajectory of some individual's lives by providing supports across mental health, homelessness, addiction, trauma, and neglect. Each of us wants a society with less crime, and while recidivism is discussed at the end point of the criminal justice system – the prison system – why not intervene earlier, at the beginning, in the garda station?

### A More Open Approach to Research

One final important point must also be made – a new culture around research on operational policing is needed in Ireland. AGS have been slow to allow academics to have access to garda stations to conduct observational research, or to conduct qualitative interviews with gardaí involved in investigative interviewing.<sup>28</sup> There is a need to nurture a more open culture of independent research on policing in Ireland, which could be of benefit to all, including AGS as an institution and its members operating on the ground. The more we know about the day-to-day issues that face gardaí, the more we can advocate for change that will both support their work and ensure appropriate safeguards for persons subject to policing.

28 On the access challenges relating to research on AGS, see V Conway, *Policing Twentieth Century Ireland: A History of An Garda Síochána* (Routledge 2014); P Williams, 'Cop Culture: The Impact of Confrontation on the Working Personality of Frontline Gardaí' (Unpublished Masters dissertation, Dublin Institute of Technology 2016); S O'Brien-Olinger, *Police, Race and Culture in the 'New Ireland': An Ethnography* (Palgrave Macmillan 2016); C Marsh, *Irish Policing: Culture, Challenges and Change in An Garda Síochána* (Palgrave Macmillan 2022).

Looking to other jurisdictions, there is much that could be done including, for example, exploring opportunities for the co-creation of research between police and academics, creating links between AGS and university researchers and departments, and supporting PhD research on operational policing issues.<sup>29</sup> Cooperation and research of this nature are hugely valuable as they lead to evidence-informed policy and practice. Governmental funding of research in this area would also be welcome. While the Policing Authority has, in recent years, supported important research of this kind,<sup>30</sup> more could be done across agencies to broaden the field of research and knowledge, and to support the further development of a cohort of academic experts in this area.

## Conclusion

Any one of us could find ourselves suspected of criminal offending. It may seem a remote possibility, but unexpected events occur, allegations can be made, and misunderstandings can escalate. If you were detained in police custody in Ireland, what would you want that experience to be like? What physical conditions would you expect? How would you wish to be treated? Would you want assistance from a lawyer, and could you afford to pay for it? Would you need access to medications? What if you have an intellectual disability or are neurodiverse? Would you need additional supports? Would your likely response to being in custody, and to garda interviewing, be different to that of other detainees? What if your child was arrested and detained? How would you expect gardaí to treat them? What specific supports would you expect to be in place? What training would you expect gardaí to have?

It is easy to “other” garda station detainees, but it could be any one of us, our relatives or friends. In considering what is needed in terms of best practice, it is useful to explore how you would feel if you were detained in police custody. Even if you were guilty of the offence, you would want supports in place to assist you during an extremely stressful time, and the physical conditions of custody should not be punitive.

This book has provided a clear picture of contemporary police custody in Ireland. Applying a human rights lens and based on a concern for procedural fairness across the criminal process, it has critically examined specific issues within police custody ranging from garda interview methods to the experiences of minority ethnic groups and from rights and entitlements in custody to the additional needs of suspects with particular vulnerabilities. The Garda

29 See, for example, the Scottish Institute for Policing Research <[www.sipr.ac.uk/](http://www.sipr.ac.uk/)> accessed 27 July 2023; and, the N8 Policing Research Partnership <[www.n8prp.org.uk/](http://www.n8prp.org.uk/)> accessed 27 July 2023.

30 Including the research on children subject to garda questioning referenced across Chapter 11.

Inspectorate report has drawn attention to aspects of garda custody, but the overall picture is bigger and in need of informed and sustained review, both internally within AGS and externally. A proactive strategy to improve police custody in Ireland is needed. We must insist on the highest standards of police practice, the greatest level of support possible for detainees, and ongoing, effective oversight of what happens behind closed doors.

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