



**INCLUSION IRELAND**

National Association for People with an Intellectual Disability

# **Submission to the Policing Authority**

**On 2018 Policing Priorities**

September 2017

**This document is written in font 12 Verdana in line with Inclusion  
Ireland plain English guidelines.**

## 1. About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations. Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

## 2. Introduction

Increasing the public's trust and confidence in an Garda Síochána must focus on the more marginalised groups in society, ensuring they can rely on the police force for protecting and enhancing their rights as citizens. This includes people with disabilities and those with additional support needs. Access to justice for people with disabilities has been recognised as more challenging due to procedural, physical and attitudinal barriers experienced when engaging with the relevant authorities.<sup>1</sup>

As the Policing Authority is responsible for determining the Policing Priorities for 2018 Inclusion Ireland believe this is an important opportunity to ensure the human rights of persons with intellectual disabilities are protected and promoted within an Garda Síochána. There needs to be a focus on improving the supports for individuals with additional supports needs while at the same time increasing the expertise and knowledge within an Garda Síochána. The collection of accurate data on crimes against persons with disabilities would be a starting point to ensure that our laws recognise all crimes and the motivations for such acts.

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<sup>1</sup> Access to Justice for People with Disabilities as Victims of Crime in Ireland, School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law University College Cork, February 2012, <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

Persons with intellectual disabilities should be afforded all the same protections within the law as any other citizen. This can involve extra supports to ensure they can engage with the law on an equal footing with all other citizens.

Inclusion Ireland appreciates the invite from the Policing Authority to contribute to the Policing Priorities for 2018.

## **Confronting Crime**

### Crimes against the Person and Property

#### Sexual Offences

Inclusion Ireland is concerned that the Criminal Law (Sexual Offences) Act 2016 contains definitions that could prejudice a person with an intellectual disability.

**Section 21** sets out that a person lacks capacity if “by reason of a mental or intellectual disability or a mental illness is “incapable of understanding the nature, or consequences, of that act evaluating relevant information communicating his or her consent then they should be deemed a **“protected person”**”.

This is in stark contrast to the **Assisted Decision-Making (Capacity) Act 2015** which took a ‘disability neutral’ approach to assessing capacity and does not require that a person have a diagnosis or disability to have their capacity assessed. This disability-neutral approach ensures that it is a functional approach to decision-making rather than a status-based approach to decision-making.

Regarding the use of the term ‘protected person’, Inclusion Ireland conferred with a lawyer who has experience in criminal trials with persons with intellectual disabilities and we were told that:

- If you are opening a case for the Director of Public Prosecutions (DPP) and you are using the terminology ‘protected persons’, then you are pre-judging someone.
- This terminology requires the jury to make a judgment about the person before they have heard any evidence.
- Assessment of capacity in criminal trials should be case dependent and victim dependent.
- When using the current legislation, which uses terminology such as ‘mentally handicapped’, this lawyer declines to use that terminology in court. Instead, they use the phrase ‘intellectually disabled’ which is the

phraseology used by experts in the field. So they ignore statute terminology that is offensive.

**Recommendation:**

**Inclusion Ireland would encourage the Policing Authority to include disability equality training in order that all legislation, but particularly potentially prejudicial legislation such as the above is not interpreted in a negative way.**

**Recommendation:**

**Provide Easy-to-Read information on what constitutes a sexual crime and how to report a crime to the public and service providers for people with intellectual disabilities.**

## **Community Policing and Public Safety**

### Vulnerable Victims

Persons with an intellectual disability are not adequately supported during interviews with members of an Garda Síochána, whether they are a victim of a crime, a witness to a crime or a perpetrator of a crime. In the UK, there are dedicated supports known as “appropriate adults” for the purpose of supporting a vulnerable adult during an interview. The “appropriate adult” provides advice and further communication to the suspect or victim where necessary. “Appropriate adults” are vetted and also work with children in the criminal justice system. It is determined by the police whether a person requires that support in order to conduct the interview. In the UK psychologists are routinely relied on by police before the interview is undertaken to assess a person’s vulnerability.

**Recommendation:**

**Inclusion Ireland would recommend the Policing Authority works with an Garda Síochána to put in place supports for persons with additional support needs when they are being interviewed as a victim, suspect for witness to a crime.**

While there are specialist interviewers available to question persons with an intellectual disability within an Garda Síochána as victims of sexual crimes as outlined in the policy document on investigations into Sexual Crime, Crime Against Children and Child Welfare<sup>2</sup> these interviewers are

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<sup>2</sup> An Garda Síochána Policy on the investigations into Sexual Crime, Crime Against Children and Child Welfare 2<sup>nd</sup> Edition 2013

<http://www.garda.ie/Documents/User/Policy%20on%20the%20Investigation%20of%20Sexual%20Crime,%20Crimes%20Against%20Children%20and%20Child%20Welfare%202014%2002%2024%20HQ%20Dir%2048%2013.pdf>

not available to suspects or witnesses of crimes. Specialist interviewers are not involved in interviewing suspects of crime which is a serious shortcoming regarding access to justice for individuals with an intellectual disability accused of a crime. Again the use of a non-disability neutral approach in this policy, as it clearly states that “only specialist interviewers should interview complainants with an intellectual disability”, is based on the medical model rather than the social model of disability. All adults in need of extra supports should have a right to be interviewed using the specialist interviews. Research regarding police interviewing has revealed “the importance of taking into account the interviewee's vulnerabilities and providing appropriate support, and suggests a more humane approach to interviews and when vulnerable people testify in Court.”<sup>3</sup>

### **Recommendation:**

**Specialist interviews should be equally provided to all persons in need of additional supports, as a suspect, victim or witness to a crime. The policy document on investigations into sexual crimes needs to be updated and incorporate the ‘disability neutral’ approach to interviewing victims of sexual crimes.**

A case reported on in February 2016 in which a man with autism and profound intellectual disabilities was arrested and detained for 90 minutes by an Garda Síochána highlighted a significant lack of understanding regarding persons with intellectual disabilities. No guidelines exist for an Gardai when interacting with people with intellectual disabilities.<sup>4</sup>

An Garda Síochána need to build relationships with representative bodies such as us and the National Advocacy Service. Victims of crime may require advocacy or intermediary supports and Gardaí should be aware of where to go to if that is required.

### **Recommendations:**

**Training should be provided to all members of An Garda Síochána on disability awareness. Guidelines must be developed and published on how an Gardai deal with suspects, victims or perpetrators of crimes who have an intellectual disability.**

**An Garda Síochána should receive training from representative bodies, national advocates about the resources available and from**

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<sup>3</sup> [Gisli Gudjonsson, Theresa Joyce](https://doi.org/10.5042/amhid.2011.0108), (2011) "Interviewing adults with intellectual disabilities", *Advances in Mental Health and Intellectual Disabilities*, Vol. 5 Issue: 2, pp.16 21, <https://doi.org/10.5042/amhid.2011.0108>

<sup>4</sup> Reported in the Irish Times, 2 Feb. 2016, <https://www.irishtimes.com/news/crime-and-law/damages-for-man-with-autism-treated-despicably-by-garda%C3%AD-1.2519653>

## **individuals with lived experience about the challenges they experience.**

### Hate Crime

A big issue facing persons with intellectual disabilities in Ireland is that of hate crime. There is a large amount of data showing the crimes committed against people with disabilities in Ireland. In the Expert Group on Crime Statistics' report in April this year it stated that an Garda Síochána have implemented a progressive measure when recording crime data on the Pulse system 6.8 relating to motives of crime.<sup>5</sup> Discrimination and disability specifically will now be recorded as a motive for a crime by an Garda Síochána.

### **Recommendation:**

#### **Publish the statistics on motives for crimes recorded on the Pulse system by type of discrimination.**

It is also not helpful that Ireland, unlike most other EU countries, does not have any hate crime legislation. This coupled with the absence of any official crime statistics relating to people with disabilities, results in people with disabilities being ignored in the Irish criminal justice system.

From a policing point of view, it is important all members of the public feel comfortable in reporting crimes to members of An Garda Síochána. This is particularly true for groups in society that are not protected in law, such as people with intellectual disabilities. This places extra responsibility on members of an Gardai Síochána to be vigilant of crimes committed against people with disabilities and to ensure that people with disabilities feel they have the confidence of an Gardai should they wish to report a crime.

Reporting a crime can be a daunting thing to do for anyone, but this can be particularly difficult for people with intellectual disabilities who may not understand information if it is not in an accessible format or is not communicated adequately. People with intellectual disabilities may need different supports, depending on their needs, to report a crime.

It is important that an Gardai Síochána play their role in helping to end the silence surrounding hate crime and find effective ways to address prejudice and racism in local communities.

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<sup>5</sup> Report of the Expert Group on Crime Statistics April 2017  
[http://www.justice.ie/en/JELR/Report\\_of\\_the\\_Expert\\_Group\\_on\\_Crime\\_Statistics\\_2017.pdf/Files/Report\\_of\\_the\\_Expert\\_Group\\_on\\_Crime\\_Statistics\\_2017.pdf](http://www.justice.ie/en/JELR/Report_of_the_Expert_Group_on_Crime_Statistics_2017.pdf/Files/Report_of_the_Expert_Group_on_Crime_Statistics_2017.pdf)

### **Recommendation:**

**Publish Easy-to-read material on what to do when you are a victim of a crime and a witness to a crime.**

**The Policing Authority to work alongside An Garda Síochána to ensure that all members of the force are appropriately trained in disability awareness.**

### Access to Legal Aid

The State funded legal aid system, civil and criminal, should be made more accessible for all members of society but in particular to persons with an intellectual disability. The legal system in Ireland can be difficult to navigate for any member of the public, greater awareness around access to justice and the State supports available is required from the relevant authorities involved. Easy-to-Read materials are best practice for ensuring accessibility of information to all individuals.

### **Recommendation:**

**The Policing Authority should work with the Legal Aid Board to develop an Easy-to-read guide to civil legal aid and the Courts Service to produce Easy-to-read information on criminal legal aid.**

### 3. Conclusion

#### **Overarching Priorities for an The Policing Authority**

##### Prisoners with Intellectual Disabilities within the Criminal Justice System

Research conducted in 2000 for the Department of Justice and Equality and Law Reform<sup>6</sup> based on a sample of the prison population revealed that 28.8% of prisoners had a suggestion of a significant intellectual disability. If this research sample can be taken as an accurate representation of the prisoner population in Ireland then all the relevant authorities involved, including the Policing Authority and An Garda Síochána must assess why a significant percentage of prisoners have an intellectual disability. Rehabilitation programmes must include proper supports for people with intellectual disabilities to move back into the community, by supporting them through education and work opportunities in order to reduce the likelihood of reoffending.

Further research is needed on the prisoner population in Ireland to inform the direction of our wider public policies. Such research will ensure that our public policies are effective and reduce the chances of people falling into a life of crime.

##### Public Sector Duty

All public bodies must take proactive steps to actively promote equality, protect human rights and combat discrimination, and is provided for under Section 42 of the Irish Human Rights and Equality Commission Act, 2014<sup>7</sup>. If the Policing Authority has not already done so, it should carry out an assessment of all human rights and equality issues relating to their function.

#### **Recommendations:**

**The Policing Authority must take measures to ensure that they are complying with the Public Sector Duty.**

**The Policing Authority should incorporate training on human rights and equality for all staff within its authority.**

**The Policing Authority should oversee the implementation of the public sector duty within an Garda Síochána also.**

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<sup>6</sup> A Survey of the Level of Learning Disability among the Prison Population in Ireland  
<https://doi.org/10.5042/amhid.2011.0108>

<sup>7</sup> Irish Human Rights and Equality Commission Act 2014  
<http://www.irishstatutebook.ie/eli/2014/act/25/section/2/enacted/en/html#sec2>