



CIGIREACHT AN GHARDA SÍOCHÁNA
GARDA SÍOCHÁNA INSPECTORATE

**Report of the Garda
Síochána Inspectorate**

Delivering Custody Services

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

Executive Summary

July 2021

The objective of the Garda Síochána Inspectorate is:

'To ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services.'

(s. 117 of the Garda Síochána Act 2005)

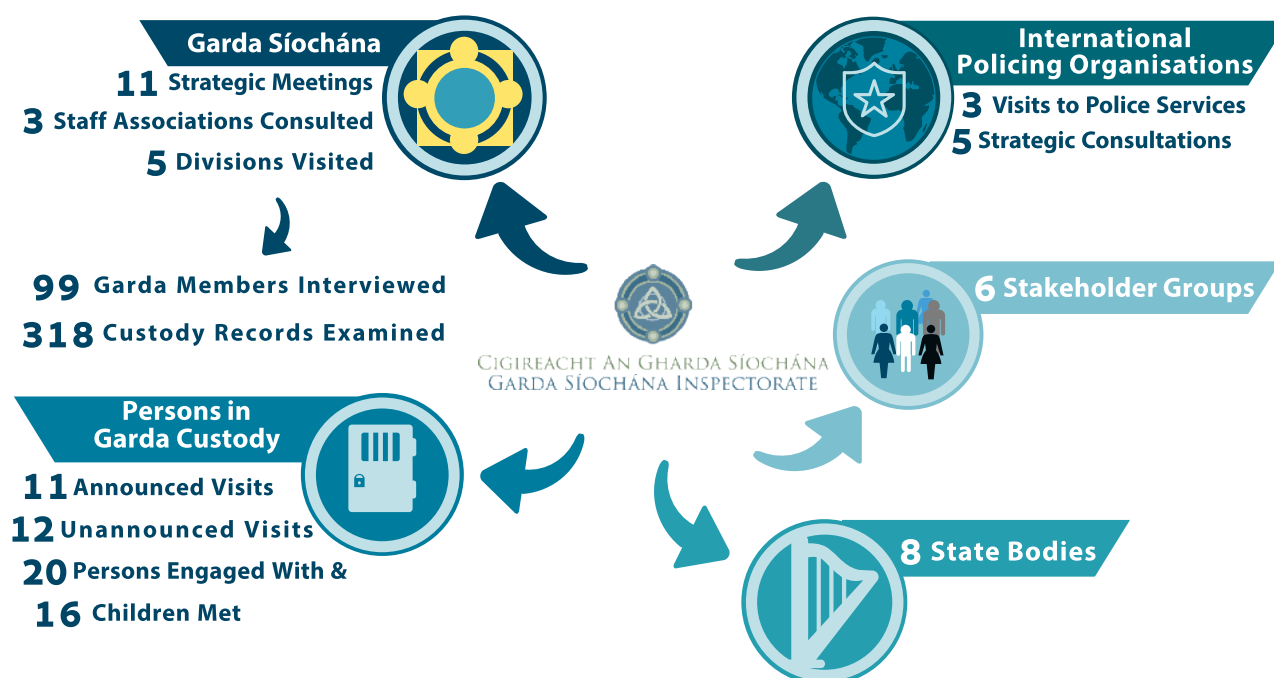
Executive Summary

Introduction

This self-initiated inspection adopted a rights-based approach to the examination of the standard of treatment, safety and wellbeing provided to persons in garda custody. Important elements of the inspection included visits to custody facilities, engagement with people who were or had been in custody, and a detailed

examination of custody records. For the first time, the Inspectorate conducted unannounced visits to garda stations. In addition, legislation, policy and practice in comparable international jurisdictions were reviewed and these informed many of the recommendations contained in this report. Figure A summarises the key components of the inspection.

Figure A: Components of the Inspection Programme



On a day-to-day basis, custody is an operational matter that takes place in local garda stations. Responsibility for its management currently sits with district or community engagement superintendents. The garda member assigned to look after persons in custody is known as the member in charge and they must complete a custody record for each person in custody. Depending on the station, members in charge may be of garda or sergeant rank. In locations where the member in charge is a sergeant, there is often a member of garda rank, called a gaoler, appointed to assist them.

As custody records are paper-based and not collated centrally, there is no definitive figure for the number of persons in custody in garda stations during any given period. Some information about persons in custody is captured electronically on the PULSE system. Although a PULSE prisoner log is not required in every case, the number of logs is a useful indicator of the total number of people in custody. The Inspectorate's analysis of logs from 1 July 2018 to 30 June 2019 showed that there were 82,013 people in custody during this 12-month period. Results

from the analysis of the PULSE prisoner logs are presented throughout the report.

The Legal, Ethical and Policy Framework for Custody

Members of the Garda Síochána who deal with persons in custody are required to operate within a multi-faceted legal, ethical and policy framework, the main elements of which are shown in Figure B.

Figure B: Key Documents Directly Relevant to Custody

 <p>International Legal Framework</p>	<ul style="list-style-type: none"> > European Convention on Human Rights > European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment > United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 <p>Domestic Legal Framework</p>	<ul style="list-style-type: none"> > Constitution of Ireland > Criminal Justice Act, 1984 > Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 > Irish Human Rights and Equality Commission Act, 2014
 <p>30+ Internal Garda Policies Including:</p>	<ul style="list-style-type: none"> > The Garda Code > Guidance notes on the implementation of the Custody Regulations > Custody risk assessments > Interpretation services > Code of practice on access to a solicitor
 <p>Ethical Standards</p>	<ul style="list-style-type: none"> > Garda Síochána Code of Ethics

The main findings in this area were:

- > There were some aspects of custody services where changes in the law would contribute to more efficient and effective arrangements.
- > The Garda Síochána did not have a single coherent policy document that contained all of the essential information about the rights, care and treatment of persons in custody, and most of the current custody policies were not publicly available.

A number of legislative changes are proposed throughout this report. In addition, the Inspectorate recommends that custody policies, practices and procedures be consolidated into a single document. A version of this document, from which operationally sensitive material is excluded, should be published on the Garda Síochána's external website and also made available in every custody facility for consultation upon request.

Strategy, Governance and Accountability

Organisational Leadership and Strategy

Strategic leadership is needed to direct the Garda Síochána in a way that ensures that day-to-day custody activity aligns to the statutory requirements and sets the tone for how custody services should be delivered.

The main findings in this area were:

- > Despite the challenges and risks associated with custody, there was no single strategic owner in place at the time of this inspection, resulting in uncoordinated activity and inconsistent practice. An assistant commissioner has since been assigned this responsibility.

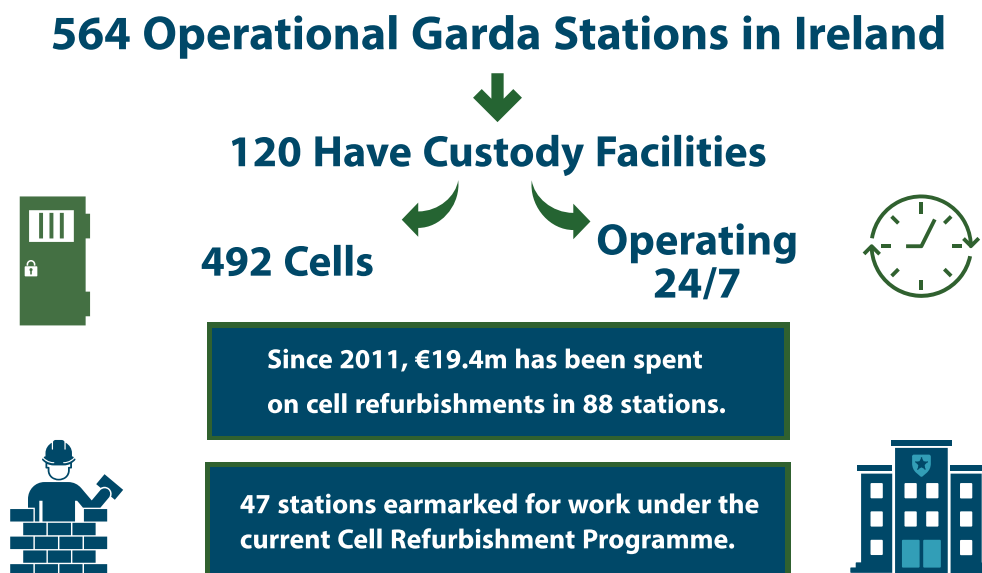
- > There was no organisational vision or strategy for custody beyond adherence with the legal requirements.

The Inspectorate recommends that the strategic owner for custody develop and oversee the implementation of an organisational strategy for custody that is based on human rights and a culture of dignity and respect.

Custody Estate Plan

An important component of a custody strategy is a custody estate plan. This should ensure that there is an optimum number of modern facilities that meet a defined specification so that the safety, rights and entitlements of persons in custody and those working there can be fully met. Figure C illustrates the garda custody estate at the time of the inspection.

Figure C: The Garda Síochána's Custody Estate



The main findings in this area were:

- > The Garda Síochána did not have a cohesive custody estate plan, although it had a Capital Works Plan and Cell Refurbishment Programme.
- > Since 2011, the total number of custody facilities had reduced, some new facilities have been built and others upgraded.

- > The standard of facilities visited during this inspection ranged from purpose-built custody suites with all the necessary components of a modern, safe and secure facility to those that were unsafe and not secure. The Inspectorate found cells in use that did not meet the safety standard defined in the Cell Refurbishment Programme.

- > Analysis by the Inspectorate showed that cell capacity exceeded peak occupancy rates in four of the five divisions visited.
- > Having too many custody facilities results in an inefficient use of resources, an unachievable training requirement and unnecessary expenditure.

The Inspectorate recommends that the strategic owner leads on the development of a custody estate plan. It should comprise fewer facilities, all of which should meet a defined specification and inform future Capital Works Plans and the Cell Refurbishment Programme. The Inspectorate acknowledges that this will require financial investment.

Strategic Partnerships in the Custody Context

Partnerships within the Criminal Justice System

Policing is one element of a complex and interdependent criminal justice system where decisions and actions by one organisation can affect the other parts. It follows that key partners should collaborate to improve the efficiency and effectiveness of custody-related processes and better safeguard the rights of persons in custody.

The main findings in this area were:

- > This inspection identified several custody-related matters that could be improved through collaborative working.
- > Many criminal justice partners referred to the Smyth Committee, established to review the adequacy of the law, practice and procedure relating to the interviewing of suspects in garda custody, as a good example of partnership working. However, the group had not met since 2018 and its eight reports have yet to be published.

To examine and drive improvements in operational custody-related issues and oversee the implementation of recommendations from all custody-related reports, the Inspectorate recommends that the Department of Justice establish a multi-agency working group on custody.

The Case for Cross-Sectoral Partnerships

The well-established connections between mental health, drug/alcohol dependency and offending are evident in the custody environment. Figure D indicates the prevalence of these factors in the custody records sampled for this report.

Figure D: Prevalence of Alcohol and Drug Use, Poor Mental Health and Self-Harm from Custody Records Examined



The main finding in this area was:

- > Although custody provides an opportunity to initiate multi-agency support to divert people from further offending, there were few interventions available at this stage of the criminal justice process.

Operation of Section 12 of the Mental Health Act, 2001

Section 12 of the Mental Health Act, 2001 gives a member of the Garda Síochána the power to take into custody a person who is suffering from a mental disorder and as a consequence is likely to cause immediate and serious harm to themselves or others.

The main findings in this area were:

- > Currently, people taken into garda custody for this reason must be brought to a garda station rather than a medical facility, even though they may not have committed a criminal offence.
- > Between 1 July 2018 and 30 June 2019, 2,091 adults and 61 children were taken into garda custody under Section 12 of the Mental Health Act, 2001.
- > In 2015, the Expert Group on the Mental Health Act recommended that gardaí should be given a specific power to remove a child believed to be suffering from a mental disorder to a place where an age-appropriate assessment can be performed. At the time of this inspection, the recommendation had not been implemented.

The Inspectorate recommends that a cross-sectoral group be established to develop post-arrest diversion and intervention services. The group's remit should include developing legislation and arrangements in order that adults to whom Section 12 of the Mental Health Act, 2001 applies can be

brought directly to a suitable medical facility and ensuring that the previously mentioned recommendation of the Expert Group on the Mental Health Act is implemented.

Internal Accountability and Governance

Good governance is essential if the Garda Síochána is to achieve its objectives, drive improvements and manage risks. It requires defined roles and responsibilities and clear lines of accountability. Information reports should be routinely available to enable managers to understand custody demand, examine trends and patterns, assess the level of compliance with regulations and policy, and improve performance.

The main findings in this area were:

- > There was a lack of formal oversight of custody at local, regional and organisational levels. Custody was the responsibility of district or community engagement superintendents, a model that dissipated responsibility and resulted in inconsistent practices.
- > The value of custody data was not widely recognised and management information reports on custody were not compiled.
- > The absence of an electronic custody management system was a major barrier to conducting routine and reliable analysis.
- > Many weaknesses previously identified by the Garda Professional Standards Unit during its examinations of custody had not been addressed.
- > There was some local auditing of custody records, but these audits did not result in any evaluation of performance at the organisational level, nor did they lead to the identification and dissemination of good practice or lessons learned.

To address these weaknesses, the Inspectorate recommends that the Garda Síochána implement a formal governance, accountability and performance management framework for custody that is overseen by the strategic owner and informed by regular management information reports.

External Accountability

Independent scrutiny of custody demonstrates transparency and accountability in an area of policing that significantly impacts human and statutory rights and can help bring about improvements.

The main findings in this area were:

- > The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visits garda custody facilities every five years and reports on how persons deprived of their liberty are treated.
- > While Ireland is a signatory to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, it has not yet ratified it and has not established a National Preventive Mechanism to carry out independent inspections of places of detention.
- > Unlike neighbouring jurisdictions, there was no independent custody visiting scheme to monitor and report on the welfare and treatment of persons in custody and the conditions in which they are held.

To enhance external accountability, as previously recommended by the Inspectorate, an independent custody visiting scheme should be established by the Department of Justice.

Protecting the Rights of Persons in Custody

Authorising Detention

Although every person in custody at a garda station has been deprived of their liberty, only those arrested for certain more serious offences need to have their detention authorised by the member in charge. In these cases, the member in charge must decide if they have reasonable grounds for believing that the person's detention is necessary for the proper investigation of the offence(s) for which they have been arrested. If a person is arrested under any other power and brought to a garda station, there is no legal requirement for their detention to be authorised.

The main findings in this area were:

- > Approximately 20% of arrests recorded on PULSE prisoner logs required detention to be authorised.
- > In 80% of arrests, there was no independent, objective assessment of the need for the person to be kept in custody.
- > In addition to the right to bring judicial proceedings to determine the lawfulness of their detention, all arrested persons in neighbouring jurisdictions have an additional safeguard whereby the custody sergeant must decide if their detention is necessary.

To provide a greater degree of protection of an arrested person's right to liberty, the Inspectorate recommends that the Department of Justice consider enacting legislation that requires the member in charge to consider the necessity to detain every person who is arrested at a garda station or brought there following arrest elsewhere, with the exception of those arrested under the Offences against the State Act, 1939.

Notification of Rights

Every arrested person must be informed of their rights, given a written notice setting them out and asked to sign the custody record to acknowledge receipt.

The main findings in this area were:

- > Garda practice was to notify every person taken into custody of their rights, even if they have not been arrested.
- > Of the custody records examined, 97% showed that the notice had been given and 75% of these had an entry acknowledging receipt.
- > Although garda policy states that arrested persons should be able to consult the Custody Regulations, only 2 of the 23

custody facilities visited by the Inspectorate had a copy available.

Rights of Persons in Custody

When a person is arrested at a garda station or brought there having been arrested, they must be informed that they have the right to consult a solicitor of their choice in private and have a third party notified of their being in custody. If they are ill or injured, a doctor must be called and the person is entitled to also be examined by a doctor of their choice at their own expense. If the person does not understand English, they are entitled to assistance from an interpreter and foreign nationals must be told that they can communicate with their consul. Figure E illustrates the key findings in respect of these rights.

Figure E: Key Findings in Respect of Rights of Persons in Custody



To better uphold the rights of people in custody, the Inspectorate recommends that the arrangements for the timely provision of medical services be improved. It also recommends that all aspects of the right to legal advice be placed on a statutory footing, including the circumstances in which a person's access to their chosen solicitor can be delayed and when an interview may be conducted before legal advice

has been obtained. The circumstances in which notification of a third party may be delayed should be defined in law, with the decision to delay being authorised by a member of the rank of inspector or above. Facilities must be upgraded in order to guarantee the privacy of legal consultations and the standard of record-keeping improved to enable better auditing of access to rights.

Safeguarding the Rights of Vulnerable Persons

It is important that every person in custody understands and is able to fully participate in the custody process.

The main findings in this area were:

- > There was good awareness among garda members of the need for adult support for children in custody, but the actual role of the adult was less well understood.
- > Identifying and providing support for vulnerable adults was limited by the absence of a contemporary definition of vulnerability and the lack of training for gardaí.

In order to identify persons in custody who are vulnerable and to safeguard their rights, the Inspectorate recommends that relevant experts continue to be involved with the Garda Síochána in the development of guidance documents and in the delivery of garda custody training. In addition, it recommends that the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody. This should include establishing a legal definition of vulnerability. The Department of Justice should also set up a formal scheme that enables children and vulnerable people to be supported by suitably trained and vetted adults.

Care and Treatment of Persons in Custody

Risk Management

Identifying, assessing, managing and reviewing risks associated with each person in custody is a vital part of the custody process.

The main findings in this area were:

- > Initial risk assessments were carried out for almost every person in custody, but were not reviewed and updated during the time in custody or prior to release. There were no documented risk management plans.
- > The Garda Síochána advised that it had developed a revised version of the risk assessment form and accompanying guidance notes to support garda members dealing with people with mental illness. This was not in place at the time of the inspection.
- > The information available to the member completing the risk assessment form was limited by the inability to access other custody records and risk assessment forms, the *ad hoc* approach to updating and checking PULSE and the narrow scope of the categories of warnings that were required to be recorded on PULSE.

In order to adequately protect all those in the custody area, the Inspectorate recommends that action is taken to improve the identification, assessment, management and recording of risk in respect of every person in custody.

Checking Health, Safety and Wellbeing

There are many ways, both physical and technological, to check the health, safety and wellbeing of persons in custody. These include the use of CCTV systems and regular visits to the person by the member in charge or gaoler.

The main findings in this area were:

- > Details of in-cell visits were often poorly recorded in custody records.
- > Although in-cell technology that can assist with monitoring the health and safety of people in custody is available, this had not been installed.

- > CCTV was not routinely reviewed to check that people in custody were treated with dignity and respect.

To address these matters, the Inspectorate recommends that the Garda Síochána improve the monitoring of the health, safety and wellbeing of persons in custody.

Meeting the Needs of Persons in Custody

Everyone in custody should have the basic human needs of rest, food and hygiene attended to, with the particular requirements of each individual accommodated where possible.

The main findings in this area were:

- > In some circumstances, the agreement of the person in custody was required before they could be provided with a period of rest.
- > There were some examples of good practice and high standards of treatment during this inspection, but these were not consistently adopted in all of the places visited.
- > There are a number of aspects of care and treatment that need to be improved, these are illustrated in Figure F.

Figure F: Aspects of Care and Treatment that Require Improvement



The Inspectorate recommends that the Department of Justice consider enacting legislation that provides every person who is in custody for a lengthy time with a reasonable period of rest that does not depend on that person's consent. It also recommends that the Garda Síochána

improve the standard of care and treatment for all persons in custody and that the Department of Justice consider incorporating these aspects in the proposed statutory codes of practice.

Safety and Suitability of Custody Facilities

An important element of the care and treatment provided to persons in custody is the physical environment in which they are held.

The main findings in this area were:

- > With the exception of the purpose-built custody suites, very few of the stations visited had all the components required in a modern, safe and secure custody facility.
- > A number of shortcomings were identified in the custody facilities visited. These are described in Figure G.

Figure G: Shortcomings Identified in Custody Facilities



The Inspectorate recommends that urgent action be taken to improve the overall safety and security of custody areas and that cells that do not meet the defined safety standard be immediately closed.

The Roles of Member in Charge and Gaoler

Member in Charge

The member in charge is responsible for ensuring that the statutory duties imposed under the Criminal Justice Act, 1984 and the Custody Regulations are carried out in respect of every person in custody at the garda station at which they work. For certain offences, the member in charge must

consider whether the person's detention is necessary for the proper investigation of the offence(s) for which they have been arrested and, if so, authorise their detention.

The main findings in this area were:

- > In most stations, the role of member in charge was performed by garda members from the regular unit on a rotational basis. Often they had additional non-custody responsibilities.
- > In Dublin and in some stations in Cork and Limerick, the member in charge was a sergeant.
- > Some probationers were required to act as member in charge despite this being contrary to garda policy.
- > Refusals to authorise detentions were extremely rare.
- > The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment supports the creation of a specialised group of custody officers to professionalise the role and as a way of breaking '*the harmful esprit de corps that often prevents officers from speaking out against their colleagues in cases of ill-treatment*'.

To bring more objective and independent decision-making to the custody process, the Inspectorate recommends that the role of member in charge be assigned on a permanent basis to trained and operationally competent sergeants.

Assisting the Member in Charge – Role of the Gaoler

In the Garda Síochána, another member who assists the member in charge is known as a gaoler.

The main findings in this area were:

- > The role of gaoler was not defined and few

of those deployed as gaoler had received specific training for the role.

- > Internationally, this role is carried out by police staff who are designated in law and given the necessary powers to do so.

To improve the contribution of the gaoler, the Inspectorate recommends that the role and responsibilities be defined. The Garda Síochána should consider recruiting police staff to perform this role in locations where demand justifies it.

Training for Custody Duty

Given the risks associated with custody, it is important that members in charge and gaolers are adequately trained and operationally competent to perform the role.

The main findings in this area were:

- > Most members spoken to felt that they were not adequately trained for the role of member in charge.
- > The main, and sometimes only, custody-related training received by gardaí was that provided during their foundation training programme.
- > There is a Custody Management course, but very few of the members in charge engaged with had attended the course and many were not aware of its existence.
- > Many members in charge were not trained in custody-specific use of force techniques and de-escalation skills and did not have up-to-date first aid training. Most would welcome training or guidance to increase their awareness of learning disabilities and mental health issues.

To address these gaps, the Inspectorate recommends a mandatory training and development programme for members in charge and gaolers, with key stakeholders involved in its development and delivery.

Local Supervision and Management of the Custody Process

Role of Local Sergeants

In stations where members of garda rank perform the role of member in charge, the regular unit sergeant assigns a member to this role and has supervisory responsibility for them. In addition, the Garda Code assigns specific custody-related responsibilities to sergeants.

The main findings in this area were:

- > Sergeants adopted a variety of approaches to supervising members in charge and not all were aware of their custody-related obligations under the Garda Code.
- > In certain circumstances, sergeants were required to authorise the taking of photographs, fingerprints and palm prints, and DNA samples from arrested persons, but there was no explicit requirement for them to make and sign an entry to this effect in the custody record or for a copy of their written authorisation to be attached to it.
- > It was also the case that there was no requirement for members of other ranks who gave authorisations to make and sign an entry in the custody record or to have a copy of their written authorisation attached to it.

The Inspectorate recommends that the Garda Síochána improve the supervision of members in charge. In addition, there is a need to improve record-keeping and accountability in relation to authorisations. Therefore, when an authorisation is given by a member of a specified rank, the custody record should contain either an entry signed

by the person granting it or a copy of that person's written authorisation.

Role of Local Inspectors

The Garda Code contains no defined role or responsibilities for inspectors in relation to the management of custody.

The main findings in this area were:

- > The extent of inspectors' involvement varied across locations visited by the Inspectorate.
- > Compared to other similar jurisdictions, inspectors had a very limited role in custody, in terms of both management and legal responsibilities.

To improve custody services, the Inspectorate recommends that divisional inspectors have a stated role in the delivery of efficient and effective custody services during their shift.

Role of Superintendents and Chief Superintendents

Superintendents and chief superintendents have management responsibility for custody and are required to conduct regular audits of their area. This may include visiting custody facilities and examining custody records.

The main findings in this area were:

- > The level of attention paid to custody by superintendents and chief superintendents often depended on the interest of the individual officer.
- > Return rates for audit reports were described as poor.

The implementation of the governance, accountability and performance management framework for custody, as recommended earlier in this report, would address these shortcomings.

Extending Time in Detention

Superintendents and chief superintendents are required to consider applications to extend the length of time a person who has been arrested under certain legislation is kept in custody. The rank of the decision-maker and the duration of any extension is determined by the power of arrest used.

The main findings in this area were:

- > Garda inspectors had no role in extending detention.
- > The law did not preclude applications to extend detention being made to superintendents who were involved in the investigation of the offence for which the person had been arrested.
- > Decision-makers were not legally obliged to consider how the time in detention prior to the application for an extension had been utilised.
- > Unlike the situation in some other jurisdictions, when extensions of detention were being considered, representations were not invited from the person in custody, their legal representative or an appropriate adult if the person was under 18.

The Inspectorate recommends that the Department of Justice consider introducing legislation that standardises the periods of time for which detention can be extended by members of the Garda Síochána and the rank of those who may do so. Consideration should be given to assigning to inspectors responsibility for considering extensions in the first 24-hour period. The legislation should specify the test to be satisfied before an extension is authorised and the need for the decision-maker to be independent of the investigation. It should also include the right for the arrested person or their representative to make representations to the decision-maker about their time in custody.

Although the Inspectorate considers that the Offences against the State Act, 1939 should be treated separately, it recommends that the views expressed in this report regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of that legislation.

Other Custody-Related Powers and Safeguards

Searching a Person in Custody

It is important to search persons in custody to protect their safety, reduce the risk of harm to others and allow items of evidentiary value to be seized. However, the Inspectorate identified a number of concerns about the powers, policies and practices for doing so.

The main findings in this area were:

- > The human rights considerations of necessity and proportionality were not to the forefront of members' minds when deciding if a search should be carried out and, if so, in what manner.
- > There was a lack of clarity about the powers to search people in custody, including searches that involve the removal of all items of clothing or examination of body orifices.
- > There was an absence of safeguards for searching children and vulnerable adults.
- > The technique for carrying out a search that necessitates the removal of all items of clothing was not aligned with the position of the Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
- > There were several policy documents that dealt with searching, but the information in them was insufficiently detailed to assist members conducting searches.

To address these matters, the Inspectorate recommends that the Department of Justice consider enacting new legislation relating to the searching of persons in custody that defines the different types of search, specifies the powers to conduct such searches and sets the level of authorisation to be obtained before carrying out more intrusive searches. Additional legal safeguards should be defined in relation to searching children and vulnerable adults. The legislation should require that detailed records be made when persons in custody are searched. The Inspectorate also recommends that the Garda Síochána review its policies, procedures and practices on searching people in custody and develop a single source of information that emphasises the need for human rights-based decision-making.

Dealing with Property in the Possession of Persons in Custody

It is the responsibility of the member in charge to look after items of property taken from persons in custody.

The main findings in this area were:

- > The practice for recording such property was generally poor and was hampered by a poorly designed custody record.
- > Property was usually stored in lockers in the custody area, but these were often insecure and larger items of personal property were sometimes left on the floor outside cells.

To improve the management of property in the possession of people in custody and reduce the opportunities for it to be mishandled, more comprehensive record-keeping is required. Adequate lockers should be available in all custody facilities and these should remain locked at all times.

Use of Force

When a garda member uses force, they must make a record of it in their notebook or journal. At the time of this inspection, not all use of force incidents needed to be recorded on PULSE. However, since the introduction of a new policy in October 2020, all such incidents must be recorded on PULSE.

If force is used on a person who is subsequently arrested, this must also be reported to the member in charge of the garda station on arrival and recorded in the custody record.

The main findings in this area were:

- > Not all incidents of use of force prior to arrival at a garda station were reported and recorded in accordance with garda policy.
- > Among members spoken to, there were low levels of awareness of the potentially fatal consequences of restraint in custody.
- > At the local level, there was no formal process to routinely monitor the use of force in custody and no requirement for superintendents to examine use of force incidents unless injury was caused as a result.

To ensure that legal, human rights and policy obligations in relation to use of force are achieved, the Inspectorate recommends that the Garda Síochána improve the monitoring of use of force in custody. It should review all incidents of use of force in custody involving children. Comprehensive data on the use of force associated with custody should be published.

Complaints Against Members of the Garda Síochána

All complaints against members of the Garda Síochána must be referred to the Garda Síochána Ombudsman Commission (GSOC).

The main findings in this area were:

- > There was no clear information available to persons in custody advising them that they could make a complaint and no specific instruction for garda members regarding the recording of such a complaint.
- > Some members said that they would ask a person if they wished to make a complaint about their time in custody. Others said that unless the person explicitly made a complaint, they would make an entry in the custody record to indicate that no complaint was made.
- > The number of complaints recorded by GSOC in the category 'During police custody' was small.

The Inspectorate recommends that all persons in custody be informed that they have a right to make a complaint and be given written information about how to do so. The process for dealing with complaints made by persons in custody should be clearly

defined. Information on complaints should be used by the Garda Síochána to improve custody policy, procedures and practices.

Release

There are a number of important actions that should be taken when releasing a person from garda custody or transferring them into the custody of others.

The main findings in this area were:

- > There was no formal process for release/transfer.
- > Vital actions, such as explaining to the person the next stages of their case, were often omitted.

To ensure that all important actions are completed, the Inspectorate recommends the development of a structured process for release/transfer. Figure H illustrates the main actions that should be included in this process.

Figure H: Actions on Release/Transfer



Evaluating the Custody Record

The primary source of information about how a person in custody has been treated is the custody record, which is currently in paper format.

The main findings in this area were:

- > Poor recording of many aspects of custody was identified throughout this inspection.
- > Flaws in the design of the current version of the custody record contributed to poor record-keeping.
- > Although the Garda Síochána accepted a previous recommendation to introduce an electronic custody record, this has yet to be implemented.
- > The absence of an electronic custody management system prevents routine analysis of custody data and the assessment of compliance and performance levels at local, regional and organisational levels.

The Inspectorate advocates the expeditious introduction of an electronic custody management system as the best solution to improving the scrutiny of custody performance and the standard of record-keeping. Pending the introduction of such a system and as an interim measure, the Inspectorate recommends that the paper custody record be redesigned to include a number of changes identified in this report. These changes should also be incorporated in the design of the new electronic custody record.

Report Recommendations

Chapter 1

Recommendation 1

The Inspectorate recommends that the Garda Síochána consolidate its internal policies, procedures and practices relating to custody into a single document.

A version of the single document, from which operationally sensitive material is excluded, should be:

- Published on its external website; and
- Available in every custody facility for consultation upon request and its availability made known to persons in custody.

Chapter 2

Recommendation 2

The Inspectorate recommends that the Garda Síochána's strategic owner for custody develop and oversee the implementation of an organisational strategy for custody that is based on human rights and promotes a culture of dignity and respect.

Recommendation 3

The Inspectorate recommends that the Garda Síochána develop a custody estate plan that supports the overarching vision and strategy for custody.

The plan should:

- Include a defined specification and standard for all custody facilities that as a minimum is the specification for new custody suites;
- Comprise fewer custody facilities, all of which should meet the defined specification and standard;
- Where feasible, include larger capacity standalone facilities;
- Inform future Capital Works Plans and the Cell Refurbishment Programme; and
- Be developed by the strategic owner for custody.

Recommendation 4

The Inspectorate recommends that the Department of Justice establish a multi-agency working group on custody, comprising key partners in the wider criminal justice system.

The remit of the group should include:

- Examining and driving improvements in operational custody-related issues; and
- Overseeing the implementation of all recommendations in this and other custody-related reports.

Recommendation 5

The Inspectorate recommends that the Department of Justice establish a cross-sectoral group on custody in garda stations with the Department of Health and other relevant government departments, agencies and organisations.

The remit of this group should include:

- Development of a range of diversion and intervention services for persons in custody;
- Enactment of legislation and development of arrangements whereby people to whom Section 12 of the Mental Health Act, 2001 applies can be brought directly to a suitable medical facility rather than only to a garda station; and
- Enactment of legislation and development of arrangements whereby children believed to be suffering from a mental disorder can be brought to a place where an age-appropriate assessment can be performed.

Recommendation 6

The Inspectorate recommends that the Garda Síochána implement a formal governance, accountability and performance management framework for custody at organisational, regional and local levels.

The framework should:

- Be overseen by the strategic owner for custody;
- Monitor compliance with the Custody Regulations, Section 42 of the Irish Human Rights and Equality Commission Act, 2014 and internal policy;
- Examine local, regional and organisational performance against key objectives and performance indicators;
- Be informed by regular management information reports on custody;
- Examine outputs from Inspection and Review reports and any subsequent analysis of them;
- Establish and oversee a process to quality assure custody records and provide feedback where appropriate; and
- Ensure that all custody-related recommendations, including from internal and external sources, are actioned expeditiously.

Recommendation 7

The Inspectorate recommends that the Department of Justice establish an independent custody visiting scheme to monitor and report on the welfare and treatment of persons in custody and the conditions in which they are held.

Chapter 3

Recommendation 8

The Inspectorate recommends that the Department of Justice consider enacting legislation that requires the member in charge to consider the necessity to detain every person who is arrested at a garda station or brought there following arrest elsewhere, with the exception of those arrested under the Offences against the State Act, 1939.

The legislation should include:

- Provision that detention should be authorised only if there are reasonable grounds for believing that it is necessary for the proper investigation of the offence for which the person has been arrested, or to charge them and bring them to court;
- A requirement to tell the arrested person the reason for their detention; and
- A requirement to make a record of the decision, the notification to the arrested person and any response made.

Recommendation 9

The Inspectorate recommends that the Garda Síochána improve its arrangements for the provision of medical services to persons in custody.

To achieve this it should:

- Improve the standard of recording of medical information in custody records;
- Proactively monitor the time between when a doctor is called and when a medical examination is carried out and address any shortcomings with the service provider; and
- As part of its custody strategy, consider embedding healthcare professionals in custody facilities.

Recommendation 10

The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody's right to legal advice.

This should include:

- The circumstances in which a person's access to their chosen solicitor can be delayed;
- The circumstances in which an interview may be conducted before legal advice has been obtained; and
- The requirement for such decisions and the rationale for them to be recorded.

Recommendation 11

The Inspectorate recommends that the Garda Síochána better safeguard the right to consult a solicitor in private.

To achieve this the following actions are required:

- Direct members in charge to record the decision of the person in custody regarding legal advice, ask the person to provide written confirmation of their decision and record any refusal to do so;
- Ensure that the design specification for all custody facilities includes soundproofed consultation rooms;
- Base the decision to observe a legal consultation on an individual risk assessment and record the decision and the rationale in the custody record;
- Ensure that the Garda Station Revised Legal Advice Scheme is brought to the attention of arrested persons, where applicable; and
- Use the lists of solicitors available on the Law Society website when persons in custody request a solicitor but are unable to name one.

Recommendation 12

The Inspectorate recommends that the Garda Síochána direct members in charge to record the decision of the person in custody regarding a third-party notification, ask the person to provide written confirmation of their decision and record any refusal to do so.

Recommendation 13

The Inspectorate recommends that the Department of Justice consider incorporating in statute all aspects of a person in custody's right to a third-party notification.

This should include:

- The circumstances in which a notification may be delayed;
- The applicable time limits; and
- The requirement for such decision to be authorised by a member of the rank of inspector or above who is independent of the investigation.

Recommendation 14

The Inspectorate recommends that the Department of Justice establish a broader and more contemporary statutory definition of vulnerability.

Recommendation 15

The Inspectorate recommends that the Garda Síochána continue to work in partnership with relevant experts to further develop guidance documents and provide training to help members to identify persons in custody who are vulnerable and to safeguard their rights.

Recommendation 16

The Inspectorate recommends that the Department of Justice consider updating the legislation relating to the arrangements for providing support to children and vulnerable adults in custody.

The updated legislation should:

- Standardise the definition of the adult whose role is to assist or support children or vulnerable adults in custody;
- Define the adult's role and describe who can perform it; and
- Set out the circumstances in which this adult is required.

Recommendation 17

The Inspectorate recommends that the Department of Justice introduce a formal scheme consisting of suitably trained and vetted individuals who are available to support children and vulnerable adults in garda custody.

Chapter 4**Recommendation 18**

The Inspectorate recommends that the Garda Síochána take action to improve the identification, assessment and management of risk in respect of every person in custody.

This should include:

- Assigning overall responsibility for the risk management of each person in custody to the member in charge and ensuring they are suitably trained to do so;
- Ensuring that all available sources of information, including PULSE, are checked as part of the initial risk assessment;
- Developing a risk management plan for each person in custody;
- Conducting periodic reviews of the risk assessment and management plan during the time in custody;
- Conducting a risk assessment prior to release and putting in place any appropriate safeguards;
- Ensuring that a copy of the risk assessment and management plan accompanies every person being transferred from a garda station into the custody of other garda members or another agency;
- Ensuring that all aspects of the identification, assessment and management of risk are recorded in the custody record; and
- Ensuring that all identified risks and vulnerabilities associated with a person are flagged on PULSE.

Recommendation 19

The Inspectorate recommends that the Garda Síochána improve the monitoring of the health, safety and wellbeing of persons in custody.

To achieve this, the following actions should be taken:

- Ensure better recording and supervision of in-cell observations;
- Include the installation of in-cell technology in the specification for custody suites in the custody estate plan;
- Routinely review CCTV footage to check that persons in custody are treated with dignity and respect and in accordance with regulations and policy; and
- Ensure that CCTV signage is prominently displayed in all areas where CCTV systems are installed.

Recommendation 20

The Inspectorate recommends that the Department of Justice consider introducing legislation that provides every person who is in custody for a lengthy time with a reasonable period of rest that is free from questioning or other interruptions and that does not depend on the consent of the person.

The legislation should include:

- A description of what is a reasonable period of rest;
- That the period of rest should be excluded in reckoning the period of time in custody that is permitted in law; and
- The circumstances in which the period of rest may be interrupted.

Recommendation 21

The Inspectorate recommends that the Garda Síochána improve the standard of care and treatment provided to persons in custody in garda stations by taking the following actions:

- Replacement clothing, including anti-rip clothing, should be stocked in each custody facility and provided in all circumstances where it is required;
- The removal of items of clothing for safety reasons should only be in response to an identified risk;
- Washing kits and towels should be available in all custody areas and offered to persons in custody, along with access to washing and shower facilities;
- Females should be asked, in private, about their need for sanitary products and offered items free of charge;
- All persons in custody should have the opportunity to speak in private with a person of the same sex about health, hygiene or welfare matters;
- Members should identify and record a person's religious or cultural needs, including dietary requirements, and endeavour to facilitate reasonable requests; and
- Each custody facility should stock a variety of suitable reading materials that can be offered to persons in custody.

Recommendation 22

The Inspectorate recommends that the Department of Justice consider incorporating all the aspects of care and treatment listed in Recommendation 21 into the proposed statutory code of practice.

Recommendation 23

The Inspectorate recommends that the Garda Síochána immediately close cells that do not fully meet the standard of the safety specifications of the Cell Refurbishment Programme.

Recommendation 24

The Inspectorate recommends that the Garda Síochána take the following urgent actions to improve the safety and security of custody areas:

- Ensure that cell inspections are completed daily and that any defect or damage is repaired without delay;
- Ensure that there is an evacuation plan for each custody facility, that it is tested biannually and that a record is kept of all tests; and
- Develop and implement a policy on the carriage of firearms in custody areas.

Chapter 5**Recommendation 25**

The Inspectorate recommends that the Garda Síochána appoint sergeants as members in charge in all custody facilities and assign the roles of member in charge and gaoler on a permanent basis.

To support this model the following actions need to be taken:

- The role and responsibilities of gaoler should be defined;
- Only those trained and operationally competent should be authorised to undertake custody duties; and
- Consideration should be given to recruiting detention officers to assist members in charge in locations where demand justifies it.

Recommendation 26

The Inspectorate recommends that the Garda Síochána's strategic owner for custody ensure that lessons learned and good practice are captured, reviewed and disseminated.

Recommendation 27

The Inspectorate recommends that the Garda Síochána develop a mandatory training and development programme for all those who undertake member in charge and gaoler roles.

The training and development programme should:

- Incorporate all aspects of custody including law and policy, human rights, risk management, vulnerability, diversity and mental health awareness, first aid, use of force in custody and de-escalation techniques;
- Be informed by lessons learned and good practice;
- Involve key stakeholders in its design and delivery; and
- Be accompanied by regular refresher training and information-sharing events.

Chapter 6**Recommendation 28**

The Inspectorate recommends that pending the implementation of Recommendation 25, the Garda Síochána improve the supervision of garda members who perform the role of member in charge by ensuring sergeants comply with their responsibilities under the Garda Code.

Recommendation 29

The Inspectorate recommends that the Garda Síochána require that when an authorisation is given by a member of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Recommendation 30

The Inspectorate recommends that the Department of Justice consider amending legislation to ensure that where an authorisation is given by a member of the Garda Síochána of a specified rank, the custody record contains either an entry signed by the person granting it or a copy of that person's written authorisation.

Recommendation 31

The Inspectorate recommends that the Garda Síochána assign to divisional inspectors, operating the shift pattern envisaged by the Garda Operating Model, a stated role in the delivery of efficient and effective custody services during their shift.

Recommendation 32

The Inspectorate recommends that the Department of Justice consider amending the legislation that applies to garda authorised extensions of detention, in order to better safeguard the rights of persons in custody.

The following matters should be included:

- The periods of time for which detention can be extended by members of the Garda Síochána should be standardised;
- Extensions of detention within the first 24 hours in custody should be a matter for members of the rank of inspector or above;
- Where extensions of detention beyond 24 hours are permitted in law, these should be a matter for members of superintendent rank or above;
- Each period of garda authorised extension should be for a maximum of six hours;
- The ability to authorise more than one period of extension within a six-hour period;
- The member considering an application for an extension must be independent of the investigation;
- The arrested person and/or their legal representative should be given the opportunity to make representations to the decision-maker about the decision to extend the period of detention. Where the arrested person is a child or is vulnerable, an appropriate adult should have this opportunity;
- A formal record should be made of the invitation to make representations, as well as the details of any representations provided;
- The test to be satisfied before authorising an extension should consist of two parts. These are to assess whether the investigation so far has been conducted without undue delay and whether there are reasonable grounds to believe that further detention is necessary for the proper investigation of the offence; and
- The concerns and proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts 1939 to 1998.

Chapter 7

Recommendation 33

The Inspectorate recommends that the Garda Síochána immediately cease the practice of having a person remove all items of outer clothing simultaneously during a search and introduce a new policy that is aligned with the position of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Recommendation 34

The Inspectorate recommends that the Garda Síochána review and update its policies, procedures and practices and develop a single source of information for searching persons in custody.

The information should:

- Emphasise the need for the human rights considerations of legality, necessity, proportionality and non-discrimination to be central to the decision to search;
- Include instructions for the searching of children, vulnerable adults and those identifying as transgender;
- Specify the details that must be recorded when a search is conducted including the name of the person conducting it, type of search, power under which it is conducted, grounds for the search, authorisation if required, and outcome of the search; and
- Be incorporated in the single document referred to in Recommendation 1.

Recommendation 35

The Inspectorate recommends that the Department of Justice consider enacting new legislation relating to the searching of persons in custody.

The following matters should be addressed:

- Separate powers to search upon arrest and on arrival at the station should be defined;
- A search that involves removal of underclothing should be defined in law and subject to a specific power which requires the authorisation of a member of the rank of inspector or above;
- A search that involves searching of body orifices (apart from the mouth) should be defined in law, subject to a specific power which requires the person's consent, authorised by a member of superintendent rank or above, carried out by a medical professional and, if the search is for drugs, it should be conducted at a medical facility;
- Additional legal safeguards to protect the rights of a child or vulnerable adult who is subject to a search that involves the removal of underclothing or examination of a body orifice should be defined;
- Information about how to establish the gender of a person for the purpose of searching should be provided; and
- There should be a legal requirement to record in the custody record the type of search conducted, the power under which it is conducted, the grounds for it, the authorisation if required and the outcome of the search.

Recommendation 36

The Inspectorate recommends that the Garda Síochána improve the processes for recording, managing and returning property in the possession of persons in custody.

To achieve this, the following actions are required:

- At the start of the custody process, all items in the possession of the person in custody should be listed on the custody record;
- For each item listed there should be an indication as to whether it is retained by the person while they are in custody or by the member in charge and the person should be asked to sign the custody record to confirm that the information is correct;
- Upon release or transfer, the custody record should be completed to show which items are returned to the person and which are retained by the Garda Síochána, and this should be signed by the person in custody;
- Any refusal to sign should be recorded;
- Adequate secure lockers should be available in every custody facility to ensure that all items are safely and respectfully stored;
- Storage lockers must remain locked at all times with keys only available to the member in charge and gaoler, if appointed;
- The design of the custody record should be amended to allow for the detailed recording of property at the start of the custody process and at release or transfer. It should include space for the person in custody to confirm that the list is correct or for a refusal to sign to be recorded; and
- The Garda Síochána should consider adopting the New Zealand policy of photographing property belonging to persons in custody and uploading the images onto its property management system.

Recommendation 37

The Inspectorate recommends that the Garda Síochána improve the monitoring of use of force in custody to ensure that it is fully compliant with legal, human rights and policy obligations.

To achieve this, the following actions are required:

- Ensure that all use of force incidents in custody, including prior to arrival at a garda station, are reported and recorded;
- Ensure that force used in custody is lawful, necessary, proportionate and non-discriminatory;
- Thoroughly review all incidents of use of force in custody involving children; and
- Collect and publish comprehensive data on the use of force associated with custody.

Recommendation 38

The Inspectorate recommends that the Garda Síochána ensure that all persons in custody are informed that they have the right to make a complaint at any time and have written information about how to do so.

To achieve this the Garda Síochána should:

- Include information about making a complaint in the Notice of Rights form;
- Raise awareness of the complaints process by providing leaflets and displaying posters in the custody area; and
- Ensure that the process for dealing with complaints made by persons in custody is clearly defined and included in the single document referred to in Recommendation 1 of this report.

Recommendation 39

The Inspectorate recommends that the Garda Síochána monitor complaints made by persons in custody and use the information to improve custody policy, procedures and practices.

Recommendation 40

The Inspectorate recommends that the Garda Síochána develop and implement a structured process for the release or transfer of persons in custody.

The process should include:

- Reviewing and updating the risk assessment prior to release and where there is a risk of self-harm, ensuring that appropriate support is in place;
- Where a person is transferred into the custody of others, sharing with them a reviewed risk assessment and management plan;
- Updating PULSE with any identified risks or vulnerability factors;
- Ensuring the person understands what will happen to them next;
- Returning items of property taken from the person that are not retained for investigative purposes; and
- Informing the person that they have the right to make a complaint and ensuring they have written information about how to do so.

Recommendation 41

The Inspectorate recommends that the Garda Síochána review and redesign the paper custody record to include the proposed changes outlined in this report and listed at Figure 7.4.

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