



CRIMINAL LAW *IN IRELAND*



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CRIMINAL COURT SYSTEM HIERARCHY

- Supreme Court
- Court of Appeal
- Central Criminal Court/Special Criminal Court
- Circuit Court
- District Court

For more information on criminal courts, visit

<https://www.courts.ie/how-the-court-works>

Note:
Sentencing
is at the judge's
discretion and
depends on
the facts of
the case

Homicide includes the criminal offences of Murder, Manslaughter, and Infanticide. All homicide trials are held in the Central Criminal Court on Indictment

MURDER

I am charged with murder, what does this mean?

This means that you are being charged under *S.4 of the Criminal Justice Act 1964*. To be found guilty of murder you must have unlawfully killed somebody. This act must be done intentionally or intentionally causing serious injury (s.4(1). This proves you had the requisite Mens Rea and Actus reus for murder. Finally, your actions must have caused the death of this person. If you are found guilty of murder, a mandatory life sentence will be imposed. The average duration a life sentence is 8-12 years imprisonment.

I did not intend to kill or cause serious injury; will this help my case?

S.4(2) of the 1964 act states there is a presumption that every murder is intended unless proven otherwise.

What is Capital Murder?

Capital murder is the unlawful killing of a Garda, Prison Officer, foreign head of state, member of government, president when they are on duty. Capital murder is governed by *S.3 Criminal Justice Act 1990*. In addition to murder requirements, to prove capital murder the accused must know the victim was on duty at the time of the killing. If convicted of a S.3 murder, a sentence of at least 40 years imprisonment is imposed. In the case of an attempt to commit a S.3 murder a convicted person must serve at least 20 years imprisonment.



DPP v Murray is an Irish Capital murder case where a Gardai was shot and killed

MANSLAUGHTER

I am charged with manslaughter, what does this mean?

This means you will be charged under *s.5 of the Offences Against the Person Act 1861*. Manslaughter is the unlawful killing of another human being without the intent to kill or cause serious injury. There are two types of manslaughter, voluntary and involuntary.

What is Voluntary manslaughter?

Murder can be lawful, for instance self-defence provided the force used was no more than reasonably necessary or, having lost control by being provoked and more. Here you can avail of criminal defences such as provocation, diminished responsibility and more. It is provided for by *S.5(1) OATPA 1861*.

What is Involuntary Manslaughter?

Involuntary manslaughter involves the unlawful killing of someone without intention. It can arise due to assault, dangerous and criminal actions or if death occurs due to criminal negligence.

An example of a dangerous and criminal act would be a person who produces a knife with the intention of intimidating or frightening another and not for self-defence commits an unlawful and dangerous act.

An example of criminal negligence would be travelling slowly in a car late at night on the wrong side of the road with no lights on and recklessly killing someone.

Revised recorded homicide incidents 2003 – 2016

The Central Statistics Office released statistics ranging from 2003 to 2016. It shows that every year there were more murder incidents than manslaughter.

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Murder	36	29	52	60	78	51	53	55	42	52	51	53	31	37	680
Manslaughter	15	15	14	12	7	14	9	8	10	8	7	6	5	5	135



ASSAULT

There are 3 types of Assault you can be charged with under the *Non-Fatal Offences Against the Person Act 1997*.

1. Assault – Section 2(1)
2. Causing Harm – Section 3(1)
3. Causing Serious Harm – Section 4

NOTE:

Everyday conduct such as bumping off people in the street is not a criminal offence



The Gardai may ask you to make a statement in relation to an allegation of assault or assault causing harm

What is Assault

A charge under s.2 involves intentionally or recklessly, directly, or indirectly applying force or impact to someone else without their consent. Also, causing someone to believe they are about to be assaulted or touched. An example of indirect assault could be recklessly throwing a rock and hitting a pedestrian.

What Is Assault Causing Harm?

Assault Causing Harm Involves Causing Pain, Unconsciousness, Emotional Or Psychological Harm To The Body Or The Mind Of Someone. Case Law Suggests Consistent Silent Phone Calls Amount To Assault Causing Harm.

S. 3(2). Punishment Includes 12 Months' Imprisonment And A Fine Not Exceeding € 1,500 Upon Summary Conviction; 5 Years' Imprisonment And An Unlimited Fine Upon Conviction On Indictment.

What Is Assault Causing Serious Harm

Assault causing serious harm includes intentionally or recklessly causing serious harm to another person. Serious harm includes loss or impairment of the body, loss of movement of limbs, risk of death, serious disfigurement, or any harm to organs. In contrast to assault causing harm, serious harm does not involve emotional or psychological harm. If found guilty of assault causing harm, you could receive a maximum life imprisonment and an unlimited fine. Irish law on assault causing harm or serious harm precludes the use of consent as a defence, on grounds of public policy – certain behaviour is considered criminal despite the consent of the parties.

DRUG POSSESSION

What Do I Do If I Am Charged With Drug Possession?

If you are charged with drug possession, you should contact a solicitor to assist you as there can be damaging consequences. These consequences include, criminal record, imprisonment, fine, damage to your reputation in work and in your personal life.

The types of legislation revolving this area are:

1. The Misuse Of Drugs Act 1977
2. Non-Fatal Offences Against The Person Act
3. Criminal Justice Drug Trafficking Act 1999
4. Criminal Justice (Psychoactive Substances) Act 2010

The *Misuse of Drug Act 1977* states it is illegal to carry out the following:

1. Grow cannabis plants

It is illegal to grow cannabis plants for illegal use.

2. Possession of controlled drugs for sale or supply:

It is illegal to be in possession of controlled drugs with the intention of selling it. For instance, being in possession of cannabis or cannabis resin.

What Are The Penalties Under The Misuse Of Drug Act 1977?

If a guilty charge is handed down to you, you may be given a fine and/ or a term of imprisonment. If you are found guilty of importing or selling controlled drugs with a market value of €13,000 or more, you may be liable for a minimum sentence of 10 years. It is important to recognise, the type of sentence is at the judge's discretion and depends on the facts of the case



The Non-Fatal Offences Against the Person Act makes it illegal be in possession of a syringe for unlawful purposes. The types of offences include:

1. Being in possession of a syringe filled with blood or a blood like substance
2. Making threats to spray the contents of syringe
3. Spraying the contents of the syringe
4. Threatening to stab someone with the syringe
5. Stabbing someone with the syringe

The Central Statistics Office released the below table on Drug Offences ranging from 2003 to 2008. It is evident that possession offences accounted for almost 75% of the 14,374 drug offences in 2008.

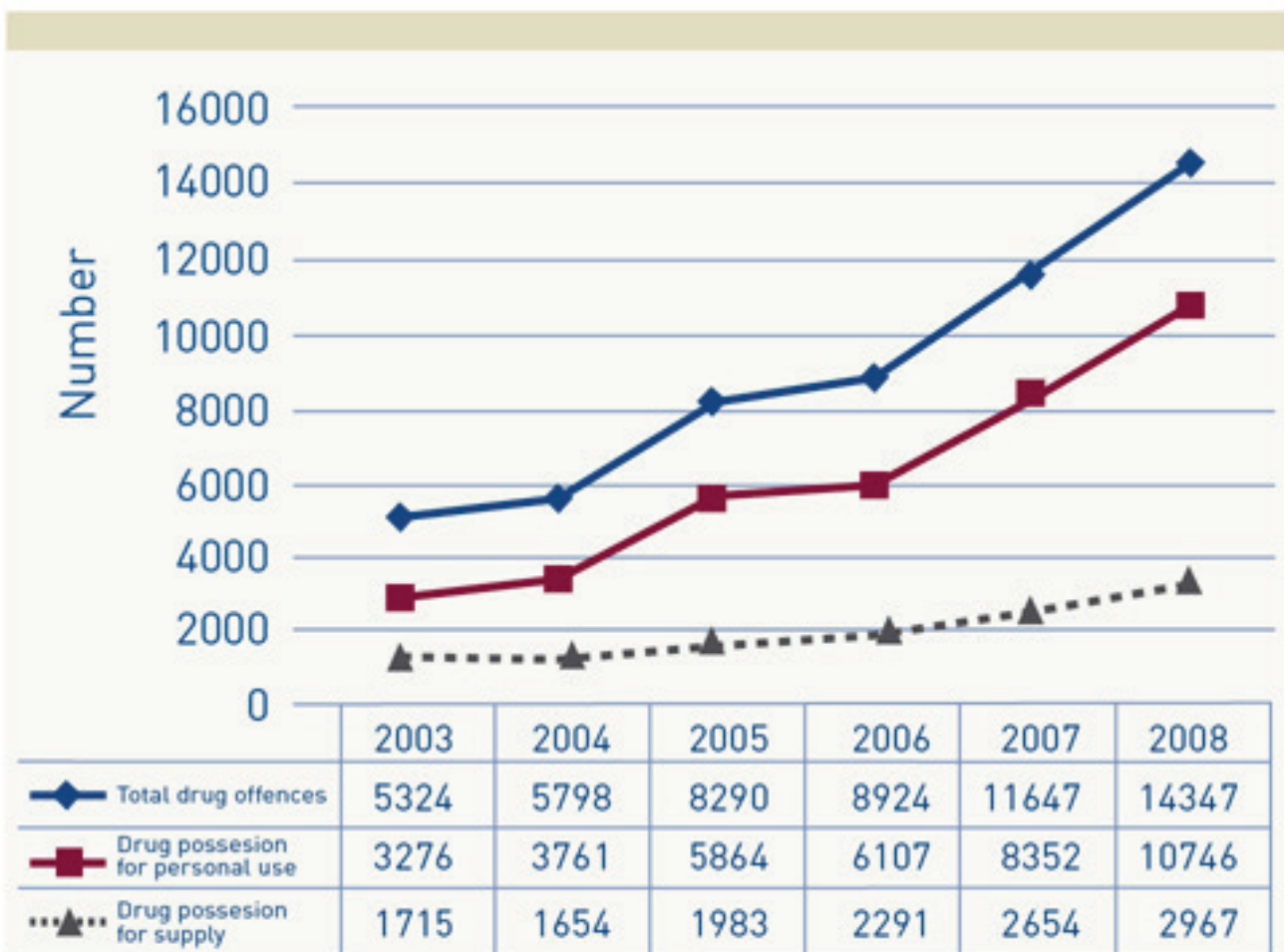


Figure 1 Trends in relevant legal proceedings for drug offences, 2003-2008

Source: Central Statistics Office

INTOXICATED DRIVING



I Am Charged With Intoxicated Driving, What Does This Mean?

This means that you were under the influence of either drugs or alcohol while driving. Intoxicated driving involves all serious risks of harm to the public and yourself being disregarded. Gardai conducts a breath test for the amount of alcohol in your system and if you refuse to comply, you are committing an offence.

Section 4 of the *Road Traffic Act 2010* introduced a limitation on alcohol limits for drivers with learner permits, those who have a full drivers licence and those with an expired or invalid driver's licence. The limitations are as follows if you try to drive after 3 hours of drinking.

Legal limit	Experienced, learner and novice	Fully licenced drivers under Category B licence
Breath	9 microgrammes of alcohol per 100 millilitres of breath.	22 microgrammes of alcohol per 100 millilitres of breath
Urine	27 milligrammes of alcohol per 100 millilitres of urine	67 milligrams of alcohol per 100 millilitres of urine
Blood	20 milligrammes of alcohol per 100 millilitres of blood	50 milligrams of alcohol per 100 millilitres of blood

What Are The Penalties For Driving While Intoxicated?

An automatic fine and disqualification from driving for a set period of time is given to you. In the event of a breaching in rules, you could be sentenced to prison. A mandatory disqualification can start at 1 year or more. The time duration depends on driving history, the type of licence you have and the amount of alcohol you had in your system.

I Have Been Disqualified; Can I Get My Licence Back Early?

There are limited circumstances when you can get your licence back early. Examples of the criteria that is required is as follows:

1. This must be your 1st time being disqualified from driving in the past 10 years.
2. You paid off your fine in full.
3. A mandatory two thirds of your disqualification duration must be fulfilled.
4. You must present your licence to a local authority so they can approve of the disqualification.

WHAT IS EVIDENCE?

Evidence involves proof facts or information indicating whether a belief or proposition is true. For instance, giving DNA evidence. The Criminal Evidence Act, 1992 mainly governs this area. The types of evidence that are used in Ireland are:

1. Real evidence
2. Documentary evidence
3. Hearsay evidence
4. DNA evidence
5. Circumstantial evidence
6. Witnesses evidence

Inadmissible evidence means evidence will not be introduced at trial. In contrast, admissible evidence will be introduced. The Criminal Justice Act 2006 sets out guidelines for admissibility of certain witness statements

What Is A Summons?

A summons is a legal document that requires your presence in court. A summons can be given to someone to give evidence in court, answer to your criminal charges or appear in court.

What Happens If There Is A Mistake On The Summons?

Generally, this is seen as a minor issue if immaterial facts are not on the summons and will not stop court proceedings. According to Rule 38 of the District Court Rules, the District Court has power to make amendments to a summons. If there was an error or mistake regarding material facts such as the address of court, then proceedings may be delayed. Order 28 rule 11 substituted by SI 271 of 2009, effective 17 August 2009. Previous rule 11 provided: "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion without an appeal.

EVIDENCE PROCEDURE

Step 1:
The victim will make a written witness statement to the Gardai.

Step 2:
An investigation proceeds.

Step 3: If enough evidence is gathered, an arrest can be made.

Step 4:
In the event of an indictable offence, the Gardai will send a file of all information on the case to the DPP. In summary offences, the gardai can decide to prosecute in the name of the DPP.

Step 5:
The DPP will decide to prosecute the suspect in question. If so, they will prepare a book of evidence against you. This book must be given to you or your legal representation. The book of evidence contains evidence against you, witness statements, charges against you, witness lists, documentary evidence and exhibits.

Step 6:
Anyone that has information or witnessed the crime can be called as a witness. A witness summons from the Gardai or court can be given to you.

Step 7:
On the day, questions will be asked to you the prosecution team. The questions cannot lead you to give a specific answer. You are there to answer truthfully and subjectively. cross examination will occur. This allows the defence to ask you questions which are allowed to be leading in this instance.