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**An Comhchoiste um Dhlí agus Ceart agus Comhionannas**

**Tuarascáil maidir le hAthchóiriú ar an gCóras Pionós agus  
Pianbhreitheanna a Ghearradh**

**Bealtaine 2018**

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**Houses of the Oireachtas**

**Joint Committee on Justice and Equality**

**Report on Penal Reform and Sentencing**

**May 2018**





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## Contents

|  |     |
|--|-----|
| Chairman's Preface .....                                 | 3   |
| Background and context .....                             | 9   |
| Previous Oireachtas Committee report .....               | 9   |
| Meetings with stakeholders .....                         | 10  |
| Prison numbers and overcrowding .....                    | 13  |
| Background .....   | 13  |
| Stakeholder views .....                                  | 14  |
| Prison inspections and conditions .....                  | 19  |
| Background .....   | 19  |
| Complaints mechanism .....                               | 19  |
| Prison inspections .....                                 | 21  |
| Prison conditions .....                                  | 23  |
| Family/visitation .....                                  | 29  |
| Addiction and mental health .....                        | 30  |
| Education, retraining and the therapeutic approach ..... | 33  |
| Health .....   | 35  |
| Solitary confinement and extended lock-up .....          | 36  |
| Prison staffing and costs .....                          | 38  |
| Post-release supports and recidivism .....               | 40  |
| Background .....   | 40  |
| Access to employment .....                               | 40  |
| Spent convictions .....                                  | 41  |
| Reducing recidivism .....                                | 44  |
| Homelessness .....                                       | 46  |
| Parole and the rights of victims of crime .....          | 49  |
| Parole .....   | 49  |
| Restorative justice and rights of victims of crime ..... | 50  |
| Conclusions and Recommendations .....                    | 53  |
| Appendix 1 – Committee Membership .....                  | 61  |
| Appendix 2 – Terms of Reference of the Committee .....   | 63  |
| Appendix 3 – Witnesses and Official Report .....         | 67  |
| Appendix 4 – Opening Statements .....                    | 69  |
| Appendix 5 – Submissions .....                           | 111 |



## Chairman's Preface

In 2013, our predecessor Committee of the 31<sup>st</sup> Dáil published its *Report on Penal Reform*, which made a number of recommendations to improve the effectiveness of both prison-based rehabilitation and the wider penal system.

Notwithstanding the progress made in the area of penal reform since the publication of the 2013 report, the current Oireachtas Joint Committee on Justice and Equality deemed it appropriate to readdress the issue in the 32<sup>nd</sup> Dáil, and we have made it a priority issue in our Work Programme.

The Committee held a series of public meetings in 2017 with stakeholder groups on the subject of penal reform in order to better understand the issues surrounding the topic and how best to improve the situation.

Over the course of our engagement with stakeholders, it became abundantly clear that there is systematic overuse of imprisonment as punishment in Ireland, and that sentencing alternatives need to be explored. It also became clear that conditions in prisons themselves are unacceptable, and that far more needs to be done to rehabilitate offenders, reduce recidivism, and minimise the impact of crime on victims and the community.

A copy of this report and recommendations has been sent to the Minister for Justice and Equality. The Committee looks forward to working proactively and productively with the Minister to address issues in the penal system in the future.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearings to give evidence. Finally, I also wish to thank the staff of the Committee Secretariat who assisted in the preparation of this report. Go raibh maith agaibh.



A handwritten signature in black ink, which appears to read 'Caoimhghín Ó Caoláin'.

Caoimhghín Ó Caoláin T.D.  
Chairman – May 2018







Ms. Fíona Ní Chinnéide, Executive Director (Acting) and Ms. Michelle Martyn, Senior Research & Policy Manager, Irish Penal Reform Trust.



Members of the Joint Committee with Ms. Maria McDonald BL, Coordinator, Irish Victims' Rights Alliance.



Members of the Joint Committee with representatives of the Irish Prison Service: Mr. Michael Donnellan, Director General; Mr. Fergal Black, Director of Care and Rehabilitation; Mr. Martin Smyth, Director of Operations; and Ms. Ethel Gavin, Campus Governor, Portlaoise.



Members of the Joint Committee with representatives of the Probation Service: Mr. Vivian Geiran, Director; Ms. Ita Burke, Deputy Director; Ms. Una Doyle, Deputy Director; Mr. Brian Dack, Assistant Director.





Members of the Joint Committee with Mr. Eoin Carroll, Social Policy and Communications Coordinator, Jesuit Centre for Faith and Justice; Mr. John Clinton, General Secretary, and Mr. Jim Mitchell, Deputy General Secretary, Prison Officers' Association.



Members of the Joint Committee with representatives of the Simon Communities of Ireland: Ms. Niamh Randall, Head of Policy and Communications; Mr. Aaron O'Connell, Cork Simon Community; Ms. Tracey Reddy, Mid-West Simon Community; and Ms. Claire McSweeney, Dublin Simon Communities.



## Background and context

The issue of penal and criminal law reform has received considerable attention in recent years, and a number of significant reports have been published on it, as outlined in Table 1, below. The Joint Committee on Justice and Equality, in revisiting the subject in 2017, sought to combine this evidence with the insights and perspectives of a number of stakeholder groups in order to identify specific legal or policy actions which can be taken to reduce the number of people who receive custodial sentences, improve conditions in prison, and improve support for prisoners post-release.

**Table 1: Recent reports around penal and criminal law reform**

| YEAR | REPORT   |
|------|--|
| 2011 | <a href="#"><u>Report of the Thornton Hall Review Group</u></a><br>Looked at the need for new prison accommodation and the plans for Thornton Hall.  |
| 2013 | <a href="#"><u>(Previous) Oireachtas Committee on Justice, Defence and Equality – Report on Penal Reform</u></a><br>Made 5 overarching recommendations aimed at reducing the prison population and addressing poor prison conditions amongst other things.   |
| 2014 | The <a href="#"><u>Strategic Review of Penal Policy</u></a> written by the Penal Policy Review Group and published in 2014 by the Department of Justice & Equality and about its current status.<br>Also the <b>Penal Policy Implementation Oversight Group</b> Reports available <a href="#"><u>here</u></a> . This group tracks the implementation of the recommendations of the Strategic Review. |
| 2015 | The <a href="#"><u>report</u></a> of the Joint Committee on Justice, Defence and Equality on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs   |

### Previous Oireachtas Committee report

In March 2013, the Oireachtas Joint Committee on Justice, Defence and Equality produced a Report on Penal Reform, which made five key recommendations:

#### 1) Reduce prison numbers

The report recommended the adoption of a “decarceration strategy” - a declared intention by the Government to reduce the prison population by one-third over a ten-year period.

## **2) Commute prison sentences of less than six months**

That all sentences for under six months' imprisonment imposed in respect of non-violent offences should be commuted and replaced with community service orders.

## **3) Increase standard remission from one quarter to one third and introduce an incentivised remission scheme of up to one half**

That standard remission should be increased from one quarter to one third of all eligible sentences of over one month in length. An enhanced remission scheme of up to one half should be made available on an incentivised basis for certain categories of prisoner, particularly those serving a prison sentence for the first time.

## **4) Introduce legislation providing for structured release, temporary release, parole and community return**

That a single piece of legislation should be introduced that would set out the basis for a structured release system, to include proposed changes to remission set out above, and to temporary release and parole; and provide a statutory framework for an expanded community return programme.

## **5) Address prison conditions and overcrowding, and increase the use of open prisons**

That structured release and incentivised remission programmes could not operate effectively within prisons unless prison conditions are improved and overcrowding tackled. In addition, actions should be taken to improve conditions within prisons generally. The proportion of open prisons should also be increased.

Whilst some reforms have been introduced and progress made in the years since the 2013 report, the current Joint Committee on Justice and Equality was of the view that much more remained to be done, and thus it made penal reform and sentencing a key priority issue in its 2017 Work Programme.

### **Meetings with stakeholders**

Over the course of a series of public engagements in spring 2017 with stakeholders (listed below), the Committee heard evidence that Ireland's penal system continues to be characterised by the systematic overuse of imprisonment as punishment. Although the daily prison population is of average size by European standards - at approximately 79 per 100,000 - the rates of committal to prison, and consequently our rates of release, are among the highest of the 46 countries of the Council of Europe area, and third highest in the European Union. Ireland's prison population is characterised by mental health issues, addictions, homelessness, poverty, unemployment, educational disadvantage,

chaotic family backgrounds and social marginalisation. In this context, it is not surprising that re-offending rates on release from prison are high.

The Committee was keen to identify the issues affecting Irish prisons, and make some recommendations for improvement.

The Committee met with seven groups involved in the penal system. It also conducted pre-Committee Stage scrutiny of two Private Members Bills relevant to the context of this report: The Prisons (Solitary Confinement) (Amendment) Bill 2016, sponsored by Deputy Clare Daly; and the Parole Bill 2016, sponsored by Deputy Jim O'Callaghan.

A number of themes emerged during these engagements, and this report categorises those themes under headings. These themes included prisoner numbers; prison inspections and conditions; the impact of imprisonment on families; addiction and mental health; therapy; restorative justice; healthcare; and solitary confinement.

## **Dates**

8<sup>th</sup> February 2017

1<sup>st</sup> March 2017

8<sup>th</sup> March 2017

22<sup>nd</sup> March 2017

29<sup>th</sup> March 2017

## **Stakeholders**

Irish Penal Reform Trust

Victims' Rights Alliance

Probation Service

Irish Prison Service

The Jesuit Centre for Faith and Justice

Prison Officers' Association

Simon Communities of Ireland

## **Acronyms**

The following acronyms are used in this report:

Irish Penal Reform Trust           **(IPRT)**

Victims' Rights Alliance           **(VRA)**

Irish Prison Service               **(IPS)**

The Jesuit Centre for Faith  
And Justice                       **(JCFJ)**

Prison Officers' Association       **(POA)**



## Prison numbers and overcrowding

### Background

The cost of imprisonment has been estimated at around €68,000 per year per prisoner. The cost per inmate per day in an institution for juvenile offenders is €2,773.38.<sup>1</sup> Ireland has a very high committal rate<sup>2</sup>, but people may serve very short sentences. Table 2 below shows sentence lengths for prisoners as of January 2017.

**Sentence length by Age of Male prisoners under sentence**

|                 | 17 years | 18 to <21  | 21 to <25  | 25 to <30  | 30 to <40  | 40 to <50  | 50yrs+     | Total        |
|-----------------|----------|------------|------------|------------|------------|------------|------------|--------------|
| <3 Months       | 0        | 2          | 5          | 6          | 5          | 3          | 1          | 22           |
| 3 to <6 Months  | 0        | 11         | 23         | 27         | 34         | 30         | 9          | 134          |
| 6 to <12 Months | 6        | 22         | 56         | 52         | 73         | 35         | 18         | 262          |
| 1 to <2 Years   | 0        | 30         | 71         | 85         | 111        | 48         | 25         | 370          |
| 2 to <3 Years   | 1        | 30         | 53         | 81         | 99         | 41         | 23         | 328          |
| 3 to <5 Years   | 1        | 31         | 97         | 122        | 189        | 90         | 70         | 600          |
| 5 to <10 Years  | 1        | 9          | 72         | 118        | 222        | 122        | 91         | 635          |
| 10+ Years       | 0        | 0          | 7          | 21         | 72         | 66         | 78         | 244          |
| Life Sentence   | 0        | 0          | 10         | 23         | 132        | 95         | 79         | 339          |
| <b>Total</b>    | <b>9</b> | <b>135</b> | <b>394</b> | <b>535</b> | <b>937</b> | <b>530</b> | <b>394</b> | <b>2,934</b> |

**Sentence length by Age of Female prisoners under sentence**

|                 | 18 to <21 | 21 to <25 | 25 to <30 | 30 to <40 | 40 to <50 | 50yrs+    | Total      |
|-----------------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| <3 Months       | 0         | 0         | 0         | 1         | 1         | 0         | 2          |
| 3 to <6 Months  | 0         | 1         | 1         | 4         | 2         | 2         | 10         |
| 6 to <12 Months | 0         | 1         | 2         | 13        | 6         | 2         | 24         |
| 1 to <2 Years   | 1         | 4         | 2         | 12        | 7         | 0         | 26         |
| 2 to <3 Years   | 0         | 1         | 3         | 6         | 0         | 2         | 12         |
| 3 to <5 Years   | 1         | 4         | 2         | 1         | 6         | 1         | 15         |
| 5 to <10 Years  | 0         | 0         | 1         | 4         | 1         | 1         | 7          |
| 10+ Years       | 0         | 0         | 1         | 0         | 1         | 1         | 3          |
| Life Sentence   | 0         | 0         | 1         | 4         | 3         | 2         | 10         |
| <b>Total</b>    | <b>2</b>  | <b>11</b> | <b>13</b> | <b>45</b> | <b>27</b> | <b>11</b> | <b>109</b> |

Source: Irish Prison Service<sup>3</sup>

The Committee considered measures that could be taken to decrease the numbers being sent to prison.

<sup>1</sup> <http://www.irishtimes.com/news/crime-and-law/inmates-in-juvenile-detention-centres-cost-10-times-europe-average-1.3011390>

<sup>2</sup> O'Hara, K and Rogan, M (2015) 'Examining the use of community service orders as alternatives to short prison sentences in Ireland', *Irish Probation Journal*, Vol. 12, October 2015.

<sup>3</sup> [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/January-2017.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2017.pdf)

## Stakeholder views

In the course of its engagement with the Committee on the 8<sup>th</sup> of February 2017, the Irish Penal Reform Trust (IPRT) stated that Ireland relies far too heavily on imprisonment as a sanction for offenders:

"Ireland's penal system is characterised by the systematic overuse of imprisonment as punishment. Although our daily prison population is of average size by European standards, at approximately 79 per 100,000, our rates of committal to prison, and consequently our rates of release, are among the highest among the 46 countries of the Council of Europe area, and third highest in the European Union. Our rate of release is the highest."

Furthermore, Ms Fíona Ní Chinnéide highlighted what she contends is a prison population characterised by mental health issues, addictions, homelessness, poverty, unemployment, educational disadvantage, chaotic family backgrounds and social marginalisation. In this context, it is not surprising that re-offending rates on release from prison are high. She submitted that the daily prison population, which is currently 79 per 100,000, should be reduced to 60, or even 50, per 100,000.

The IPRT contended that there is considerable scope for a more progressive penal system that will include an emphasis on alternatives to imprisonment:

"the emphasis of a progressive, just and humane penal policy should be on the following: investment in early intervention, prevention and diversion strategies; investment in community-based sanctions and non-custodial alternatives; protecting human rights and meeting best practice standards in prison with robust independent oversight, in cases where prison is the only appropriate response; and greater investment in rehabilitation services and post-release supports."

According to the IPRT, 2016 saw the highest number of individuals sent to prison, at 14,182. This relates to 17,206 committals. These levels are similar to the figures in 2011-2012, when it was thought that numbers had peaked.

However, the Irish Prison Service (IPS), which met with the Committee on the 8<sup>th</sup> of March 2017, stated that a great deal of progress has already been made in tackling overcrowding:

"For years overcrowding caused a strain on the system and created significant challenges for management and staff of the Irish Prison Service in providing appropriate accommodation and constructive regimes for prisoners. Thankfully, the issue of overcrowding has been eliminated in the majority of prisons."

Michael Donnellan, on behalf of the IPS, informed the Committee that the numbers in custody have fallen by 20% since their peak in 2011, while the numbers on temporary release have reduced by almost 70% during the same period.

Mr Eoin Carroll of the Jesuit Centre for Faith and Justice (JCFJ), appearing before the Committee on the 22<sup>nd</sup> of March 2017, drew attention to the number of women prisoners in particular. He contended that while the number of people in prison on any given day has reduced significantly in recent years, the numbers of people being sent to prison continues to increase. This is particularly so for women:

"The Jesuit Centre for Faith and Justice is concerned about the dramatic increase in the daily population of women in prison and numbers of women being sent to prison annually. Proposed solutions to reducing the number of women in prison – by providing a step-down unit – reflects the failed institutionalised approaches of the past. Large hostel-style accommodation post-release or part of a step-down programme will not dramatically break the cycle of homelessness or poverty. The approach taken within the housing organisations such as the Housing First approach is required.

We would have a number of recommendations about prisoner numbers ... a decision should be made ... around what number of prison places we should have in Ireland and ultimately a cap placed on prison numbers. We recommend a Housing First approach as an alternative to the step-down facility for women exiting prison."

The Prison Officers Association (POA), in its engagement with the Committee on 22 March 2017, contended that the number of people who get custodial sentences must be reduced:

"A snapshot of the prison population will show that on 3rd March 2017, a total of 3,815 prisoners were in custody with 253 on temporary release and 543 on trial or remand. That is a total of 4,204 prisoners in the system, which includes 87 prisoners on life sentences residing in the community and 28 prisoners residing in the Central Mental Hospital. The construction of additional cell spaces in the Midlands and Wheatfield prisons, as well as refurbishments in Mountjoy and Limerick prisons, the new prison in Cork and the re-designation of St. Patrick's Institution have helped to alleviate the difficulty of overcrowding. It should however be noted that the imminent closure of the training unit on a temporary basis has reduced the prison estate capacity by 96 spaces. This is a matter of concern to us. It is also noteworthy that there is a further disparity between what the late Inspector of Prisons viewed as bed capacity, and what the Prison Service figures show as bed capacity, to a quantum of 97. These numbers, if applied, represent a return to over 100% occupancy in the prison system and a

consequent return to the competition for resources that blighted the early part of this century in the penal system.”

### ***Alternative sentencing approaches***

As a means of reducing the numbers in the prison system, the IPRT wishes to see greater use of alternative sentencing approaches:

“We are concerned about the drop in the annual number of community service orders. Research must be conducted into the reason for the decrease ... We [have] found that there was an inconsistent provision of community service orders or an inconsistent use of them by the courts throughout the country, a fact that needs to be addressed.

The Probation Service in its 2014 report found that the average cost of a probation order was €5,000 and a community service order cost in the region of €2,500. The community payback or work that was done in the community was not included in the assessment. Crimes are committed in the community so it is good that there is a community payback.

The Probation Service, also in its 2014 report, calculated the hours of community work conducted through the community return programme. It estimated that community service orders were worth €4.5 million to the community. That is a significant sum that must be considered. Prison is often spoken about as a cost-neutral solution to crime. It costs just under €70,000 per prisoner per annum, not including education and other costs.”

The 2013 report of the Oireachtas Committee recommended that prison sentences of less than six months should be commuted and replaced with community service orders. That did not happen. The IPRT believes it is a good recommendation. However, the Probation Service needs the resources to cope with the expansion of its remit. Community-based sanctions are much more effective in many cases, and the Probation Service should be given the resources to be able to meet that need.

That report also recommended increasing standard remission from one quarter to one third, and introducing an incentivised remission scheme of up to one half. That recommendation goes back to the Whitaker report from 1985. Remission is not something that enjoys wide public or political appeal. There has been a very successful introduction of what is known as the community return programme. Prisoners who are deemed eligible, who are serving longer sentences, can be released into the community at the 50% mark to complete their sentence in the community. That greatly aids resettlement in the community. There is a saving on the €70,000 per year cost of individuals being in prison while gaining from the community payback. The programme has been enormously successful. The

reports are that compliance rates are 90%, although there remain concerns about why women are being returned to prison in 60% of cases when men are only being returned in 10% to 15% of cases. In the view of the IPRT, the issue must be examined:

"The programme is very positive. The numbers are beginning to fall, and the suggestion is that all those who are eligible have engaged with the programme. A total of 450 prisoners were released into the community return programme in 2014 and it was 370 in 2015. We have proven the model and shown it works. Let us expand the criteria and get more prisoners released in this way. The initiative has been very successful. Internationally, people are looking at Ireland as a model in this regard. It is a rare good news story."

### ***Non-payment of fines***

The IPRT also focused upon the issue of non-payment of fines, which accounts for over 50% of committals per annum:

"We had concerns with the two fines Acts; the Fines Act 2010 initially, that was not fully implemented, and then the Fines (Payment and Recovery) Act 2014, which was only fully implemented in January. We would have questions on these. For example, we believe the threshold of €100 is too high for payment by instalment and that there should be no limit. For people coming from certain circumstances at certain times of year coming up with €100 on the spot can be very difficult, for example two weeks before Christmas when getting Christmas presents for the kids. We would remove that €100 as a base. The original Fines Act 2010 had provision for payment by instalment of fines over two years in certain circumstances. That was reduced to 12 months in the Fines (Payment and Recovery) Act 2014. We would extend it. We see no reason it should not be over 24 months. We hear again and again from people who want to pay but who cannot pay upfront and in full. People should be facilitated to pay. We agree that it is a completely wasteful practice that puts an enormous burden on the Prison Service."

It added that there are provisions in the Fines (Payment and Recovery) Act 2014 for alternatives:

"There is now provision for attachment of earnings orders if people do not pay. We would wonder slightly why people are continuing to be sent to prison but it could be based on the date that they received the fine. There are attachment of earnings orders for people who are in employment. There is provision for community service alternatives for people who are not in employment. There are recovery orders. There is a suite of measures. Essentially, an evaluation is needed. It has been in operation for a year now, so the first point would be an

evaluation of its success and to see if those other provisions are being used or if the default is still prison even though that is not in accordance with the legislation. That would be a very useful thing to do."

### ***Drugs offences***

In the context of drug offences, the view was expressed to the Committee that there should be far more extensive use of non-custodial treatment options for offenders. Under existing legislation, a court may decide not to impose a fine or prison sentence on an offender. Instead, he or she may be placed under the supervision of a named person or body (such as the HSE) for a specified period of time or may be required to get the kind of treatment (medical or otherwise) that has been recommended. The court may also order that offenders complete a course of education, instruction or training that will improve their job prospects or social circumstances, facilitate their social rehabilitation or reduce the likelihood of them committing further drugs offences.

Deputy Daly contended that in sentencing for people who have been found guilty of drug offences, the option of the non-custodial treatment penalty provided for in the Misuse of Drugs (Amendment) Act does not appear to be utilised in practice. Under this provision, instead of people being sent to prison, they could agree to sign up to a counselling or addiction programme to get them drug free, and have supports made available to them.

## Prison inspections and conditions

### Background

Though significant improvements in prison conditions have been made in recent years, a number of issues remain, including the use of lock-up/isolation; slopping out or lack of privacy when using a toilet<sup>4</sup>; problems with drugs and a lack of availability of drug treatment to all who need it; and varying availability of healthcare more generally.

The greater and more transparent use of open prisons has been recommended. However, at present there is no open prison for women. The nature and effectiveness of prison rehabilitation programmes and supports are in question, and there may be specific issues for particular groups in prison, such as women, migrants and those with mental health problems and addictions.

Two concrete legal steps have been proposed in recent years to improve prison conditions:

- Strengthening the complaints mechanism; and
- Ratifying the Optional Protocol to the Convention against Torture ("OPCAT").

### Complaints mechanism

#### *Strengthening the complaints mechanism*

The Inspector of Prisons has long called for an independent complaints mechanism for prisoners.<sup>5</sup> A statutory complaints procedure was introduced in 2013 following on from recommendations made by the Inspector in 2012.<sup>6</sup> The Prison Rules 2007 were amended by the Prison Rules (Amendment) 2013<sup>8</sup> to give effect to a new procedure for the investigation of serious complaints and other matters. However, the Inspector of Prisons found that the necessary element of independence in the system was not included.

The 2016 report of the Inspector of Prisons on the prisoner complaints system 'Review, Evaluation and Analysis of the Operation of the present Irish Prison

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<sup>4</sup> [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/January-2017-In-Cell.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2017-In-Cell.pdf)

<sup>5</sup> See for example his 2010 report <http://www.justice.ie/en/JELR/Report%20-%20Guidance%20on%20Best%20Practice%20relating%20to%20Prisoners%20Complaints%20and%20Prison%20Discipline.pdf/Files/Report%20-%20Guidance%20on%20Best%20Practice%20relating%20to%20Prisoners%20Complaints%20and%20Prison%20Discipline.pdf>

<sup>6</sup> <http://www.justice.ie/en/JELR/Suggested%20Prisoner%20Complaints%20Model%20for%20Irish%20Prisons.pdf/Files/Suggested%20Prisoner%20Complaints%20Model%20for%20Irish%20Prisons.pdf>

<sup>7</sup> S.I No.252 of 2007 <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print>

<sup>8</sup> S.I No.11 of 2013 <http://www.irishstatutebook.ie/eli/2013/si/11/made/en/print>



*Service Complaints Procedure*<sup>9</sup> identified a number of significant concerns regarding implementation of the complaints procedure in prisons. In June 2016, the Tánaiste and Minister for Justice and Equality stated that:

"I accept the Inspector's main recommendation that the Ombudsman<sup>10</sup> should be given a role in the process and my officials will be progressing this with the Department of Public Expenditure and Reform."

The report recommends that prisoners would be allowed to refer complaints to the Ombudsman for review, who would also be able to deal with complaints directly in the case of undue delay. The Minister indicated that: "while some amendment to secondary legislation may be required, it is not envisaged that primary legislation would be required."

The Prison Rules 2007 could be amended to reflect the role of the Ombudsman.

### ***Views of UN Committee against Torture***

On 27th and 28th July 2017, Ireland was formally examined by the UN Committee against Torture on its compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>11</sup>

In respect of the complaints mechanism for prisoners, the Committee noted the Irish Prison Service Complaints Policy introduced in 2014, which initiated a new complaints model with four separate categories of complaints (from A to D). Nevertheless, it expressed concern that there are deficiencies in the system such as lack of or incomplete documentation of complaints, delays in investigations by external investigators, gaps in referrals to police in appropriate cases, confusion about the complaints categorisation as well as delays in their resolution; and that there is reportedly no confidence in the complaints system, that prisoners fear that they would not be protected if they were to make a complaint and were therefore discouraged from making complaints.

The UN Committee therefore recommended that Ireland should:

- (a) Consider establishing a completely independent mechanism for the consideration of prisoner complaints, as well as a new individual complaints procedure in light of the shortcomings cited above;

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<sup>9</sup> [www.justice.ie/en/JELR/Pages/Review-Evaluation-and-Analysis-of-the-present-Irish-Prison-Service-Prisoner-Complaints-Procedure-April-2016](http://www.justice.ie/en/JELR/Pages/Review-Evaluation-and-Analysis-of-the-Operation-of-the-present-Irish-Prison-Service-Prisoner-Complaints-Procedure-April-2016)

<sup>10</sup> <http://www.irishtimes.com/news/crime-and-law/emily-o-reilly-interview-i-wasn-t-going-to-park-20-years-of-my-life-s-experience-at-the-door-of-the-office-1.1538701>

<sup>11</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_COC\\_IRL\\_28491\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf)



- (b) Provide for an independent appeal procedure outside of the prison system;
- (c) Introduce greater involvement and oversight by an independent body; and
- (d) Inform the Committee about sanctions or punishments for torture or ill-treatment against any of those responsible, based on the complaints that were upheld.

## Prison inspections

### *Optional Protocol to the Convention against Torture*

Ireland has yet to ratify the Optional Protocol to the Convention against Torture (OPCAT),<sup>12</sup> which it signed in October 2007.

While some places of detention, such as prisons, have their own inspection regimes, others such as Garda stations and facilities for some immigrants are not inspected by any State body for human rights abuses, according to a report by the Irish Human Rights and Equality Commission (IHREC).<sup>13</sup>

The objective of OPCAT is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Ratification by Ireland would mean that an independent national preventative mechanism (NPM) would have to be established.

Articles 17 - 19 of OPCAT set out the functions and powers of the NPM:

- Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions;
- The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel; and
- The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

<sup>12</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

<sup>13</sup> <https://www.irishtimes.com/news/social-affairs/concern-as-ireland-fails-to-ratify-un-protocol-on-places-of-detention-1.3240402>

The national preventive mechanisms shall be granted at a minimum the power to:

- (a) regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; and
- (c) submit proposals and observations concerning existing or draft legislation.

The Minister for Justice and Equality stated in July 2016<sup>14</sup> that Ireland would ratify OPCAT “once the necessary legislation is in place to provide for National Preventative Mechanisms (NPMs) to inspect places of detention for the purposes of the protocol.” As part of the process of identifying the appropriate NPMs, a process of consultation with civil society, including a wide range of statutory bodies and agencies, non-governmental organisations and academics with an interest in the topic, was commenced.

In February 2015, the then Minister for Justice and Equality stated that she was considering the establishment of such a body, pointing to the model of the Northern Ireland Criminal Justice Inspectorate, which has been in place since 2002. A discussion document detailing this proposal was published, and subsequently an open policy debate was hosted by the Department on the issue.

The Department has argued that the establishment of a Criminal Justice Inspectorate “may provide the most effective structure within which to administer the OPCAT national inspection process within the criminal justice sector”<sup>15</sup>, and it is hoped that it would “[build] upon the structures already established in the Garda Síochána Inspectorate and the Office of the Inspector of Prisons.”<sup>16</sup>

The Government listed an *Inspection of Places of Detention Bill* in its 2017 legislative programme, and stated that heads of the Bill are being prepared. The Bill will provide for the inspection of all places of detention in the Justice area - prisons, Garda stations and courts. The Bill has not yet been published.

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<sup>14</sup> <https://www.kildarestreet.com/wrans/?id=2016-07-14a.96&s=OPCAT#g98.r>

<sup>15</sup> See page 13: <http://www.justice.ie/en/JELR/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf/Files/Discussion%20Document-Proposals%20for%20a%20Criminal%20Justice%20Inspectorate.pdf>

<sup>16</sup> Ibid at page 14.

### ***Views of UN Committee against Torture***

On 27th and 28th July 2017, Ireland was formally examined by the UN Committee against Torture on its compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>17</sup>

In terms of Ireland's Independent monitoring of places of deprivation of liberty, and OPCAT, the Committee stated that, whilst noting that the Inspector of Prisons, the Prison Visiting Committees, the Health Information and Quality Authority (HIQA) and the Inspector of Mental Health have access to places of detention, it is still concerned that:

- (a) Ireland has not ratified the Optional Protocol to the Convention ("OPCAT") 10 years after signing it and has therefore not been able to establish a national preventive mechanism;
- (b) The most recent annual report of the Inspector of Prisons was published in 2014 and covered only 7 out of the 14 prison establishments in Ireland; and
- (c) The existing bodies do not systematically carry out visits to all places of deprivation of liberty such as Garda stations, residential care centres for people with disabilities, nursing homes for the elderly and other care setting.

The UN Committee recommended that Ireland should:

- (a) Ratify forthwith the Optional Protocol to the Convention ("OPCAT") and establish a national preventive mechanism, ensuring that this body has access to all places of deprivation of liberty in all settings; and
- (b) Ensure that existing bodies which currently monitor places of detention as well as civil society organisations are allowed to make repeated and unannounced visits to all places of deprivation of liberty, publish reports and have the State party act on their recommendations.

### **Prison conditions**

#### ***Views of UN Committee against Torture***

In its report of July 2017, the UN Committee Against Torture made a number of observations in respect of conditions of detention in Ireland. While taking note of the decrease in the overall prison population, the measures taken to address

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[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT\\_CAT\\_COC\\_IRL\\_28491\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IRL/INT_CAT_COC_IRL_28491_E.pdf)

overcrowding and improve material conditions, including the significant reduction in the number of prisoners who have to “slop out”, the Committee expressed concern that:

- (a) While the size of the prison population was reduced as a result of the adoption of the Fines (Payments and Recovery Act) 2014, the overall number of women in detention has continued to rise;
- (b) Remand and sentenced prisoners continue to be held together in some facilities;
- (c) Overcrowding continues at the Dochás Centre for female prisoners in Mountjoy prison, as well as in the male and female wards of Limerick prison;
- (d) In-cell sanitation continues to be of concern as there remain 56 persons who still have to “slop out” and 1,539 prisoners who are required to use toilet facilities in the presence of another inmate, in cells where prisoners also have to take their meals;
- (e) Systematic deficiencies in the health care services in the prison system, including serious understaffing regarding prison personnel as well as a shortage of qualified medical and psychiatric staff and psychologists;
- (f) That solitary confinement has been used for prolonged periods, including as a disciplinary measure;
- (g) Prisoners on protection are held under a poor regime, including lack of outdoor exercise, and with almost no contact with the outside world; and
- (h) Prisoners continue to be handcuffed when transported between facilities and during external medical examinations.

The UN Committee recommended that Ireland should:

- (a) Continue to strengthen the measures aimed at decreasing further the number of persons in the prison system and to reduce overcrowding with a view to bringing conditions of detention in line with international standards enshrined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); continue efforts aimed at reducing overcrowding and improving material conditions in all places where women are detained, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

- (c) Consider increasing the use of non-custodial measures and alternatives to detention, in keeping with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);
- (d) Ensure the separation of remand prisoners from those who have been sentenced and provide the Committee with information on the number of remand prisoners and on how long they stay on remand;
- (e) Implement the Irish Prison Service Strategic Plan 2016-2018, including for the refurbishment of existing facilities and the construction of new ones, modernize Limerick Prison and "Block E" of Portlaoise Prison in order to eliminate completely the "slopping out" system, improve in-cell sanitation in all facilities that require it and ensure privacy in the use of toilet facilities and their separation from places where prisoners take meals;
- (f) Take urgent measures to increase the ratio of guards to prisoners, hire additional medical, including psychiatric, personnel and psychologists, and enable the referral of inmates requiring specialized medical care to outside medical facilities without delays for administrative reasons and lack of escorts from among prison staff;
- (g) Ensure that solitary confinement remains a measure of last resort, imposed for as short a time as possible, is never applied to juveniles, is under strict supervision and judicial review, with clear and specific criteria for its use and that prolonging and consecutive disciplinary sanctions of solitary confinement are strictly prohibited;
- (h) Introduce a cell-share risk assessment tool across the prison estate and ensure that prisoners on protection are not penalized by their situation, have contact with the outside world, sufficient purposeful activities and out-of-cell exercise and family visits;
- (i) Urgently undertake an independent fundamental review of the entire prison health care system, in keeping with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- (j) Ensure that prisoners who are transferred between facilities are not injured during transportation and ensure that handcuffing is used only as an exceptional measure, after appropriate risk assessment; and
- (k) Take the necessary steps to ensure that external medical consultations of prisoners respect the principles of medical confidentiality and human dignity.

While noting the progress made to reduce the level of violence in prisons, the Committee was concerned:

- (a) About the increase in the level of violence, including sexual violence, among both male and female prisoners;
- (b) That 78 per cent of prison staff report that they have been assaulted in the course of their duties;
- (c) At the violent incidents that took place in Oberstown detention centre for juveniles in 2016 and 2017;
- (d) At the reported placement of juveniles presenting disciplinary issues for weeks in "single separation" which may amount to solitary confinement; and
- (e) At the death in prison of Gary Douch owing to the absence of appropriate mental health care of prisoners with mental disorders and psycho-social disabilities.

It therefore recommended that Ireland should:

- (a) Make thorough and impartial inquiries into all acts of violence committed in prison facilities and detention centres;
- (b) Enhance steps to prevent and reduce inter-prisoner violence by improving prison management and the ratio of staff to prisoners and strengthen the monitoring and protection of vulnerable prisoners and those presenting disciplinary issues;
- (c) Provide training to prison staff and medical personnel on communication with and the managing of inmates, including juveniles, and on detecting signs of vulnerability and disciplinary issues;
- (d) Abolish solitary confinement of minors as a disciplinary measure, strengthen existing and develop new educational and rehabilitation programmes aimed at encouraging pro-social behaviour and improve extra-regime activities for minors; and
- (e) Ensure that solitary confinement is never applied to a person with psycho-social disability and ensure that they receive appropriate therapeutic treatment.

### **Stakeholder views**

Michael Donnellan, on behalf of the IPS, informed the Committee that the fall in the numbers in custody since 2011 has allowed the IPS to progress and enhance several key services, including pre-release planning and resettlement; structured

temporary release; the community return scheme and the community support scheme; the incentivised regime programme; drug treatment facilities; developing the psychology service; integrated sentence management facilities; working with the families of those imprisoned; and working with the third level sector and in-reach services.

The IPS further stated that it has continued to implement a comprehensive capital programme to provide additional accommodation and enhance the quality of accommodation across the prison estate. The priority has turned to improving existing accommodation and rehabilitative facilities. The number of prisoners slopping out has decreased from 1,003 in 2010 to just 49, or less than one per cent. The refurbishment of Mountjoy Prison has been completed - all cells now have toilet facilities and wash-hand basins and have been returned to single occupancy. Current and planned capital projects will result in the complete elimination of slopping out across all prisons for the first time.

However, Ms Ní Chinnéide on behalf of the IPRT offered a different perspective, arguing that although there have been positive reforms in the prison system, serious issues remain. Overcrowding is still a problem in a number of prisons, including Cloverhill and the two women's prisons:

"Some 45 per cent of prisoners do not have access to private toilet facilities, and 45 per cent are sharing cells, which does not contribute to prison safety. The majority of prisoners are locked up for 16 or 17 hours per day, with 72 prisoners in solitary confinement, which involves being locked up for 22 hours or more per day."

Eoin Carroll was critical of what he described as Ireland's "one-size" prison model, whereby prison sizes continue to increase and reliance on closed prisons intensifies, with limited access to self-management:

"Since 2000 we have continued to increase prison sizes and we still rely on closed prisons, which still dominate ... New builds since 2000 including the Midlands Prison and Cork Prison – and also in Castlereagh Prison – did not look to innovate in how we detain people. The Midlands Prison accommodates 870 people which, along with Cork Prison, mimics prison design from the 19<sup>th</sup> century. To put this in context, prisons with a maximum capacity for 300 persons are seen as best practice. The 1985 Whitaker report recommended 100 as a maximum capacity. Prisons seen as progressive, such as Shanganagh Castle and Fort Mitchel, were closed in the early 2000s".

Any future structural development within the prison service should involve the use of more innovative, community-based, semi-open facilities.

Mr Carroll noted that prison is a damaging experience for people; that the numbers being sent to prison need to be limited; and that regardless of political ideology, having smaller prisons works. Reducing prisoner numbers and



increasing the use of open prisons can result in cost savings. Mr Carroll placed particular emphasis on young adults in prisons, arguing that imprisonment is an even more inherently destructive experience for young people: prison strips people of their responsibilities, stunts opportunities for development and restricts opportunities for integration into adult society. The 18–24 age group is caught in a period of what is called extended adolescence. They are more likely to be impulsive and less able to control aggression and risk-taking than adults. Their impulsiveness and reduced ability to control aggression makes them seem uncooperative and therefore more liable to punishment within the prison system. The prison system treats them as if they were fully mature adults when in fact they should be treated as a distinct group and more like children.

The JCFJ therefore recommends that young adults in prison be recognised as a distinct group by making them the responsibility of the Irish Youth Justice Service. The Minister for Children and Youth Affairs should become a champion for young adults in prison. Currently, young adults are recognised within the Department of Children and Youth Affairs strategy - *Better Outcomes Brighter Futures* - as being a distinct group separate from the adult population. However, young adults in detention are ignored in this strategy, and this needs to change.

In terms of prison conditions, John Clinton, representing the POA, informed the Committee that his organisation had pressed for the introduction of the Incentivised Regime Protocol (IRP) into the Irish prison system. It links prisoner behavioural patterns to incentives. Prisoners who engage in work, training and meaningful activities will be rewarded. In addition, it includes meaningful sentence management plans, has the potential to reduce the number of prisoners on protection, prioritises prisoners who wish to engage positively and provides a safety net for prisoners who refuse to engage. It also provides a consistent approach to prisoner rehabilitation across the estate, demonstrates the advantages to positive engagement within the prison communities and links the behaviour in prison of individuals to accepted norms in society. It brought in an introduction of personal officers to explain the IRP to prisoners, to encourage individuals' involvement, to lend support and to aid their personal development.

Mr Clinton contended that if custodial sentences are going to be managed in a way that encourages and supports prisoners in their endeavours to live law-abiding and purposeful lives as valued members of society, then some form of normality must be brought to that process to match performance and behaviour to reward.

According to the POA, there is still a huge over-reliance in the prison system on closed prisons, despite the recommendations from the Joint Committee on Justice, Defence and Equality's Report on Penal Reform in March 2013. This report was clear in its recommendation that the proportion of open prisons should be increased. On Thursday, 16 March 2017, there were 3,793 people in custody, and only 235 of those were in open centres.



The POA believes that diverting people to appropriate care facilities in the community earlier in the judicial process is more likely to yield positive dividends than having these people go through the trauma of incarceration and then being transferred to the appropriate facility.

### Family/visitation

Ms Michelle Martyn of the IPRT informed the Committee that in 2012, the IPRT issued a report, *Picking up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment*. Subsequently, children affected by imprisonment were identified in the national policy framework for children and young people as having specific needs, and a commitment was made to them. Approximately 6,000 children are currently affected by parental imprisonment, and 17,000 are affected every year.

Since that report, the IPS has set up a family imprisonment group and looked to improve prison visiting conditions for children and families. The IPRT believes that from the beginning of a sentence, children and families should be involved and relationships should be maintained through sentence management and after release. The IPRT noted that the children in question are more likely to have mental health problems or end up in the criminal justice system themselves:

“From our interviews with young people affected, we learned [that] they cannot hear their parents in prison. Accordingly, they like the special visits because they can hug the parent. Another issue is inconsistency in the conditions across the prison estate. The last report from the Dóchas Centre visiting committee recommended [that] financial support should be given to families visiting because female prisoners tend to come from further away as there are only two female prisons, namely, the Dóchas Centre in Dublin and the female wing in Limerick Prison.

The IPRT informed the Committee that in the UK, the Prison Advice and Care Trust (PACT) has shown a social return on investment of £11.40 for every £1 of public money spent on family supports for prisoners. Accordingly, the IPRT recommends a penal environment which replicates normal domestic life as much as possible for the children of offenders. France was cited by the IPRT as being an example of international best practice, where there are family life units to enable children to replicate their home life insofar as possible, despite a parent being incarcerated.<sup>18</sup>

The Simon Communities outlined how family units operate successfully in a number of jurisdictions:<sup>19</sup>

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<sup>18</sup> <https://www.loc.gov/law/help/children-residing-with-parents-in-prison/foreign.php#france>

<sup>19</sup> Submission from the Simon Community, 4 April 2017.

“Of the 12 women’s prisons in England and Wales, 6 facilities operate Mother and Baby Units (MBUs) that have capacity for 54 women and their children. An (MBU) is designated separate living accommodation within a women’s prison, which enables mothers to have their children with them whilst in custody. Mothers on MBUs retain parental responsibility for their children and are responsible for their day-to-day care. The Scottish Prison Service (SPS) introduced the Standards for Encouraging Family Contact in 2013 which details the minimum level of support that is now available in every prison establishment to strengthen the relationship between the SPS and families affected by imprisonment to ensure that both prisoner and family receive the best possible support during a person’s period of incarceration. This is based on recognition that children and families are significant motivating factors that can influence behaviour change.”

Among the standards set out by the SPS are the right to access to family contact, communication, participation of families during the sentence, respect from prison staff, and the provision of a safe prison environment for visitation.

Deputy Daly contended that when a woman goes to prison, the impact on society is far greater. Studies have shown that when a man goes to prison, the family pulls together, with the woman saving to assist the man, and the children being able to visit him. When a woman goes to prison, the children quite often end up in care, or the family unit’s accommodation is lost. The idea of no prison for women, or of small community residential units, replicating family life while maintaining links with people’s families, is key to the rehabilitation process.

### **Addiction and mental health**

Evidence was given to the Committee that prisoners with mental health issues and in need of acute psychiatric care must wait for long periods before they can access acute psychiatric facilities. The fact that prisoners with serious mental health difficulties cannot access the care they need in a timely fashion was highlighted as a matter of extreme concern by some of the Members; and there were calls for resources to urgently be made available to ensure appropriate mental health care for all prisoners with mental health issues.

The IPS estimates that approximately 70% of people come into prison with an addiction or substance abuse problem. There were 750 people on methadone maintenance across the prison system in 2008 compared to 465 in 2017. It made the point that prison is an ideal opportunity for somebody to address his or her addiction issues. There is a self-directed detox programme in the Mountjoy campus where people can reduce their methadone intake by 5ml a week under the supervision of a doctor and pharmacist. Between June 2014 and December 2016, there were 530 patients involved in self-directed detox in Mountjoy, of which 120 came off methadone completely. Some 197 reduced their methadone intake by a minimum of 20 ml. However, there is concern about

other drugs, particularly new psychoactive substances (NPS). Staff from the IPS have met with colleagues from Public Health England and the NHS to discuss ways of dealing with NPS in Irish prisons.

The Committee heard that it is important that all parties involved in the justice system be aware of the rehabilitation facilities available within the penal system, including the judge and the offender. These rehabilitation facilities should address all addictive activity, from substance abuse to gambling. The varying levels of understanding of addictive behaviours by judges are resulting in differing sentences being issued to offenders suffering from addiction issues.

The offender needs to know about those services, and the obligation is usually on the solicitor to tell them. It can be difficult for offenders with addiction issues to know about the services or to consider their options. Judges could have a role in indicating this and asking the offender if it is something they have considered, and suggesting they talk to their solicitor about it. Solicitors and barristers should also be made aware of the appropriate local services, not just the judiciary.

Mr Aaron O'Connell of the Simon Communities of Ireland noted that alcohol addiction is a serious issue, and drug treatment courts should be expanded to include alcohol. In terms of prison facilities, he emphasised the need for safe injection centres to ensure harm reduction for drug use. Mr O'Connell referred to a scheme used in Switzerland whereby addicts can obtain a prescription for their heroin, and recommended the decriminalisation of drugs for personal use. To address the issues of drug use and homelessness, he recommended that:

"we must take a long-term view and adopt an integrated, cross-departmental approach that includes the health service, the Departments of Social Protection, Justice and Equality, Housing, Planning, Community and Local Government, and Education and Skills."

The IPS informed the Committee that mental health training – consisting of a six-hour programme – is being encouraged by training liaison officers to try to ensure every officer within the system has adequate training. In Cloverhill, 30 prisoners with serious mental health issues are awaiting transfer to acute psychiatric facilities.

The case load of the national forensic mental health service at the Central Mental Hospital is around 220 patients at any time. These are people in prison with a severe mental illness, and the IPS noted the significant challenges endured by the system in dealing with these people.

According to the POA, a study of male remand prisoners in 2005 showed that 7.6% of them exhibited indications of psychiatric illness. Many prisoners commit crimes while suffering from a psychiatric illness and end up incarcerated in the prison system, where there are insufficient resources to address their illnesses.

This, in turn, can make them volatile and unpredictable while in prison and exacerbate their symptoms. Prisoners with mental health issues are more likely to assault staff, particularly if their psychiatric illness is combined with a drug problem. These prisoners require additional supervision resources compared with prisoners who do not present with psychiatric illness.

The POA believes that diverting people to appropriate care facilities in the community earlier in the judicial process is more likely to yield positive dividends than having these people go through the trauma of incarceration and then being transferred to the appropriate facility. It believes that the treatment and rehabilitation of such prisoners is being conducted in reverse order, and this needs to be reviewed.

It added that the misuse of drugs in prisons continues to be a common theme running through many of the challenges prison officers face. Prisoners are often put under pressure to get their families to bring drugs into prisons. This can be done to pay off a drug debt, or simply because of their compliant profile as they are not suspected by prison staff of being involved in trafficking. The punishment for refusal can be severe, and thereafter the prisoner who refuses will probably end up on voluntary protection. Very often, those at the top of the drug trade in prisons are involved in drug trafficking as a display of their power within the facility. The much-publicised gang war that has claimed lives also has its protagonists within the prison system. At the other end of the spectrum, there is always a market in prison for drugs, and many prisoners commence their drug-taking, leading to their consequent addiction, while in prison. While achieving an entirely drug-free estate is very difficult, the establishment of drug-free areas within estates is practical.

According to the POA, the problem of violence in prisons continues, with a number of very serious incidents involving assaults on prison staff. In a recent analysis conducted by the State Claims Agency, the projected number of assaults by prisoners on prison staff for 2017 was estimated at 107. This is based on a figure for direct physical assaults between 2011 and 2015 of 475. The nature of these assaults included concussion, lacerations, cuts, fractures, burns and bites. Most of these injuries were to the head and face, thereby leaving permanent reminders to the injured officers of the incidents. The starkest statistic is that 77.9% of staff who responded had been physically assaulted by prisoners in the course of their operational duties. The level of prisoner-on-prisoner assaults is much higher, and represents only those assaults that are reported or observed by prison staff. The records for 2013 show 604 prisoner-on-prisoner assaults. To have an optimal work environment, the challenges that these assaults cause need to be addressed in a consistent manner. The POA believes that the absence of adequate protection measures that are successfully used in other jurisdictions - such as batons, incapacitating spray and body cameras - is another factor undermining staff confidence.

Deputy Clare Daly outlined her concerns about the welfare of prison staff, and of the need for a mental health training programme:

“New staff often come in with lots of new ideas but that gets knocked out of them fairly quickly. They become demoralised or institutionalised. Some of the older staff then feel that they have been there for far longer and are not appreciated. Sometimes they feel that they are put in vulnerable positions where they do not get backup. They can become dehumanised themselves because of being cut off and the circumstances they are exposed to. While there may be some access to supports, it is never enough in any job. We need to pay a lot of attention to staff in terms of welfare because the environment plays with people's heads and affects the way they think. People can become dehumanised and institutionalised on all sides and that needs to be addressed. There is a need for enhanced training. I am interested in the mental health training programme that was mentioned but that should be mandatory for everybody and should be of a high level.”

A number of proposals to address the issue of offenders suffering from addiction emerged over the course of the hearings, including:

- Investment in community mental health and addictions treatment and services.
- On committal to prison, there needs to be an assessment and diversion to more appropriate therapeutic treatments and services.
- There needs to be the establishment of vulnerable care units in all prisons, modelled on the successful high support unit in Mountjoy Prison, and a shift from pharmacological treatment towards therapeutic interventions. There should not be waiting lists.
- All prisoners who want to address their addictions should be able to access treatment, not only methadone but detox beds, drug treatment landings and counselling.

### **Education, retraining and the therapeutic approach**

The IPS informed the Committee that significant progress has been made to incentivise prisoners to participate in constructive activities. The incentivised regime programme has provided real incentives to prisoners to participate and engage and has also reduced levels of violence across the estate. New training facilities have been provided in Mountjoy Prison, and the IPS emphasised the importance of making these facilities available to all prisoners.

The POA outlined to the Committee the benefits of making training available to prisoners:

“Prisoners who engage in work, training and meaningful activities will be rewarded. In addition, it includes meaningful sentence management plans, has the potential to reduce the number of prisoners on protection, prioritises prisoners who wish to engage positively and provides a safety net for prisoners who refuse to engage. It also provides a consistent approach to prisoner rehabilitation across the estate, demonstrates the advantages to positive engagement within the prison communities and links the behaviour in prison of individuals to accepted norms in society.”

Evidence heard from different witnesses before the Committee showed that punitive prison environments are not constructive settings for preparing an offender to re-enter society. Instead, therapeutic environments are more conducive to enabling prisoners to deal with their issues and psychologically preparing them for re-entry to society. Witnesses informed the Committee that it was hoped a new 40-bed therapeutic community could be developed in the beginning of 2018, in the area that was occupied by children in St. Patrick's Institution.

The Committee heard evidence of therapeutic practices being used effectively in prisons in other jurisdictions – such as Grendon prison in the UK and Hydebark in Germany – to reform prisoners. Mr Clinton of the POA had visited Grendon prison, and he outlined the daily routine of the prisoners there:

“What they do there is to normalise prison to the greatest extent possible. There were two prison officers running the project when I visited. One of them was actually the chairman of the local Prison Officer's Association branch and was very helpful to us. They sit down in a group every day with the prisoners on the project and have very intense counselling sessions. That happens from the time the prisoners get up in the morning until the afternoon, when they have recreation...The prisoners speak very openly and honestly. The project is designed around the concepts of non-violence and normalisation. For example, prisoners call the prison officers by their first names, which is not a common occurrence in the Irish prison system. Small things like that make a difference.”

The POA advocated for a prison system which rehabilitates the prisoner by assisting him or her in dealing with the past and engaging in responsible citizenship in the future in an environment that is safe for both prison officers and prisoners alike. It believes there is an opportunity to transform areas of the prison estate into units of therapy and education (UTES), which has been successful in other jurisdictions, in particular the Villabona project in Spain:

"This model transforms prisons into educational spaces, using an alternative model that immerses prisoners in an educational environment that teaches skills and, more importantly, values such as empathy and kindness. This reduces violent behaviour and lowers the rates of re-offending. The units of therapy and education have created micro-societies that enable inmates to learn to live as they would outside the prison walls."

Mr Clinton also again cited the example of Grendon prison in the UK:

"The Grendon regime is unique as the therapeutic programme is the core work of the establishment. The POA sees merit in exploring further the concept of therapeutic programs, and we will continue to explore the possibility of having these programs introduced into the prison system."

## Health

In November 2016, the report [Healthcare in Irish Prisons](#) was published. This was the final report of the late Inspector of Prisons, Judge Michael Reilly. The report makes a number of recommendations on the provision of health care in prisons, including a review of prison health care.

The report had three stated aims:

- To restate the absolute entitlement of prisoners to healthcare, and to make the case for such healthcare to be provided by the Department of Health;
- To point to the necessity of carrying out a health needs assessment of prisoners and a staffing needs analysis in each prison; and
- To give guidance to the IPS, prison management, and the providers of healthcare in the prisons as to what will be expected of them in the area of healthcare when inspections are carried out by the Office of the Inspector of Prisons.

Recommendations of the report included:

- That responsibility for the provision of healthcare be transferred from the IPS to the HSE;
- A health needs assessment of prisoners in all prisons should be undertaken immediately, with the lead in the assessment being a clinician;
- A healthcare staffing needs analysis for each prison should be undertaken on the completion of the health needs assessment, with this analysis being clinically led;



- The healthcare staffing needs analysis must reflect the health needs assessment of prisoners in each particular prison, and should not be influenced by operational or other non-healthcare considerations other than healthcare staff and custody staff working together in ensuring prisoners are escorted to the nurse/doctor appointment or to outside hospitals etc.;
- The health needs assessment of prisoners and the staffing needs analysis must be published for each prison;
- The health needs of prisoners and by extension the staffing needs of each prison must be kept under constant review as prison populations change, as do the cohort of prisoners in all prisons; and
- A public response to this report should be made, either accepting the recommendations of the report and giving time lines for implementation, or rejecting this report, with reasons for such rejection given.

The European Committee for the Prevention of Torture (CPT) has been critical of the management of healthcare in Irish prisons, noting that in 2010 there were significant problems with waiting lists and missed appointments for Irish prisoners.<sup>20</sup> A further review in 2014 found that while the conditions had improved in some Irish prisons, it had deteriorated in others. This report recommended that the Health Information and Quality Authority (HIQA) undertake a fundamental review of healthcare in Irish prisons.

However, the IPRT informed the Committee that the Strategic Review Of Penal Policy Implementation Oversight Group stated in its report that HIQA has said it cannot currently undertake responsibility for oversight and audit of healthcare in Irish prisons. The IPRT expressed disappointment at this, and recommended that resources should be allocated to ensure that HIQA can have oversight of healthcare in prisons. Additionally, the IPRT recommended that the Department of Health commission an independent external audit of prison healthcare.

The IPRT echoed the view of Judge Reilly in his report that responsibility for the provision of healthcare should be transferred from the IPS to the HSE.

### **Solitary confinement and extended lock-up**

In the context of its penal reform hearings, the Committee, on February 15 2017, conducted pre-Committee scrutiny of the Prisons (Solitary Confinement) (Amendment) Bill 2016, a Private Members Bill sponsored by Deputy Clare Daly.

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<sup>20</sup> <https://rm.coe.int/1680696c9a>



Deputy Daly briefed the Joint Committee on the main provisions of the Bill. Its main purpose is to amend section 35 of the Prisons Act 2007, which allows the Minister to make rules to govern and regulate prisons. At present, prisoners held in solitary confinement in Ireland are held under either rule 62 or 63, which are made under section 35. This Bill inserts a provision which will oblige the Minister to make prison rules restricting the use of solitary confinement.

The Bill gives a definition of solitary confinement for the first time in Irish law, which is "the restriction of a prisoner's opportunities for meaningful human interaction and communal association for 22 to 24 hours a day, whether by means of restricting the prisoner to a cell or by any other means". According to Deputy Daly, "the reason 22 hours is being provided for is because the international standard is 22 hours, because after that time we are looking at irreversible psychiatric problems if people are held indefinitely. It is the time period for which there is medical evidence. That is the definition." She added that the amended section 35(2)(2A)(a) is most important as it says that "no prisoner shall be held in solitary confinement for any reason for more than 15 consecutive days", because after the 15 days is when the damage sets in.<sup>21</sup>

Witnesses before the Committee were unanimous in their desire for solitary confinement to be phased out in the Irish penal system. John Clinton of the POA referenced a Sourcebook on Solitary Confinement,<sup>22</sup> published in 2008 by Dr Sharon Shalev, which found that solitary confinement is an extreme and potentially harmful measure and should only be used in the most exceptional of cases. Periods in solitary confinement should be for the shortest period possible, and prisoners should be held for that time in decent conditions and offered meaningful human contact and access to purposeful lives.

The IPS informed the Committee that as of 1 January 2017, there are 72 people in solitary confinement, who are in their cells for 22 or 23 hours a day. The IPS outlined the rationale for placing these prisoners in solitary confinement:

"They would mostly be people who have mental health problems and may be awaiting a place at the Central Mental Hospital (CMH). They may be people who fear for their lives and that they are going to be attacked because of the crimes they have committed. We also have other people there for a whole range of reasons, including debt, money and drugs, who say to us that they cannot come out onto the landing, cannot associate with others and that we need to protect them. We have to work with that group because we know the psychological damage that that does to people. We are working to eliminate that practice."

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<sup>21</sup> The Committee's scrutiny report can be found at: [Report on Scrutiny of the Prisons \(Solitary Confinement\) \(Amendment\) Bill 2016\[PMB\]](#)

<sup>22</sup> [http://solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://solitaryconfinement.org/uploads/sourcebook_web.pdf)

Michael Donnellan of the IPS informed the Committee that they have made huge strides in reducing the numbers of prisoners who require protection or are accommodated on a restricted regime. The number of prisoners on 22- or 23-hour lock-up, or solitary confinement, has decreased from 211 in July 2013 to 72 in January 2017. Whilst figures for solitary confinement can fluctuate, the IPS is confident that the practice can be eliminated gradually and that the revised UN Standard Minimum Rules for the Treatment of Prisoners - known as the 'Mandela Rules' - can be implemented.

However, Eoin Carroll of the JCFJ claimed that lock-up times have not changed in over 30 years, despite constant recommendations for change. The overwhelming majority of people are in closed prisons where the regime is 16- to 17 hours per day in the cell. The 1985 Whitaker report recommended a minimum of 12 hours out-of-cell time:

"The principle of normalisation has been spoken about for decades, including within Irish Prison Service Documentation, in order to make prison life more like life in the community. The current daily routine could not, in any way, be considered normal. Our recommendations around prison conditions and sizes are to reduce prison sizes and to provide accommodation based on security need, avoiding the one-size-fits-all model, and at least 12 hours out-of-cell time with meaningful activity."

He called for the ending of the use of extended lock-up, also referred to as the restricted regime, and for the abolition of the basic regime standard for all young adults. All young adults should be placed on the enhanced accommodation standard on entry to prison. At present, young adults are over-represented in solitary confinement and on the restricted regime. Mr Carroll welcomed Deputy Clare Daly's legislation on solitary confinement, and recommends that legislation prohibit the use of solitary confinement for young adults.

### **Prison staffing and costs**

The IPS has an annual budget of over €311 million. Approximately 75% of that budget is for staff costs, with the rest for programme costs, including maintenance, food, clothing, light, heat, and power.

Just over €25 million is provided for education, work training, psychology, chaplaincy and all of the services that are there to assist prisoners. Education, for example, is provided by Education and Training Boards (ETBs), which provide 220 whole-time equivalent teachers across the 13 prisons. The cost of their salaries is not included in the budget of €25 million. Similarly, the cost of the 250 work training officers employed by the IPS, which amounts to approximately €16 million, is not included in the budget. The programme costs also include pharmaceuticals and all of the other elements of a care and rehabilitation service.

The IPS informed the Committee that a spending review is on-going in the context of its budget for 2018, and it has made a detailed submission to the Department of Justice and Equality seeking an increase in both capital and current allocations.

Regarding staffing issues, the POA pointed out that 2017 is the first time since 2010 that recruit prison officers are entering the IPS, and this is to be welcomed. The Prison Service currently has a shortfall of 230 staff, with a number of staff having completed their minimum service requirements to be eligible to retire. This has left significant shortfalls within the prison staffing complement and will obviously have an impact on service delivery. The POA believes that any penal reform measures should be designed with prison staff at the centre of the delivery as part of a multidisciplinary group. The POA and the IPS agreed an annualised working hours system in 2005 that is predicated on the principle of the availability of constant recruitment panels to replace retiring prison officers. The moratorium introduced during the crash has created a significant gap in the availability of recruit prison officers, which in turn has caused stagnation in the transfer of many staff to places closer to home. This in turn has caused many stresses outside of the workplace in addition to the many stresses attendant on being a prison officer. The new recruit prison officers will receive, as part of their induction, many of the tools they will require to function better in the prison environment. The skills taught will include conflict coaching, resilience training and mindfulness, as well as the ability to recognise signs of post-traumatic stress disorder. It is further planned to roll out these initiatives to all serving staff, who, according to the POA, will benefit greatly from this commitment to on-going professional development.

## Post-release supports and recidivism

### Background

In the UK, HM Inspectorate of Probation and HM Inspectorate of Prisons<sup>23</sup> has said that the minimum requirements for resettlement of prisoners post-release were:

- a safe place to sleep, from the day of release;
- access to enough money to meet basic needs including food, clothing and transport;
- a sense of hope for the future; and
- active links to other services that can assist them with other needs, for example substance misuse and mental health services.

However, it is difficult to legislate for these requirements as they are dependent on resources. For example, a statutory requirement could be introduced for everyone leaving prison to have an aftercare plan.<sup>24</sup> The requirement would be useless without the necessary resources to implement the plan. It would also be of little use to someone serving a very short sentence.

The Committee considered a range of measures, both legislative and policy-based, aimed at reintegrating offenders back into the community post-release and reducing the likelihood of them reoffending and being quickly returned to prison.

### Access to employment

In a detailed submission to the Committee (see Appendix 5), Ms Jane Mulcahy of University College Cork discussed the importance of access to employment and to other basic needs for people who are making the transition from prison back to the regular community. "Agency and a positive self-concept will be hampered", she notes, "if an offender who fully considers himself/herself to be redeemed, and adjusts their behaviour to match their new, non-criminal identity finds that he/she, nonetheless, repeatedly has doors slammed in their face by mainstream society, for example by employers who cannot see beyond their criminal past and are unwilling to give him a chance to prove himself/herself."

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<sup>23</sup>

<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmworpen/58/5806.htm>

<sup>24</sup> Similar to the statutory requirement to provide children leaving care with an aftercare plan under the *Child Care (Amendment) Act 2015*. There is no statutory obligation to implement the plan however.

Ms Mulcahy contends that ex-prisoners cannot be expected to make and sustain positive changes, including the decision to abandon a life of crime without safe, responsible transition management which includes the active engagement of non-criminal justice state agencies and the support of the community. If people do not have their basic needs met on release from prison, they are highly likely to reoffend despite their best intentions. Once released, many people making the transition from prison to the outside world will face, once again – often in an intensified form - the harsh realities that caused, or greatly contributed to their offending behaviour in the first instance, such as poverty, exclusion from the employment market, anti-social peers and distorted cognitions, compounded by the stigma of an ex-prisoner status. State agencies and the wider community have a major role to play in supporting returning prisoners, though public awareness of this fact and enthusiasm for reparative justice and a connected, proactive approach to promoting social integration may be low.

Over time, if ex-prisoners who have undergone a major identity shift and subscribe to mainstream values cannot gain access to meaningful employment because of the stigma of their criminal past or build healthy, respectful relationships with pro-social others, their commitment to maintain a conventional lifestyle may well be undermined, regardless of the quality of any therapeutic interventions they may have received (during custody or as part of post-release supervision) or the enthusiasm and commitment of the many professionals who cross their paths.

### **Spent convictions**

A specific legislative change which has been suggested to support people following conviction and release is to extend the ambit of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

People who have been convicted of crimes may face discrimination or difficulties in everyday life. These can include:

- Visa restrictions;
- Access to employment;
- Dismissal from employment;
- Access to finance;
- Access to insurance; and
- Access to education.

Spent conviction legislation is generally introduced in recognition of the difficulties faced by individuals who have been convicted of relatively minor offences and have not re-offended since. The need to disclose a conviction for an offence which may have occurred decades or years previously is also considered by some to be contrary to some human rights and to achieving goals of rehabilitation and re-integration of former offenders into society. The Criminal

Justice (Spent Convictions and Certain Disclosures) Act 2016<sup>25</sup> is more restrictive than the Criminal Justice (Spent Convictions) Bill 2012 as initially published. This means that its provisions are applicable to fewer people who have been convicted of a relatively minor crime.

Two of the most important changes made during the passage of the Bill through the Houses were that:

- Only one<sup>26</sup> conviction can be spent (except for motoring and public order offences): Section 2.2(e) of the Spent Convictions Bill 2012 as published allowed for two convictions to be spent.<sup>27</sup> Now, if a person has two or more convictions, every conviction must be disclosed. None of the convictions can be spent; and
- Convictions including fines must be disclosed for seven years: the Bill had a more nuanced approach to time limits for disclosure. For example, a person given a class C fine ( a maximum of €2,500) for a first and second offence of possession of drugs for personal use would have to disclose this for four years following conviction. The Bill had time limits ranging from three years for a fine of up to €500 to seven years for a custodial sentence of up to twelve months.

Spent convictions legislation applies to both custodial and non-custodial sentences. The convictions which may be regarded as spent after seven years are set out in Section 5 of the Act. They are:

- All convictions in the District Court for motoring offences except for convictions for dangerous driving which are limited to a single conviction;
- All convictions in the District Court for minor public order offences; and
- A single conviction (other than a motoring or public order offence) in the District or Circuit Court which resulted in a term of imprisonment of 12 months or less (or a fine).

In the UK, sentences of up to four years can be spent. Prison sentences up to and including six months become spent two years after the end of the sentence. Prison sentences of over six months and up to and including 30 months will be spent four years after the end of the sentence. Where a conviction results in a fine, it will become spent one year from the point of imposition.

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<sup>25</sup> <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/print>

<sup>26</sup> Where a person appears before a court and is convicted of 2 or more offences which were committed at the same time or relate to the same event and more than one sentence is imposed by that court at that time, these are regarded as a single conviction for the purposes of the Act.

<sup>27</sup> [http://www.justice.ie/en/JELR/Criminal%20Justice%20\(Spent%20Convictions\)%20Bill%202012-P&C.pdf/Files/Criminal%20Justice%20\(Spent%20Convictions\)%20Bill%202012-P&C.pdf](http://www.justice.ie/en/JELR/Criminal%20Justice%20(Spent%20Convictions)%20Bill%202012-P&C.pdf/Files/Criminal%20Justice%20(Spent%20Convictions)%20Bill%202012-P&C.pdf)

Deputy Jonathan O'Brien argued that spent convictions have a huge role to play in penal reform and sentencing – it is counterproductive to try to rehabilitate those convicted back into society and not to reoffend, whilst at the same time forcing them to carry the negative consequences and stigma of convictions for the rest of their lives. The point was taken up by Ms Fíona Ní Chinnéide:

"The Criminal Justice (Spent Convictions and Certain Disclosures) Act was finally introduced in January 2016, signed into law in February and commenced in April. We find it extremely disappointingly limited. We acknowledge that it will be of benefit to many people but it is extremely limited in its application and we believe it fails to support rehabilitation of people with more serious offending. As it stands, there is no limit to the number of minor motoring offences and public order offences that can become spent, but only one other conviction can become spent. If one has two or more other convictions, neither can become spent. It is a huge issue."

She continued that the current position does not take into account in any way the circumstances that may have contributed to a person's offending behaviour at the time, which could have been youth, addictions, poverty or any range of other circumstances:

"It presumes that one contact with the criminal justice system is enough for people to escape all these circumstances of disadvantage and marginalisation, which we know is not the case. We also know that people grow up, move away from crime and move on. We hear from people so often who are now in their late 20s, have got married and have kids. They want to move to Australia and they have moved away from the impulsive, low-self-regulated immature behaviour they engaged in when they were 18, 19 or 20 but these convictions pursue them 20, 30 or 40 years after the fact. If one has two separate convictions for shoplifting, for example, from 20 years ago, they are still on one's record indefinitely. We would strongly welcome a review of, and more attention being paid to, this issue. We have generous provision for offences committed by people when they are aged 18 or younger, and there is a proposal, reported in the newspapers last week, that these provisions could be extended up to the age of 24 at a minimum. We would strongly recommend this as a first point, but the overall point is whether we are giving people second chances. Are we acknowledging that they have moved away from their offending behaviour? No one is suggesting that convictions be removed from one's criminal record overnight. One demonstrates that one has moved on, and then society needs to acknowledge people's efforts."

The Minister for Justice and Equality indicated in February 2017 that the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 will be subject to



post-enactment scrutiny.<sup>28</sup> It would be possible to recommend that the ambit of the Act be broadened.

### Reducing recidivism

The IPS referenced CSO figures indicating that annual recidivism levels have fallen from 55% in 2007 to 45% in 2010. It also noted that a reduction of another 10% over the next decade was achievable, and would bring Ireland in line with best practice in a European context.

The POA outlined how recidivism can be reduced through effective post-release programmes:

“The only real tool to prevent recidivism is the availability of positive activity for an individual following discharge, assisting him or her in the avoidance of further criminality. A person who goes to meaningful work every day while also providing for dependants is less likely to revert to previous criminal activity. The provision of such support is not the responsibility of any single group or organisation but prison officers hold the view that we must find some form of a multidisciplinary approach, which supports the individual willing to make an effort”.

John Clinton pointed out that the act of going to work every day and returning at the end of it to a normal setting is one that many of us take for granted. However, most of those in custody will not have come from that background, and the normalisation of the act of going to work for many individuals is a learned function. He was therefore critical of the Government decision to close the training unit in Mountjoy, albeit temporarily, arguing that it represents a retrograde step in the penal system as it was a semi-open, drug-free part of the prison. Prisoners went to work in the community on a daily basis and returned at the end of the day to an establishment that was separate to the main prison complex.

The Probation Service informed the Committee that it operates a ‘carrot-and-stick approach’ by offering help to offenders to make positive changes in their lives, but doing so within specific boundaries of supervision, surveillance and control. They described the main types of supervision:

“Offender supervision programmes come under two broad headings: probation-type supervision and community service. Probation supervision includes a range of interventions undertaken with offenders, mainly in the community, aimed at helping them to reduce their risk of reoffending and make good the harm caused by their offending. Specifically, these interventions, which are based on the probation officer's initial risk and needs assessment, enlist the co-

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<sup>28</sup> <http://www.justice.ie/en/JELR/Pages/PQ-16-02-2017-2>



operation of the offender and those around them, such as family and other positive supports, to address any dynamic...that may have contributed to their offending. These factors can include anti-social attitudes, pro-criminal associates, substance misuse or addiction, homelessness, mental health issues, lack of positive role models, poor problem solving and self-management, and unemployment, among others. What we term "probation-type supervision" also includes work with those in custody, helping them prepare for reintegration in the community, again with a focus on helping to reduce their risk of reoffending. Community service is a direct alternative to prison, available to the courts for those 16 years of age and over who are guilty of an offence that would otherwise attract a custodial sentence and who can then be ordered to perform unpaid work in the community as an alternative sanction."

The Probation Service said that while there is a need for custodial sanctions within prisons, international research consistently shows that punitive responses to crime alone, such as imprisonment, are in themselves statistically not as successful in reducing reoffending as community-based sanctions such as probation; these have been shown to be generally more effective in reducing the risk of reoffending. They also emphasised the need for a joined-up penal system:

"Reducing offending is a societal problem and needs a whole-of-society response. That co-ordinated response has to start with a whole of criminal justice system approach in the first place. One key to the success of the work that the Probation Service does is the nature of our interagency and multidisciplinary approach to what we do, especially with our justice partners, namely, the Irish Prison Service, the Courts Service, An Garda Síochána, the Irish Youth Justice Service and the Department of Justice and Equality. The Probation Service is a community-facing organisation, and community-based organisations are a key group of partners for us in our work."

The Probation Service channels €15 million in funding from the Department of Justice and Equality every year to community and voluntary organisations throughout the country in providing essential services to help in reducing offenders' risk of reoffending and facilitating their reintegration in their communities. These organisations provide a diverse range of services, addressing offender needs in the fields of training, education and employment, accommodation, addiction treatment, and resettlement and mentoring, among others.

The Probation Service informed the Committee that probation is most effective with those who present a medium to high risk of reoffending and who can safely be managed in the community. Probation officers carry out their work with offenders broadly from the standpoint that the individual person has committed

an offence and must be held accountable for the offending and take responsibility for his or her own rehabilitation. However, the Probation Service does recognise that offending typically takes place in a wider family and social context, and that this must be taken into account in trying to help the offender turn his or her life around for the better.

The POA informed the Committee that in the Spanish prison system generally, there was a 75% re-offending rate. However, progressive therapeutic methods used with prisoners in the Villabona prison in Spain saw the reoffending rate amongst prisoners who completed the programme drop to 10%.

## Homelessness

Ms Niamh Randall of the Simon Communities of Ireland, in its engagement with the Committee on 29 March 2017, highlighted the link between homelessness and the penal system:

“As the committee members know, there are clear links between homelessness, problematic drug use and the penal system, with particularly vulnerable people cycling between rough sleeping, emergency homeless and drugs services and the prison system. Data on the number of people who have entered prison from homelessness or indeed exited into homelessness are not readily available. A 2005 survey of 241 prisoners found that 54% of participants had at least one previous experience of homelessness prior to imprisonment and 25% of all prisoners were homeless on committal to prison. Prisoners who were homeless on committal were more likely to be long-term homeless, with 88% having experienced homelessness for six months or more. Some 58% were homeless for more than three years. Many people who are in prison following a period of homelessness are there for crimes such as vagrancy, theft and drug offences. Some 35% of prisoners experiencing homelessness on committal were diagnosed as having a mental health disorder.”

The chronic lack of housing at this time means that people are still being released from prison into emergency accommodation, with some ending up sleeping rough. Having no permanent home makes reintegration into society very difficult. Having permanent and stable accommodation reduces the risk of reoffending by 20%. In Ireland, the rate of reoffending is 30% within one year, and 49% within four years.

Ms Randall added that there is a lack of official data collected on the number of prisoners who are homeless, at risk of homelessness or becoming homeless on release. Often, the extent of homelessness within the prison population may be hidden as a result of the stigma attached to this status and the negative impact it may have on applications for early or temporary release. It is important to note that while homelessness is often viewed as rough sleeping or people being

trapped in emergency accommodation, it also includes those who have no option but to stay with friends or relatives, often in overcrowded or unsuitable accommodation. This phenomenon is known as hidden homelessness. Whilst the Simon Community does not have figures on hidden homelessness, the pressures caused by the housing crisis mean the numbers involved are likely to be considerable.

Ms Tracey Reddy of the Simon Communities informed the Committee that of women prisoners surveyed in a 2005 study, 33% were homeless on committal to prison. Two thirds of women who were homeless on committal indicated they had previously been diagnosed as having a mental health illness. Most women are committed to prison for non-violent offences, such as non-payment of fines. Two distinct categories of the female homeless prison population emerged from the study: the first was older women with alcohol and drug problems who are repetitive petty offenders and are sentenced for crimes such as breach of the peace, loitering and shoplifting, while the second was young female drug users.

Ms Claire McSweeney of the Simon Communities briefed the Committee on the housing difficulties faced by offenders upon their release from prison:

"A study of the two year period following release from prison showed that less than a third who had homes to go to were reconvicted compared to 69% of those who had no home. In the 2005 research, 44% of prisoners did not think they would be returning to the accommodation they were in prior to incarceration. People are often discharged into emergency accommodation or can end up rough sleeping. Prisoners who are homeless tend to be long-term homeless with extremely complex needs, often combining problematic drug and/or alcohol use with mental health problems. Without permanent and stable accommodation it is extremely difficult for people with these support needs to seek the support they require, to plan for the future and to make the kinds of changes in their lives that enable them to move away from those aspects of their life before prison."

Ms McSweeney also informed the Committee of the additional problems faced by released prisoners living in emergency accommodation in terms of applying for employment and social welfare payments. To address these issues, she recommended that pre-release housing needs assessments be carried out well in advance of prisoners exiting prison and that personalised discharge plans should be put in place for all people exiting prison services. She referenced a successful pilot programme in Cork prison in this regard, and recommended that that scheme should be rolled out nationwide as a matter of priority. Ms McSweeney emphasised the importance of implementing a Housing First policy for released offenders.

Mr Aaron O'Connell of the Simon Communities of Ireland stressed the need for a cross-departmental approach to address the links between drug use, homelessness, and the prison population:

"Pre-release programmes must be followed through in the community post-release. This applies to methadone programmes as well as housing, housing stability and the supports associated with this. Former prisoners are particularly at risk of overdose if they are intravenous drug users when they are decanted from prisons. For this reason, a continuum of care must be provided that offers supports and plans that include an accommodation option."

## Parole and the rights of victims of crime

### Parole

In the context of its hearings on penal reform, the Committee, on 15 February 2015, also conducted pre-Committee scrutiny of the Parole Bill 2016, a Private Members Bill sponsored by Deputy Jim O'Callaghan.

Deputy O'Callaghan explained that whilst temporary release and remission already exist in practice, the purpose of the Parole Bill 2016 is to put on a statutory basis the operation of parole in Ireland. Parole applies at present on a non-statutory basis to people who have been convicted and sentenced to a sentence of eight years or more. It is only for serious criminals, people who have been sentenced to a long time in jail. At present, the parole system does not operate on a statutory basis. It operates on an informal basis run ultimately by the Minister for Justice and Equality, but on the basis of advice and recommendations that he receives from the Parole Board. The Parole Board is a non-statutory board.

The Deputy added that the objective of the Bill is fourfold: to establish an independent Parole Board on a statutory basis; to give that independent statutory board responsibility for the decision to grant parole, thereby taking it from the Minister for Justice and Equality; to establish on a statutory basis the clear criteria for the granting of parole, so people can understand how parole operates; and to give victims of crime a say in the process, because much of the time, it is contended that victims of crime do not have a say when it comes to parole. The Bill does not give them a veto, but it does give them an involvement in the process:

"The reason I think the current system is unsatisfactory is because it is not based on statute; one cannot see how it operates and ultimately it is controlled by the Minister for Justice and Equality. Sometimes there will be political pressures on a Minister not to give parole to a particular individual because it could be met with a great deal of opposition in the press and it could be politically difficult for the Minister. Sometimes there may be pressures on Ministers to give parole to people because of political affiliations they have with them. It is better to take the issue out of politics and put it on an independent, transparent and statutory basis that sets out how and when a person is granted parole."

There was broad support for the Bill amongst Committee Members, and it later passed Committee Stage on the 24<sup>th</sup> of May.<sup>29</sup> Both the IPRT and the Victims' Rights Alliance (VRA) also called for reform of the parole system. Ms Maria McDonald, addressing the Committee on behalf of the VRA on 1 March 2017,

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<sup>29</sup> The Committee's scrutiny report on the Bill can be found at: [Report on Scrutiny of the Parole Bill 2016 \[PMB\]](#)

argued that the independence of the parole board is essential to ensure that justice is adhered to, not only for the victim of crime but also for the offender:

“Legislation relating to the make-up of a parole board should be cognisant of Article 1 of the victims’ directive, such that ‘Member States shall ensure that the victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings’. The Irish parole Board may be deemed to be the competent authority for the purpose of this legislation.”

Deputy O’Callaghan clarified that there is a provision in his Bill that allows victims and their interests to be considered by the proposed statutory Parole Board.

### **Restorative justice and rights of victims of crime**

The Committee heard evidence from the Victims’ Rights Alliance (VRA) that Ireland had no statutory scheme for restorative justice. Speaking on behalf of the VRA in its engagement with the Committee on 1 March 2017, Maria McDonald contended that the absence of restorative justice was one of the major omissions within the Criminal Justice (Victims of Crime) Bill 2016 (now enacted):

“Ireland has no statutory scheme for restorative justice ... Restorative justice was included in the scheme of the Criminal Justice (Victims of Crime) Bill that was published in 2015. It was, therefore, a surprise that restorative justice was not included in the recently published Criminal Justice (Victims of Crime) Bill 2016. The failure to include restorative justice safeguards is an obvious omission of Ireland's obligations under the victims' directive ... ”

However, these criticisms were to an extent subsequently remedied at Report Stage of the Bill. Thus, section 7(1)(m) of the Criminal Justice (Victims of Crime) Act 2017 provides that where a victim first contacts or is contacted by the Garda Síochána or the Ombudsman Commission in relation to an alleged offence, they shall offer the victim information relating to restorative justice schemes, where available.

Section 26 of the Act provides certain safeguards in respect of restorative justice schemes, and sets out a list of minimum requirements that must be complied with in administering a restorative justice scheme.

Restorative justice brings the victim and the perpetrator of a crime together in an attempt to repair the damage caused by the crime, and to facilitate an understanding of each other’s perspectives.<sup>30</sup> A survey by some VRA members

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<sup>30</sup> <http://legal-dictionary.thefreedictionary.com/restorative+justice>

indicated that 72% of victims surveyed said that they felt re-victimised by the criminal justice system. This should be compared with the figure of 49% of victims who indicated that they felt re-victimised by the accused.

The VRA proposed a new approach to penalising offenders, while simultaneously assisting victims of crime: fine the offender and put the funds into a victim support service. The VRA noted that this measure may be a means by which the offender can avoid prison and instead contribute back to the community through the money he or she is paying towards the victims' fund.

Restorative justice can tremendously benefit victims of crime, including the relatives of victims of even the most heinous crimes. The VRA referenced meetings between the relatives of a particular crime victim and the perpetrators, and noted that the relatives' understanding of the crime had benefitted them greatly. The relative developed a close relationship with the offender, and they are in regular contact. The VRA noted that while that does not happen in all situations, if people feel they can engage in that process, rehabilitation may occur and hopefully that individual will not come back into the prison system again.

The Probation Service has developed a number of restorative justice programmes over the past 20 years:

"Restorative justice services in Dublin, as well as the restorative justice in the community programme, based in Tipperary and Cork, run community-based reparation panels where offenders have an opportunity to confront their offending and its impact on their victim or victims through discussion with panels of people representing community interests, including victims where appropriate, and to take specific actions to go some way towards making good the harm caused. As part of the restorative justice strategy, the Probation Service now also offers a range of victim-offender mediation interventions, including in relatively serious cases."

To assist victims of crime, one of the suggestions advanced by the IPRT was for a federal ombudsman for victims, similar to the Canadian model. In Canada, there is a victim surcharge system<sup>31</sup> where, if an offender commits a crime, they would have to pay a victim surcharge as opposed to a fine. The proceeds of that surcharge will go directly to fund the ombudsman's office or victim support organisations. The IPRT informed the Committee that in 1984, America implemented the Victims of Crime Act which, similarly, has a victim fund where moneys are paid directly to victim support organisations.

The VRA also recommended that such surcharges be channelled to an independent resource within the criminal justice system:

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<sup>31</sup> <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/sentencing-peine/imposed-imposees.html#vic-sur>

"The Criminal Justice (Community Sanctions) Bill 2014, envisaged by the former Minister for Justice and Equality and Defence, Alan Shatter, indicated the moneys would go to the Department of Justice and Equality. I am of the view that any victims' moneys should go to an independent source. The reason I say that is because currently the Commission for Victims of Crime does not exist anymore. If one looked at the Department website, it would lead one to believe there is an independent body currently assessing moneys that go to victims of crime. However, all moneys are distributed by the Department of Justice and Equality's victims of crime office. Transparency is incredibly important to ensure moneys are given to victim support organisations. We all know of incidents and difficulties which have arisen with charities recently. We all want to ensure that those moneys are given in a transparent way and that victims know how and when they are going to get it. I am not in any way criticising the Department of Justice and Equality's victims of crime office."



## Conclusions and Recommendations

### *Prison numbers and conditions*

1. The Committee heard evidence that Ireland's daily prison population, at approximately 79 per 100,000, is average by European standards. However, our rates of committal to prison are very high. Overcrowding is still a problem in some prisons, and there are many problems associated with this in terms of prisoner and staff safety, health and well-being. Prison generally is a damaging experience in many ways. The Committee therefore recommends the capping of prisoner numbers in each institution, along with the adoption of a clear strategy by the Government to reduce the prison population by half over a fixed time scale.
2. A "one size fits all" philosophy is not appropriate for prison environments. There is still a huge over-reliance in the prison system on closed prisons, where the regime is 16- to 17 hours per day spent in the cell. There has also been a continued expansion of prison sizes, despite considerable evidence that smaller prisons are more effective. There is a need for different mixes of restriction and supervision. Construction of future prisons should be done in a flexible manner, organised around self-contained units. Regimes should be programme-driven and open to the possibilities of individual change. Future infrastructural development within the prison system should involve the use of more innovative, community-based, semi-open facilities, avoiding the one-size-fits-all model. Prisoners should have at least 12 hours per day out-of-cell time with meaningful activity.
3. Evidence was heard of a dramatic increase in the daily population of women in prison and numbers of women being sent to prison annually. Proposed solutions to reducing the number of women in prison – for example, by providing a step-down unit – reflect the failed institutionalised approaches of the past. Large hostel-style accommodation post-release or as part of a step-down programme will not dramatically break the cycle of homelessness or poverty. The Committee would prefer to see the approach such as Housing First being adopted more widely.
4. Young adults in prison, aged 18-24, should be recognised as a distinct group by making them the responsibility of the Irish Youth Justice Service, under the auspices of the Department of Children and Youth Affairs. Third level institutions and further education colleges should be paired with each young adult detention centre. Young adults should spend a minimum of 14 hours per day unlocked from their rooms. Accommodation should be

provided in houses with single room occupancy, communal dining and access to food preparation areas.

5. Prisons should aim for an accommodation policy of one person, one cell, and the necessary resources should be made available to realise this aspiration.

### *Complaints and inspections*

6. The Committee recommends the establishment of a completely independent mechanism for the consideration of prisoner complaints, as well as a new individual complaints procedure.
7. The Committee calls for the speedy introduction of legislation providing for the inspection of all places of detention in the Justice area – including prisons, Garda stations and courts; and for the immediate ratification thereafter of the Optional Protocol to the UN Convention Against Torture.

### *Family/Visitation*

8. Mother and Baby Units should be developed within the Irish prison system, along the lines of those in some women's prisons in England and Wales, which support female offenders in cohabiting with their children in a purpose-built facility. Participation in such a scheme would be supported on the basis of the needs and well-being of the child, and the promotion and maintenance of family life.
9. From the beginning of a sentence, children and families should be involved and relationships should be maintained through sentence management and after release. Visitation of family members and further involvement by family in the life of an imprisoned offender should be facilitated to maintain as normal a family life as possible. Children and families are significant motivating factors that can influence behaviour change.

### *Addiction and mental health*

10. Evidence was given that approximately 70% of people come into prison with an addiction or substance abuse problem. All prisoners with addiction issues should have access to appropriate rehabilitation facilities within the penal system. This would include not only methadone treatment, but access to detox beds, drug treatment landings and counselling. Every effort must be made to ensure that all offenders are fully aware of the

services that are available and of the options that are open to them. On committal to prison, there needs to be an assessment and diversion to more appropriate therapeutic treatments and services.

Evidence was given that prisoners with mental health issues and in need of acute psychiatric care must wait for long periods before they can access acute psychiatric facilities. The fact that prisoners with serious mental health difficulties cannot access the care they need in a timely fashion is of extreme concern. Resources must urgently be made available to ensure appropriate mental health care for all prisoners with mental health issues.

11. The Committee welcomes the development of the Violent and Disruptive Prisoners (VDP) Unit in the Midlands Prison. Vulnerable care units should be established in all prisons, modelled on the successful high support unit in Mountjoy Prison, with a shift from pharmacological treatment towards therapeutic interventions. The necessary resources must be made available to ensure that there are no waiting lists.
12. Prison staff must be provided with the necessary supports, both in terms of their own mental health and welfare, and in providing them with the requisite training to deal with prisoners with mental health and addiction issues. They need supports in terms of counselling and related assistance if they are to work in a stressful environment and be exposed to a risk of violence on a daily basis. A comprehensive, high quality mental health training programme should be made obligatory for all prison officers.
13. In order to fully address the complex, interrelated problems of drug addiction, homelessness and recidivism, a more integrated, cross-Departmental approach should be adopted, that includes the Health Service Executive and the Departments of Justice and Equality, Children and Youth Affairs, Social Protection, Education and Skills, and Housing, Planning, Community and Local Government. Post-release programmes must be followed through in the community. This includes not just methadone programmes but also housing stability, and the supports associated with this. Former prisoners are particularly at risk of overdose if they are intravenous drug users when they are decanted from prisons. A continuum of care must be provided that offers supports and plans that include an accommodation option.

#### *Education, retraining and therapeutic approach*

14. Evidence heard from different witnesses before the Committee showed that punitive prison environments are not constructive settings for preparing an offender to re-enter society. Instead, therapeutic environments are more conducive to enable prisoners to deal with their

issues and psychologically prepare for re-entry to society. Therapeutic practices are being used effectively in prisons in other jurisdictions – such as Grendon prison in the UK and Hydebank in Germany – to reform prisoners, and this model should be utilised where appropriate within the Irish penal system.

15. Education and training facilities should be available to prisoners to equip them with the necessary skills for re-entry to society after release. There is an opportunity to transform areas of the prison estate into units of therapy and education (UTES), which have been successful in other jurisdictions in reforming offenders and reducing recidivism. The Villabona project in Spain may be instructive in this regard, using an alternative model that immerses prisoners in an educational environment that teaches skills and, importantly, values such as empathy and kindness.
16. As far as possible, rehabilitation in the penal system should reflect the pattern of a normal day in terms of a daily schedule of waking up, working or training, and sleeping.

### *Health*

17. The European Committee for the Prevention of Torture (CPT) has been critical of the management of healthcare in Irish prisons, noting significant problems with waiting lists and missed appointments for Irish prisoners. It is recommended therefore that the Health Information and Quality Authority (HIQA) undertake a fundamental review of healthcare in Irish prisons. The Department of Health should commission an independent external audit of prisoner healthcare. Resources should be allocated to ensure that the HSE can deliver healthcare in prisons.
18. The Committee supports the recommendation contained in a 2016 report by the former Inspector of Prisons, Judge Michael Reilly, that responsibility for healthcare in prisons should be transferred to the HSE.

### *Solitary confinement and extended lock-up*

19. Solitary confinement should only be used in extreme circumstances, and should be phased out over the next number of years. Practices similar to solitary confinement, such as extended lock-up, should also be phased out. As part of its deliberations, the Committee conducted pre-Committee Stage scrutiny of the Prisons (Solitary Confinement) (Amendment) Bill 2016, a Private Members Bill. The Bill gives a statutory definition of solitary confinement for the first time in Irish law, and provides that “no prisoner shall be held in solitary confinement for any reason for more than

15 consecutive days.” The Committee calls upon the Government to facilitate without further delay the passage of this legislation through the Oireachtas.

#### *Sentencing and remission/early release policies*

20. The emphasis of a progressive penal and sentencing policy should be on investment in community-based sanctions and non-custodial sentences. Prison should be a last resort for minor criminal offences. Community-based sanctions are not only more effective in many cases, but can generate community payback and result in enormous savings compared to the costs of incarceration. Reasons for an apparent drop in the annual number of community service orders must be examined. The recommendation of the 2013 report of the Oireachtas Justice Committee – that prison sentences of less than six months should be commuted and replaced by community service orders, should be implemented without delay. The Probation Service must be provided with the necessary resources it would require on foot of a greater emphasis on community-based sanctions.
21. Non-payment of fines still accounts for over 50% of the committals per annum. There is now provision in the Fines (Payment and Recovery) Act 2014 for alternatives, including attachment of earnings orders for people who are in employment, and community service alternatives for people who are not in employment. There are also recovery orders. A thorough review and evaluation of the legislation should be conducted to see if those other provisions are being utilised, or if the default sentence in the event of non-payment of fines is still imprisonment, even though that is not in accordance with the intention of the legislation. Following on from this evaluation, steps should be taken by the Government to ensure that the alternatives provided for in the Fines (Payments and Recovery) Act 2014 are utilised, and that non-payment of fines does not result in imprisonment.
22. The Fines (Payment and Recovery) Act 2014 sets a threshold of €100 for payment by instalment. That is too high – for people in certain circumstances at certain times, coming up with €100 on the spot can be very difficult. The €100 threshold should therefore be removed. The original Fines Act 2010 had provision for payment by instalment of fines over two years in certain circumstances. That was reduced to 12 months in the 2014 Act. This should be extended. There is no reason why repayment should not be over 24 months. People should be facilitated to pay.

23. In the context of drug offences, there should be far more extensive use of non-custodial treatment options for offenders. Under existing legislation, a court may decide not to impose a fine or prison sentence on an offender. Instead, he or she may be placed under the supervision of a named person or body (such as the HSE) for a specified period of time or may be required to get the kind of treatment (medical or otherwise) that has been recommended. The court may also order that offenders complete a course of education, instruction or training that will improve their job prospects or social circumstances, facilitate their social rehabilitation or reduce the likelihood of them committing further drugs offences. These options do not seem to be sufficiently utilised in practice, and a review should be conducted to ascertain why this is the case. Concurrent with any review, steps should also be taken, and resources made available, to facilitate wider and more reliable access to non-custodial treatment options for offenders.
24. Garda diversion and community projects should be expanded to offer alternatives to incarceration. This could be done with greater partnership with community bodies or youth clubs. Diverting people to appropriate care facilities in the community earlier in the judicial process is more likely to yield positive dividends than having these people go through the trauma of incarceration.
25. The Committee very much welcomes the operation of the Community Return Scheme - an incentivised scheme for the supervised release of qualifying prisoners who complete unpaid community work as a condition of their early release. It gives prisoners, whom the Irish Prison Service and Probation Service have assessed as being suitable and motivated, the opportunity of early - and renewable - temporary release with resettlement support. It is available for those who have been assessed as posing no threat to the community; are serving more than one year and fewer than eight years, and who have served at least 50% of their sentence. The programme involves participants doing supervised community service instead of remaining in prison. Evidence suggests the programme has been enormously successful. The eligibility criteria should be expanded so that more prisoners are released by this means.

### *Spent convictions*

26. The issue of spent convictions must be examined urgently. Offenders should be afforded a second chance, and should not have to carry the stigma and negative consequences of a criminal record for the rest of their lives if they have moved away from offending behaviour. The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 is extremely limited in its application and fails to support rehabilitation of more serious

offenders. There is no limit to the number of minor motoring offences and public order offences that can become spent, but only one other conviction can become spent. If one has two or more other convictions, neither can become spent.

The current position does not take into account in any way the circumstances that may have contributed to a person's offending behaviour at the time, which could have been youth, addictions, poverty or any range of other circumstances. There is generous provision for offences committed by people when they are aged 18 or younger, and these provisions should be extended up to the age of 24 at a minimum.

In light of all this, the Criminal Justice (Spent Convictions and Certain Disclosures) Act must urgently be reviewed and revised.

### *Homelessness*

27. Chronic housing shortages mean that people are still being released from prison into emergency accommodation, with some ending up sleeping rough. Having no permanent home makes reintegration into society very difficult. Evidence was given that having permanent and stable accommodation reduces the risk of reoffending by 20%. Pre-release housing needs assessments should be carried out well in advance of prisoners exiting prison, and personalised discharge plans should be put in place for all persons exiting prison services. A coordinated approach to step-down accommodation post-release is needed between the relevant Government departments and housing agencies. A Housing First approach is a useful starting point. Under this model, the outgoing offender is placed in his or her own home and provided with individualised supports based on his or her needs. In addition, an inter-agency approach to release is needed to ensure that housing, employment, and addiction services are available to prisoners upon release.

### *Parole*

28. There is a clear need to reform the parole system and place it on a statutory footing. The Committee therefore calls for the creation of a statutory Parole Board, fully independent of political control and governed by clear and fair decision-making processes.

### *Victims of crime*

29. Consideration ought to be given to a model adopted in Canada and the United States - a victim surcharge system where, if an offender commits a crime, they have to pay a victim surcharge as opposed to a fine. The

proceeds of that surcharge will go directly to fund an ombudsman's office or victim support organisations. If such a system were to be introduced, the surcharges should be channelled to an independent resource within the criminal justice system.



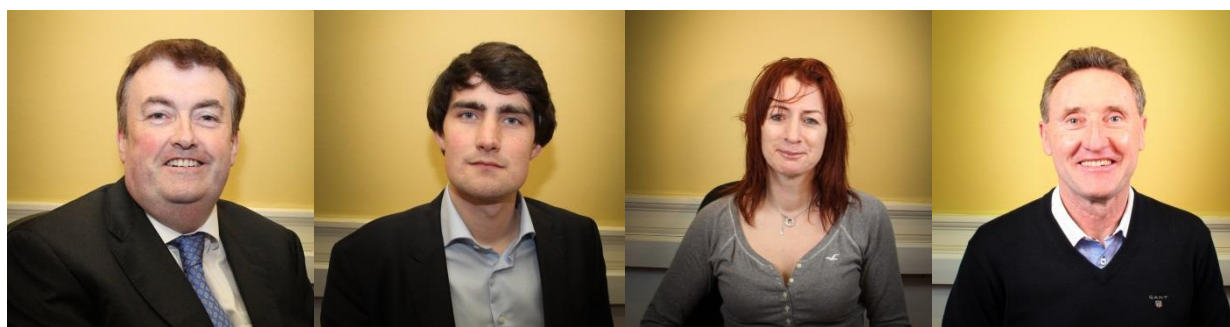
## Appendix 1 – Committee Membership

### Joint Committee on Justice and Equality

#### Deputies



Caoimhghín Ó Caoláin TD  
(SF) [Chair]



Colm Brophy TD  
(FG)

Jack Chambers TD  
(FF)

Clare Daly TD  
(I4C)

Peter Fitzpatrick TD  
(FG)



Jim O'Callaghan TD  
(FF)

Mick Wallace TD  
(I4C)

## Senators



Frances Black  
(CEG)



Lorraine Clifford-Lee  
(FF)



Martin Conway  
(FG)



Niall Ó Donnghaile  
(SF)

### Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20<sup>th</sup> July 2016.

## Appendix 2 – Terms of Reference of the Committee

### JOINT COMMITTEE ON JUSTICE AND EQUALITY

#### TERMS OF REFERENCE

##### **a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
  - (c) Estimates for Public Services, and
  - (d) other matters

as shall be referred to the Select Committee by the Dáil, and

  - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy and governance in respect of bodies under the aegis of the Department,
  - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill,
  - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
  - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
  - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in

relation to EU policy matters, and

- (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)  
[DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.
- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

## Appendix 3 – Witnesses and Official Report

### 8th February 2017

#### **Irish Penal Reform Trust (IPRT)**

Ms. Fíona Ní Chinnéide, Executive Director (Acting)

Ms. Michelle Martyn, Senior Research & Policy Manager

[Official report](#)

### 1st March 2017

#### **Victims' Rights Alliance**

Ms. Maria McDonald BL, Coordinator

[Official report](#)

### 8th March 2017

#### **Irish Prisons Service**

Mr. Michael Donnellan, Director General

Mr. Fergal Black, Director of Care and Rehabilitation

Mr. Martin Smyth, Director of Operations

Ms. Ethel Gavin, Campus Governor, Portlaoise

#### **The Probation Service**

Mr. Vivian Geiran

Director

Ms. Ita Burke

Deputy Director

Ms. Una Doyle

Deputy Director

Mr. Brian Dack

Assistant Director

[Official report](#)

## **22nd March 2017**

### **Jesuit Centre for Faith and Justice**

|                  |  |
|------------------|--|
| Mr. Eoin Carroll | Social Policy and Communications Coordinator |
|------------------|--|

### **Prison Officers Association**

|                  |                   |
|------------------|-------------------|
| Mr. John Clinton | General Secretary |
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|                  |                          |
|------------------|--------------------------|
| Mr. Jim Mitchell | Deputy General Secretary |
|------------------|--------------------------|

[Official report](#)

## **29th March 2017**

### **Simon Communities of Ireland**

|                   |                                   |
|-------------------|-----------------------------------|
| Ms. Niamh Randall | Head of Policy and Communications |
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|                     |                      |
|---------------------|----------------------|
| Mr. Aaron O'Connell | Cork Simon Community |
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| Ms. Tracey Reddy | Mid-West Simon Community |
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| Ms. Claire McSweeney | Dublin Simon Communities |
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[Official report](#)





### **IPRT Presentation to Oireachtas Joint Committee on Justice and Equality**

#### ***Prisons, Penal Policy and Sentencing***

**8<sup>th</sup> February 2017**

#### **Opening Statement**

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is of a penal system that is just and humane; that protects and promotes human rights, equality and social justice; and that only uses prison as a sanction of last resort.

We are delighted to have been invited to meet with the Joint Committee today, and we will do our best to respond to any questions that you may have following my opening remarks on penal policy, prisons, and sentencing.

I'd like to begin with an overall observation that reforms achieved since 2011 means that there is now a strong foundation on which to work towards a progressive penal system in Ireland – a penal system led by innovation and best practice and not crisis-management; a penal system that addresses and does not merely compound social inequalities.

Taken together, the cross-party consensus achieved in the *Joint Committee on Justice, Defence and Equality Report on Penal Reform* (March 2013) in particular, and the cross-agency consensus achieved in the *Strategic Review of Penal Policy Final Report* (July 2014) means that there is a strong basis for reform. Indeed, implementation of the recommendations in both reports would represent significant advances on achieving a just and humane penal system, which would in turn contribute to safer and more equal communities.

## CHARACTERISTICS

Ireland's penal system is characterised by the systematic overuse of imprisonment as punishment. Although Ireland's daily prison population is average by European standards, our rates of committal to prison (and consequently our rates of release) are sixth highest of the 46 countries of the Council of Europe area, and third highest in the EU. In 2015, 89.6% of sentenced committals to prison were for sentences of 12 months or less. This includes 9,883 committals for non-payment of court-ordered fines, of which 2,667 (27%) were female.

The prison population is characterised by mental health issues, addictions (often together: "dual diagnosis"), homelessness, poverty, unemployment, educational disadvantage, chaotic family backgrounds and social marginalisation. An estimated 70% of people in prison have addictions (85% of female prisoners); and the prevalence of mental illness ranges from 16% to 27% among male prisoners, and from 41% to 60% among female prisoners. In this context, it is not surprising that reoffending rates on release from prison are high, with 45.1% of prisoners committing a further offence within 3 years of release.

It's important to emphasise that this does not mitigate the harm that is caused by offending, nor does it minimise the impact on victims and the community of crime. However, if Ireland's criminal justice system and penal policy is to meet its goal of safer communities, it must have at its centre *addressing the causes of offending behaviour*, and not just punishment.

As an overarching recommendation, IPRT calls for a clear Government commitment to evidence-informed criminal justice policy, grounded in data and evidence of what works to reduce crime and improve community safety.

## PENAL POLICY

IPRT's starting point is that imprisonment itself causes a number of serious social harms, therefore imprisonment should only be used sparingly at the point of sentencing and the numbers in prison should be reduced. It is worth restating here the two principles that underpin penal reform:

1. It is the deprivation of liberty is the punishment, and prison conditions cannot be used as further punishment. (*Human Rights*)
2. At its core, prison is damaging in itself, and the negative impacts of prison – on individuals, on families, and on communities – mean that it should only ever be a sanction of last resort, reserved for the most serious offences and for those offenders who continue to present a serious risk to society. (*Penal Moderation*)

Therefore, the emphasis of a progressive, just and humane penal policy should be on:

- investment in early intervention, prevention and diversion strategies;
- investment in community-based sanctions and non-custodial alternatives (community service, restorative justice, community courts, bail supports, etc);
- protecting human rights and meeting best practice standards in prison, in cases where prison is the only appropriate response;
- greater investment in rehabilitation services and post-release supports, including:
  - improved inter-agency co-operation between prisons, probation, health, mental health, housing, social welfare and voluntary services; and
  - a review of the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, which is currently so limited that it fails to fulfil its rehabilitative purpose.

In all cases, provision must be on a nationwide basis, and not solely concentrated in Dublin.

## **PRISONS**

Positive reforms in recent years includes the safe reduction of the prison population from over 4,600 in 2011 to 3,700 today; a reduction in the number of men slopping out from 1,003 in December 2010 to less than 50 today; and innovations including incentivised early release programmes and supported community service schemes. Progressive legislation includes the *Criminal Justice (Community Service) Act 2011*, the *Fines (Payment and Recovery) Act 2014*, and (although very limited in its reach) the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*.

Despite these positive reforms, many serious issues remain, including:

- Crowding in a number of prisons, including Cloverhill and the two women's prisons;
- 45% of prisoners do not have access to private toilet facilities;
- Majority of prisoners are locked up for 16 or 17 hours per day, with 428 on restricted regimes, including 72 in solitary confinement – a damaging practice, which does not contribute to public safety; *[To this end, IPRT strongly welcomed the introduction by Deputy Clare Daly of the Prisons (Solitary Confinement) (Amendment) Bill 2016.]*
- 30 prisoners with serious mental health issues currently awaiting transfer to the Central Mental Hospital.
- Parole Board has not yet been established on a statutory basis, and release decision-making remains in political control; *[To this end, we strongly welcome the introduction of the Parole Bill 2016 by Deputy Jim O'Callaghan and look forward to its debate at Committee stage.]*
- Systems of accountability are weak:
  - prisoners still do not have access to an effective independent complaints mechanism;
  - Ireland has not yet ratified the OP-CAT (Optional Protocol to the Convention against Torture), which it will have signed 10 years ago in October 2017;
  - no inspection report by the Office of the Inspector of Prisons has been published since September 2014.

Robust independent oversight is crucial to the prevention of torture and degrading or inhuman treatment out of sight behind prison walls, and strengthening Ireland's systems of prisons accountability must be a priority.

## **SENTENCING**

IPRT believes that necessary sentencing reforms should be informed by the principles of: *penal moderation* (that is, prison as a sanction of last resort); *proportionality*; and *judicial independence*. Imprisonment should only be used sparingly at the point of sentencing, and judges should exhaust all other options before imposing a custodial sentence. All mandatory or presumptive sentencing regimes should be repealed, and the establishment of a Sentencing Council should be explored as a potential mechanism to achieve greater transparency around sentencing, whilst maintaining judicial independence.

Community-based non-custodial sanctions are a cheaper and more effective response to less serious offending, while the community benefits directly from the work carried out (“community payback”). However, despite the introduction of the *Criminal Justice (Community Service) Act* in 2011, which obliges judges to consider community service in lieu of custodial sentences of 12 months or less, the number of community service orders made has fallen every year since 2012. Given that prison committals have continued to rise, this is a concern.

To this end, there is a need to ensure consistency in the availability, use and operation of community sanctions and supported community sanction schemes nationwide. Proposals for the establishment of community courts should be brought forward, and the drug court should be continued. Investment in restorative justice strategies, which have been found to be of benefit to both victims and offenders, should be prioritised. Finally, the youth justice strategies and approaches that have proven so successful with children and young people aged under-18 – including diversion, mentoring, and supported bail schemes – should be extended to young people aged up to 25. In February 2014, IPRT welcomed provisions for the differential treatment of 18-21s that were included in the *General Scheme of Criminal Justice (Community Sanctions) Bill*. We believe this is an area of sentencing reform that deserves further attention.

I’d like to conclude by thanking the Committee for its invitation and its attention to penal reform issues. I am ready to respond to the Committee’s questions as best I can.

**Fíona Ní Chinnéide**  
**Acting Executive Director**  
**Irish Penal Reform Trust**

## **Opening Statement to the Joint Committee on Justice & Equality**

### **Maria McDonald BL on behalf of the Victims' Rights Alliance**

I would like to thank the Committee for giving me an opportunity to speak today on behalf of the Victims' Rights Alliance [VRA].

The VRA is an Alliance of victim support and human rights organisations in Ireland namely, [Advocates for Victims of Homicide \[AdVIC\]](#), [the CARI Foundation](#), [the Dublin Rape Crisis Centre \[DRCC\]](#), [the Gay & Lesbian Equality Network \[GLEN\]](#), [the Immigrant Council of Ireland](#), [Inclusion Ireland](#), [the Irish Criminal Justice Disability Network \[ICJDN\]](#), [the Irish Council for Civil Liberties \[ICCL\]](#), [the Irish Road Victims' Association \[IRVA\]](#), [the National Women's Council of Ireland \[NWC\]](#), [the Irish Tourist Assistance Service \[ITAS\]](#), [One in Four](#), [the Rape Crisis Network Ireland \[RCNI\]](#), [Ruhama](#), [Safe Ireland](#) and [Support after Homicide](#). The Alliance was formed with one key goal: to ensure the Victims' Rights Directive is implemented in Ireland within the proposed time frame, with all victims of crime in mind.

Some of our members have different views in relation to penal reform, sentencing and prisons. For that reason this submission will be limited to the rights afforded to victims under the Victims Directive and recognised rights provided to victims of crime in other common law jurisdictions. Given the short time period it has not been possible to get all of our members to sign off on these submissions.

Member States, including Ireland, were required to transpose the Victims Directive into Irish law by the 16th of November 2015. No legislation has been enacted to date to transpose the Directive in Ireland. The publication of the *Criminal Justice (Victims of Crime) Bill 2016* on the 29th of December 2016, was the first major step in putting victims at the heart of the Irish criminal justice system.

The *Criminal Justice (Victims of Crime) Bill 2016* is a comprehensive document which has had the benefit of significant consultation with key state and non-state agencies working with victims of crime, including victim support organisations. It broadly mirrors the content of the Victims Directive, although there are some glaring omissions.

The necessity to implement dedicated victims legislation is illustrated by the contents of the Guerin Report (May 2014), the Garda Inspectorate Report (Nov 2014), the VRA Report (2014) and the O'Higgins Report (2016). A survey by some VRA members indicated that 72% of victim's surveyed stated that they felt re-victimised by the criminal justice system. Compare this with the figure of 49% of victims who indicated that they felt re-victimised by the accused. The risk of re-victimisation and intimidation should be reduced as much as possible and safeguards should be put in place in order to protect victims of crime including during sentencing, the parole process and on the release of an offender from prison.

The *Criminal Justice (Victims of Crime) Bill 2016*, if implemented, will put victims of crime on a statutory footing for the first time in Irish law. There is currently no legal definition of a victim of crime in Irish criminal law. Section 2 *Criminal Justice (Victims of Crime) Bill 2016* proposes to define a victim as 'a natural person who has suffered harm, including physical,

*mental or emotional harm or economic loss, which was directly caused by an offence*'. This mirrors the definition in the Directive. Family members are deemed to be victims for the purpose of the Bill if the death of the victim was directly caused by a criminal offence. A family member will not be entitled to the rights thereunder if he/she has been charged with or is under investigation for the death of the victim.

One of the major omissions within the *Criminal Justice (Victims of Crime) Bill 2016* is the absence of restorative justice. There has been growing recognition that restorative justice should be explored in order to address the need of victims of crime for redress (Kool 2016). It is a process which is being increasingly used by victims of crime in Ireland (Le Cheile, 2015). Article 2 (1) d of the Victims Directive defines restorative justice as '*any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party*'. Member states are not required to establish restorative justice services, but where they exist member states were required to have safeguards in place for their use.

Article 4 (1) (j) of the Victims Directive asserts that victims must be informed, on first contact with the Gardaí, of the available restorative justice services. Article 12 of the Directive outlines safeguards to protect a victim from repeat and secondary victimisation - from retaliation and intimidation. Restorative justice should only be used if it is in the interest of the victim to do so based on his or her free and informed consent. A victim can withdraw his/her consent at any time. Prior to agreeing to engage in restorative justice, a victim must be given complete and unbiased information. This should include information on the outcomes and the supervision of the process. Article 12 of the Victims Directive also provides for the safeguard that an offender must acknowledge the basic facts of the case. The agreement of the parties must be voluntary and it can be considered in any criminal proceedings which follow, such as the sentence. If restorative justice is conducted in private then it is confidential and it cannot be discussed without the consent of the parties, save where there is a prevailing public interest to do so. Victims that choose to engage in restorative justice should have the benefit of these measures under the Victims Directive.

Ireland has no statutory scheme for restorative justice. Notwithstanding this judges have recommended its use. Section 26 and 28 of the Children Act 2001 invite victims to be involved in a conference convened by a probation and welfare officer. Restorative justice was included in the *Scheme of the Criminal Justice (Victims of Crime) Bill 2015*. It was therefore a surprise that restorative justice was not included in the recently published *Criminal Justice Victims of Crime Bill 2016*. The failure to include restorative justice safeguards is a very obvious omission of Ireland's obligations under the Victims Directive and infringement proceedings may be instigated by the European Commission should the Bill not be amended to include it. The necessity of including restorative justice in legislation is illustrated by the fact that a court had suggested the use of restorative justice to a victim in circumstances which did not take account of the safeguards provided for in Article 12 of the Victims Directive (Gallagher, 2014). The Strategic Review of Penal Policy (2014) acknowledged that the Victims '*Directive promotes the appropriate use of restorative justice services which is in line with the existing delivery of such services in this State*'. Furthermore, without being provided with information on the available restorative justice measures, victims will not be able to access their rights thereunder. The Victims Directive requires that victims be informed of the available restorative justice services. The Garda Victims

Information leaflet, which was drafted in order to comply with the State's obligations, only makes reference to restorative justice services being available where the offender is under 18 years of age. There are other restorative justice services available to victims of crime, who are adults. The *Criminal Justice (Victims of Crime) Bill 2016* does not require the Gardaí to provide information on restorative justice, again a glaring omission in light of Ireland's obligations under Article 4 (1) (j) of the Victims Directive. Failure to adequately provide information on restorative justice significantly dilutes a victim's rights under the Directive. It illustrates the difference between providing rights on paper and accessing those rights in practice.

Victims have a right to information on an accused's remand and release from custody. Article 6 (5) of the Victims Directive provides that victims must be '*offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention*'. Furthermore, victims should be informed of measures which have been implemented for their protection where an offender has been released or escaped from prison. Section 7 of the *Criminal Justice (Victims of Crime) Bill 2016* provides that information should be provided to the victim in relation to an offenders release or escape from custody.

Currently, upon request, victims can receive information from the Irish Prison Service about an offenders release from prison, however, once a victim opts in they are provided all information which the Irish Prison Service would deem relevant in the circumstances. Victims should be able to pick and choose what information they want to receive, for example some victims are re-victimised every time they receive an update in relation to the offender while other victims would like to know as much information as is available.

In Canada *Bill C-32, the Victims Bill of Rights Act* permits victims, upon request, to receive information from Correctional Service of Canada about an offender's progress towards meeting the objectives of a correctional plan and information on the correctional plan. Correction Service Canada also gives victims access to a photograph of the offender prior to certain releases into the community. Victims can request access from the Parole Board of Canada to listen to an audio recording of a parole hearing if unable to attend in person. Currently victims of crime in Ireland are not entitled to a photograph of a offender, nor are they able to attend or watch a parole hearing online. The VRA is cognisant that the rights of the accused must be balanced with the rights of an offender; however, at least where there is a risk to re-victimisation or intimidation a victim should be offered the opportunity to have sight of a picture of an offender prior to their release from prison. Furthermore, should a victim wish to attend a parole hearing they should be given the opportunity to do so and/or given the opportunity to hear a play back of the parole hearing. In June 2016 Correctional Service of Canada and the Parole Board of Canada launched an online victims portal whereby victims of crime could receive/view appropriate information about the offender; view/manage preferences for receiving information; submit a victim statement to the Correctional Service of Canada and the Parole Board of Canada; request to observe a parole hearing; request to present a victim statement at a parole hearing and request a copy of the parole decision. It might be worth considering running a pilot programme in Ireland.

Like the IPRT, the VRA believes that the parole process is in need of reform. The independence of the parole board is essential to ensure that justice is adhered to, not only for



the victim of crime, but also for the offender. The author is aware of one instance where a parole board member referred to a victim seeking ‘*revenge*’ upon an offender. This example is mentioned to illustrate the issue of bias and the importance of an objective parole board. It is respectfully submitted that legislation relating to the make-up of a parole board should be cognisant of Article 1 of the Victims Directive, such that ‘*Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings.*’ The Irish Parole Board may be deemed to be a competent authority for the purpose of this legislation.

Article 25 of the Victims Directive provides that ‘*officials likely to come into contact with victims*’ should get both specialist and general training appropriate with their level of contact with victims of crime, so as to ‘*enable them to deal with victims in an impartial, respectful and professional manner*’. Having due regard to the independence of the legal profession the Victims Directive recommends that training be made available’ to ‘*increase the awareness of judges and prosecutors of the needs of victims*’. The Irish Council for Civil Liberties, in conjunction with The Bar of Ireland and the Law Society of Ireland with financial support from the Justice Programme of the European Union are developing a training programme for lawyers on the Victims Directive. The VRA is cognisant of the independence of the judiciary; however, I would like to draw the Committees attention to a Private Members Bill in Canada, namely ‘*An Act to amend the Judges Act and the Criminal Code (sexual assault)*’, which was introduced in Canada on Thursday last the 23<sup>rd</sup> of February 2017. That Bill appears to have general support. The Act ‘*amends the Judges Act to restrict eligibility for judicial appointment to individuals who have completed comprehensive sexual assault education. It also requires the Canadian Judicial Council to report on continuing education seminars in matters related to sexual assault law. Furthermore, it amends the Criminal Code to require a court to provide written reasons in sexual assault decisions*’. On Monday I spoke with Judge Hinkle and Anna Evans of the Massachusetts Trial Court who developed and implemented training specific to Domestic Violence in the Massachusetts Trial Courts. The training has been effective and well received by employees across Massachusetts who work within the courts. The Chief Justice of the Massachusetts Trial Court has made it compulsory for all judges to participate in the training programme, including court officers, facilitation offers and some lawyers such as guardian ad litem’s. Training is essential in order to ensure that victims of crime get access to their rights under the Victims Directive and persons working with victims of crime within the sentence, restorative justice and parole process should receive appropriate training.

I would like to thank the Committee for giving the opportunity to speak to you today. I hope that I will have an opportunity to speak to you more generally again about the *Criminal Justice (Victims of Crime) Bill 2016*.

## **Oireachtas Joint Committee on Justice and Equality**

**Hearing on Penal Reform,  
Wednesday 8<sup>th</sup> March, 2017**

### **Opening Statement**

**by**

***Vivian Geiran,*  
Director, The Probation Service**

Thank you for this opportunity to contribute to the Committee's deliberations on penal reform. I am joined today by my colleagues: Deputy Directors – Ms. Ita Burke and Ms. Una Doyle; and Assistant Director, Mr. Brian Dack. I propose, in these opening remarks, to give the Committee a brief overview of the role and work of the Probation Service, and to highlight some key issues that may assist the Committee. In the more extensive briefing paper, which will have been made available to you ahead of today's hearing, you will also see more detailed information about the structure and work of the Service. In addition, my colleagues and I will of course be more than happy to answer any questions and engage in further discussion on any matter as the Committee sees fit.

Probation, as a concept and a practice, has been around, both in these islands and internationally, for more than one hundred years. The 1907 Probation of Offenders Act is still very much the core legislation for what the Irish Probation Service does every day. Probation, across the world, is based on the idea of offering offenders a 'second chance,' to make good for the harm they have caused, and specifically not to reoffend. Probation also works on the basis of a classic 'carrot and stick' approach, that is, offering *help* to the offender to make positive changes in their life, but within specific *boundaries* of supervision, surveillance and control. While there is an undoubted need for custodial sanctions – prison – in penal systems, international research consistently shows that punitive responses alone to crime, such as imprisonment, in themselves, are statistically not as successful in reducing reoffending, as community-based sanctions, such as probation, which are shown to be generally more effective in reducing risk of reoffending.

The two primary areas of work undertaken by the Probation Service are:

- (1) offender *assessment* and
- (2) offender *supervision*.

Most assessments are undertaken by probation officers at the request of the Courts, to assist in sentencing decisions, and to identify what factors need to be addressed in order to reduce an individual's likelihood of reoffending. Other individual offender assessments are

undertaken by probation officers on behalf of the Parole Board and the Irish Prison Service, for example.

Offender *supervision* programmes come under two broad headings:

- (1) probation type supervision and
- (2) community service.

*Probation supervision* includes a range of interventions undertaken with offenders, mainly in the community, aimed at helping them to reduce their risk of reoffending and make good the harm caused by their offending. Specifically, these interventions, which are based on the probation officer's initial risk and needs assessment, enlist the co-operation of the offender and those around them (e.g. family, other positive supports) to address any dynamic (i.e. open to possible change) issues or factors which may have contributed to their offending. These factors can include: anti-social attitudes, pro-criminal associates, substance misuse or addiction, homelessness, mental health issues, lack of positive role-models, poor problem-solving and self-management, and unemployment, among others. What we term 'probation type supervision' also includes work with those in custody, helping them prepare for reintegration in the community, again with a focus on helping to reduce their risk of reoffending. *Community service* is a direct alternative to prison, available to the Courts, for those sixteen years of age and over, who are guilty of an offence that would otherwise attract a custodial sentence, and who can then be ordered to perform unpaid work in the community as an alternative sanction.

At the core of what Probation staff do across all our programmes is to: *motivate* offenders to change, to help them increase both their *ability* to change, and facilitate improved *opportunities* for change. Probation officers do this through the development of positive professional relationships, within clear role boundaries, and using skills and interventions based on those shown by research to be effective. These in turn are founded on social work training, and national and international standards of good practice, including for example the Council of Europe Probation Rules (2010). While those we work with are, in the main, those who have committed criminal offences, a central focus for probation work is the impact of offending on victims, and the needs, rights and position, of victims of crime. Our work would be one-dimensional if we only focused on the offender. In doing what we do, we need to be conscious of, and seek to repair where possible, the broken relationship between offender, victim and the wider community. We do this in a number of ways. When preparing a pre-sanction assessment on an offender, we assess, as part of that, the impact on the particular victim or victims, the offender's understanding of that impact, and how we can help that offender to avoid creating more victims again in the future. We also provide opportunities to offenders to make good the harm they have caused. This includes performance of community service, as well as a number of reparative and restorative interventions and programmes that we run, many of these in conjunction with partner agencies.

The Probation Service is an agency of the Department of Justice and Equality. The organisation, which functions independently, in practical terms, on a day to day basis, is headed by a Director, who is also a member of the Department's Management Board, and

answerable to the Secretary General. We have almost four hundred staff, based in offices across the country. We have a presence in every county, as well as in every custodial institution in the State. Our annual budget is now €46.3 million. On any day, the Probation Service is assessing and supervising over 8,500 offenders in the community, as well as working in all fourteen prisons and the Children Detention School. Of the 8,500 people being managed in the community every day, around 2,200 are on community service, and 3,500 on probation supervision, as direct sanctions from the Courts. Just over 1,300 of the 8,500 are women, 260 are under eighteen years of age and over 1,200 are on post-release supervision after serving a custodial sentence. Every year, the Probation Service assesses and/or supervises around 15,000 offenders, mainly in the community. Those referred to us have offended across the wide spectrum of crimes, from relatively minor, to the most serious violent offences.

While all criminal justice agencies bring their own unique skills, roles, and ways of working, to how we respond collectively as a society to crime and offending, *no* single organisation or agency has all the answers. So, Probation cannot do what the Prison Service does, nor what An Garda Síochána does, and *vice versa*. Reducing offending is a societal problem and needs a whole-of society response. That co-ordinated response has to start with a whole-of-criminal-Justice system approach in the first place. One key to the success of the work that the Probation Service does is the nature of our interagency and multi-disciplinary approach to what we do, especially with our Justice partners, namely the Irish Prison Service, Courts Service, An Garda Síochána, Irish Youth Justice Service, and the Department of Justice and Equality.

The Probation Service is a community-facing organisation, and community based organisations are a key group of partners for us in our work. We channel €15 million, funding from the Department of Justice and Equality, every year, to community and voluntary organisations that partner with us, across the country, in providing essential services to help in reducing offenders' risk of reoffending and facilitate their reintegration in their communities. These organisations provide a diverse range of services, addressing offender needs, in the fields of training, education and employment; accommodation; addiction treatment; resettlement and mentoring, among others.

In many jurisdictions, probation tends to be seen as either an alternative to imprisonment, or as something for diverting those guilty of really minor offences, particularly first time offenders, away from more serious sanctions. I would suggest that while probation can and does usefully fulfil both of those functions, it is in fact most appropriate and most effective with those who present a medium to high risk of reoffending and who can safely be managed in the community. Probation Officers carry out their work with offenders broadly from the standpoint that the individual person has committed an offence and must be held accountable for their offending, and take responsibility for their own rehabilitation. In addition, we recognise that offending typically takes place in a wider family and social context, which must be taken into account in trying to help the offender turn their life around for the better. We also recognise that change is usually difficult, and people are more likely to be successful in making and maintaining changes in their lives if they have the benefit of skilled professional help, which is what we provide.

The full range of work that the Probation Service undertakes is important. Nevertheless, I do want to highlight some particular priority categories of offender with whom we have been undertaking specific initiatives.

- Prolific offenders: Recognising that a significant percentage of certain offences, such as burglary, are committed by a small percentage of prolific offenders, the Probation Service, in partnership with the Prison Service, An Garda Síochána and the Department of Justice and Equality, have established the Joint Agency Response to Crime (or JARC). This programme, developed in four areas of Dublin since 2014, is currently being extended to a number of areas outside the capital, and targets in a uniquely intensive, interagency approach, those identified as being the most prolific offenders in their areas. Burglary and violent crime have been the two primary offence categories targeted under JARC, with observable success. .
- Young people: Recognising that the mid to late teens, and early twenties, are statistically the peak ages for offending by many individuals, the Probation Service has a dedicated division – Young Persons Probation – that specialises in work with this age group, primarily those under eighteen years, but extending the same focused, and age-appropriate supervision to those up to twenty-one years of age.
- Women: Women are disproportionately represented in the criminal justice system, and face unique issues in addressing and reducing their risk of reoffending. For that reason, we have put in place a number of responses to take these issues into account. These include, for example, gender-appropriate assessment and supervision, female-specific community service projects, peer mentoring, and accommodation programmes.
- Sex offenders: As well as working closely with our psychology service colleagues in the Irish Prison Service, in delivering sex offender treatment programmes to those in custody, we also run, with a number of partner bodies, similar treatment programmes in the community, as well as accommodation support initiatives and circles of support and accountability programmes. Since 2010, the Probation Service, in co-operation with An Garda Síochána, Irish Prison Service, TUSLA (child and family agency) and local housing authorities have worked closely, through the SORAM (Sex Offender Risk Assessment and Management) initiative, to jointly supervise and manage the risk posed by sex offenders in the community. This work is overseen nationally by a strategic co-located interagency team, based in Harcourt Square.
- Post-release supervision: The Probation Service traditionally worked with those referred directly to us by the Courts. More recently, we have supervised an increasing number of people on post-release from custody, under a number of legislative provisions. Now, around fifteen percent of all those we supervise in the community are on some form of post-release programmes. These programmes, including Community Return, and Community Support have proven very successful and mean that virtually all those released from prison on Temporary Release now are on one or other form of *structured* post-release programme, involving some Probation input.
- Life sentence prisoners: Much of our work in relation to this group of offenders is undertaken under the ‘umbrella’ of the Parole Board process. As well as preparing assessment reports on life sentence prisoners for the Parole Board, probation

officers work with such prisoners in addressing issues related to their offending, and helping them prepare for release and resettlement. The Probation Service, with the Irish Prison Service and the Parole Board, is currently developing a more co-ordinated interagency approach to the management of life sentence prisoners.

- Restorative Justice: The Probation Service has developed a number of restorative programmes over the past twenty years or so. Two of these, Restorative Justice Services (in Dublin) and Restorative Justice in the Community (based in Tipperary and Cork) run community based reparation panels, where offenders have an opportunity to confront their offending and its impact on their victim or victims, through discussion with panels of people representing community interests, including victims where appropriate, and to take specific actions to go some way toward making good the harm caused. As part of our Restorative Justice Strategy, the Probation Service now also offers a range of victim-offender mediation interventions, including in relatively serious cases.

‘How effective is probation?’ This is a frequently-asked, and important, question. On the face of it, such effectiveness is something that can be measured quite easily, in terms of the rate of reoffending by those who have been under probation supervision. On that reoffending measure alone, probation is effective, both here in Ireland and internationally. For the past four years, in partnership with the Central Statistics Office (CSO), reoffending rates by all those who have been on probation orders and community service each year has been measured. This is tracked over a three year follow-up period. Findings, which are published by the CSO, show that six out of every ten probationers have no further convictions in the follow-up three year period. This compares favourably with statistics for those who have been in prison, and also with probation comparators internationally. I appreciate there is no room for complacency and we are constantly reviewing our practice, based on statistical and other evidence, to improve our outcomes.

I should point out that effectiveness in probation needs to be measured on other scales, apart from reoffending. As well as probation’s effectiveness in offender rehabilitation, some of those other effectiveness measures include: probation’s relative cost effectiveness as a sanction; promoting citizenship and social justice; its value as a proportionate and just sanction in itself and as an alternative to custody; reducing the impact of imprisonment on prisoners’ children and families; as an aid to sentencing decisions; in resettling ex-prisoners; in building up communities; through the unpaid work undertaken in communities by those on community service; and by helping those who have offended to be reintegrated in their communities and to become positively-contributing members of society. In monetary terms alone, supervised community sanctions cost a fraction of custodial ones: €1,500 for a community service order, and €5,000 for a probation supervision order. The unpaid work done annually by people on community service – estimated with reference to the national minimum wage hourly rate (€9.25) – is the equivalent of a total of €2.7 million worth of work done in local communities across Ireland every year, valuable work which would not otherwise have been done. .

Penal policy has been the subject of ongoing consideration for some time. A previous Oireachtas Justice Committee reported in 2013, making five recommendations, a number of which have been substantially achieved. The Report of the Strategic Review of Penal Policy

was published by the Minister for Justice and Equality in September 2014. This report contained forty-seven recommendations, across the penal policy field, half of which relate directly to the work of the Probation Service. The Probation Service is fully committed to implementing penal policy, as set out in the Programme for Government and the Department of Justice and Equality strategy. We work closely with our partners to implement Government and Departmental policy, and specifically the actions in the 2014 Strategic Review of Penal Policy. We report regularly to the relevant Implementation Oversight Group, chaired by Dr. Mary Rogan. Implementation reports are published on the Department of Justice and Equality website. In that regard, we are well on track towards implementation of the review's recommendations. Much positive and productive change has been achieved in Ireland in recent years. More remains to be done, and that work programme is being advanced, in a collaborative way, across the Justice agencies. In conclusion, probation work, done well, makes a difference and adds significant value to the criminal justice system as a whole, and to making Ireland a safer and fairer place. The Probation Service's unique role is in helping to create safer communities and fewer victims through offender rehabilitation. Probation staff are in the business of hope; hope that is based in reality and evidence-informed practice. In that way, we provide unique services, reducing reoffending and victimisation, as part of a proportionate, just and effective response to crime, offending and offenders.

**Remarks by Michael Donnellan, Director General of the Irish Prison Service,  
Joint Committee on Justice and Equality 08 March 2017.**

Firstly, let me begin by thanking the committee for this opportunity to update them in relation to progress and reforms being made within the Prison Service and also to highlight the planned future direction of the Service, as outlined in our strategic plan 2016 - 2018. I understand the Committee is engaging in a number of meetings with various groups including, the Irish Penal Reform Trust, the Probation Service, The Prison Officers Association, and the Jesuits Centre for Faith and Justice. The lessons learned and shared from such meetings will be of great assistance in offering different views and solutions to bring about better outcomes for the Prison Service and society as a whole.

The Committee will be aware that significant change and reform has occurred in the prison system in recent years, addressing many issues highlighted by the Committee as requiring reform including prison numbers, overcrowding and prison conditions. For years overcrowding caused a strain on the system and created significant challenges for the management and staff of the Irish Prison Service in providing appropriate accommodation and constructive regimes to prisoners.

Thankfully the issue of overcrowding has been eliminated in the majority of our prisons. The numbers in custody have fallen by 20% since their peak in 2011, while the numbers on temporary release have reduced by almost 70% during the same period. The implementation of the Fines legislation is starting to have an effect on committals for the non-payment of court ordered fines and while the numbers committed for fines remain relatively high, provisional figures for 2016 show a decrease of approximately 15% on the previous year.

This reduction in numbers has allowed the Prison Service to progress/enhance a number of key services to prisoners, including;

- Enhanced pre-release planning and resettlement
- Structured temporary release.
- The Community Return Scheme and Community Support Scheme
- The Incentivised Regime programme
- Drug treatment
- Psychology Service
- Integrated Sentence Management
- Families and Imprisonment
- In-reach Services



The Irish Prison Service has continued to implement a comprehensive capital programme to provide additional accommodation and to enhance the quality of accommodation across the prison estate.

The priority has turned to improving existing accommodation and rehabilitative facilities across the estate including the elimination of the practice of slopping out. The number of prisoners slopping out has decreased from 1,003 in 2010 to just 49 or 1% of the prison population in January this year. The refurbishment of Mountjoy has been completed and now all cells have toilet facilities and have been returned to single occupancy. In 2016, we saw the opening of a new prison in Cork which provides high quality accommodation and rehabilitation facilities and also allows the Service to provide enhanced visiting facilities to prisoners and their families. Current and planned capital projects will result in the complete elimination of slopping out across the estate.

Huge progress has been made to incentivise prisoner participation in the many constructive activities available to them in prison in order to allow them to address the causes of their offending. The incentivised regime programme has provided real incentives to prisoners to participate and engage and has also resulted in reduced levels of violence across the estate. New training facilities have also been provided including, for the first time, purpose built work and training facilities in Mountjoy Prison.

While the provision of these opportunities is important it is vital that those services are available for all prisoners. As the committee will be aware there are, at all times, prisoners who for various reasons are unable to associate with other prisoners. These issues mainly relate to factors on the outside and prison management must ensure the safety of all who work and reside within our walls.

That said, we have made huge strides in reducing the numbers of prisoners who require protection or are accommodated on a restricted regime. The number of prisoners requiring 22/23 hour lock up, or solitary confinement as it is known, has decreased from 211 in July 2013 to 72 in January this year. While this figure can fluctuate due to factors within our prisons I am confident that this number can be reduced even more and I am working with our prison governors in that regard.

The work we have undertaken has positively contributed to the goal of a safer Ireland. Since 2013, in partnership with the CSO, annual recidivism studies have been published which show a reduction in recidivism levels from 55% for those released in 2007 to 45% for 2010.

There are still significant challenges facing the prison service, including issues around Mental Health, the management on prisoners on protection, and how the Service can best deal with violently disruptive prisoners. However, I am confident the Prison Service can meet these challenges and the work being undertaken by the Committee will assist in our endeavour in this regard.

I am also confident that the successful implementation of our Strategic Plan 2012 – 2015 and our new Strategy 2016 – 2018 which is built of 4 key pillars namely - support for staff, support for prisoners, support for victims and the enhancement of our organisational capacity will see further improvements across the Service in the years to come.



**Verbal Presentation to the Joint Committee on  
Justice and Equality on the issue of Penal Reform by  
the Prison Officers Association, 22 March 2017**

## **Verbal Presentation to the Joint Committee on Justice and Equality on the issue of Penal Reform by the Prison Officers Association, 22 March 2017**

Firstly we want to thank the Joint Committee on Justice and Equality for this opportunity to make a verbal presentation on the issue of Penal Reform – as a follow up to our written presentation which we sent to you on Monday. We last made a presentation to this Committee on 16<sup>th</sup> November 2011.

The Prison Officers Association was established in 1947 and now represents up to 3,200 prison service grades based at prisons all around the country.

Our written submission includes the items on:

- 1) Reducing the amount of people who get custodial Sentences
- 2) Conditions of People in Prisons
- 3) Solitary Confinement
- 4) Post release Programmes
- 5) Mental Health
- 6) Drugs/Gangs
- 7) Violence

We will deal briefly with each of these issues here this morning and then will be very pleased to take questions from members of the committee.

As we have stated here in the past we want a prison system, which rehabilitates the prisoner and assists him or her in dealing with the past and engaging in responsible citizenship into the future, in an environment that is safe for both prison officers and prisoners alike. This rehabilitation does happen for many prisoners– but regrettably not for all and the onset of the gang culture in our prisons is certainly not helpful in this regard.

There are many reasons, why sufficient progress on rehabilitation is not being made, such as resources, lack of motivation by the authorities, and a major lack of interest by wider society. We are key stakeholders in this entire system and want to see a progressive Prison Service being built today that we can all be proud of in the future, a Prison Service, that has addressed

many of the challenges and difficulties that we currently face. In order to achieve this service, which we can all be proud of, many of the following areas must be addressed.

### **Reducing the Amount of People who get Custodial Sentences**

While the reduction of people being committed to prison is largely beyond the remit of the Prison Officers' Association; it is our members at the coal face that must deal with the consequences of system failures such as prison overcrowding when it hits the system. We have dealt with this difficulty numerous times in the past.

A snapshot of the Irish Prison Population will show that on the 3<sup>rd</sup> March 2017 a total of 3,815 prisoners were in custody with 253 on Temporary release and 543 on Trial/Remand. There is a total of 4,204 prisoners in the system, which also includes 87 Prisoners on life sentences residing in the community - and 28 prisoners residing in the Central Mental Hospital.

The construction of additional cell spaces in the Midlands and Wheatfield as well as refurbishments in Mountjoy and Limerick and the new prison in Cork and the re-designation of St Patricks have helped to alleviate the difficulty of overcrowding.

It should however be noted that the imminent closure of the Training Unit has reduced the prison estate capacity by 96 spaces, and this is a matter of immense concern to us. It is also noteworthy that there is a further disparity between what the late Inspector of Prisons viewed as bed capacity, and what the Prison Service figures show as bed capacity - to a quantum of 97. These numbers, if applied, represent a return to over 100% occupancy in the prison system and a consequent return to the competition for resources that blighted the early part of this century in the Irish Penal System.

### **Conditions of People in Prisons**

#### *Sentence management*

The Incentivised Regime Protocol was introduced to the IPS following proposals put forward by the POA at the National Pay talks for the Public Service Agreement 2010 – 2014 (Croke Park Agreement). The POA outlined to management the benefits of the introduction of an IRP to the Irish Prison Service. The POA sought an Incentivised Regime, which would form a part of the agreement.

The main benefits of the Incentivised Regime Protocol are: -

- Links prisoner's behavioural pattern to incentives.
- Prisoners who engage in Work /training and meaningful activities would be rewarded.
- Meaningful sentence management plan.
- Has the potential to reduce the number of prisoners on protection.
- Prioritises prisoners who wish to engage positively.
- Provides a safety net for prisoners who refuse to engage.
- Provides a consistent approach to prisoner rehabilitation across the estate.
- Demonstrates the advantages to positive engagement within the prison communities.
- Links individuals' behaviour in prison to accepted norms in society.
- Introduction of personal officers to explain the IRP to prisoners, to encourage the individual's involvement, to lend support and to aid their personal development.

It is the case in every other area of our society whether it be, the work place in the private sector or the work place in the public sector - that performance relates to reward whether that is by way of financial remuneration or promotion. If we are going to manage custodial sentences in a way which encourages and supports prisoners in their endeavours to live law abiding and purposeful lives as valued members of society; then we must bring some form of normality to that process and match performance and behaviour to reward.

We believe that there is an opportunity to transform areas of the 'Prison Estate' into Units of Therapy and Education, which has been successful in other jurisdictions in particular the Villabona Project in Spain. This model transforms prisons into educational spaces, using an alternative model that immerses prisoners in an educational environment that teaches skills - and more importantly values, such as empathy and kindness, which reduces violent behaviour and lowers the rates of re-offending. The Units of Therapy and Education have created micro-societies that enable inmates to learn to live as they would outside the prison walls.

We have met Mr Faustino Zapico Garcia from Spain who developed the Villabona Project on a number of occasions in conjunction with ASHOKA Ireland, as part of the exploratory work as to whether the stakeholders in the Irish Prison Service would consider the setting up of UTEs in the Irish Prison System. We viewed this as a very worthwhile project and arranged for Mr Garcia to come and address the CESI Justice Trades Council in Brussels.

Through our colleagues in the POA in the United Kingdom we arranged a visit to Grendon Prison in September 2014. We were accompanied by Mr Rory O' Carroll from Ashoka and by Mr Eoin Carroll, Social Policy and Communications Coordinator of the Jesuit Centre for Faith and Justice, Dublin. The Grendon regime is unique, as the therapeutic programme is the core work of the establishment.

The POA see merit in exploring further the concept of therapeutic programs and will continue to explore the possibility of having therapeutic programs introduced into the Irish Prison System.

There is still a huge over reliance in the Irish Prison System on closed prisons, despite the recommendations from the Joint Committee on Justice, Defence and Equality Report on Penal Reform, in March 2013. This Report was very clear in its recommendations that the proportion of open Prisons should be increased. On Thursday 16<sup>th</sup> March 2017 there were 3,793 people in custody out of this figure only 235 were in 'Open Centres'.

### **Solitary Confinement**

The Sourcebook on Solitary Confinement (2008) by Sharon Shalev identifies a number of common themes in relation to Solitary Confinement. Firstly it finds that Solitary Confinement is an extreme and potentially harmful measure and it should only be used in the most exceptional of cases. Periods in solitary confinement should be for the shortest time possible and prisoners should be held for that brief time in decent conditions and offered meaningful human contact and access to purposeful activities. The recommendations made include procedural safeguards, directions as to the placement of an individual in solitary confinement, the physical conditions and regime of the solitary confinement and the health of the individual.

The Prison Officers' Association supports the conclusions in Dr Shalev's Sourcebook. Solitary Confinement is not used in the Irish Prison system and we have been consulted on and issued with and the Irish Prison Service policy in relation to minimum out of cell time that incorporates rules 44 and 45 of the United Nations Standard Minimum Rules for the treatment of Prisoners ('The Mandela Rules').

Our support of the conclusions by Dr Shalev is practical and based on the creation of a safer environment for all.

### **Post Release Programmes**

The only real tool to prevent recidivism is the availability of positive activity for an individual, following discharge, assisting them in the avoidance of further criminality. If someone is going to work meaningfully every day, while also providing for their dependants, they are less likely to revert to their previous criminal activity. The provision of such support is not the responsibility of any single group or organisation, but the Prison Officers Association hold the view that we must find some form of a multidisciplinary approach, which supports the individual willing to make an effort.

The act of going to work every day and returning at the end of it to a normal setting is one that many of us take for granted. However, most of those in custody will not have come from that background and the normalisation of the act of going to work for many individuals is a learned function.

We believe, therefore, that the decision of the Minister to close the Training Unit, albeit temporarily, represents a retrograde step in Irish Penal Reform as it was a semi-open drug free prison. On a daily basis, prisoners were going to work in the community and returning at the end of their working day to an establishment separate to the Main Prison Complex in Mountjoy.

### **Mental Health**

In 2005 a study of male remand prisoners in Ireland showed that 7.6% of them exhibited indications of psychiatric illness. Many prisoners commit crimes while suffering from a psychiatric illness and end up incarcerated in the prison system where there are insufficient resources to address their illnesses. This in turn can make them volatile and unpredictable while in prison and exacerbate their symptoms.

Prisoners with mental health issues are more likely to assault staff particularly if their psychiatric illness is combined with a drug problem. These prisoners require additional supervision resources compared to prisoners who do not present with psychiatric illness.

The Prison Officers' Association believes that diverting people to the appropriate care facility in the community earlier in the judicial process is more likely to yield positive dividends



rather than having these people go through the trauma of incarceration - and thereafter being transferred to the appropriate facility.

We are without doubt approaching the treatment and rehabilitation of such prisoners in reverse order – and this needs to be reviewed.

### **Drugs/Gangs**

The misuse of drugs in Irish prisons continues to be the common theme running through many of the challenges we face. Compliant prisoners are often put under pressure to get their families to bring drugs into prisons. This can be done to pay off a drug debt or just simply because of their compliant profile, as they are not suspected by prison staff of being involved in trafficking. The punishment for refusal can be severe and thereafter the prisoner who refuses will probably end up on voluntary protection.

Very often those at the top of the drug trade in prisons are involved in drug trafficking as a display of their power within the facility. The much publicised gang war that has claimed lives also has its protagonists within the prison system.

At the other end of the spectrum there is always a market in prison for drugs and many prisoners commence their drug taking, leading to their consequent addiction, while in prison.

While the ability to achieve an entirely drug free estate is very difficult, the establishment of drug free areas within that estate is practical and has the support of all stakeholders.

### **Violence**

The issue of violence in prisons regrettably continues, with a number of very serious incidents involving assaults on prison staff. In a recent analysis conducted by the State Claims Agency the projected level of assaults by prisoners on prison staff for 2017 was estimated at 107. This is based on a level of assaults between 2011 and 2015 of 475 direct physical assaults. The nature of these assaults included concussion, lacerations, cuts, fractures burns and bites. Most of these injuries were to the head and face thereby leaving a permanent reminder to the injured officer of the incident.

The starkest statistic is that 77.9% of staff who responded had been physically assaulted by prisoners in the course of their operational duties.

The level of prisoner on prisoner assaults is much higher and represents only those assaults that are reported/ observed by prison staff. In 2013 the records show 604 prisoner on prisoner assaults.

In order to have an optimal work environment the challenges that these assaults manifest need to be addressed in a consistent manner.

The absence of adequate protection measures that are successfully used in other jurisdictions such as batons, incapacitating spray and body cameras is another factor that undermines staff confidence.

### **Staffing Issues**

2017 represents the first time since 2010 that there are recruit prison officers entering the Prison Service and this is to be welcomed. The Prison Service has currently a shortfall of nearly 230 staff with a number of staff having completed their minimum service requirement in order to be eligible to retire. This has left significant shortfalls within the prison staffing complement that will obviously have an impact on service delivery. We believe that any Penal Reform measures should be designed with Prison Staff at the centre of the delivery as part of a multidisciplinary group.

The Prison Officers' Association and the Irish Prison Service agreed an Annualised Hours System in 2005 that is predicated on the principle of the presence of constant recruitment panels being available to replace retiring Prison Officers. The moratorium has created a significant gap in the availability of recruit Prison Officers which in turn caused stagnation in the transfer of many staff to places that are closer to home, which in turn caused many additional stresses outside of the workplace as well as the many stresses attendant on being a Prison Officer.

The new recruit Prison Officers will receive, as part of their induction, many of the tools that they will require to function better in the prison environment. Some of the skills taught will be conflict coaching, resilience training and mindfulness as well as the ability to recognise signs of post-traumatic stress disorder. It is further planned to roll out these initiatives to all serving staff who will benefit greatly from this commitment to ongoing professional development.

In conclusion, I want to again thank the members of the Committee for this opportunity to make this presentation – and we will now deal with whatever questions you wish to put to us.

Thank You

Mr John Clinton, General Secretary, Prison Officers Association

Mr Jim Mitchell, Deputy General Secretary, Prison Officers Association

## **Opening Statement to the Joint Committee on Justice and Equality,**

**Wednesday 22<sup>nd</sup> March 2017**

**Eoin Carroll, Social Policy and Communications Co-ordinator, Jesuit Centre for Faith and Justice.**

Deputies and Senators I much welcome the opportunity to speak to you hear today and I am heartened that the committee has identified penal reform as a priority for 2017. Today I would like to focus on the need to reduce the amount of people in prison and to improve prison conditions; with an emphasis on young adults. As part of my submission to the Committee I included our Report ‘Developing Inside: Transforming Prison for Young Adults – A new approach to the unique needs of young adults (aged 18–24) in prison’.

### **1. Reducing the amount of people in prison**

We all have a tendency, a desire, to produce more and more reports, it shows action, outputs. However, we do not sufficiently measure the outcomes we have achieved from these. Ways to reduce the amount of people in prison are already known. Two reports produced by this Committee (which I have included in my submission) provide blue prints for radical penal reform they are the:

- Sub-Committee on Crime and Punishment, 'Report of the Sub-Committee on Crime and Punishment of the Joint Committee on Justice, Equality, Defence and Women's Rights on Alternatives to Fines and the Uses of Prison' (March 2000).
- Joint Committee on Justice, Defence and Equality 'Report on Penal Reform' (March 2013)

These were cross party, non-partisan publications. There were no minority reports, so everyone was in agreement. Why cannot pressure be put on the Minister to implement **all** their recommendations?

The 2000 Committee determined that “the balance of resources is skewed heavily towards prison. [...] Punishment in the community should be the norm.” (2000: 14). In 2000, when the report was written, we had 2,948 (Irish Prison Service, 2001), today we have 3,722 (Irish Prison Service, 2017).

Because of skewed resources we fail to address underline reasons why people commit crime, such as poverty, deprivation, social exclusion, educational failure, unemployment, homelessness, mental health, drug addiction.

Thirteen years later the Joint Committee on Justice, Defence and Equality, Report on Penal Reform (March 2013) was more explicit, recommending a “decarceration strategy”, calling for the prison population to be reduced by one-third. What this means is a target of around 2,900 by 2022, which will be some achievement; a further reduction of 800 on today’s figures. However, if we look at the aspirations in the 2000 report, this would still be too high. Worryingly, current figures suggest that progress in reducing prison numbers may have stalled, the number in prison Tuesday, 14<sup>th</sup> March was 3,784, higher than the average daily prison population in 2015.

The 2000 Committee highlighted that the size of the prison estate and by extension the number of people we have in prison, is “to a large extent a political calculation. ... that, despite popular belief to the contrary, imprisonment rates have a very small impact on crime rates and can be lowered significantly without exposing the public to serious risk.” (2000: 14).

I can refer you to several reports that attempt to forecast prison numbers, but all these reports fail to realise that it is ultimately a political decision and can be as large (USA) or as small as you like.

### Women in Prison

While the number of people in prison on any given day has reduced significant in recent years, the numbers of people being sent to prison continues to increase. This is particularly so for women. The Jesuit Centre for Justice (JCFJ) is concerned about the dramatic increase in the daily population of women in prison and numbers of women being sent to prison annually. Proposed solutions to reducing the number of women in prison – by providing a ‘step-down unit’ – reflects the failed institutionalised approaches of the past. Large hostel style accommodation post-release or part of a stepdown programme will not dramatically break the cycle of homelessness; a Housing First approach is required.

### **Recommendations:**

Place on record a renewed commitment to the recommendations of the two Justice Committee Reports.

Decide on what number of prison places we should have in Ireland.

Housing First approach as alternative to step-down facility for women exiting prison.

## **2. Conditions (Regime, physical conditions and how people are treated)**

The 2000 Justice Committee highlighted that “Many prisoners are held in conditions which are unnecessarily secure ... A “one size fits all philosophy is not appropriate. There is a need for different mixes of restriction and supervision.” That for the future, “prisons constructed should be flexible, arranged around self-contained units. Regimes should be programme-driven and open to the possibilities of individual change. Prisoners should be encouraged to take responsibility for their lives by preparing their own food, eating together and, as far as possible, looking after their own affairs.” (p. 19). This was also echoed in the 2013 report which called for a greater use of open prisons.

Unfortunately, for the most part our prison estate is a one-size model. Since 2000 we have increased prison sizes and continue and closed prisons still dominate with limited access to self-management. New builds, Midlands and Cork did not look to innovate in how we detain people; the Midlands accommodates 870, and both mimic prison design from the 19th Century. To put this in context prisons with a maximum capacity of 300 are seen as best practice. The 1985 Whitaker Committee Report recommended 100 as maximum capacity. Prisons seen as progressive, Shanganagh Castle and Fort Mitchel were closed in the early 2000s.

### Lock up times

How people experience prison conditions is heavily influenced by how much time a person spends in their room or cell. Lock-up times have not changed in over 30 years despite constant recommendations to. The overwhelming majority of people are in closed prisons where the regime is 16 to 17 hours per day in your cell. The 1985 Whitaker Report, as well as numerous others since, recommended a minimum of 12 hours out of cell time.

The principle of ‘normalisation’ has been spoken about for decades, including within Prison Service documentation. To make prison life more like that of life in the community. The current daily routine could not, in any way, be considered normal.

### **Recommendations:**

Reduce prison sizes and provide accommodation based on security need avoiding the ‘one size all model’.

At least 12 hours out of cell time.

### **3. Young Adults in Prison**

Imprisonment is inherently a destructive experience for everyone, but particularly for young people, no matter how good the facilities within the prison. A young person’s growth and development is linked to decision-making: young people grow by learning from both the positive and negative decisions which they make. However, in prison, you are not allowed to make any decisions, except the decision to keep your head down and cause no trouble.

Prison is an environment which strips people of their responsibilities, stunts opportunities for development, makes them feel unsafe and restricts their opportunities for integration into adult society.

As highlighted within our Report ‘Developing Inside: Transforming Prison for Young Adults’ emotionally and psychologically, they are more like adolescents than adults: the 18–24 age group is a period of “extended adolescence”. They are more likely to be impulsive, and less able to control aggression and risk-taking than adults. Their impulsiveness and reduced ability to control aggression makes them seem uncooperative and therefore more liable to punishment within the prison system. The prison system treats them as if they were fully mature adults when in fact we should be treating them as a distinct group and more like children.

Contained within our report are 10 recommendations to transform prison for young adults, I am going to touch upon a few of these now.

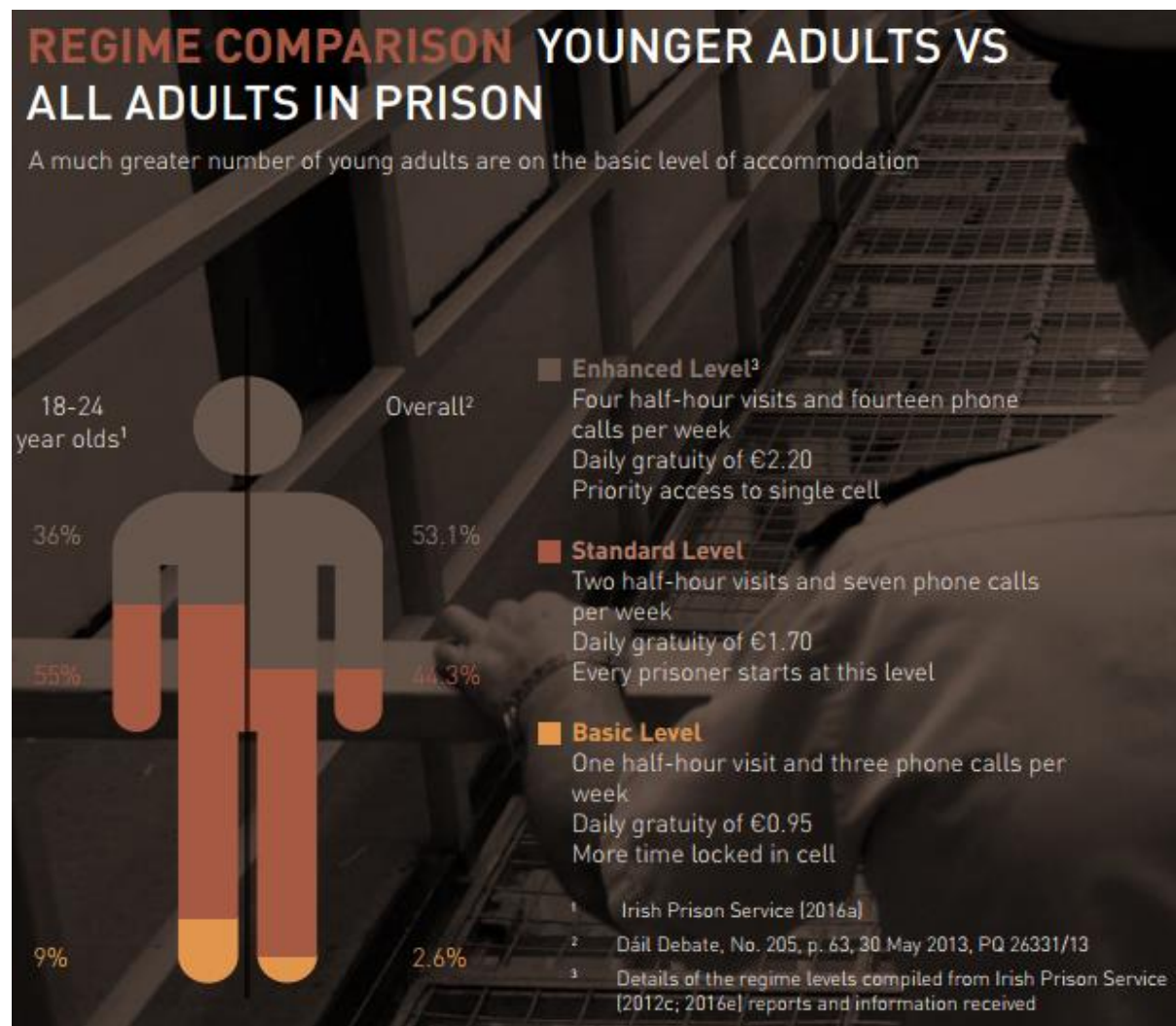
### **Recognise young adults in prison and within the criminal justice system as a distinct group by making them the responsibility of the Irish Youth Justice System.**

The Minister for Children and Youth Affairs should become a champion for young adults in prison. Currently, young adults are recognised within the DCYA strategy (2014) *Better Outcomes Brighter Futures* as being a distinct group, separate to the adult population. However, there is a demarcation when it comes to young adults in detention; they are ignored in this document. This needs to change.

**End the use of extended lock-up ('restricted regime'), abolish the 'basic' regime standard, and place all young adults on the 'enhanced' accommodation standard on entry to prison.**

It would appear that there is no mitigation for the characteristic behaviours of young adults, such as impulsivity and lack of self-control, as they are over-represented in solitary confinement and those on restricted regime. We welcome Deputy Daly's draft legislation on solitary confinement and would recommend that legislation prohibit the use of solitary confinement for young adults.

The infographic below highlights that young adults are more likely to be on 'basic level' than the general adult population. Basic level means less access to family visits and telephone calls, single cells and less out of cell time – all contrary to how we should respond to the needs of young adults.



## **Significantly reduce the number of young adults imprisoned and provide separate, young adult detention facilities with specially trained staff**

Politically, if we wished to be a European leader in having a low young adult prison population this would require a 50 per cent reduction in prison places. Much of this could be achieved through an expansion of the Garda Youth Diversion Programme. It would also, in effect, end the use of prison for young women.

Dedicated facilities, similar to those found in other jurisdictions, including Northern Ireland, should now be provided. Historically we provided specific facilities for young adults; with mixed results. St Patrick's Institution was condemned as far back as the Whittaker Committee but Shanganagh Castle and Fort Mitchel were both seen as having a positive impact on the lives of young adults.

Any future facility should be 'campus style' with varying levels of security and should be as 'open' as possible to provide maximum freedom. It must be emphasised that young adults are sent to prison *as* punishment and not *for* punishment.

The daily routine should provide meaningful access to education, work and training beyond equivalence to that available in the community. Third level institutions and further education colleges should be paired with each young adult detention centre. Young adults should spend a minimum of 14 hours unlocked from their rooms. Accommodation should be provided in 'houses' with single room occupancy, communal dining and access to food preparation areas.

### **References**

Committee of Inquiry into the Penal System (1985) *Report of the Committee of Inquiry into the Penal System*.

Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures* (available at: [https://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](https://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf)).

Irish Prison Service:

(2001) *Annual Report 1999 and 2000* (available at:

[http://www.drugsandalcohol.ie/5327/1/IPS\\_annual\\_report\\_1999\\_2000.pdf](http://www.drugsandalcohol.ie/5327/1/IPS_annual_report_1999_2000.pdf)).

(2011) *Annual Report 2010* (available at:

<http://www.irishprisons.ie/images/pdf/annualreport2010.pdf>).

(2014) *An Effective Response to Women Who Offend*, (available at:

[http://www.irishprisons.ie/images/pdf/women\\_strat\\_2014.pdf](http://www.irishprisons.ie/images/pdf/women_strat_2014.pdf))

(2017) *Prisoner Population on Tuesday 14<sup>th</sup> March 2017* (available at:

[http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/14-March-2017.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/14-March-2017.pdf))

Sub-Committee on Crime and Punishment (2000) *Report of the Sub-Committee on Crime and Punishment of the Joint Committee on Justice, Equality, Defence and Women's Rights on Alternatives to Fines and the Uses of Prison*, March 2000.

Jesuit Centre for Faith and Justice (2016) *Developing Inside: Transforming Prison for Young Adults – A new approach to the unique needs of young adults (aged 18–24) in prison*.

Joint Committee on Justice, Defence and Equality (2013) *Report on Penal Reform*, March 2013.





*Opening Statement to the Oireachtas Committee on Justice and Equality*

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Simon Communities in Ireland

*29<sup>th</sup> March 2017*

## 1. Introduction

- 1.1 Thank you and about the Simon Communities:** Thank you to the Committee and the Chairperson for inviting us here today: The Simon Communities are a network of communities, providing local responses to local needs and issues of homelessness all around the country based in Cork, Dublin, Dundalk, Galway, the Midlands, the Mid West, the North West and the South East. As the Committee members will be aware, the complexity of homelessness touches every facet of Irish life with the greatest impact being felt by those most vulnerable in society. We welcome the opportunity to speak to you today to illustrate the further complexities that exist between homelessness and the State penal and prison systems.
- 1.2 Prison and homelessness – the links:** There are clear links between homelessness, problematic drug use and the penal system with particularly vulnerable people cycling between rough sleeping, emergency homeless services and drugs services and the prison system. Data on the number of people who have entered prison from homelessness or indeed exited into homelessness is not published or readily available. A 2005 survey of 241 prisoners found that 54% of participants had at least one previous experience of homelessness prior to imprisonment and 25% of all prisoners were homeless on committal to prison. Prisoners who were homeless on committal were more likely to be long term homeless with 88% having experienced homelessness for six months or more. Fifty eight percent were homeless for more than three years.<sup>1</sup> Many people who are in prison following a period of homelessness are often there for crimes such as vagrancy, theft and drug offences.<sup>2</sup> Thirty-five percent of prisoners experiencing homelessness on committal were diagnosed as having a mental health disorder and two thirds had been hospitalised in a psychiatric institution.<sup>3</sup>
- 1.3 Exiting prison into homelessness:** The chronic lack of housing in Ireland at this time means that people are still being released from prison into emergency accommodation. Having no permanent home makes reintegration into society very difficult. Having permanent and stable accommodation reduces the risk of re-offending by 20%.<sup>4</sup> In Ireland just under 30% of former prisoners re-offend within one year and 49% re-offend within 4 years.<sup>5</sup> We welcome the commitment contained in the *Rebuilding Ireland: Action Plan for Housing and Homelessness (Action Plan)* to enhance inter-agency arrangements to ensure that accommodation, welfare and health supports for prisoners are in place prior to their release, reducing the likelihood of released prisoners presenting as homeless. According to the *Rebuilding Ireland's Second Quarterly Progress Report* an inter-agency protocol developed by the Irish Prison Service, in consultation with the Health Service Executive (HSE), the Department of Social Protection (DSP) and the County and City Management Association (CCMA), is now in place.<sup>6</sup> We await feedback on how well this is operating in practice.

<sup>1</sup> Seymour, M. and Costello, L. (2005) A Study of the Number, Profile and Progression Routes of Homeless Persons Before the Court and in Custody, Dublin: Dublin Institute of Technology

<sup>2</sup> Hickey, C. Crime and Homelessness (2002) (Dublin: Focus Ireland and PACE).

<sup>3</sup> Seymour, M. and Costello, L. (2005) A Study of the Number, Profile and Progression Routes of Homeless Persons Before the Court and in Custody, Dublin: Dublin Institute of Technology

<sup>4</sup> Social Exclusion Unit (SEU) (2002) Reducing Re-offending by Ex-Prisoners. Summary of the Social Exclusion Report. London: HMSO.

<sup>5</sup> O'Donnell, I., Baumer, E., Hughes, N. 'Recidivism in the Republic of Ireland' Criminology and Criminal Justice, (2008) 8

<sup>6</sup> Action Plan for Housing and Homelessness, Second Quarterly Progress Report, P.23, [file:///C:/Users/eamonn/Downloads/Second\\_Quarterly\\_Progress\\_Report\\_-RBI-Final-1%20\(4\).pdf](file:///C:/Users/eamonn/Downloads/Second_Quarterly_Progress_Report_-RBI-Final-1%20(4).pdf).

## 2. Data collection and availability

**2.1 Need for greater data collection:** There is a lack of official data collected on the number of prisoners who are homeless, at risk of homelessness or becoming homeless upon release. Often the extent of homelessness within the prison population may be hidden as prisoners may be reluctant to admit to being homeless due to the stigma attached to this status and the negative impact it may have on applications for early or temporary release. It is important to note that while homelessness is often thought of as rough sleeping or emergency accommodation, it also includes those who often have no other option but staying with family or friends, often times in overcrowded or unsuitable accommodation because they have no alternative. This phenomenon is known as hidden homelessness.

**2.2 Disaggregated data collection:** An agreed dataset should be collected by the Irish Prison Service in collaboration with the Department of Housing, Planning, Community and Local Government's Pathway Accommodation and Support System (PASS) to collect and produce disaggregated data to provide a full understanding of the linkages between homelessness and the Irish penal and prison system. This exercise is fundamental to gain an understanding of the number of people entering and exiting the prison system from and to a situation of homelessness. Full disaggregated data collection will provide further understanding of the root causes that lead to a person's committal from a situation of homelessness in addition to providing greater information for addressing accommodation and support needs.

## 3. Problematic drug and alcohol use

**3.1 Problematic drug and alcohol use:** Problematic drug and alcohol use is one of the issues most strongly linked to people's experiences of homelessness and imprisonment. Of the 241 participants of the 2005 study mentioned previously over 90% on committal were problem drug users prior to their time in prison. Over three-quarters of those homeless on committal consumed alcohol prior to imprisonment and almost two-thirds of these drinkers said alcohol caused problems in their lives. One-third of those homeless on committal expected that alcohol would be problematic for them on release in comparison to 15% of those who had never experienced homelessness.<sup>7</sup> Prisoners engaging with the study identified the need for follow-up drug and alcohol treatment supports on release from prison expressing concern that a return to homelessness would inevitably lead to a return to problematic use.<sup>8</sup>

**3.2 Drug and alcohol treatment in prison:** Prisoners must be supported to engage with drug and alcohol treatment programmes on entry to prison. A wide range of treatment and intervention options are available within the Irish prison system carried out by Community Based Organisations. They are not however universally available onsite in each individual prison and differ in terms of treatment approach and philosophy.<sup>9</sup> The drug free programme in Mountjoy Prison currently offers 9 places on an 8 week programme to prisoners seeking to address their problematic drug use. This programme should be expanded and where possible learnings should be disseminated to all prisons nationwide where elements of the approach could be replicated.<sup>10</sup>

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<sup>7</sup> Seymour, M. and Costello, L. (2005) A Study of the Number, Profile and Progression Routes of Homeless Persons Before the Court and in Custody, Dublin: Dublin Institute of Technology

<sup>8</sup> Ibid, P. 79.

<sup>9</sup> Review of Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community, p.62, [http://www.justice.ie/en/JELR/PS\\_IPS\\_Probation\\_Review\\_of\\_treatment\\_for\\_offenders.pdf/Files/PS\\_IPS\\_Probation\\_Review\\_of\\_treatment\\_for\\_offenders.pdf](http://www.justice.ie/en/JELR/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf/Files/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf).

<sup>10</sup> Ibid, P. 70.

**3.3 Lack of post release continuity of support:** People who are homeless who have participated in recovery programmes in prison have a significant lack of continuity of support post release. With very few places available for treatment in the community setting, those who wish to continue their treatment are often left on waiting lists. They often end up in emergency hostel accommodation or rough sleeping, straight back into a chaotic and unpredictable lifestyle with people who are currently active drug users or problem drinkers and this leaves them vulnerable to relapse. For those that are discharged from prison into treatment, stable accommodation is often only available to them for the duration of the treatment.

**3.4 The need for a continuum of care:** Continuum of care is essential for all prisoners who have completed drug and alcohol treatment and are being released. People must have stable and permanent accommodation with supports in place. Discharge protocols must be published, implemented and resourced. We welcome the commitment contained in the *Action Plan* that through the new National Drugs Strategy, drug rehabilitation pathways will be linked to sustainable supported tenancy arrangements. It is essential that such approaches are underpinned by a Housing First approach to addressing homelessness and made available to all persons on release from prison that have indicated they will become or are at risk of homelessness.

**3.5 Prison diversion programmes:** Greater emphasis must be placed on redirecting problematic drug and alcohol users into suitable treatment, rehabilitation and detoxification services prior to entering or as a substitute to entering prison. The Drug Treatment Court (DTC) Programme currently available to problematic drug users in certain Dublin areas should be expanded nationwide and should facilitate those with problematic alcohol use.<sup>11</sup> The programme is aimed at people struggling with drug use who have pleaded guilty or have been convicted of non-violent crimes in the District Court. Once accepted on the programme, a person's charges can be put on hold and suspended or struck out on successful completion of the course. Those engaging with the programme are assisted by a team of professionals including a DTC liaison nurse, a probation officer, an education coordinator, a DTC coordinator, Gardaí working with the DTC and other professionals as appropriate.

**3.6 Harm Reduction:** Harm Reduction must be at the heart of our drug policies and practice. Harm reduction is a set of policies, programmes and practices that aim to reduce the harms associated with the use of psychoactive drugs in people unable or unwilling to stop. The defining features are the focus on the prevention of harm, rather than on the prevention of drug use itself, and the focus on people who continue to use drugs.<sup>12</sup> The following harm reduction strategies could significantly reduce drug use in the homeless population, redirect people to available services and treatments and reduce the numbers of people entering the prison system.

**3.6.1 Medically Supervised Injecting Centres (MSIC's):** MSIC's are a core harm reduction service providing a safe and hygienic place for injecting drug users while also providing a pathway into higher threshold treatment services such as medical and social interventions. Such facilities should allow for the consumption of all 'carry-in' substances on site, and should promote the use of foil for smoking substances as a harm reduction measure rather than focus entirely on injection drug use. We welcome the recent cabinet approval to introduce legislation to introduce MSIC's for problematic drug users and look forward to the urgent implementation of same.

<sup>11</sup> <http://www.courts.ie/offices.nsf/lookuppagelink/5C3FCB8E070ADAA280256E7B003B1D9E>.

<sup>12</sup> Harm Reduction International, 'What is Harm reduction – A Position Statement from Harm Reduction International', <https://www.hri.global/what-is-harm-reduction>.

**3.6.2 Heroin Prescription:** The establishment of MSIC's is an opportune time to consider adopting the Swiss model of administering heroin for problematic drug users. Under this model users must meet a strict six point criteria before receiving the necessary prescription. Heroin administered under this scheme can only be obtained and consumed on site at an appropriate clinic. Evaluations of this model have found:

- Reduction in criminal offending: 60% drop in felony crimes by patients (80% drop after one year in the program).
- Reduction in drug dealing: 82% drop in patients selling heroin.
- Studies from the Netherlands, Germany, Spain and the UK confirm the positive results from Switzerland.
- In Switzerland it is believed that the programme saves money when costs for criminal proceedings are factored in. (HAT Annual Report 2007).<sup>13</sup>

**3.6.3 Decriminalisation:** At a time when decriminalisation is being explored in Ireland there is a unique opportunity to shift policing focus from individual users and intensify efforts on suppliers. People caught in the cycle of problematic drug and/or alcohol use are continually being fined for carrying small substance amounts for personal use and for begging. This only goes to occupy court and police time, increasing the need for subsidised legal aid, pressure on prison systems and ultimately creates undue pressures on already burdened individuals.

For more details see our *Submission to the Review of the National Drug Strategy* and our Submission to the Oireachtas Committee on the Future of Healthcare.<sup>14,15</sup>

## 4. Female homelessness in the Irish prison system

**4.1 Women's pathways into homelessness:** Women's entry into homelessness can occur for many reasons, at any time of life, alone or within a family. Recurring themes identified in Simon Communities research '*Women, Homelessness and Service Provision*' include childhood trauma; exposure to domestic violence and child sex abuse; early childhood experiences of homelessness; growing up in adversity and in family environments characterised by tension and/or conflict and where economic hardship was an everyday reality; a lack of intervention in their lives as children which may have served to protect them from future trauma and harm; spending short or prolonged periods of their childhood in State care. The primary barrier to housing stability for the participants in the study was the lack of affordable housing options and the absence of continuing support available on exiting homelessness services.<sup>16</sup>

**4.2 Female homeless prison population:** A significant proportion of those who are homeless in prison are women. Thirty-three percent of women prisoners surveyed in a 2005 study were homeless on committal to prison. Two thirds of women who were homeless on committal said that they had previously been diagnosed as having a mental health illness.<sup>17</sup> Most women are committed to prison for non-violent offences, such as non-payment of fines.<sup>18</sup> Two distinct categories of the female homeless prison population emerged from the 2005 study:

<sup>13</sup> <http://www.globaldrugpolicy.org/Issues/Vol%205%20Issue%204/Switzerland%20the%204%20pillar%20drug%20policy%20in%20Switzerland%20Koeppel-SR%20edit.pdf>.

<sup>14</sup> Simon Communities in Ireland, Submission to Inform the National Drugs Strategy, <http://www.simon.ie/Portals/1/Simon%20Communities%20in%20Ireland%20Submission%20to%20inform%20the%20National%20Drug%20Strategy.pdf>.

<sup>15</sup> Simon Communities in Ireland, Submission to the Oireachtas Committee on the Future of Healthcare, <http://www.simon.ie/Portals/1/Simon%20Communities%20Submission%20to%20the%20Oireachtas%20Committee%20on%20the%20Future%20of%20Healthcare%20Final%20PDF.pdf>.

<sup>16</sup> Mayock et al, 'Women, Homelessness and Service Provision', 2015, Simon Communities in Ireland, [http://www.simon.ie/Women\\_Homelessness\\_and\\_Service\\_Provision/#/1/](http://www.simon.ie/Women_Homelessness_and_Service_Provision/#/1/).

<sup>17</sup> Seymour, M. and Costello, L. (2005) A Study of the Number, Profile and Progression Routes of Homeless Persons Before the Court and in Custody, Dublin: Dublin Institute of Technology

<sup>18</sup> Irish Penal Reform Trust. (2013) Women in the Criminal Justice System: Towards a Non-Custodial Approach.

- Older women with alcohol and drug problems who are repetitive petty offenders sentenced for such crimes as breach of the peace, loitering and shop lifting.
- Younger, female drug users.

**4.3 Lack of gender specific prison services:** There are no open prisons for women and there is a lack of gender specific alternatives to custody. There are currently only two female prisons in the State, the Dóchas Centre in Dublin and the female wing in Limerick Prison. Accommodation post release appears to be particularly problematic for female prisoners with a 2014 study showing that women were over four times more likely to have difficulty securing accommodation on release leading to a higher possibility of re-entering the prison system.<sup>19</sup> This may be due to Women's increased caring duties to children and other family members, making suitable accommodation more difficult to find in addition to the relative stigma attached to time spent in the prison system. Implementation of the commitment in the Strategic Review of Penal Policy (2014) is required to explore options for an open prison for women and gender specific alternatives to custody.

**4.4 Parenting in homelessness and in a prison setting:** Parenting in the context of homelessness is both challenging and distressing. This is increasingly the case for women in prison settings who on release will experience significant difficulty in finding a sustainable tenancy in which to create a more stable family life. Greater resources are required to provide parenting units in both female prisons. Currently this is only available in the Dóchas Centre in Dublin. Mothers must be supported in fostering and maintaining positive relationships with their children by increasing the time allowed for visits which currently stands at only 30 minutes in the Dóchas Centre. Immediate implementation of the Dóchas Visiting Committee recommendation for a subsidy scheme to financially support family visits to prison is required.

See more in our *Submission to inform the National Women's Strategy 2017-2020*.<sup>20</sup>

## 5. Access to housing

**5.1 Recidivism and access to housing:** A study of the two year period following release from prison showed that less than a third who had homes to go to were reconvicted compared to 69% of those who had no home.<sup>21</sup> In the 2005 research, 44% of prisoners did not think they would be returning to the accommodation that they were in prior to incarceration. Of those 39% had never been homeless, 38% were previously homeless and 60% were homeless on committal. A 2016 study of former prisoners found that 57% of those interviewed were currently homeless.<sup>22</sup> People are often discharged into emergency accommodation or can end up rough sleeping. Without permanent and stable accommodation it is extremely difficult to plan for the future and to make the kind of choices that enable someone to move away from aspects of their life before prison. Prisoners who are homeless tend to be long term homeless with extremely complex needs, often combining problematic drug and/or alcohol use with mental health problems (dual diagnosis).

<sup>19</sup> Kelly, J. & J. Brogue (2014) Gender Differences in Criminogenic Needs among Irish Offenders, Irish Probation Journal. [http://www.probation.ie/EN/PB/0/D65A3976215BDF6E8025803B0030D4B0/\\$File/IPJ2014pages87to102.pdf](http://www.probation.ie/EN/PB/0/D65A3976215BDF6E8025803B0030D4B0/$File/IPJ2014pages87to102.pdf).

<sup>20</sup> Simon Communities in Ireland, Submission to Inform the National Women's Strategy 2017-2020, <http://www.simon.ie/Portals/1/Simon%20Communities%20in%20Ireland%20Submission%20to%20inform%20the%20National%20Women's%20Strategy%202017-2020%20FINAL.pdf>.

<sup>21</sup> Ramsay, M. (1986) A Review of Research into Homelessness and Offending. Home Office Research Bulletin, No. 20. London: Home Office.

<sup>22</sup> Brand, S. (2016) Lived Experiences of Reintegration: A Study of How Former Prisoners Experienced Reintegration in a Local Context. Dublin Institute of Technology.



**5.2 Housing and reintegration:** On a practical level, living in emergency accommodation means that people are limited in applying for employment. Social welfare payments are stopped for the duration of a prison sentence, meaning that people can have difficulties accessing private rental accommodation because they have no money for a deposit or even to pay for hostel service charges when they are released from prison settings. Simon Communities have encountered people experiencing difficulties in finding a landlord who will accept tenants with a conviction. On conviction and entry into the prison system people can lose their entitlement to social housing during their prison sentence. This may also include losing your position on the social housing waiting list and having to undergo a housing needs assessment again upon release.

**5.3 Pre-release housing needs assessment:** Pre-release housing needs assessments must be carried out well in advance of prisoners exiting prison. Challenges are experienced by those with no address availing of temporary release and when premature or unplanned release occurs. The resourcing of prison resettlement officers is welcome and must be continued to ensure nobody is released into a situation of homelessness. Furthermore, personalised discharge plans should be put in place for all people exiting prison services. This should include a pre-release assessment of all necessary health and social welfare supports to ensure access to basic income and medical treatments and medication on release. Innovative pilot programmes in Cork prison should be rolled out nationwide as a matter of priority. This includes the establishment of Homeless Officers within the prison funded under the National Drug Strategy and the development of a medical card pilot project which ensures prisoners have access to all necessary medication on release.

**5.4 Reintegration through Housing First:** Stable, permanent and supported accommodation is needed to prevent people entering or re-entering homelessness on release from prison. This model is known as Housing First and is internationally considered to represent best practice in housing people with complex needs. In 2013, the Government committed through the Homelessness Policy Statement to adopt a ‘housing led’<sup>23</sup> approach to tackling the homelessness crisis. This was reinforced by more recent commitments in the *Action Plan* to triple Housing First tenancies in the Dublin Region during 2017. This urgently needs to be implemented and expanded nationwide. Housing First provides housing without preconditions and offers a range of supports focussed on harm minimisation and supporting recovery and empowerment. The success of such initiatives depends not just on housing but also, crucially, on drug and/or alcohol, mental health, education and community integration services being available to tenants who were formerly homeless.

**5.5 Affordable Housing Supply:** The primary cause of homelessness relate to poverty, inequality and a lack of affordable housing often coupled with systems failures and individual circumstances. New models of social and affordable housing are badly needed to meet the needs of low and middle income households. There must be a move away from continued over reliance on the private housing sector for the delivery of affordable housing for those on low incomes, and social housing for those with long term housing needs. With access to affordable housing and the right supports people can move out of homelessness quickly. Affordable housing models such as ‘cost rental’ provides a financially sustainable means of providing affordable housing to meet the needs of low income households that struggle in the private rented sector but who may not be eligible for social housing or, even if they are eligible, are unlikely to be allocated it, given its scarcity. Combined with increased Local Authority social housing construction, affordable housing models can have a significant impact on the number of people exiting homelessness and stemming the tide of those entering a situation of homelessness.

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<sup>23</sup> The terms ‘housing led’ and ‘housing first’ are often used interchangeably.

For more information please see our *Submission to Inform the Review of the Tenant (Incremental) Purchase Scheme* and our recent research paper *Empty Homes: Unlocking Solutions to the Housing and Homeless Crisis*.<sup>2425</sup>

## 6. Conclusion

Prisoners who are homeless or at risk of homelessness are some of the most marginalised of an already marginalised group and as a society, we are failing them time and time again. The prison experience does not currently support prisoners who are homeless to break the cycle of rough sleeping, emergency homeless services and drugs services and the prison system to become reintegrated into their communities. Planning is particularly important for prisoners who are homeless or at risk of homelessness and should begin at an early stage of their imprisonment and continue right through their custody and post release.

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<sup>24</sup> Simon Communities in Ireland, *Submission to Inform the Review of the Tenant (Incremental) Purchase Scheme*, <http://www.simon.ie/Portals/1/Simon%20Communities%20in%20Ireland%20Submission%20to%20inform%20the%20Review%20of%20the%20Tenant%20Incremental%20Purchase%20Scheme%20FINAL.pdf>.

<sup>25</sup> Simon Communities in Ireland, *Empty Homes: Unlocking Solutions to the Housing and Homelessness Crisis*, <http://www.simon.ie/Portals/1/FINAL%20Empty%20Homes%20-%20Unlocking%20solutions%20to%20the%20housing%20and%20homeless%20crisis%2001022017.pdf>.



**About Simon Communities**

The Simon Communities in Ireland are a network of eight regionally based independent Simon Communities based in Cork, Dublin, Dundalk, Galway, the Midlands, the Mid West, the North West and the South East that share common values and ethos in tackling all forms of homelessness throughout Ireland, supported by a National Office. The Simon Communities have been providing services in Ireland for over 40 years. The Simon Communities deliver support and service to over 8, 300 individuals and families throughout Ireland who experience – or are at risk of – homelessness every year.

Whatever the issue, for as long as we are needed, Simon's door is always open. For more information please visit [www.simon.ie](http://www.simon.ie)

**Services include:**

- Housing provision, tenancy sustainment & settlement services, housing advice & information services helping people to make the move out of homelessness & working with households at risk;
- Specialist health & treatment services addressing some of the issues which may have contributed to homeless occurring or may be a consequence;
- Emergency accommodation & support providing people with a place of welcome, warmth & safety;
- Soup runs & rough sleeper teams who are often the first point of contact for people sleeping rough.

**For further information please contact:**

Niamh Randall

Head of Policy and Communications

E: [niamh@simoncommunity.com](mailto:niamh@simoncommunity.com)

Ph: 085 8588 384

**Appendix 1: Housing and homelessness crisis in umbers**

- During one week in February 2017 (latest available figures), there were 7,421 men, women and children in emergency accommodation across the country. This included 3,219 adults with no dependents in their care and 1,239 families made up of 1,656 adults and 2,546 children. (DHPCLG, 2017).
- On the night of 22<sup>nd</sup> November 2016, there were 142 people without a place to sleep in Dublin City. This included 65 people sleeping rough and 77 people sheltering at the Nite Café. Unfortunately, Dublin is the only area where an official rough sleeper count takes place, making it difficult to get a countrywide rough sleeping picture. (DRHE 2016).
- Figures from Cork Simon Community indicate that rough sleeping in Cork City increased nine-fold in four years (2011-2015) from 38 people sleeping rough in 2011 to 345 people sleeping rough in 2015.
- Homelessness and housing insecurity are more acute and visible in our cities but the Simon Communities are working at capacity countrywide – in urban and rural areas.
- There are 91,600 households on the social housing waiting list. Two-thirds of households on the list were living in the private rented sector and one fifth living with parents, relatives or friends. 5,159 households (5.6%) had at least one member considered to be homeless, a proportion which has doubled since 2013 (Housing Agency, 2016).
- Social housing commitments will take time to begin to deliver housing. This is far too long for the people we work with and those at risk of homelessness. Social housing output for 2015, reached 1,030 new builds and acquisitions, with new builds accounting for 75 units. (DECLG, 2016). This is below the Social Housing Strategy target of 18,000 new units for the period 2015-2017.
- The average rent nationwide has risen by over one third since bottoming out in 2011 and has surpassed its 2008 peak. The average national rent is now €1,111. This is a 12-month increase of 13.5%, the highest rate of annual inflation on record (Daft.ie Rental Report Q3 2016).
- *Locked Out of the Market V* (October 2016 Simon Communities) found that 80% of rental properties are beyond the reach for those in receipt of state housing support.
- Nearly 80,000 mortgage accounts are in arrears. 43% of all mortgage arrears are in arrears of over 720 days (Central Bank of Ireland, 2016).
- At the end of September 2016, 21,435 or 16% of buy-to-let mortgages, were in arrears of more than 90 days. (Central Bank of Ireland, 2016).
- 750,000 people are living in poverty in Ireland (*Poverty, Deprivation and Inequality* (July 2016) Social Justice Ireland Policy Briefing).
- Since 2007 the deprivation rate, which looks at the number of people forced to go without at least 2 of 11 basic necessities examined, in Ireland has doubled - 29% of the population or 1.3 million people are experiencing deprivation (Social Justice Ireland *ibid*).
- There were 198,358 vacant houses in April 2016. The county with the highest rate of vacancy is Leitrim at 30.5% of all housing stock vacant (Central Statistics Office, 2016)

## Appendix 5 - Submissions

Jane Mulcahy, University College Cork

### ***Sentence planning, prisoner progression, rehabilitation and resettlement in Ireland***

Jane Mulcahy<sup>1</sup>

I thank the Oireachtas Committee on Justice and Equality for the opportunity to make a written submission, which I trust will be a helpful contribution to its important work on penal reform. I will focus on:

- the recent commitment to interagency working of the Irish Prison Service (IPS) and Probation Service, e.g. *Joint Irish Prison Service and Probation Service Strategic Plan 2015-2017* and the Joint Agency Response to Crime (J-ARC)
- the renewed shift towards rehabilitation, sentence planning and resettlement due to reduced numbers and different management ethos and priorities.

#### ***Introduction: A right to rehabilitation and a safe, supported transition to the community***

The general principle of imprisonment as a last resort should be enshrined in legislation without delay.<sup>2</sup> Moreover, express legal recognition that prisoners have a right to rehabilitation and reintegration would create the legal backdrop for a shift in the focus of punishment. John Costello, Chairman of the Parole Board strongly believes that providing prisoners with access to rehabilitative services and reintegration should be government policy. Indeed, Mr Costello informed me during an interview for my PhD<sup>3</sup> that he conveyed this view in writing to the Minister for Justice and Equality and her officials.

We need to give rehabilitation and reintegration some teeth. If we want a safer society with less crime, non-custodial penalties should be the default sanctions for all but the most dangerous, violent offenders or those who otherwise cause serious harm. People serving long sentences face greater rupture to their familial and other relationships, than short sentence prisoners. Yet, arguably, more can be done with long term prisoners as regards constructive sentence planning and rehabilitation in prison.

Serious offenders sent to prison by the courts should have a minimum of 12 hours a day out of cell, with access to structured activities, including employment opportunities, that give them skills and work habits that they can draw on in the free world upon release. Once they have acquired skills in

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<sup>1</sup> PhD candidate in Law at UCC, funded by the Irish Research Council and the Probation Service under the employment based PhD scheme in conjunction with the Cork Alliance Centre, a desistance project. **The views expressed in this submission are the author's own and in no way reflect those of the IRC, the Probation Service or the Cork Alliance Centre.**

<sup>2</sup> See IPRT *White Paper on Crime IPRT Response to Discussion Document 3 Organised and White Collar Crime* (2011 p. 15 and *IPRT Position Paper 5 Penal Policy with Imprisonment as a Last Resort* (2009). See also J. Mulcahy, Submission to the Committee on Justice and Equality on *The General Scheme of the Bail Bill 2015*: an analysis of key provisions (2015). Mulcahy argued that in the pre-trial context a provision should be inserted into the proposed legislation stating that imprisonment should be a last resort pending trial.

<sup>3</sup> My thesis topic is "Connected Corrections and Corrected Connections: Post-release supervision of Long Sentence Male Prisoners".

prison, they must be afforded opportunities to expand them in legitimate mainstream employment, for a living wage.

In *Imprisoning Communities*, Todd Clear states that there are 3 key aspects of community justice.

1. An emphasis on restoration. “Victims’ losses are restored, those who are convicted of crime likewise may expect to be able to be restored if they take appropriate action, and the community peace that was fractured by the crime is, for want of a better term, restored.”
2. An emphasis on maintaining those who are convicted of crimes within their communities. This enables both them and their loved ones to keep their community ties, and it eases post-penalty restoration to community life.
3. Purely punitive sanctions like solitary confinement are deemphasized in favour of ameliorative sanctions such as community service. For these reasons community justice, in whatever form it takes, is an idea that proposes minimal use of imprisonment.<sup>4</sup>

Ireland’s prison population increased by 400% between 1970 and 2011.<sup>5</sup> Between 1997 and 2011 Ireland’s prison population doubled. In its 1997 Fianna Fail election manifesto the party declared a war on crime, pledging to “adopt a zero tolerance policy on all crime” and to create 2,000 more prison places. On 22 July 2011, a total of **5,479** prisoners were in the prison system, with a further 612 on Temporary Release (TR). On 23 February 2017, there were 4,168 prisoners in the system, including 263 on TR.<sup>6</sup> In 2015, 89.6% of all committals under sentence were for less than 12 months,<sup>7</sup> down from 90.2% the previous year.<sup>8</sup>

In 1970, the daily average prison population was 749.<sup>9</sup> Writing in 1985, the Committee of Inquiry into the Penal System, better known as the Whitaker Committee stated:

Casual large-scale releases have been resorted to in order to relieve congestion. The pressure on accommodation in prisons and places of detention arises not only from the numbers committed but from the length of time effectively spent in prison. The Committee is in favour of custodial sentences being reserved for the most serious offences (with the corollary that very short sentences should be virtually eliminated) but is opposed to any general lengthening of sentences or to haphazard, as distinct from well-judged, early releases. The Committee prefers a system in which sentences imposed would in fact be served subject to a higher standard of remission (1/3 as against the present ¼) for good

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<sup>4</sup> T. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York, OUP: 2009), at pp. 194-5.

<sup>5</sup> See <http://www.iprt.ie/prison-facts-2>

<sup>6</sup> See [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/23-February-2017.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/23-February-2017.pdf)

<sup>7</sup> *Irish Prison Service Annual Report 2015*, p. 23.

<sup>8</sup> *Irish Prison Service Annual Report 2014*, p. 19.

<sup>9</sup> Committee of Inquiry into the Penal System, *Report of the Committee of Inquiry into the Penal System*, (Stationery Office, Dublin: 1985), para 14.15. See O’Sullivan and O’Donnell *Coercive confinement in Ireland Patients, prisoners and penitents*, (Manchester University Press 2012). The authors explain that the historical low levels of imprisonment in Ireland must be understood as existing in a landscape of other non-penal institutions such as mental hospitals, Mother and Baby Homes and industrial schools, where “the difficult, the deviant, the disengaged and disturbed” (p. 5) – often women, children and inconvenient siblings - were deposited by their families. They suggest the purpose of this coercive confinement was frequently the protection of the family farm.

conduct, to a system of regular judicial review of all sentences of 5 years or more, and to provision for supervised release at any stage if recommended by review committees representative of all the services operating in prison.”<sup>10</sup>

As regards the community component in law and order, the Whitaker Committee suggested that crime could be prevented if the public committed itself to “greater watchfulness and a more caring attitude”. The Committee also:

- acknowledged the role played by the Probation and Welfare Service – as it then was – in working with local organisations such as PACE in addressing the housing needs of offenders (paras 11.10 and 11.11)
- called for enhanced co-operation of the community in crime prevention (paras. 3.18-3.20) and
- emphasised that “the co-operation of the community in developing effective punitive alternatives to imprisonment will be essential if the inherent dynamics of present trends are not to create an intolerable situation” (para. 3.21)

On 5 April 2011, on foot of a commitment contained in the Government Programme for National Recovery about the planned super prison – the Thornton Hall Prison Project - on a green field site in Dublin, Minister Alan Shatter set up the Thornton Hall Review Group to review the plans, and to make recommendations on the twin problems of overcrowding and poor physical conditions.<sup>11</sup> In July 2011 the Review Group recommended that **“the Minister for Justice and Equality should introduce an incentivized scheme for earned temporary release coupled with a requirement to do community service under supervision.”**<sup>12</sup> According to the Review Group, this scheme could “be an integral element of integrated sentence management and the, soon to be introduced, incentivised regime scheme” and would contribute significantly to the principles of normalisation, progression and reintegration”.<sup>13</sup> I will return to the earned early release initiative born out of this recommendation, namely Community Return, later in the submission.

When Michael Donnellan took over as the Director General of the Irish Prison Service at the end of 2011 he and his senior management team set about a commendable and wide-ranging programme of prison reform, in which the human rights of prisoners came to be recognised as a central requirement of a humane administration.<sup>14</sup> The Irish Prison Service (IPS) has safely and responsibly reduced prison numbers by 10% since its peak in 2011<sup>15</sup> and is now better placed to prioritise rehabilitation, sentence planning and resettlement of prisoners. The recently published *Strategic*

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<sup>10</sup> Committee of Inquiry into the Penal System, *Report of the Committee of Inquiry into the Penal System*, (Stationery Office, Dublin: 1985), para 2.15.

<sup>11</sup> See J. Mulcahy, “Doing Nothing Is Not an Option: Recent Milestones towards Improving Prison Conditions and Addressing Overcrowding”, *Irish Prison Journal* 2013, pp. 141-153.

<sup>12</sup> Thornton Hall Project Review Group, *Report of the Thornton Hall Review Group*, Department of Equality and Justice (2011) at p. 71.

<sup>13</sup> Ibid, at p. 60

<sup>14</sup> Any humane prison system that counts among its goals the promotion of dignity, wellbeing and human rights of prisoners must strive on a daily basis to the enhance the benign impact that imprisonment might have on people and minimise the malignant or “desistance-degrading” effects. See S. Maruna & H. Toch, “The Impact of Imprisonment on the Desistance Process” in in *Prison Reentry and Crime in America*, J. Travis and C. Visser eds. (Cambridge University Press, New York: 2005).pp. 139-178 at p. 140.

<sup>15</sup> See IPRT *Smart Justice = Safer Communities* at <http://www.iprt.ie/>

*Plan 2016-2018* sets out an ambitious agenda for the IPS and contains an encouraging narrative account of the importance of human rights, equality, ethics, relationships<sup>16</sup> and dignity to the prison service as a “responsible organisation of the State”.<sup>17</sup>

In its quest to “become a global leader in penal practice”<sup>18</sup> IPS must work tirelessly to translate its rehabilitation, resettlement support and reintegration goals from rhetoric into the reality of lived experience. I have heard that a reduction of prison numbers by a further 1,000 during the course of the current *Strategic Plan 2016-2018* is being considered as a reasonable goal. If this is achieved, it would mean 1,000 more people would remain in their communities, with less disruption to their family ties. Resultant IPS savings could, and *should*, be redeployed into expanded education provision, the creative arts, therapeutic services and work training that would teach people skills relevant to the modern workplace.

The overarching Strategic Objective of the Irish Prison Service and Probation Service in their *Joint Strategic Plan 2015-2107* is to “have a multiagency approach to offender management and rehabilitation from pre to post imprisonment in order to reduce reoffending and improve prisoner outcomes.”<sup>19</sup> In Action 1, IPS and Probation undertake to ensure “that all sentenced prisoners can be assisted in their rehabilitation and community reintegration throughout their sentence” and list the following strategic outcomes: reduced offending, increasing public safety; better resettlement and desistance from crime and enhanced sentence management and through care. I will discuss sentence planning in detail in the next section.

In Action 2, the partner agencies commit to “build on the success of the Community Return Programme of earned early release” in order to improve the reintegration of prisoners, manage prison numbers and enhance “restorative and reparative releases”. Maruna and LeBel have advocated for a “strengths-based” reparative approach to resettlement which is associated with restorative justice, due to its incorporation of “repair, reconciliation and community partnership.”<sup>20</sup>

A pilot Community Return Project<sup>21</sup> was launched in October 2012 and commenced in November 2012 in line with the recommendations of the Thornton Hall Project Review Group. According to the Report of the Sub-Committee on Penal Reform, the scheme “roughly equates to a week of community service for extra remission of one month – essentially a swap of prison time for time in the community paying back through unpaid work.”<sup>22</sup> Prisoners are eligible if their sentence is

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<sup>16</sup> See Irish Prison Service *Strategic Plan 2016-2018*, at pp. 2, 6 and 12. The IPS commit to more supportive and collaborative relationships with staff in order to enhance staff morale and organisational capacity, as well as to better support relationships between prisoners and their families and to improve links with external stakeholders to achieve IPS goals.

<sup>17</sup> *Ibid*, p. 5.

<sup>18</sup> *Ibid*.

<sup>19</sup> IPS and Probation Service, *Joint Strategic Plan 2015-2017*, p.1.

<sup>20</sup> *Ibid*.

<sup>21</sup> See McNally, G and Brennan, A “Community Return: A Unique Opportunity” *Irish Probation Journal*, (2015) Vol. 12, 141-159.

<sup>22</sup> Houses of the Oireachtas *Joint Committee on Justice, Defence and Equality Report on Penal Reform*, March 2013, at p. 21. The Report called on the Government to reduce prison numbers by adopting the “decarceration strategy”, committing to reduce the overall prison population by one-third over a ten-year period. It also made a ‘front-door’ recommendation that all sentences of under 6 months imprisonment imposed in respect of non-violent offences should be commuted and replaced with community service orders, and a ‘back-door’ recommendation that standard remission should be increased from one-quarter to one-third of all sentences

between 1-8 years imprisonment from the half-way point of their sentence, instead of normal remission three-quarters of the way through. They will generally be on the *enhanced* level within the Incentivised Regimes scheme, which means that they participate in structured activities and are of good behaviour.<sup>23</sup> In my view, it would be useful if IPS commissioned a review on the operation and success of Incentivised Regimes before the end of 2017.

Under Action 3 of their Joint Strategy, the IPS and Probation undertake to provide “support for short sentenced prisoners” anticipating that this will lead to “increased availability of structured release from prison”, in addition to reduced prison overcrowding, and a “reduction in re offending by short sentenced prisoners.” Enhanced pre-release planning for prisoners is addressed under Action 5, which is to be achieved through “forging collaborative arrangements with statutory and voluntary providers to respond to the reintegration needs of released prisoners”.

The Community Support Scheme (CSS) is an early release program delivered in conjunction with Probation Service funded Community-based Organisations (CBOs) including Care After Prison in Dublin, PALLS in Limerick and my own employment partner, the Cork Alliance Centre. These CBOs offer structured support upon release for short sentence prisoners, e.g. those serving less than 12 months imprisonment. Prisoners can be released at any point in their sentence following pre-release assessment regarding suitability and risks/needs (homelessness, addiction, mental illness etc.) and are required as part of their TR conditions to attend meetings with a support worker in the community usually within a week of release. The scheme is more about support and structure in the perilous days and weeks after release than supervision or monitoring. Previously these prisoners would have been released with little or no warning on TR, often on a Friday evening, with no community supports and perhaps no money or place to stay.

Promotion of joint integrated responses to crime is the theme of Action 7. The anticipated strategic outcome is greater “emphasis on inter-agency co-operation in the management and rehabilitation of prisoners.” The *Carter Report* in 2003 referred to the phenomenon of ‘silo mentalities’ among the key criminal justice players in the UK. The prison authorities, probation and the police did not appear to Carter to be working together in as joined up and coordinated a manner as they could, or should.<sup>24</sup> In his Martin Tansey Memorial Lecture in 2014, Paul Senior, an expert in Integrated Offender Management (IOM), provided a helpful overview of the evolution, aims and challenges of IOM.<sup>25</sup> IOM arose out of various experiments in England and Wales which brought together the main Justice partners – police, prison, probation - with community safety partnerships and the voluntary sector “to find a more focused way to tackle persistent and prolific adult offenders.”<sup>26</sup>

Officially launched in November 2015, the Joint Agency Response to Crime (J-ARC)<sup>27</sup> is the Irish version of IOM. There are currently three Dublin-based J-ARC pilot projects under the “providing for co-ordinated and enhanced levels of co-operation and co-ordination between An Garda Síochána,

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over one month in length, with an enhanced remission scheme of up to one-half available on an incentivised basis for certain categories of prisoner, particularly those imprisoned for the first time. None of these recommendations have been implemented to date.

<sup>23</sup> See Irish Prison Service, *Incentivised Regimes*, February 2012.

<sup>24</sup> P. Carter, *The Carter Report – Managing Offenders, Reducing Crime – A New Approach*, (London: Strategy Unit of the Cabinet Office, 2003).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid, p. 7.

<sup>27</sup> See <http://www.garda.ie/Controller.aspx?Page=212>



the Probation Service and the Irish Prison Service”.<sup>28</sup> Ballymun STRIVE deals with prolific offenders in Ballymun area, focussing on “quality of life” offences. The Bridge Project “Change Works” programme targets high risk violent offenders “aligning Garda Case management, Probation Case Management, Integrated Sentence Management and Community Return”. The ACER 3 project works with prolific burglars in certain parts of Dublin. I understand that these original pilot projects are in the process of being evaluated,<sup>29</sup> and that the interim statistical data on recidivism is very positive. In September 2016, the Minister for Justice launched the Joint Strategy on the Management of Offenders (“drawn up by the Probation Service, the Prison Service and An Garda Síochána, and with the full support of the Department of Justice and Equality”<sup>30</sup>) and announced that there would be new J-ARC projects targeting prolific offenders in Waterford, Dundalk and Limerick. There is also a plan for a “Junior J-ARC” for problematic young offenders in the north-side of Cork City.

Overall, I am pleased to report to the Committee that IPS and Probation have made significant strides towards meeting their stated aims in the *Joint Strategy 2015-2017*. Although many of their joint goals are still “works in progress”, their closer working relationship and mutual respect, the different, yet complimentary skills sets in the two organisations along with Community-based Organisations, the strategic partnership with the Gardai in providing prolific offenders with intensive interventions, as well as a much greater openness to ideas and innovation - including from external sources - has been beneficial in terms of developing a more joined-up, holistic penal policy. In my view, this multi-agency approach is leading to better, person-centred practice with an understanding that concern with an individual offender’s “welfare” (their safety, wellbeing and non-criminogenic needs) is not just the business of Probation. Indeed, as I will discuss below in the section on transition management, the safe return of a prisoner to the community is not exclusively the business of the IPS. Rather it requires a systematic, multi-agency, whole of government partnership approach. Moreover, a humanistic community focus and a commitment to social justice will, I suggest, be central to the success or failure of the reform agenda.

### ***Sentence planning to provide opportunities for positive change in prison***

According to the Scottish Prisons Commission “prison may sometimes do good, but it always does harm” (to the prisoner).<sup>31</sup> While I agree with the essence of this statement, I believe that meaningful and committed sentence planning which (a) commences immediately upon committal, (b) is developed in collaboration with the prisoner, (c) is cross-disciplinary and (d) subject to periodic review will increase the capacity of prison to “do good” in the lives of the people in its care. The goal of criminal justice agencies, including prison, should be to maximise “desistance-enhancing”<sup>32</sup> opportunities for the benefit of offenders and the community at large. Desistance is a technical term

<sup>28</sup> IPS and Probation Service, *Joint Strategic Plan 2015-2017*, p. 7.

<sup>29</sup> During a recent interview I was informed that the publication of the ACER-3 evaluation is imminent.

<sup>30</sup> See “Tánaiste Launches Joint Strategy on the Management of Offenders and announces the extension of Joint Agency (J-ARC) initiative to Dundalk, Limerick City and Waterford City”, 22 September 2016, available at <http://justice.ie/en/JELR/Pages/Extension-of-Joint-Agency-J-ARC-initiative>

<sup>31</sup> See Scottish Prisons Commission, *Scotland’s Choice: Report of the Scottish Prisons Commission*, July 2008 available at <http://www.gov.scot/Publications/2008/06/30162955/0>

<sup>32</sup> S. Maruna & H. Toch, “The Impact of Imprisonment on the Desistance Process” in in *Prison Reentry and Crime in America*, J. Travis and C. Visser eds. (Cambridge University Press, New York: 2005).pp. 139-178 at p. 141.



to describe a process of positive change; a long, slow, complex process by which offenders reduce/deescalate<sup>33</sup> and ultimately stop offending and then endeavour to maintain a law-abiding lifestyle.<sup>34</sup>

In 1985 the Whitaker Committee noted in its report that:

The physical and psychological impact of imprisonment limits what can be achieved in the personal development of prisoners. Nevertheless, a personal development programme should be prepared by the professional services for every prisoner, discussed and agreed with him/her, and reviewed periodically by the professional services. A prisoner's participation must be voluntary; no prisoner should be so rigidly classified as to be denied access to a programme. ... In general, more resources are needed for work within prisons and more initiatives for work outside prisons on day-release programmes. The variety and high standard of educational facilities should be maintained. More flexibility is desirable in the timing of courses and their extension through holiday periods. Remedial education for a sizeable minority of prisoners is an urgent need. Advice and counselling services require to be strengthened .... The Prisons Board should regularly monitor and measure the contribution of each service to the social and personal development of prisoners.<sup>35</sup>

Integrated Sentence Management (ISM) has been on the IPS agenda since 1999, but was largely meaningless up until 2012. In his address to the Wexford POA conference in 2000, Sean Aylward then Director General of the IPS set out "a new scenario for the organisation as a service which:

- 1 not only fulfils its custodial role effectively but gives equal and substantial weighting to care and rehabilitation of offenders
- 2 provides a safe, secure, just and positive environment and which operates effective programmes as part of a *structured sentence management* approach
- 3 actively and fully involves prison officers in all aspects of the care and rehabilitation of offenders through multi-disciplinary team working".<sup>36</sup>

Unfortunately, Aylward's vision for the IPS failed to materialise, at least under his watch and that of his successor, Brian Purcell. During the boom years of the *Celtic Tiger*, an era characterized by penal expansion and poor physical conditions (including "slopping out" combined with overcrowding and high levels of inter-prisoner violence) there was little focus on rehabilitation or sentence planning and TR was primarily used as a safety valve to reduce overcrowding, rather than a tool to promote rehabilitation, desistance or facilitate resettlement.

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<sup>33</sup> Ibid, at p. 143. The authors oppose definitions of desistance that incorporate with "the process of deescalation or the slowing down the criminal behaviors that sometimes happens over time. Deescalation may (or may not) eventually build into full-fledged desistance, but there is no reason to force the two perfectly understandable processes to share the same name. It seems to us that de-escalation should remain de-escalation and desistance should remain desistance."

<sup>34</sup> D. Healy, *The Dynamics of Desistance: Charting Pathways through Change* (Routledge: London & New York, 2012), p.34.

<sup>35</sup> Committee of Inquiry into the Penal System, *Report of the Committee of Inquiry into the Penal System*, (Stationery Office, Dublin: 1985), para. 2.20.

<sup>36</sup> S. Aylward, "The Irish Prison Service, Past, Present and Future – A Personal Perspective" in *Criminal Justice in Ireland*, edited by P. O'Mahony (Institute of Public Administration: 2002, Dublin), 570-594, at p. 580.

According to the *IPS Annual Report 2007*, Integrated Sentence Management (ISM) was developed as a “fully coordinated” system that year<sup>37</sup> although the *Annual Report 2009* made it clear that ISM had only been introduced as a pilot scheme to Arbour Hill and Wheatfield prison in 2008 and was extended to the Midlands and the Training Unit in 2009.<sup>38</sup> By the end of 2009, only 200 prisoners were reportedly beneficiaries of ISM. ISM remained essentially a paper exercise until at least 2012. It was a class of criminal justice fantasy belonging to Pat Carlen’s “penal imaginaries” (a term which includes the problematic and malleable concept of rehabilitation itself),<sup>39</sup> in the sense that it was routinely discussed by the IPS “as if” it meant a lot more than it actually did.

As prison numbers rocketed and physical conditions deteriorated it is hardly surprising that meaningful sentence planning never became a major IPS priority. Due to squalid conditions and spiralling prison numbers the administration was too busy fire-fighting,<sup>40</sup> to put proper case management systems in place for ISM.

ISM has never meant more in practice than it does today, yet there are still problems with its effective operation. Anyone with a sentence of over one year *should* have a sentence plan developed upon committal,<sup>41</sup> or as soon as possible thereafter. The plan should highlight their particular strengths (such as family relationships, motivation, intelligence and education/training goals) and interests (woodwork, drama, soccer, creative writing, animal welfare) as well as identifying their risks and needs. The sentence plan should be developed collaboratively with the individual prisoner in which they undertake to work on certain issues such as addiction or anger management closely associated with their offending, and choose to avail of rehabilitative/therapeutic services in the prison such as psychology, workshops, fitness etc.

Imprisoned people require access to basic literacy classes and a “broad-based, flexible, relevant education service”.<sup>42</sup> This means Irish prisons must provide a wide range of non-accredited<sup>43</sup> and

<sup>37</sup> Irish Prison Service, *Annual Report 2007*, (IPS: Longford, 2007), p. 18.

<sup>38</sup> Irish Prison Service, *Annual Report 2009*, (IPS: Longford, 2009), p. 30.

<sup>39</sup> See P. Carlen, “Against Rehabilitation: For Reparative Justice”, *Eve Saville lecture given by Professor Pat Carlen to the Centre for Crime and Justice Studies on 6 November 2012*, available at <https://www.crimeandjustice.org.uk/resources/against-rehabilitation-reparative-justice>. Carlen states: “when aspirational criminal justice concepts become routinized and acted upon *as if* they can be realised without fundamental social change, they become penal imaginaries, part of a taken-for-granted ideological baggage which, because it is taken-for-granted, obstructs critique. One such penal imaginary is the concept of rehabilitation, a concept which has a long history of justifying almost every kind of non-lethal response to lawbreaking and which is currently being reborn yet again in theories of criminal desistance, in anti-prison campaigns, in the desperate fantasies of a Prime Minister who wants to privatise rehabilitation (along with everything else!), as well as in the already-part-privatised rehabilitation industry with its sales of programmes for cognitive reform.”

<sup>40</sup> J. Mulcahy, “Doing Nothing Is Not an Option: Recent Milestones towards Improving Prison Conditions and Addressing Overcrowding”, *Irish Prison Journal* 2013, pp. 141-153.

<sup>41</sup> See I. Durnescu, *Resettlement research and practices. An international perspective*, (2011) CEP, Executive Summary, available at <http://cep-probation.org/wp-content/uploads/2015/03/Durnescu-CEP-Resettlement-research-and-practice-final.pdf> Durnescu argues that when committed to prison under sentence, each prisoner should play an active role in the careful construction of their own personal development or “resettlement plan” which should be developed at the start of the sentence, “be organised from the release perspective” and “designed and delivered by motivated and professional staff that strongly believe in change”.

<sup>42</sup> See *Joint IPS/ETBI Education Strategy 2016 – 2018* (2016), available at [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/education\\_strategy\\_2016.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/education_strategy_2016.pdf) This was the first time the IPS ever developed an education strategy, which is highly significant. At p. 5, the authors state: “Poor literacy skills, a history of

accredited programmes - including, but not limited to evidence-based thinking skills and Cognitive Behavioural Therapy group-work programmes - *throughout* the year. Prisons operate on a 24/7 basis. The community system of “school holidays” in summer time often means that prisoners suffer an impoverished regime<sup>44</sup> as teachers hired by the Education and Training Boards (ETBS) are absent for extended periods, while Prison Officer staffing are even more strained than usual due to annual leave, leaving workshops frequently closed.

Offenders, like the rest of us, are more likely to want to please people - including professional criminal justice personnel - with whom they feel a real, honest connection, who recognise their role as potential change agents and show, in word and deed, that they believe the client is capable of change and living a better, more fulfilling, non-criminal future.<sup>45</sup> According to Lofland, “normal-smiths” are people who consistently let offenders know that it is within their own power to change.<sup>46</sup> Normal-smiths corroborate the offender’s essential normality “giving evidence of their good character so that others can see and believe that change has taken place.”<sup>47</sup>

Therapeutic prison staff and Prison Officers can, and should, act as normal-smiths. They should invest in the person, motivate, challenge and inspire the people in their care and custody to entertain other choices in risky situations, to help them begin to think differently about themselves and to be realistic about the complexities of the desistance process. All staff working in prisons should receive training in the importance of their attitude and the power of the “Pygmalion effect” of positive reinforcement for good, pro-social behaviour.<sup>48</sup> Having kind, respectable people show belief in one’s ability to change is, for many, an important motivator.

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previous educational failure and/or negative educational experience often combine to create powerful barriers to engaging with education centres in prisons. As such, the IPS believes that the curriculum offered in prisons must be broad, flexible and at the same time attractive enough to counteract the previous negative experiences of those in custody.”

<sup>43</sup> Ibid, see p. 9.

<sup>44</sup> See Inspector of Prisons, *The Irish Prison Population - an examination of duties and obligations owed to prisoners* (Office of the Inspector of Prisons, Nenagh: 2010) at pp. 17-18 for a discussion of the concept of “impoverished regimes” according to the jurisprudence of the European Court of Human Rights.

<sup>45</sup> See F. McNeill, S. Farrall, C. Lightowler & S. Maruna, *Insights. How and Why People Stop Offending: Discovering Desistance*, (The Institute for Research and Innovation in Social Services: 2012), available at <http://www.iriss.org.uk/resources/how-and-why-people-stop-offending-discovering-desistance> See also the Cork Alliance Centre website describing the strengths-based, person-centred approach to their desistance work at <http://www.corkalliancecentre.com/our-approach>

<sup>46</sup> J. Lofland, *Deviance and Identity*, (Prentice Hall, Englewood, 1969).

<sup>47</sup> S. Farrall, “The Long-Term Impacts of Probation Supervision”, in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock-Warnemuende, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project “European treatment and transition management of high-risk offenders”*, (F. Dünkel, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp.45-83 at p. 55.

<sup>48</sup> S. Maruna & H. Toch, “The Impact of Imprisonment on the Desistance Process” in *Prison Reentry and Crime in America*, J. Travis and C. Visser eds. (Cambridge University Press, New York: 2005).pp. 139-178 at p. 148. Maruna and Toch describe the ethically-questionable though fascinating Leake and King experiment from the late 1970s where treatment professionals working with people with alcohol addiction were told that the authors had devised a scientific test capable of identifying the patients who were most likely to successfully recover. This was, in fact, a fiction. There was no such test. The patients who were identified as “most likely to succeed” were randomly selected. Nonetheless, the outcome of the experiment showed that those: “who were assigned this optimistic prophecy were far more likely to give up drinking than members of the control

People need a genuine, warm and principled interest to be taken in them on committal to prison. They must be asked what are they good at and what they are interested in. The sad fact is for some prisoners this may be the first time that these simple questions are put to them in their lives. Posing these questions on committal (and at regular intervals afterwards) might prompt them to think about themselves, the choices they have made in the past that got them in trouble, and the different, better choices they could make in the future.

During his address before the Public Accounts Committee on 2 February 2017, Michael Donnellan acknowledged that prison officers are the principle change agents who, in his view, have more influence and impact than psychologists and psychiatrists, due to their daily interactions with prisoners on the landings. Notwithstanding the problematic aspects of Prison Officer “culture”, identified by the Inspector of Prisons in 2015,<sup>49</sup> I entirely agree with the Director General’s assessment of the importance of the Prison Officer as a change agent and “normal-smith”. A major problem with the sentence planning system as it stands is that ISM officers - who are presumably chosen because of their interest in a more person-centred role, their communication skills and a strong belief in the human capacity for change - are frequently pulled from their sentence planning duties to unlock doors, or man gates or exercise yards due to staffing shortages and chronic absenteeism.

In order to ensure that sentence planning has the best possible chance of operating as it should, the role of ISM Officers needs to be protected without delay. Several of my interviewees expressed the view that the role of ISMs needs to be ring-fenced, i.e. they must not be pulled from their ISM duties to attend to control functions.

I had previously suggested to the Director General and the Head of Psychology that a directive should be sent from IPS Headquarters to the effect that “ISMs cannot under any circumstances be diverted from their core sentence planning duties”. There are only a tiny number of ISM Officers in the country, so protecting their role should not significantly undermine the safety and security of prisons. In any event, ISM Officers should be *the last* Prison Officers to be reassigned in the event of staffing shortages. I understand that IPS is currently in the process of ring-fencing the ISM role and this is a welcome development.

If the ISM role were to be protected so that ISM Officers could spend all of their time meeting with prisoners at the start of their sentences to put a plan in place and to make all the necessary referrals to therapeutic services within the prison (such as psychology, addiction or Probation if the person got a part-suspended sentence with a post-release supervision order), it would improve the likelihood of prisoners being encouraged and empowered to constructively use their time in prisons.

Even if a prisoner chooses not to engage with ISM at the outset, they should be intermittently invited to reconsider. One of my interviewees mentioned the benefits of visiting people on the landings and asking them to participate in interventions, giving the example of how one young man who was invited to participate in a specially designed course for violent offenders was very surprised

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group. Apparently, they believed in their own ability to achieve sobriety because the professionals around them seemed to believe it so well.”

<sup>49</sup> Inspector of Prisons *Culture and Organisation in the Irish Prison Service A Road Map for the Future* (Office of the Inspector of Prisons, Nenagh: 2015).

and flattered. It mattered to him that he was *chosen* for something, even if it was because of his problematic behaviour.

If proper interest is taken in the personal development of prisoners and how they spend their time while incarcerated, more of them might actually begin to imagine a positive future self *while still behind bars*; a self in which criminal behaviour has no part – or perhaps, more realistically, a reduced part to play in their lives going forward. As I understand it, this is a key reason for targeting 18-24 year olds for particular attention from the new Psychology Assistants by the Psychology Service under ISM.<sup>50</sup> If their desistance journey can start a bit earlier, or at a minimum if IPS builds up information about their strengths, risks and needs in their early adulthood, with each subsequent period in prison, therapeutic interventions should be better targeted at their enduring criminogenic needs.

### *Out-of-cell time and access to an adequate regime*

Another limitation of rehabilitation in prisons is the unchallenged assumption that prisoners can somehow acquire marketable skills “inside” when they are only officially out of their cells for five and a half hours a day. Many judges, the media and the wider community expect prisons to facilitate prisoners in becoming productive citizen workers upon release - despite the fact that many of them had little, if any, exposure to the working world before incarceration.

As it stands, prisoners are entirely reliant on Prison Officers to bring them here and there to whatever educational pursuit or therapeutic intervention they have signed up for on a given day. They have very little freedom of movement within the prison, a fact which inevitably hampers their ability to take responsibility for turning up - on time, or at all - to education, work or external appointments once released.

The Whitaker Committee recommended that there should be “much more out-of-cell time (at least 12 hours), the present lock-up time of 16 or more being excessive.” In 2010, at the height of the overcrowding crisis in Irish prisons, the Inspector of Prisons in his report on the duties and obligations owed to prisoners, stated that a prison could be overcrowded if it had inadequate services and regimes in addition to inappropriate accommodation and threats to prisoner safety.<sup>51</sup> He stated that all prisoners who wanted to participate in structured activities were entitled to a minimum of 5 hours per day, five days a week, in addition to out of cell time and recreation time.<sup>52</sup>

Many of my interviewees felt that the current “norm” of five and a half hours of out-of-cell activities was less than optimal, and even at that there were problems with inadequate provision of structured activities in many prisons (including the open centres, where long sentence prisoners occasionally asked to return to a closed prison due to better access to meaningful occupations) and needless barriers to structured activities, such as timely attendance at school, due to inefficient prisoner transport logistics at a local level.

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<sup>50</sup> See F. Porporino, “New Connections” Embedding Psychology Services and Practice in the Irish Prison Service”, (IPS, Longford: 2015).

<sup>51</sup> Inspector of Prisons, *The Irish Prison Population – an examination of duties and obligations owed to Prisoners* (Office of the Inspector of Prisons, Nenagh: 2010) p. 7.

<sup>52</sup> Inspector of Prisons, *The Irish Prison Population – an examination of duties and obligations owed to prisoners*, (Office of the Inspector of Prisons, Nenagh: 2010), p. 19.

The IPS should work towards providing prisoners with 12 hours out-of-cell activities per day as recommended by the Whitaker Committee in 1985, eight hours of which should be in structured activities in school or workshops to accustom people to what a working day or busy day at an educational facility would be like in the real world.

Perhaps, as a step towards even ensuring that the current provision of out-of-cell activities is maximised and time is not wasted bringing prisoners from A to B, the IPS can explore whether (a) architecturally quite so many doors are required for secure custody in medium security establishments and (b) whether there are more common-sense ways or efficiencies that can be introduced to remove unnecessary barriers to prompt attendance at classes, workshops and therapeutic appointments.

Any so-called “grace periods” that Prison Officers have that negatively impact on prisoners out-of-cell activities should be removed without delay. Grace periods mean that Prison Officers are currently permitted to present for work within fifteen minutes of their designated time in the morning, after lunch and after their evening break. The IPS cannot profess full commitment to the goal of rehabilitation while such a wasteful practice exists. In terms of pro-social modelling alone, it does little to impress upon prisoners - who by and large do not have extensive mainstream employment histories - the importance of time-keeping and responsible behaviour in a working environment.

#### *The reentry process: managing safe transitions for better outcomes*

According to A.H. Maslow:

The healthy, normal, fortunate adult in our culture is largely satisfied in his safety needs. The peaceful, smoothly running, 'good' society ordinarily makes its members feel safe enough from wild animals, extremes of temperature, criminals, assault and murder, tyranny, etc. Therefore, in a very real sense, he no longer has any safety needs as active motivators. Just as a sated man no longer feels hungry, a safe man no longer feels endangered. If we wish to see these needs directly and clearly we must turn to neurotic or near-neurotic individuals, and to the *economic and social underdogs*.<sup>53</sup>

Mindful of the social context of crime, it is true to say that many prisoners could be described as “economic and social underdogs”.<sup>54</sup> According to Farrington, offending behaviour is an element of “a larger syndrome of antisocial behaviour” starting in childhood and continuing throughout the person’s adult life.<sup>55</sup> Those who get embroiled in offending behaviour have, more likely than not, been born into circumstances which offer them limited chances for flourishing in mainstream society. People who grow up to be chronic offenders, defined by Zara and Farrington as those with over 10 criminal convictions, are typically born into “family conditions, where parental affection and

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<sup>53</sup> “A Theory of Human Motivation”, *Psychological Review*, (1943) 50, 370-396, at pp.378-379, available at <http://psychclassics.yorku.ca/Maslow/motivation.htm>

<sup>54</sup> See, for example, IPRT (2012) *The Vicious Circle of Social Exclusion and Crime: Ireland’s Disproportionate Punishment of the Poor* at [http://www.iprt.ie/files/Position\\_Paper\\_FINAL.pdf](http://www.iprt.ie/files/Position_Paper_FINAL.pdf).

<sup>55</sup> D. Farrington, ‘Human Development and Criminal Careers’, in M. Maguire, R. Morgan and R. Reiner (eds), *Oxford Handbook of Criminology* (2<sup>nd</sup> edn) (Oxford University Press: Oxford, 1997), p. 362.

support are optional rather than a secure basis to lean on".<sup>56</sup> Chronic involvement in criminality was only one "minor" aspect of a bigger picture characterised by "family disruption, parental negligence, abuse and neglect, emotional solitude, social deprivation, and psychological desperation".<sup>57</sup>

Since the goal of the criminal justice system is to enhance community safety by detecting and punishing wrongdoing, there are serious limits to what it can be expected to achieve in terms of exerting a positive impact on individuals who are products of the wider social problems that lead to crime in the first instance, problems such as an absence of belonging, addiction, mental illness and homelessness, which are likely to be exacerbated upon release from prison - especially after a long sentence.

Prisoners typically return to the same social problems they experienced before prison, but often these are intensified due to the stigma of the experience, their impaired sense of personal responsibility and the consequences of institutionalisation.<sup>58</sup> As Travis and Visser state, reentry is the "inevitable consequence of incarceration"<sup>59</sup> which happens when incarceration ends.<sup>60</sup> Almost everyone who is imprisoned is released eventually and returns to the free world, usually to their poor, socially excluded community of origin.<sup>61</sup> A destructive phenomenon of "churning"<sup>62</sup> or "re-entry cycling" occurs in certain poor communities that are subject to higher than average rates of incarceration, followed by re-entry and further periods of incarceration.<sup>63</sup> O'Donnell *et al* state that prisoner reentry is not just about the volume of returning prisoners, but it is also about the impact of these people on the disadvantaged communities which must accommodate and assimilate them.<sup>64</sup> Using records from the Irish Prisoner Records Information System (PRIS) in 2004, they found that 24% of prisoners in Ireland were produced by 1% of electoral divisions – poor urban areas - that contained less than 5% of the overall population.

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<sup>56</sup> Zara & D. Farrington, "Chronic Offenders and the Syndrome of Antisociality: Offending is a Minor Feature!" *Irish Probation Journal* (2016) 13, pp.40-64, at p. 46.

<sup>57</sup> *Ibid*, pp. 46-47.

<sup>58</sup> See C. Hainey, *From prison to home: the effect of incarceration and reentry on children, families, and communities The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, U.S Department of Health and Human Services, available at <https://aspe.hhs.gov/basic-report/psychological-impact-incarceration-implications-post-prison-adjustment> Hainey states: "In the course of becoming institutionalized, a transformation begins. Persons gradually become more accustomed to the restrictions that institutional life imposes. The various psychological mechanisms that must be employed to adjust (and, in some harsh and dangerous correctional environments, to survive) become increasingly 'natural,' second nature, and, to a degree, internalized. To be sure, the process of institutionalization can be subtle and difficult to discern as it occurs. Thus, prisoners do not 'choose' do [sic] succumb to it or not, and few people who have become institutionalized are aware that it has happened to them. Fewer still consciously decide that they are going to willingly allow the transformation to occur."

<sup>59</sup> J. Travis & C. Visser, "Introduction: Viewing Public Safety Through the Reentry Lens", in J. Travis & C. Visser (eds) *Prison Reentry and Crime in America*, (Cambridge University Press; NYC, 2005), pp. 1-14, at p. 3.

<sup>60</sup> *Ibid*, p. 4.

<sup>61</sup> See I. O'Donnell, C. Teljur, N. Hughes, E. Baumer & A. Kelly, "When Prisoners Go Home: Punishment, Social Deprivation and the Geography of Reintegration", *Irish Criminal Law Journal*, (2007) 17(4), pp. 3-9.

<sup>62</sup> J. Lynch & W. Sabol, "Prisoner Reentry in Perspective." *Crime Policy Report*, vol. 3 (The Urban Institute: Washington DC 2001).

<sup>63</sup> T. Clear, E. Waring & K. Scully, "Communities and Reentry: Concentrated Reentry Cycling", in *Prisoner Reentry and Crime in America*, (edited by J. Travis & C. Visser), (Cambridge University Press, NYC: 2005), pp.179-209 at p. 182. See also J. Breen, "Secondary Effects of Imprisonment: The New Direction of Prison Research", *Irish Probation Journal*, 7, 2010, pp. 46-64.

<sup>64</sup> I. O'Donnell, C. Teljur, N. Hughes, E. Baumer & A. Kelly, "When Prisoners Go Home: Punishment, Social Deprivation and the Geography of Reintegration", *Irish Criminal Law Journal*, (2007) 17(4), pp. 3-9, at p. 7.



There would be no need for transition management, pre-release planning, resettlement assistance or through-care if there was no imprisonment, but since imprisonment remains overused as a penalty, the supported return of prisoners to the community is, or should be, an urgent priority for all correctional services.

Transition management is a phrase used in the European criminological literature to describe case management approach to the period in custody, pre-release planning and return of the prisoner to society. The terms “reentry” and “resettlement” describe the process of return to the community, how prisoners make their way “through the gate”<sup>65</sup> in a safe, structured and supported way after serving a prison sentence.<sup>66</sup>

According to Federal Justice Minister in the region of Mecklenburg Vorpommern Uta-Maria Kuder, “If you ask ex-prisoners, the real punishment begins, from their perspective, often after release. Through social exclusion, lack of housing or lack of work”.<sup>67</sup> Advocating for a whole of government/whole of society approach to transition management Kuder argues that:

[t]he chance for a crime-free life in liberty depends largely on the question of preparation for release. Therefore, all institutions involved, thus also the municipalities and local authorities must cooperate closely with each other long before the release of the prisoner. Departments such as work, social, educational, health and home affairs must be aware of their shared responsibility and also contribute. In other countries, reintegration involving all departments and the support of the community is already a living reality. The Norwegian Cabinet has recognised this joint responsibility for a successful reintegration of former offenders and has obligated all departments involved to cooperation.<sup>68</sup>

Wolfgang Wirth states that transition management is more than release preparation. It is the systemic establishment of a conveyor belt type approach to corrections that leads to the successful reintegration of prisoners.<sup>69</sup> In the prison context it requires a multi-disciplinary case management approach that may combine treatment, education and other support measures, while on the outside

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<sup>65</sup> See B. Weaver & T. McCulloch, *Co-producing Criminal Justice: Executive Summary*, Report No. 05/2012, (Scottish Government Social Research: 2012), para. 5.2.2 where the authors refer to the St Giles Trust *Through the Gates* programme. See also <http://site.stgilestrust.org.uk/what-we-do/reports-and-evaluations-into-st-giles-trust>

<sup>66</sup> J. Mead, “Resettlement” in R. Hancock & D. Canton eds., *Dictionary of probation and offender management* (Cullompton: Willan, 2007) 268-270. See also J. Travis, A.L. Solomon & M. Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*. (Washington DC: The Urban Institute, 2001).

<sup>67</sup> U. Kuder, “Proceeding of the final conference – Welcome addresses and introduction to the course of the project” in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock- Warnemünde, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project “European treatment and transition management of high-risk offenders”*, (F. Dünkel, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp.3-5 at p.5.

<sup>68</sup> Ibid, at pp.4-5. See also Michael O’Riordan, Workers Resource Cooperative, cited in J. Culleton & F. Hogan, *Re-integration - Life after prison; An evaluation of the You’re Equal Project*, (Centre for Social and Family Research, Waterford Institute of Technology, 2008) at p. 25, available at [http://repository.wit.ie/1187/1/Re-Integration - Life after Prison.pdf](http://repository.wit.ie/1187/1/Re-Integration_-_Life_after_Prison.pdf): “Most prisoners get out with just a bag over their shoulders ... the hardest part is when you get out the gate. If you don’t have somewhere to go and if you don’t have money, you’re gonna have to rob.”

<sup>69</sup> See W. Wirth, “Übergangsmanagement im Strafvollzug: Anwendungsfelder – Schwerpunkte”, in Kerner, Hans-Jürgen u. Marks, Erich (Hrsg.), *Internetdokumentation des Deutschen Präventionstages*. Hannover 2014, available at <http://www.praeventionstag.de/dokumentation/download.cms?id=1845>.



it means that comprehensive reintegration assistance will be provided to the (former) prisoner. Transition management, in Wirth's view, is an enterprise that requires close cooperation between judicial authorities, criminal justice agencies and competent third sector agencies.<sup>70</sup>

Paddy Richardson, CEO of the Irish Association for the Integration of Offenders (IASIO) states that reentry/resettlement occurs before reintegration.<sup>71</sup> At its most fundamental level, reentry management should mean the safe, responsible transition of prisoners back into free society where their basic human needs are safeguarded. Where prisoners are released from incarceration into chaotic situations where their basic human needs are not met, it is unsurprising that some of them will experience serious reentry failures,<sup>72</sup> which include fatalities due to drug overdose, and exposure to the elements as a result of homelessness, in addition to the more directly relevant criminal justice outcome of recidivism.

There is a need to be realistic about what prisons alone can accomplish in terms of reduced recidivism rates, even with a full, varied, well-funded regime, delivered by motivated, respectful staff who believe in change and a properly functioning, transparent parole/early release process independent of political interference.<sup>73</sup> McConnell, Carnie and Mehta of the Scottish Prison Service (SPS) state there is a risk in:

overstating the contribution that any prison or Prison Service can make to reducing reoffending if working in isolation. It is not realistic to expect prison custody to rectify the social, economic, educational and psychological problems that present in the prison population. Whilst ... [SPS] can encourage and motivate those in prison to use their time to develop their skills, abilities and resilience, it is unlikely to be able to provide, in isolation, the opportunities and support necessary for them to sustain positive and crime-free lives when they return to the communities from which they were imprisoned. ... SPS has an impressive range of professional resources, interventions and mentoring skills at its disposal; and its staff are its principal asset. Maybe the challenge, the question if you like, is better framed in terms of measuring its effectiveness in preparing those in prison for release and pro-social community reintegration which, with robust community support, will be far more likely to promote desistance from offending and the attainment of life goals through legitimate endeavour.<sup>74</sup>

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<sup>70</sup> Ibid.

<sup>71</sup> P. Richardson, "Between Offender Management and Reintegration: The Role of the third sector in high-risk offender transition" in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock-Warnemuende, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project "European treatment and transition management of high-risk offenders"*, (F. Dünkel, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp. 213-224, p. 216.

<sup>72</sup> See C. Smyth, "Temporary release inmates account for nearly a third of all prison deaths in the Republic of Ireland", *The Detail*, 19 December 2016, available at <https://www.thedetail.tv/articles/temporary-release-inmates-account-for-nearly-a-third-of-all-prison-deaths-in-the-republic-of-ireland> The Detail reports that 42 of the 129 inmates who died in the Republic of Ireland since January 2007 were on temporary release.

<sup>73</sup> See C. Scott-Hayward & D. Williamson, "Post-custody Supervision in Ireland: From Tickets-of-Leave to Parole?", *Irish Probation Journal* (2016) 13, pp. 102-118.

<sup>74</sup> C. McConnell, J. Carnie & H. Mehta "Reframing the role of custody within the desistance paradigm", *Scottish Justice Matters*, December 2013, pp.10-11, at p. 11, available at [http://scottishjusticematters.com/wp-content/uploads/SJM\\_1-2\\_December2013\\_ReframingCustodyLo-Res.pdf](http://scottishjusticematters.com/wp-content/uploads/SJM_1-2_December2013_ReframingCustodyLo-Res.pdf)

In the American context Wacquant stresses how disconnected “penal trajectories” are from the gamut of state policies that jointly determine the life options of convicts both *before* and *after* confinement, and especially from the regressive transformation of welfare policies (embracing income support, housing, education, job training, health, etc.) that has “accompanied, amplified, and complemented criminal justice changes over the past three decades.”<sup>75</sup>

The organs of State responsible for the delivery of core social services must stop shirking their duties in respect of those whose problematic behaviour entangles them in the criminal justice system. Offenders are, and remain citizens. Having lost their liberty on foot of a prison sentence, a person’s basic human needs must be met by the prison service during their incarceration. For many prisoners, however, their basic needs will once again require the prompt and efficient engagement of non-criminal justice services such as health and housing immediately upon their release. In a system that takes the transition of prisoners back to society seriously and wishes to enhance their post-release reintegration prospects, non-criminal justice actors must accept their role in the process and be involved in release planning and transition management so as to optimise the returning prisoner’s prospects of making a safe, successful reentry to the community.

The Director General of the IPS stated at the ACJRD conference on resettlement in 2012 that “[t]hrough focusing on the ways in which we can improve co-operation within the criminal justice system and between state agencies we can certainly create the conditions which are needed to bring about better outcomes for offenders. In so doing we can also go some way towards achieving our collective objective of improving public safety.”<sup>76</sup> In its 2014 Report, the Strategic Review of Penal Policy Group recommended that **“there must be greater emphasis, if necessary through legislation, on promoting inter-agency cooperation in the management and rehabilitation of offenders. In addition to the criminal justice agencies, there is a need to recognise that a whole-of Government approach is required in collaboration with relevant agencies and local authorities in addressing offending behaviour and assisting offenders in maintaining crime free lives.”**<sup>77</sup>

The staff of criminal justice agencies must act in concert with other governmental agencies and their civil servants to ensure that the basic needs of returning prisoners are met, especially in terms of their immediate health, housing and financial requirements. I am aware that IPS, Probation, members of the Penal Policy Review Group and officials from the Department of Justice and Equality have held meetings with relevant Departments such as Health, Housing and Social Protection to discuss the desirability and logistics of a whole of government approach to prisoner resettlement. I **respectfully submit that it may be of benefit to the Committee to invite the Ministers and/or senior civil servants from these Departments to discuss their respective roles in transition management.**

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<sup>75</sup> L. Wacquant, “Prisoner re-entry as myth and ceremony” *Dialect Anthropol* (2010) 34: 605-620, p. 606.

<sup>76</sup> M. Donnellan, “Prisoner resettlement – Broadening the responsibility”, p. 3 *Fifteenth Annual ACJRD Conference on Exit from Custody – Throughcare, Resettlement and Related Issues*, available at [http://www.acjrd.ie/files/Exit\\_from\\_Custody - Throughcare, Resettlement Related Issues %282012%29.pdf](http://www.acjrd.ie/files/Exit_from_Custody_-_Throughcare,_Resettlement_Related_Issues_%282012%29.pdf)

<sup>77</sup> See Department of Justice, *Strategic Review of Penal Policy, Final Report* (Dublin, 2014), Recommendation 3, at pp. 31-2.

In 2006 Maguire and Raynor welcomed NOMS's concept of "end-to-end management" and its first ever attempt to provide "effective practical services to large numbers of ex-prisoners"<sup>78</sup> in its *Reducing Re-offending National Action Plan*, but pointed out that unless the system were to place more attention of the fluctuating motivation level of the offender, their need for ongoing external support, as well as the cognitive factors that effect personal change, there would be no great impact on recidivism rates.<sup>79</sup>

In 2010, Martinowicz and Quigley reported that the lack of pre-release preparation in Ireland was linked to chronic overcrowding and the emergency, unstructured use of Temporary Release (TR) as a "safety valve", which meant that release was frequently granted on a Friday afternoon or Saturday. Some prisoners only had only minutes to pack their belongings. In this chaotic system people landed back in the community with no access to "vital support" in the precarious "first few days post-release."<sup>80</sup> The authors also found that during imprisonment prisoners received little or no information about prison-based services and supports available in the community and were overly-reliant on obtaining information from other prisoners, rather than the prison authorities or the relevant service-providers.<sup>81</sup>

Realistically, a returning prisoner cannot even begin to contemplate finding a job, accessing education or training or ponder the bigger existential endeavour of "(re)integrating" into society in any meaningful sense if their basic human needs of access to food, shelter, medicines and money are not met. They have no sense of safety. As per Maslow's hierarchy of needs, the process of desistance is unlikely to take root in a situation where a person is fighting for survival, or sliding back into addiction due to the harsh realities of "freedom".

The best of intentions to "go straight" or "make good"<sup>82</sup> can be quickly scuppered when the realities of life on the outside set in and the structure of imprisonment gives way to chaos in the community and destructive interactions with criminal peers. There is little hope of a person maintaining a non-offending, pro-social lifestyle if they leave prison where they had a warm bed, three square meals a day and all their medical needs attended to and return to the community where several of those needs go unmet. If a man is released to a homeless shelter after several years in prison and has only a three-day supply of his anti-psychotic medication, it is a virtual certainty that he will re-offend before long, regardless of the therapeutic nature of the prison environment or "milieu"<sup>83</sup> he experienced, the level of perceived legitimacy,<sup>84</sup> the quality of any interventions he may have availed

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<sup>78</sup> M. Maguire & P. Raynor, "How the resettlement of prisoners promotes desistance from crime: Or does it?", *Criminology & Criminal Justice* (2006), Vol: 6(1): 19–38, p. 20.

<sup>79</sup> Ibid, p. 19 and 20.

<sup>80</sup> A. Martynowicz & M. Quigley, "It's like stepping on a landmine..." - *Reintegration of Prisoners in Ireland*, (Dublin: IPRT, 2010), at p. 37.

<sup>81</sup> Ibid at pp.78-79. See, however, J. Culleton & F. Hogan, *Re-integration - Life after prison; An evaluation of the You're Equal Project*, (Centre for Social and Family Research, Waterford Institute of Technology, 2008) at p. 25, available at <http://repository.wit.ie/1187/1/Re-Integration - Life after Prison.pdf> At p. 58, the authors write that as the You're Equal mentoring project developed and people got used to the multiagency working and partnership approach, "word of the mentoring process had spread and a range of agencies and individuals were now referring service users to the project".

<sup>82</sup> See S. Maruna, *Making Good: How Ex-Convicts Reform & Rebuild Their Lives* (Washington DC, American Psychological Association, 2001)

<sup>83</sup> See E. Genders & E. Player, *Grendon: A Study of a Therapeutic Prison*, (Oxford University Press, 1995).

<sup>84</sup> See J. Jackson, T. Tyler, B. Bradford, D. Taylor, Dominic & M. Shiner, "Legitimacy and procedural justice in prisons, *Prison Service Journal* (2010) 191, pp. 4-10; R. Sparks & A. Bottoms, "Legitimacy and Order in Prisons",

of in prison and the enthusiasm and commitment of the staff delivering them. The social conditions to which he returns set him up to fail.

As a contributor to the 2002 National Economic Social Forum (NESF) report on reintegration states:

*It is unrealistic to expect that people will leave prison and start to lead a socially included, crime-free existence without any supports being put in place for them before they complete their sentence ... many people leave prison and they are returning to nothing. When this is the case, they have nothing to lose by re-offending and prison becomes a way of life. For this pattern to change, interventions need to take place throughout the period of imprisonment and through the release from prison into the wider community.<sup>85</sup>*

Where reentry is mismanaged or ad hoc, the community will ultimately pay a greater price through increased recidivism and inevitable returns to prison for many. According to Petersilia, parole failures in 1999 accounted for 35 percent of new prison committals, up from 17 percent in 1980. In California the parole failure rate was even higher for that year. 67 percent of all California prison committals were parole violations rather than convictions on new charges.<sup>86</sup> In *Recidivism in the Republic of Ireland*, O'Donnell *et al* reported that almost 30% of ex-prisoners reoffend within one year and 49.2% reoffend within 4 years, which the authors declared was a high recidivism rate by comparison with other jurisdictions.<sup>87</sup>

Recent recidivism studies undertaken by the Central Statistics Office (CSO) show that reoffending is most likely to occur in the first 12 months after release from prison, or after the imposition of a non-custodial sentence.<sup>88</sup> In 2012 the Probation Service study revealed a recidivism rate of 37.2% after two years, while the first recidivism study published by the IPS in 2013 (based on reconviction data about those released in 2007 up until the end of 2010) showed a recidivism rate of 58.3% after two years and 62.3% after three years. Eighty percent of those who reoffended in the prison study did so within the first 12 months following release.<sup>89</sup> In November 2016 the CSO reported that 45% of prisoners released in 2010 reoffended within three years, a decrease of 2.4% on the 2009 figure.<sup>90</sup> Of the 4,208 individuals who were found to have reoffended 60.8% offended within six months their official release date and an additional 16.7% within one year. Younger offenders were more likely to

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*The British Journal of Sociology*, (1996) 46, 1, 45-62; A. Bottoms, W. Hay & J. Sparks, "Situational and Social Approaches to the Prevention of Disorder in Long-Term Prisons" in T. Flanagan (ed) *Long-Term Imprisonment: Policy, Science, and Correctional Practice*, (Thousand Oaks, California: Sage, 1995).

<sup>85</sup> NESF, *Re-integration of Prisoners Forum Report No. 22*, (NESF: Dublin, 2002), p. 69, available at [http://edepositireland.ie/bitstream/handle/2262/72753/No\\_22\\_Re-integration\\_of\\_Prisoners.pdf?sequence=1&isAllowed=y](http://edepositireland.ie/bitstream/handle/2262/72753/No_22_Re-integration_of_Prisoners.pdf?sequence=1&isAllowed=y)

<sup>86</sup> Ibid, p. 12.

<sup>87</sup> I. O'Donnell, E. Baumer, & N. Hughes, 'Recidivism in the Republic of Ireland', *Criminology and Criminal Justice* (2008) 8(2), pp. 123-146.

<sup>88</sup> IPS, *Irish Prison Service Recidivism Study 2013* (IPS: Longford, 2013) at p. 3, available at <http://www.irishprisons.ie/images/pdf/recidivismstudyss2.pdf>

<sup>89</sup> IPS, *Irish Prison Service Recidivism Study 2013* (IPS: Longford, 2013) at p. 3, available at <http://www.irishprisons.ie/images/pdf/recidivismstudyss2.pdf>

<sup>90</sup> See CSO, "Prison Recidivism 2010 cohort", 09 November 2016, available at <http://www.cso.ie/en/releasesandpublications/er/prir/prisonrecidivism2010cohort/>

reoffend within a shorter timeframe. The reoffending rate was 49.8% for the under 21 category and 94.2% of those reoffenders did so within the first year after release.<sup>91</sup>

Haines argues that the immediate social environment to which ex-prisoners return is crucial to their re-entry success or failure. According to Haines, released prisoners are frequently more successful in meeting their accommodation or employment needs through relying on their own social networks rather than the social welfare system.<sup>92</sup> Ex-prisoners are reliant the support of family and friends, and if these social bonds actually promote law-abiding attitudes and behaviour, the returning prisoner stands a far greater chance of remaining on the straight and narrow. Family relationships are, however, put under strain when the weight of the reentry process falls on their shoulders, in terms of providing housing, financial assistance and moral support during the difficult weeks after release from prison. A 2008 research report commission by the Bedford Row family Project in Limerick entitled *Voices of Families Affected by Imprisonment* includes interviews with family members of prisoners who stated that the absence of community after-care supports placed a substantial burden on them to help their family members reintegrate back into the family unit and the wider community.<sup>93</sup> According to Petersilia, “community-based organizations, local businesses, and faith-based organisations are showing themselves to be critical partners in assisting offenders with their transitions.”<sup>94</sup>

The community has a role to play in promoting its own safety and cohesion. Johnson states that “released prisoners find themselves “in” but not “of” the larger society” and they are presumed to suffer from “moral contamination”.<sup>95</sup> Speaking at a United Nations event on crime in Brazil in 2009, Erich Marks stated that crime prevention cannot be viewed solely the responsibility of state bodies working together in an interdisciplinary way, but rather is a social responsibility that requires the engagement of non-governmental organisations, private charities, religious groups and industry working together.<sup>96</sup> He stated further that citizen involvement is central to crime prevention and that the strengthening of civil society can contribute to enhancing the safety and security of society, because active citizenship, democratic participation and moral courage hold society together and prevent crime.<sup>97</sup>

A legal right to rehabilitation and reintegration would mean that all the organs of State - not just the criminal justice agencies - but Departments with responsibility for health, housing, social protection, education, and employment would be obliged to work together to ensure the safe transition of prisoners back to society. It may also mean that the recently enacted and disappointingly conservative *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* could be subject

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<sup>91</sup> Ibid.

<sup>92</sup> K. Haines, *After-care for Released Offenders: A Review of the Literature* (Cambridge: Institute of Criminology, 1990).

<sup>93</sup> Kelleher Associates, *Voice of Families Affected by Imprisonment*, (Bedford Row Family Project: Limerick, 2008).

<sup>94</sup> J. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York, Oxford University Press, 2004), Preface, p. Vi.

<sup>95</sup> R. Johnson, *Hard Time*, 3<sup>rd</sup> edn. (Belmont, CA: Wadsworth, 2002), p. 319.

<sup>96</sup> E. Marks, “Einige aktuelle Erfahrungen zur Kriminalprävention mit deutschem und europäischem Kontext”, *Beiträge für den XII. Kongress der Vereinten Nationen zur Verbrechensverhütung und Strafrechtspflege vom 12. bis 19. April 2010 in Salvador, Brasilien*, pp. 9-20, at p. 11 available at [http://www.erich-marks.de/Biografie/Media/VN\\_Verbrechensverhuetzung-und-Strafrechtspflege.pdf](http://www.erich-marks.de/Biografie/Media/VN_Verbrechensverhuetzung-und-Strafrechtspflege.pdf)

<sup>97</sup> Ibid.

to constitutional challenge on the basis that it acts as a *de facto* lifetime ban from mainstream employment for a former prolific offender who has done considerable “work on themselves” and has maintained a non-offending lifestyle over time. The Act prevents people, formerly entrenched in offending behaviour, from acquiring a positive worker identity due to a perpetual duty to disclose convictions, regardless of how long ago the offences were committed. These are the very people who need the most help to access employment. They are also those whose change process is most commendable and valuable to society in terms of lower crime rates. It is, therefore, in all our interest that former prolific offenders who transform themselves succeed in accessing and maintaining legitimate employment.

The State should lead by example and the criminal justice agencies, including the Probation Service, should be permitted to hire suitably qualified former offenders who may be better able to connect with so-called “hard to reach clients”<sup>98</sup> and particularly adept at challenging antisocial attitudes and behaviours, having “been there” and “done that” themselves. These “wounded healers”<sup>99</sup> would also serve to inspire offenders contemplating change since they are living, breathing proof that redemption is possible. The benefits of their lived experience, should, in my view, be harnessed both in terms of direct service provision and penal policy formulation.

## **Conclusion**

In this submission I have endeavoured to make the case for a reparative, humanistic, rights-based, connected approach to penal policy and practice, particularly in relation to rehabilitation, sentence planning, transition management and reintegration. If fully adopted, it would, I believe, improve outcomes for returning ex-prisoners in terms of their overall wellbeing and desistance prospects, with a key benefit to society through reduced victimisation and criminal justice costs.

Considerable work needs to be done to make sentence planning meaningful in practice by building on a person’s strengths and interests. Great effort also is required to ensure that the transition of prisoners back to the community is safe and responsibly managed. The latter is not simply the responsibility of the IPS and Probation, but requires engagement from Departments of Housing, Health, Social Protection, Education and Employment. A whole of government response is necessary to ensure that a prisoner’s basic human needs are met upon release and accordingly that they are in a stronger position to desist from crime. To maintain a non-offending lifestyle over time, they will require assistance and support from community-based organisations and opportunities to gain mainstream employment.

Thank you for your time and attention to this vital matter,

Jane Mulcahy BCL(G), LLM (NUI)

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<sup>98</sup> User Voice, an ex-offender lead charity working with the Prison and Probation Services in the UK, on prison and community councils. Second Chances is an example of an initiative in the USA, where ex-offenders are employed to assist newly-released prisoners acquire jobs skills in an intensive work training programme.

<sup>99</sup> S. Maruna, *Making Good: How Ex-Convicts Reform & Rebuild Their Lives* (Washington DC, American Psychological Association, 2001), at p. 87.

## Supplementary submission on work training and access to employment for offenders

Jane Mulcahy<sup>1</sup>

This submission should be read in conjunction with my previous contribution to the Oireachtas Committee on Justice Equality relating to interagency working, sentence planning and transition management which was sent to the Committee in February 2017.

If we want a safer society with less crime, then people sent to prison by the courts should have a minimum of 12 hours out of cell a day with access to meaningful activities, including work opportunities that give them the skills and work habits that they can use to earn an honest wage upon release. Once they have acquired or enhanced their skills in prison and their safe transition to the community has been managed with their basic needs met, they then need to be afforded opportunities to expand these skills in educational facilities and eventually mainstream workplaces, for a living wage. This would enhance their human and social capital in ways that should improve their capacity to live a good, fulfilled life.

### *Work training in prison*

Edgardo Rotman argues that socially deprived offenders are likely to have unmet basic human needs relating to education, job-training and fundamental social learning which creates:

the moral basis to institute a legal duty of the state to counteract the effects of disabling criminal punishment, particularly when applied to offenders with a flawed socialization process, and to establish a correlative right of the criminal offender to rehabilitation. This right demands from the state an affirmative care and a positive contribution to the welfare of the inmates, counteracting the harms of imprisonment. Rehabilitation in this sense means a state effort to prevent and neutralize the unwanted harmful side effects of its own punitive intervention as well as to respond to the human challenge posed by the extremely socially-deprived offender.<sup>2</sup>

Giving the example of the excellent *Bake me a cake* prison work initiative in which prisoners make beautiful lamps in collaboration with Northern Lighting,<sup>3</sup> Marianne Vollan Director of the Norwegian Correctional Service argues that work training in prison needs to be more realistic and focused on providing people with skills relevant to today's employment market

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<sup>1</sup> Irish Research Council Employment-based PhD scholar in Law at UCC, co-funded by the Probation Service. Employment partner is the Cork Alliance Centre, a desistance project in Cork City. **The views expressed in this submission are the author's own and do not reflect those of the IRC, Probation or the Cork Alliance Centre.**

<sup>2</sup> E. Rotman, "Do criminal offenders have a constitutional right to rehabilitation?" *The Journal of Criminal Law and Criminology*, (1987) (77)(4), pp. 1023-1068, at p. 1028.

<sup>3</sup> See <https://northernlighting.no/product/bake-me-a-cake/>



rather than redundant, outmoded occupations.<sup>4</sup> As regards instilling prisoners with a sense of duty to counteract their sense of entitlement, she states that they can take responsibility for their own life and practice aspects of citizenship through their participation in workshops, for example by requesting permission from the employer to go to the doctor, paying bills and buying food.<sup>5</sup> Moreover, a person's (in)ability to navigate a "normal" daily routine can also inform risk assessments in the sense that how he relates to, and communicates with others and how he responds to conflict may be relevant to decisions about their progression/release.

Joan Petersilia, a renowned American re-entry scholar, draws on the direct correctional experience of Dora Schiro, former Director of the Missouri Department of Corrections, arguing that inmate responsibility should be encouraged through participation in so-called "parallel universe concepts".<sup>6</sup> As regards the principle of normalisation, Schiro is a firm believer that prison life should resemble life in the community as closely as possible and proposes four cornerstones of her parallel universe, which Petersilia describes as a "corrections-based reentry program."<sup>7</sup> First, during normal working hours all prisoners should participate in school or work or treatment for addiction, mental health issues of sexually harmful behaviour, where relevant. In non-work hours they should engage in reparative activities, community service and recreation.<sup>8</sup> Second, all prisoners must adopt relapse prevention strategies and avoid taking drugs or sexual misconduct and unauthorized activities. Third, prisoners can earn opportunities to make choices for which they will be held accountable. Fourth, good conduct and adherence to rules are recognised and rewarded and can lead to enhanced status.<sup>9</sup>

During their sentence prisoners should be offered opportunities to develop their nurturing, care-giving relational abilities through participation in generative pursuits<sup>10</sup> and helping others.<sup>11</sup> Generativity is the pursuit of goals where the actor tries to give something back to future generations. According to Maruna's engagement with generative pursuits will bestow

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<sup>4</sup> See M. Vollan, "The high-risk offender as subject –the individual approach" in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock-Warnemünde, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project "European treatment and transition management of high-risk offenders"*, (F. Dünkel, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp.83-90, at p. 88.Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> See D. Schiro, *Correcting Corrections: Missouri's Parallel Universe*, (National Institute of Justice: Washington, D.C., 2000) in J. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York, Oxford University Press, 2004), at p. 182-183.

<sup>7</sup> J. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York, Oxford University Press, 2004), at p. 183.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> S. Maruna, T. LeBel & C. Lanier, "Generativity Behind Bars: Some 'Redemptive Truth' about Prison Society," in E. de St. Aubin, D. McAdams & T. Kims (eds), *The Generative Society* (American Psychological Society; Washington DC, 2004), pp. 131-152.

<sup>11</sup> W. Gove, "The Effect of Age and Gender on Deviant Behavior: A Biopsychosocial Perspective," in A.S. Rossi (ed), *Gender and the Life Course*, (Aldine: New York) pp. 115-144.



feelings of fulfilment, exoneration and legitimacy on desisting offenders and may also serve as a form of therapy.<sup>12</sup> Generative roles can give people a sense of achievement and meaning in life. LeBel has documented the benefits to a person's psychological wellbeing that accrues from their engagement in advocacy<sup>13</sup> and helping others, finding that there is correlation between having "helper/wounded healer orientation" and increased self-esteem and satisfaction with life.<sup>14</sup> LeBel's research revealed that criminal attitudes and behaviours decline with a person's participation in helping and advocacy pursuits.<sup>15</sup> Weaver and McCulloch state that LeBel's findings suggest "that helping or advocating on behalf of others may help maintain a person's pro-social identity and facilitate the maintenance of desistance" and that it would make sense for prisons and Probation "to invest in increased opportunities for people to engage in these behaviours."<sup>16</sup>

In 2004 Burnett and Maruna published an account of a case study looking at the advice work conducted by prisoners at HMP Springhill as a Citizens Advice Bureau (CAB).<sup>17</sup> Although it did not come into being with the explicit intention of having a strengths-based focus from a rehabilitation perspective, it is nonetheless deemed by the authors to be "an ideal example of strengths-based resettlement on the ground"<sup>18</sup> in which prisoners acquired or updated marketable skills such as improved proficiency with computers, phone etiquette and the normality of "having a one-to-one with people"<sup>19</sup>. The CAB initiative was "a pre-release route into the habits and ethos of daily professional employment" which offered long sentence prisoners nearing the end of their sentence who qualified for daytime release on temporary licence (ROTL) daily work in a community-based call centre, usually for a period of six months.<sup>20</sup> It also afforded them an opportunity to "give back" to the community by providing callers with useful advice about their problems.<sup>21</sup>

While some prisoners in the scheme successfully applied for and gained CAB work after release, the biggest contribution of the CAB project, in Burnett and Maruna's view, related

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<sup>12</sup> S. Maruna, *Making Good: How Ex-Convicts Reform & Rebuild Their Lives* (Washington DC, American Psychological Association, 2001), p. 118. See also F. McNeill, "Punishment as rehabilitation" in G. Bruinsma & D. Weisburd, (eds.) *Encyclopedia of Criminology and Criminal Justice*, (Springer: New York, 2014) pp. 4195-4206.

<sup>13</sup> T. LeBel, "Formerly incarcerated persons use of advocacy / activism as a coping strategy in the reintegration process" in Veysey B, Christian J and Martinez D J (eds) *How Offenders Transform Their Lives* (Willan Publishing: Cullompton, 2009).

<sup>14</sup> T. LeBel, "An examination of the impact of formerly incarcerated persons helping others", *Journal of Offender Rehabilitation*, (2007) 46 (1/2), at p. 1-24.

<sup>15</sup> *Ibid*, at p. 2.

<sup>16</sup> B. Weaver & T. McCulloch, *Co-producing Criminal Justice: Executive Summary*, Report No. 05/2012, (Scottish Government Social Research: 2012) at para. 4.3.3.

<sup>17</sup> R. Burnett & S. Maruna, *Prisoners as Citizens' Advisers: The OxCAB-Springhill Partnership and Its Wider Implications* (London: Esmée Fairbairn Foundation: 2004).

<sup>18</sup> *Ibid*, p. 85.

<sup>19</sup> *Ibid*, p. 93

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid*, p. 87.

"to the self-concept and social identity of the prisoners taking part."<sup>22</sup> Participation in meaningful work helped people to view themselves in a positive light and served to distance them somewhat from their criminal pasts and antisocial labels.<sup>23</sup> Burnett and Maruna state that typical forms of prison employment such as cleaning, factory labour and kitchen work cannot be properly "considered 'strengths-based or restorative because they are not voluntary efforts that put offenders in visible, community-oriented 'helping' or leadership roles."<sup>24</sup> Instead, a strengths-based approach to prisoner employment should, according to Bazemore and Stinchcomb focus on projects "designed to meet community needs, build community capacity, and repair the harm caused by crime to affected communities".<sup>25</sup>

Gove states that desistance from crime results partly from a "shift from self-absorption to concern for others; increasing acceptance of societal values...; increasing comfort with social relations; increasing concern for others in their community; and increasing concern with the issue of the meaning of life." Toch argues that offenders who take on a helping role - for example those who become involved with the Red Cross or as Listeners with the Samaritans in Irish prisons - may feel a sense of accomplishment, experience increased self-esteem and purpose in their lives, as well as a change in their beliefs about the importance taking personal responsibility.<sup>26</sup>

#### *Access to employment in the free world*

Agency and a positive self-concept will be hampered, if an offender who fully considers himself to be redeemed, and adjusts his behaviour to match his new, non-criminal identity finds that he, nonetheless, repeatedly has doors slammed in his face by mainstream society, for example by employers who cannot see beyond his criminal past and are unwilling to give him a chance to prove himself.

MacKenzie suggests that the acquisition of work on release from prison is a protective factor that may reduce recidivism,<sup>27</sup> while Bushway and Apel state a former offender's participation in constructive, civic-minded pursuits like work and commitment to the job in question might be a "signal of desistance."<sup>28</sup> Dünkel, Pruin and von der Wense contend that where sentence planning includes the continuation in the community of education or

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<sup>22</sup> Ibid, p. 93.

<sup>23</sup> Ibid.

<sup>24</sup> R. Burnett & S. Maruna, *Prisoners as Citizens' Advisers: The OxCAB-Springhill Partnership and Its Wider Implications* (London: Esmée Fairbairn Foundation: 2004) p. 87.

<sup>25</sup> G. Bazemore & J. Stinchcomb 'Involving Community through Service and Restorative Justice: Theory and Practice for a Civic Engagement Model of Reentry', *Federal Probation* (2004)68(2): 14–24 at p. 18.

<sup>26</sup> H. Toch, "Altruistic Activity as Correctional Treatment", *International Journal of Offender Therapy and Comparative Criminology* (2000), 44(3): 270-8.

<sup>27</sup> D. L. MacKensie, *What works in Corrections? Reducing the Criminal Activities of Offenders and Delinquents*, (New York: Cambridge University Press, 2006).

<sup>28</sup> S. Bushway and R. Apel, "A Signaling Perspective on Employment-Based Re-Entry Programming: Training Completion as a Desistance Signal", *Criminology and Public Policy*, (2012) 11(1),pp.21-50.

training pursuits commenced in prison, this enhances a person's desistance prospects.<sup>29</sup> They state further that the evidence-based research has found that "transitional programs providing individualized employment preparation and services for high-risk offenders have been found to be 'working'."<sup>30</sup> According to Dickey and Smith:

Probation and parole projects in which offenders visibly and directly produce things the larger community wants, such as gardens, graffiti-free neighbourhoods, less dangerous alleys, habitable housing for the homeless ... have also helped build stronger communities, and have carved channels into the labour market for the offenders engaged in them.<sup>31</sup>

It is deeply regrettable that Irish policy-makers recently saw fit to maintain the legal barriers many people with criminal histories face in accessing employment. Under the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, signed into law on 11 February 2011 by President Higgins, adults with certain minor criminal convictions are no longer legally obliged to disclose them after seven years to prospective employers.<sup>32</sup> The legislation does not apply to any conviction for a sexual offence or an offence which was tried in the Central Criminal Court. It includes suspended sentences of under two years, but does not cover people who have more than one offence – other than minor motoring or public order offences– irrespective of how long ago those offences occurred.<sup>33</sup> According to the Department of Justice, it is estimated that about 85% of convictions will become spent after 7 years as a result of this Act.

In announcing the commencement of the new legislation, Minister for Justice and Equality, Frances Fitzgerald TD stated that it:

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<sup>29</sup> F. Dünkel, I. Pruin & M. von der Wense, "Final Evaluation Report of the Justice-Cooperation-Network-Project 'European treatment and transition management of high-risk offenders'" in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock-Warnemuende, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project "European treatment and transition management of high-risk offenders"*, (F. Dünkel, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp. 253-291, p. 283.

<sup>30</sup> Ibid, p. 283.

<sup>31</sup> W. Dickey & M.E. Smith, *Dangerous Opportunity: Five Futures for Community Corrections: The Report from the Focus Group*. US Department of Justice, Office of Justice Programs: Washington, DC, 1998) at p. 35, cited in R. Burnett & S. Maruna, "The kindness of prisoners: strengths-based resettlement in theory and in action", *Criminology and Criminal Justice*, (2006) 6(1): 83-106, p. 87.

<sup>32</sup> See Department of Justice, "Commencement of Spent Convictions Act and National Vetting Bureau Act", 29 April 2016, available at <http://www.justice.ie/en/JELR/Pages/PR16000094>. All convictions in the District Court for motoring offences which are more than 7 years old will be spent, with the proviso that spent convictions for dangerous driving are limited to a single conviction. Additionally, all District Court convictions for minor public order offences which are more than 7 years old will be spent. Finally, where a person has one District Court or Circuit Court conviction (other than a motoring or public order offence) which resulted in a term of imprisonment of less than 12 months (or a fine) that conviction will also be spent after 7 years.

<sup>33</sup> See IPRT, "The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 has finally commenced", 29 April 2016, available at <http://www.iprt.ie/contents/2905>

*is an important milestone in the rehabilitation of offenders in Ireland. This legislation brings Ireland into line with most other EU Member States in providing that people convicted of relatively minor offences can eventually leave their past behind them and get on with their lives. The Bill should be of particular benefit to ex-offenders, who often find their path to employment blocked, once they admit to a previous offence. Society's interests and those of the offender who mends his or her ways can coincide. It is in everyone's interest that offenders who have paid their debt to society and want to leave crime behind are encouraged to do so. Insofar as this legislation can help, then it is to be welcomed by all.*<sup>34</sup> [emphasis in the original]

English law provides for sentences of up to four years being covered by the legislation.<sup>35</sup> Building on the UK's experience of over 40 years with rehabilitation and spent convictions, Ireland's leading penal reform NGO, the Irish Penal Reform Trust (IPRT) argued that the definition of "excluded sentences" in section 1 of the Bill should be amended to at least "sentences of 30 months or less" (the previous UK position) or, preferably, to "sentences of 48 month or less".<sup>36</sup> This sensible proposal fell on deaf ears. Basically, the new Act will assist middle-class people who, by and large, enjoy decent social networks, ample social capital and opportunities for pro-social engagement in society, but who have misbehaved on our roads, or streets by being drunk and disorderly, or who might have a single conviction dating back to their youth for section 3 possession of cannabis.

But what about the people who have more than one conviction for a road traffic offence or minor public order matter? What about chronic offenders with in excess of ten convictions<sup>37</sup> and several stints of imprisonment behind them? When launching the Joint Agency Response to Crime initiative (J-ARC), the Irish version of Integrated Offender Management in November 2015, the Minister for Justice stated that it is estimated that 75% of all property crime is linked to 25% of offenders in Ireland.<sup>38</sup> In the context of burglary, for example, a perennially emotive crime causing considerable upset and insecurity to victims, the same statistic applies. According to Garda Síochána statistics, 75% of all burglaries are committed by 25% of burglars.<sup>39</sup> Most property crime is perpetrated by people chronically

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<sup>34</sup> See Department of Justice, "Commencement of Spent Convictions Act and National Vetting Bureau Act", 29 April 2016, available at <http://www.justice.ie/en/JELR/Pages/PR16000094>

<sup>35</sup> See *Legal Aid, Sentencing and Punishment of Offenders Act, 2012* provides that for a rehabilitation period of one year for community orders, two years for custodial sentences of six months or less, four years for custodial sentences of over six months and up to and including 30 months, and seven years for custodial sentences of over 30 months and up to and including 48 months. Custodial sentences of over four years must continue to be disclosed when necessary, including to employers.

<sup>36</sup> See *IPRT Submission on the Criminal Justice (Spent Convictions) Bill, 2012*, (2012) available at [http://www.iprt.ie/files/IPRT\\_Submission\\_on\\_Spent\\_Convictions\\_Bill\\_2012\\_20012016.pdf](http://www.iprt.ie/files/IPRT_Submission_on_Spent_Convictions_Bill_2012_20012016.pdf)

<sup>37</sup> Zara & D. Farrington, "Chronic Offenders and the Syndrome of Antisociality: Offending is a Minor Feature!", *Irish Probation Journal* (2016) 13, pp.40-64, at p. 46.

<sup>38</sup> See Department of Justice and Equality, "The Minister for Justice and Equality, Frances Fitzgerald, T.D., launches J-ARC the Joint Agency Response to Crime", 30 November 2015, available at <http://www.justice.ie/en/JELR/Pages/PR15000617>

<sup>39</sup> See Department of Justice and Equality, "Commencement of the Criminal Justice (Burglary of Dwellings) Act 2015", 17 January 2016 available at <http://www.justice.ie/en/JELR/Pages/PR16000017>

addicted to illegal drugs. If a prolific burglar is convicted and sentenced to imprisonment and during that time he manages to make significant inroads towards a better future by tackling his addiction issues and underlying psychological problems, how do we as a society help him sustain that change process when he gets out? The answer is, quite simply, that we do very little to support him.

By and large we fail to provide the former prolific burglar - now would-be desister - with the vital transitional supports, the opportunities, the sense of belonging to mainstream society that will enhance his reintegration and desistance prospects.<sup>40</sup> If he is minded to apply for a work, he is legally obliged to declare his criminal history to every potential employer who requests such disclosure for the rest of his life. He can, of course, take his chances and not disclose his convictions, but if he adopts this course of action he is likely to fear his secret being uncovered and will probably not settle well into his job. If his convictions do come to light, he will likely be let go due to the deception, even if he has proven himself to be a good, diligent worker. However, if he complies with the legal obligation and discloses his convictions, his chances of being hired are virtually nil, unless he has a friend or acquaintance that is willing to vouch for him. Jerry, a peer mentor in the You're Equal pilot project at Castlerea prison told the evaluation team that ex-prisoners face an unenviable dilemma regarding their past.

I'm an ex-prisoner myself. In active addiction for 17 years, heroin was my drug of choice and in 1997 I went through a treatment centre ... What if you have turned a corner in your life and you're then looking to make a new start. Do you draw a line underneath the past, veil it and try to hide it and pretend it never happened and kind of reinvent yourself? In which case you're kind of living a lie. Or do you openly and honestly declare your past? In which case you're unlikely to even get the interview, you know, let alone the job.<sup>41</sup>

Constant rejection in the face of feeling and behaving like a different person can undermine the will to continue on the path of desistance. For some it will inevitably lead to relapse and re-offending. What's the point of being redeemed, if "the feeling of redemption"<sup>42</sup> is worse than the feeling of being a prolific criminal in active addiction?

For most people living non-criminal lives, a positive "worker" identity is central to how they see themselves. As Weaver states work matters in a "whole-greater-than-parts" way because it contributes to a person's sense of "place, belonging and hope."<sup>43</sup> In addition to providing or facilitating financial security, healthy structure and routine, self-esteem and

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<sup>40</sup> See, however, the ACER-3 project as part of the J-ARC, which provides high intensity supervision and assistance to prolific burglars in certain parts of Dublin.

<sup>41</sup> J. Culleton & F. Hogan, *Re-integration - Life after prison; An evaluation of the You're Equal Project*, (Centre for Social and Family Research, Waterford Institute of Technology, 2008) at p. 72, available at [http://repository.wit.ie/1187/1/Re-Integration - Life after Prison.pdf](http://repository.wit.ie/1187/1/Re-Integration_-_Life_after_Prison.pdf)

<sup>42</sup> Lyric from "World Outside Your Window" by Tanita Tikareem from the Ancient Heart album.

<sup>43</sup> See B. Weaver, "Co-producing desistance from crime: The role of social cooperative structures of employment" in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p.14.

ambition<sup>44</sup> work may generate a feeling of relational connectedness, “togetherness”<sup>45</sup> or inclusion<sup>46</sup> when it occurs alongside others. But how do people acquire a positive worker identity and its myriad benefits if they are perpetually excluded from the workplace? Initially, offenders are excluded from the workplace because of their poor family background, early school-leaving and lack of employment skills to thrive in the competitive jobs market. If they are sent to prison for years they are cooped up in unnatural, infantilising environments where “social problems are most acute and people’s life chances are most absent”.<sup>47</sup> Most prisons with long lock-down periods offer limited opportunities to acquire or hone employment skills. Once released, they will continue to be excluded from society, and specifically from the workplace, primarily because of their past criminality. According to Maruna:

criminal sanctions, for the most part, end very badly. Indeed, by most accounts, they do not end at all. Except for a very fortunate few who have their offenses formally forgiven through pardons or other legal means, individuals with felony records can remain permanently stigmatized, excluded from employment, educational and social opportunities, on the grounds of something they did many years or decades earlier.

**In 2011 Audit Scotland estimated that if one former prisoner could be assisted into employment for five years it would lead to a net saving almost one million pounds.**<sup>48</sup> If the public yearns for a world with less crime and wants prisoners to be rehabilitated, to turn a corner and live better lives, then the public itself has to change. As a society, we reportedly live in fear and want to be safer.<sup>49</sup> If this is indeed the case, then we need to elect politicians who take a long view (i.e. are not just focused on deliverables within the immediate electoral cycle) and prioritise spending in housing, health, education, social welfare and employment generation, especially in deprived areas in order to build stronger, more cohesive families (however they are constituted) better schools and connected communities.

Once the harm of criminal conduct has been done and paid for, we must all play a more active role, individually and collectively, in rehabilitating and reintegrating offenders. While being more forgiving of and trusting in people who declare themselves to be changed is arguably simply a case of being the morally right to do, I suggest that investing greater care

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<sup>44</sup> B. Owens, “Training and Employment in an Economic Downturn: Lessons from Desistance Studies”, *Irish Probation Journal*, (2009) 6, pp.49-65, at p.59.

<sup>45</sup> See B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24, at pp. 17-18.

<sup>46</sup> Ibid, p.19.

<sup>47</sup> Prime Minister’s Office, “Prison reform: Prime Minister's speech”, 08 February 2016, available at <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>

<sup>48</sup> Audit Scotland, An overview of Scotland’s criminal justice system, (2011) at p. 33, available at [http://www.audit-scotland.gov.uk/docs/central/2011/nr\\_110906\\_justice\\_overview.pdf](http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf)

<sup>49</sup> See M. Lee, *Inventing Fear of Crime: Criminology and the politics of anxiety* (Willan Publishing: Cullumpton, 2007). See also H. Annison, *Dangerous Politics* (OUP: Oxford, 2016).

and attention into the resettlement and reintegration of our offending brethren is *enlightened self-interest*.

If we believe that people can change and be redeemed,<sup>50</sup> we must face up to and take responsibility for our role in their redemption. Offenders cannot do it on their own. They need our assistance to go straight, whether this sits well with us or not. Society needs to embrace people on the road to change. We need give them real opportunities to demonstrate they have turned over a new leaf. We must stop seeing them as “other” and learn to view them as “assets to be harnessed”, to borrow a recent phrase from former British Prime Minister David Cameron.<sup>51</sup> If we are employers, we must take chances to enable ex-offenders to turn a corner.

In its 2011 report on reintegration in Council of Europe States, the QCEA recommends that Member States should prioritise efforts to engage wider support into prison reintegration. In particular:

- a. employers should be offered incentives to employ released prisoners, for example by waiving employers’ social security payments for a period of time
- b. greater involvement by the private sector and charities should be sought in providing work placements and work experience for prisoners nearing their release.<sup>52</sup>

The Constitutional Court of the Federal Republic of Germany, in *Lehbach*<sup>53</sup> stated that based on the Sozialstaatsprinzip contained in Article 20. 1 of the Grundgesetz,<sup>54</sup> which places a constitutional duty on the German State to protect and care for the socially disadvantaged, the State was under an active duty to rehabilitate criminal offenders. As Dr. Stefanie Hubig, Secretary of State at the Federal Ministry for Justice and Consumer Protection in Berlin states (ex)prisoners must be offered as a fundamental right the chance to reintegrate into

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<sup>50</sup> See A. Bottoms, “The Community dimension of Community Penalties”, *The Howard Journal of Criminal Justice*, (2008) 47(2), pp.146-169. See also IPRT, *White Paper on Crime IPRT Response to Discussion Document 4 The Community and the Criminal Justice System* (2011), p. 6 available at <http://www.iprt.ie/contents/2181>.

<sup>51</sup> See Prime Minister’s Office, “Prison reform: Prime Minister’s speech”, 8 February 2016, available at <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>. “See also John Newman, “UK prisoners “potential assets to be harnessed” for profit”, 11 May 2016, available at <https://www.wsws.org/en/articles/2016/05/11/pris-m11.html>

<sup>52</sup> Quaker Council for European Affairs, *The Social Reintegration of Ex-Prisoners in Council of Europe Member States European Affairs* (2011), at p. x, available at <http://cep-probation.org/wp-content/uploads/2015/03/rprt-reintegration-full-en-may-2011.pdf>

<sup>53</sup> Judgment of June 5, 1973, Bundesverfassungsgericht (W. Ger.), 35 BVerfGE 202. See E. Rotman, “Do criminal offenders have a constitutional right to rehabilitation?” *The Journal of Criminal Law and Criminology*, (1987) (77)(4), pp. 1023-1068 at p. 1058 where the author states that the *Lehbach* decision “was premised on a view of criminal offenders as psychologically handicapped and consequently in need of resocialization-oriented compensatory action. The assimilation of prisoners and former convicts to the vast group of those handicapped in personal and social development creates a new perspective for future applications of the equal protection theory to the rehabilitation of criminal offenders. Such an interpretation should introduce into the constitutional equation the social welfare and rehabilitation programs to which the disabled are entitled.”

<sup>54</sup> Article 20.1 of the Grundgesetz available at <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf> states: “Die Bundesrepublik Deutschland ist ein demokratischer und sozialer Bundesstaat.”



society upon release due to “the conception of a society which places human dignity at the center of its value system and is committed to the principle of social justice. The state’s duty of care to the members of society, who are hindered in their personal and social development extends to prisoners and ex-prisoners, even those who may pose a risk to others.”<sup>55</sup>

Rotman argues that:

the right to rehabilitation can be formulated as the right to an opportunity to return to society with an improved chance of being a useful citizen and of staying out of prison. This right requires not only education and therapy, but also a non-destructive prison environment and, when possible, less restrictive alternatives to incarceration. The right to rehabilitation is consistent with the drive towards the full restoration of the civil and political rights of citizenship after release. ... The denial of rehabilitation and the consequent lack of concern for the future life of the offender amounts to a passive and indifferent acceptance of the inevitable deterioration brought about by life in the institution. Imprisonment itself jeopardizes other rights different from those forfeited through the commission of a crime and the consequent criminal punishment. Moreover, a large majority of inmates are socially handicapped offenders who need basic support in the areas of education, job-training and fundamental social learning. Their social handicap is considerably aggravated by the stigma of a criminal record, requiring additional efforts from social agencies to support the arduous process of social reintegration.<sup>56</sup>

Recognising the challenges of accessing employment that ex-prisoners face, the Irish Prison Service (IPS) and Probation Service are currently working on the development of Social Enterprise (SE), which has been underused to date in Ireland as a response to barriers to accessing the labour market due to social exclusion combined with the stigma of criminal convictions. The 2016-2018 IPS Strategic Plan contains a commitment to this effect.<sup>57</sup>

Indeed, Siobhan Cafferty, Director of the Bridge Project (one of the J-ARC projects in Dublin that deals with violent offenders) has been seconded to the Probation Service in Haymarket as Project Manager with responsibility for the development of SE. **The Justice Committee**

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<sup>55</sup> S. Hubig, “Proceedings of the final conference – Welcome addresses and introduction to the course of the project” in in *European Treatment, Transition Management, and Re-Integration of High-Risk Offenders, Results of the Final Conference at Rostock-Warnemuende, 3-5 September 2014, and Final Evaluation Report of the Justice-Cooperation Network (JCN)-Project “European treatment and transition management of high-risk offenders”*, (F. Dünkler, J. Jesse, I. Pruin and M. von der Wense eds.), (Forum Verlag: Godesberg, 2016), pp.6-8, at p. 6.

<sup>56</sup> E. Rotman, “Do criminal offenders have a constitutional right to rehabilitation?” *The Journal of Criminal Law and Criminology*, (1987) (77)(4), pp. 1023-1068 at pp. 1026-1028.

<sup>57</sup> IPS, *Irish Prison Service Strategic Plan 2016-2018*, available at [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/strategic\\_plan\\_2016.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/strategic_plan_2016.pdf) See Goal 2.10 at p. 30: “We will increase the employment opportunities for ex-prisoners through social enterprises and other initiatives”.



**may find it beneficial to consult with Ms Cafferty about the barriers to employment for (ex)offenders and the potential of SE in this country.**

Unemployed ex-prisoners are twice as likely to re-offend as those in full or even part-time employment,<sup>58</sup> while the recidivism rate for prisoners involved in prison cooperatives has been reported to be as low as 1-5%.<sup>59</sup> Weaver makes the case for the promotion of social cooperatives as a means of circumnavigating “systemic obstacles to employment such as criminal records and employer discrimination”,<sup>60</sup> arguing that

[t]hrough-the-prison-gate social cooperatives provide continued access to paid employment and resettlement services for their members both in prison and in the community. As the process of desistance extends beyond the practices and proclivities of the justice sector, supporting resettlement and desistance requires collaborative multi-sectorial approaches.<sup>61</sup>

Majee and Hoyt write that both communities and individuals can grow and thrive in the context of community development through enhancing equality, solidarity, democracy, mutual-aid, self-responsibility and social capital.<sup>62</sup> Work integrated social enterprises abroad have demonstrated that they provide valuable opportunities for people who have criminal convictions and otherwise poor employment prospects.<sup>63</sup> Weaver emphasises that in Italy the social cooperatives that hire ex-prisoners are independent of prisons and Probation and aim to achieve social justice and solidarity rather than reduce reoffending.<sup>64</sup> Existing SEs in the UK place the emphasis on employability and job training rather than offering actual paid employment.<sup>65</sup> Since employment is an “important indicator of and pathway to social

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<sup>58</sup> See *Submission to the UN Universal Periodic Review 12th session of the UPR Working Group of the Human Rights Council October 2011*, p. 5.

<sup>59</sup> W. Majee & A. Hoyt, “Are worker-owned cooperatives the brewing pots for social capital? *Community Development*, (2010) 41(4), pp.417-30, cited in B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p. 21.

<sup>60</sup> See B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p. 13.

<sup>61</sup> Ibid.

<sup>62</sup> See W. Majee & A. Hoyt, “Are worker-owned cooperatives the brewing pots for social capital? *Community Development*, (2010) 41(4), pp.417-30 and W. Majee & A. Hoyt, “Cooperatives and community development: a perspective on the use of cooperatives in development”, *Journal of Community Practice*, (2011) 19(1), pp. 48-61.

<sup>63</sup> See B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24. At p.16 Weaver describes how ‘social solidarity cooperatives’ came into being in Italy in 1991 providing paid employment to socially disadvantaged groups including prisoners in custody, those on partial release and post release. Law 381/1991 specifies two types of social co-operatives: type A provides services, while the purpose of type B is to integrate socially disadvantaged people into work. The law requires 30% of employees to meet the “disadvantaged” requirement.

<sup>64</sup> B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p. 16.

<sup>65</sup> Ibid, p.14.

integration”<sup>66</sup>, Weaver recommends that the UK learn from the experience of their Italian counterparts regarding post-release paid employment innovations. Italian social cooperatives are “embedded in the country’s infrastructure”<sup>67</sup> and are part of the penal landscape where, by virtue of the Smuraglia Law, imprisoned employees are entitled to receive a wage not less than two thirds of that regular “free” workers would get for the same job under a national contract. The same law increased the financial incentives for cooperatives employing prisoners by way of generous tax credits and a 95% reduction of social security and national insurance contributions.<sup>68</sup>

Italian social cooperatives seek to bolster social integration and community cooperation and cohesion by running cafés or shops, running charitable events to benefit local people, hosting social events open to the whole community and hiring people including professionals from the local area. All the social cooperatives visited by Weaver were NGOs providing support to prisoners and their families (some provide family mediation), investing in their communities and working towards the development of new social relationships supportive of social integration.<sup>69</sup>

Forfás define SE in an Irish context as an enterprise: i) that trades for a social/societal purpose; ii) where at least part of its income is earned from its trading activity; iii) is separate from government; and iv) where the surplus is primarily re-invested in the social objective.<sup>70</sup> In May 2016, Social Entrepreneurs Ireland (SEI) devoted a Minnovation Fund in event at Smock Alley Theatre in Dublin to business ideas on the theme of “Unlocking a positive future for offenders”. A scoping exercise was also recently undertaken by Cafferty, McCarthy and Power regarding the potential of SE in Ireland as prison and community-based income-generating businesses to provide supported employment, responsive to

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<sup>66</sup> B. Weaver, “Co-producing desistance from crime: The role of social cooperative structures of employment” in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p.16.

<sup>67</sup> Ibid, p. 12.

<sup>68</sup> Nonetheless, see S. Marietti, *Prison conditions in Italy* (European Prison Observatory, 2011) at p.24 available at: [http://www.prisonobservatory.org/upload/Italy\\_Peniten.pdf](http://www.prisonobservatory.org/upload/Italy_Peniten.pdf) where she writes that only 1 in 5 prisoners out of 52,000 prisoners has access to work due to lack of funding.

<sup>69</sup> Ibid, p. 20.

<sup>70</sup> Forfás, *Social Enterprise in Ireland: Sectoral Opportunities and Policy Issues*, (Forfás: Dublin, 2013), at p.2, available at [http://test.ahg.gov.ie/app/uploads/1970/01/forfas\\_social\\_enterprise\\_in\\_ireland\\_sectoral\\_opportunities\\_and\\_policy\\_issues\\_publication-3.pdf](http://test.ahg.gov.ie/app/uploads/1970/01/forfas_social_enterprise_in_ireland_sectoral_opportunities_and_policy_issues_publication-3.pdf) See B. Weaver and D. Nicholson, “Co-producing change: resettlement as a mutual enterprise”, *The Prison Service Journal*, (2012) 204, pp. 9-16. At p. 10 the authors note that the NOMS Report *Reducing re-offending through social enterprise: social enterprises working with prisons and probation services – a mapping exercise for National Offender Management Service* (2009) “made no distinction between the work of mutual and co-operative social enterprises and the work of the wider social enterprise sector” but rather conflate all the various forms of social enterprise. The NOMS report states that an SE is any “independent business that trade for a social purpose” (p. 17). Weaver and Nicholson state that this lack of definitional clarity “obscures the critical feature of mutual and co-operative forms of social enterprise – the ‘ownership questions’ – which differentiates them from other models of social enterprise” and “allows for a prisoner owned enterprise to be indistinct from a global corporation” that specifies a social purpose “and seems in other ways to be as focused on encouraging private sector investment and profit” in the criminal justice field as it is with the resettlement of prisoners. The authors proceed to give a useful account of the importance of the ownership issue.

service-user needs, to those exiting prisons who may otherwise find it virtually impossible to secure employment.<sup>71</sup> They claim that a major benefit for SE's focusing on criminal justice clients is that work/training provides a client-centred environment in which other criminogenic risks/needs underlying offending behaviour may be addressed.

In their interviews with people from the Department of Justice, IPS, Probation and community sector, Cafferty, McCarthy and Power report widespread enthusiasm in principle for the concept of SEs, but note that a range of cultural, structural and policy reforms would be necessary. All 8 interviewees supported the development of SE believing that the model presents significant potential for criminal justice clients, their families, for the state and its agencies in terms of both service outcomes and efficiency. The authors argue that support from the State through financial incentives would "support the development of SE from the top down" and that policy changes that permit State agencies to become SE customers would be a "significant benefit".<sup>72</sup> The criminal justice agencies would, however, have to become less risk averse, particularly regarding the development of new SE funding mechanisms and learn from operational SEs in other jurisdictions such as Italy in order to be realistic about their financial as well as the anticipated social returns for SEs working with people with criminal histories.<sup>73</sup>

As regards the role of social cooperatives in "re-socialising"<sup>74</sup> extremely disadvantaged people during and post-imprisonment and supporting their social integration, Weaver's interviews with Italian workers who benefitted from these schemes afforded people a sense of normality or ordinariness which:

meant 'being' and 'doing' in the same way as others around them – but it also meant feeling no worse, or better, than anyone else, but both capable and allowed to do anything anyone else would want – to work, be in company, earn a living.<sup>75</sup>

### *Employing reformed offenders within the justice system and beyond*

As a major employer in this country, the State needs to lead by example and employ ex-offenders who have turned their lives around and are suitably qualified for careers, including (but not limited to) those in the criminal justice area. In terms of the benefits of harnessing the lived experience of former offenders to assist others with their reintegration and desistance journey, the Quaker Council for European Affairs (QCEA) recommends that States "consider the use of ex-offenders (who have reintegrated) as counsellors, mentors or

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<sup>71</sup> S. Cafferty, O. McCarthy and C. Power, "Risk and Reward: The Development of Social Enterprise within the Criminal Justice Sector in Ireland – Some Policy Implications", *Irish Probation Journal*, (2016) 13, pp. 22-39.

<sup>72</sup> Ibid, at p. 37.

<sup>73</sup> Ibid.

<sup>74</sup> B. Weaver, "Co-producing desistance from crime: The role of social cooperative structures of employment" in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24, at p.20.

<sup>75</sup> B. Weaver, "Co-producing desistance from crime: The role of social cooperative structures of employment" in Howard League of Penal Reform, ECAN Bulletin, Issue 28, February 2016, p.12-24 at p. 19.

advisers for others who are newly released.”<sup>76</sup> People are more likely to be influenced by a change-agent with whom they can identify.<sup>77</sup> Weaver and McCulloch advocate for greater direct involvement by former offenders and prisoners in the development and delivery of criminal justice interventions, stating that it:

can enhance the credibility, meaning or legitimacy of those interventions to users. If services are co-designed or co-produced by former/current prisoners and probationers, they may well be more likely to be credible to users, fit for purpose and thus effective.<sup>78</sup>

Service-user involvement in various aspects of governmental decision-making is growing in importance and in the criminal justice setting fostering the engagement of victims, ex/offenders, families and community-based organisations is fully in line with the idea of co-production, a governance approach “that emphasizes greater citizen engagement in and co-production of public services and greater third sector provision of the same”.<sup>79</sup> Weaver and McCulloch suggest that desistance might be supported where service users engage in various criminal justice processes and practices, where such participation may amount to both a generative pursuit and “a form of group or collective co-production”. They argue that service-user networks “can generate social capital and enhance feelings of individual and collective self-efficacy”.<sup>80</sup>

In 2010, Martinowicz and Quigley’s Irish reintegration research revealed that there was widespread enthusiasm among service providers and ex-prisoners for peer support schemes. They report that ex-prisoners benefitted from working with people who “know what you’ve been through” and the informality and flexibility of engagement. According to the authors, this flexibility permitted positive engagement, where people “felt that they were doing it for themselves” and were proud of when they managed to “reach the goals they set for themselves”.<sup>81</sup>

As regards the needs of human beings for esteem, Abraham Maslow wrote:

All people in our society (with a few pathological exceptions) have a need or desire for a stable, firmly based, (usually) high evaluation of themselves, for self-respect, or

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<sup>76</sup> Quaker Council for European Affairs, *The Social Reintegration of Ex-Prisoners in Council of Europe Member States* European Affairs (2011), at p. x, available at <http://cep-probation.org/wp-content/uploads/2015/03/rprt-reintegration-full-en-may-2011.pdf>

<sup>77</sup> B. Weaver & T. McCulloch, *Co-producing Criminal Justice: Executive Summary*, Report No. 05/2012, (Scottish Government Social Research: 2012) at para. 3.2.2.

<sup>78</sup> Ibid at para. 3.1.1.

<sup>79</sup> V. Pestoff, *Innovations in Public Services: Co-Production and New Public Governance in Europe* in Botero A, Paterson A and Saad-Sulonen (eds) *Towards peer production in public services: Cases from Finland*, Aalto University publication series Crossover 15/2012 (2012) Helsinki, Finland, available at [http://p2pfoundation.net/Co-Production\\_and\\_New\\_Public\\_Governance\\_in\\_Europe](http://p2pfoundation.net/Co-Production_and_New_Public_Governance_in_Europe)

<sup>80</sup> B. Weaver & T. McCulloch, *Co-producing Criminal Justice: Executive Summary*, Report No. 05/2012, (Scottish Government Social Research: 2012), at para. 4.3.1.

<sup>81</sup> A. Martynowicz & M. Quigley, *“It’s like stepping on a landmine...” - Reintegration of Prisoners in Ireland*, (Dublin: IPRT, 2010), at p. 37.

self-esteem, and for the esteem of others. By firmly based self-esteem, we mean that which is soundly based upon real capacity, achievement and respect from others. These needs may be classified into two subsidiary sets. These are, first, the desire for strength, for achievement, for adequacy, for confidence in the face of the world, and for independence and freedom. Secondly, we have what we may call the desire for reputation or prestige (defining it as respect or esteem from other people), recognition, attention, importance or appreciation. ... Satisfaction of the self-esteem need leads to feelings of self-confidence, worth, strength, capability and adequacy of being useful and necessary in the world. But thwarting of these needs produces feelings of inferiority, of weakness and of helplessness.<sup>82</sup>

In the context of permanently exiting a criminal career, engagement in generative or “helping” pursuits may take the form of employment with a charity or community-based organisation working to assist returning prisoners by providing direct guidance, support and encouragement. The “wounded healer” may also draw on his or her personal experience of what service-users are going through to support change in the ex-prisoner. Doing this kind of work - helping people who are in desperate need of ongoing support and advice, and maybe even being a source of inspiration to some of them – may, potentially, catapult the wounded healer into the sphere of self-actualization, the top tier of human goods in Maslow’s *hierarchy of needs*.<sup>83</sup> According to Maslow, once all the human needs are satisfied:

we may still often (if not always) expect that a new discontent and restlessness will soon develop, unless the individual is doing what he is fitted for. A musician must make music, an artist must paint, a poet must write, if he is to be ultimately happy. What a man *can* be, he *must* be. This need we may call self-actualization.<sup>84</sup>

In redrafting the narrative of their murky pasts, ex-offenders working with people who are going through now what they themselves once experienced, can reinterpret their own criminal histories as being a necessary prelude to finding the path they were destined for in life, namely a helping, caring, useful path. Helping to heal others may, in this way, act to further heal themselves,<sup>85</sup> bringing them closer to a sense of wholeness and social integration.

Evidence of generativity in action can be seen when former addicts become addiction counsellors themselves, or when ex-prisoners act as peer mentors supporting people pre and post release and engaging in work to challenge attitudes and offending behaviour, as well as through initiatives such as User Voice, an ex-offender lead charity working with the Prison and Probation Services in the UK, on prison and community councils. Second Chances

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<sup>82</sup> Ibid, pp. 381-382.

<sup>83</sup> A. H. Maslow, “A Theory of Human Motivation”, *Psychological Review*, (1943) 50, 370-396, available online at <http://psychclassics.yorku.ca/Maslow/motivation.htm> (accessed 31/08/16).

<sup>84</sup> Ibid, p. 382.

<sup>85</sup> S. Maruna, *Making Good: How Ex-Convicts Reform & Rebuild Their Lives* (Washington DC, American Psychological Association, 2001), p. 118.

is an example of an initiative in the USA, where ex-offenders are employed to assist newly-released prisoners acquire jobs skills in an intensive work training programme. Ex-offenders facilitate the 2 week intensive post-release work training programme and provide useful “dramaturgical” advice on how to disclose criminal convictions and communicate remorse – what to say and how to say it following rehearsal. Facilitators also work on practical issues such as general workplace decorum, including posture/body language, time-keeping, suitable clothing for the workplace, conduct to enable students to avoid evoking negative stereotypes. The programme also deals with the importance of resilience in the face of rejection.<sup>86</sup>

For those with a personal history of trauma, addiction, offending and prison to be in a position to make a positive contribution to the change process of others – to be effective and inspiring in one’s “replacement self”<sup>87</sup> as a wounded healer - they must have done considerable “work on themselves” and be in a good, healthy, stable place. As Marina, a peer mentor who volunteered on the Cork prison pilot mentoring project from mid-2006 states:

Well, I’m a volunteer mentor and also what’s considered a peer mentor, having spent time in Limerick Prison myself. I’m also a recovering alcoholic, so I bring a lot of my own personal experience to it. But it’s very important that you do a lot of work on yourself. I got sober. I worked on myself. I did a lot of personal work. It’s important that I’m in a good place myself before I even went to work for You’re Equal. If I wasn’t well in myself, I wouldn’t be able to be of use to the people I’m supposed to be helping. So I bring that dimension to working with the guys.<sup>88</sup>

We need to harness the experience of reformed offenders as employees delivering rehabilitation and reentry services, such as peer mentoring, alongside traditional criminal justice agencies since they are living, breathing success stories. “Credible Messengers”<sup>89</sup> who have walked the walk have matchless insight and may be able to better connect with potential desisters, many of whom are likely to have anti-authoritarian views and difficulty

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<sup>86</sup> See J. Haluska “Work wisdom: Teaching former prisoners how to negotiate workplace interactions and perform a rehabilitated self”, *Ethnography* March 2016, 17: 72-91.

<sup>87</sup> P. Giordano, S. Cernovich & J. Rudolph, “Gender, Crime and Desistance”: Toward a Theory of Cognitive Transformation”, *American Journal of Sociology* 107, 990-1064, at p. 1053.

<sup>88</sup> See J. Culleton & F. Hogan, *Re-integration - Life after prison; An evaluation of the You’re Equal Project*, (Centre for Social and Family Research, Waterford Institute of Technology, 2008), at p. 73, available at [http://repository.wit.ie/1187/1/Re-Integration - Life after Prison.pdf](http://repository.wit.ie/1187/1/Re-Integration%20-%20Life%20after%20Prison.pdf)

<sup>89</sup> C. Seppings, *To Study the Rehabilitative Role of Ex-Prisoners /Offenders as Peer Mentors in Reintegration Models – in The UK, Republic of Ireland, Sweden and USA*, (Winston Churchill Memorial Trust of Australia, 2015), available at [https://www.churchilltrust.com.au/media/fellows/Seppings\\_C\\_2015\\_Rehabilitative\\_role\\_of\\_ex-prisoners\\_offenders\\_as\\_peer\\_mentors.pdf](https://www.churchilltrust.com.au/media/fellows/Seppings_C_2015_Rehabilitative_role_of_ex-prisoners_offenders_as_peer_mentors.pdf) At p. 95, Seppings discusses the Crown Height Mediation Center’s SOS Save Our Streets Program which began as a response to the Brooklyn Riots in 1991. The “Credible Messengers” are peer counsellors with extensive experience of crime and imprisonment who work to prevent gun violence and impress upon young people that there are alternatives to violence.

placing trust in professionals.<sup>90</sup> As Jerry, a peer mentor in the Castlerea prison You're Equal project observes:

Being a peer mentor puts you in a unique position to challenge both the prisoners and the system. Just by being there, you can show that rehabilitation does actually work.<sup>91</sup>

### *Conclusion*

Ex-prisoners cannot be expected to make and sustain positive changes, including the decision to abandon a life of crime without safe, responsible transition management which includes the active engagement of non-criminal justice state agencies and the support of the community. If people do not have their basic needs met on release from prison, they are highly likely to reoffend despite their best intentions. Once released, many people making the transition from prison to the outside world will face, once again – often in an intensified form - the harsh realities that caused, or greatly contributed to their offending behaviour in the first instance, such as poverty, exclusion from the employment market, anti-social peers and distorted cognitions, compounded by the stigma of an ex-prisoner status. State agencies and the wider community have a major role to play in supporting returning prisoners, though public awareness of this fact and enthusiasm for reparative justice and a connected, proactive approach to promoting social integration may be low.

Over time, if ex-prisoners who have undergone a major identity shift and subscribe to mainstream values cannot gain access to meaningful employment because of the stigma of their criminal past or build healthy, respectful relationships with pro-social others, their commitment to maintain a conventional lifestyle may well be undermined, regardless of the quality of any therapeutic interventions they may have received (during custody or as part of post-release supervision) or the enthusiasm and commitment of the many professionals who cross their paths.

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<sup>90</sup> See J. Culleton & F. Hogan, *Re-integration - Life after prison; An evaluation of the You're Equal Project*, (Centre for Social and Family Research, Waterford Institute of Technology, 2008), at p. 73, available at [http://repository.wit.ie/1187/1/Re-Integration - Life after Prison.pdf](http://repository.wit.ie/1187/1/Re-Integration%20-%20Life%20after%20Prison.pdf) See Barry, from Linkage's comments.

<sup>91</sup> Ibid.