



Mr. Alan Guidon,  
Clerk to the sub-Committee on Penal Reform,  
Leinster House,  
Dublin 2.

16<sup>th</sup> November 2011

**Your Ref: SCPR-12/3/1**

RE: sub-Committee on Penal Reform – Invitation for Submission

Dear Mr. Guidon,

Please find enclosed a submission document on behalf of the Etruscan Life Training & Education Centre. This document outlines our position on sentencing reform and crime prevention measures.

We as an organisation would be happy to attend a hearing of the Oireachtas Sub Committee on Penal Reform to further give evidence on our position on sentencing reform and crime prevention.

Kind Regards,

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**Etruscan**

Life Training &  
Education Centre

**Submission to the  
Oireachtas Sub Committee on Penal Reform**

**Re: Sentencing Reform**

**15/11/2011**

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## **1. Executive Summary:**

In conclusion what this document attempts to transmit is the idea that a move towards in the first instance restorative sentencing and in the second instance the use of techniques which we use in our programmes as part of overall sentencing can be used in pre trial and pre sentence scenarios to great effect and benefit.

We know through our examination of statistics and research that this ideal can have great benefit to the four main stakeholders who deal with the offence, these are; The Offender, The Victim, The Justice system as a whole and finally Irish Society.

*Firstly The Offender:* In terms of benefits to the offender, in educating them on the issues which underlie the offence the offender has a greater chance of not reoffending or graduating to more serious crime and in the process and allowing them to live a better and more productive life.

*Secondly The Victim:* Victims of crime can be benefitted in two ways, firstly through reducing re-offences we can reduce the numbers of victims of crime, secondly through using our programmes as both a post and pre sentence option they can reduce the amount of time spent by the victim in the prosecution of the offender.

*Thirdly The Justice System:* The benefits to the Justice system are threefold, firstly the judiciary will have greater sentencing options allowing them to be more effective and a more suitable rehabilitation process. Secondly, through a reduction in re-offences there will be a reduction in demand on prison places which will ease the burden on our prisons. Thirdly, through a reduction in offences this will create cost and time efficiencies which will allow the justice department to apportion resources more effectively and reduce costs.

*Finally Irish Society:* The benefit to Irish Society is produced through the reduction of offenders reoffending and through an overall reduction in crime through the use of our programmes as a preventative measure.

## **2. Introduction:**

The Etruscan Centre is a social enterprise which specialises in Life Training and Psychological Education.

Our Organisation provides programmes for people presenting with anger related, aggression, behavioural and Drink/Drug Driving issues.

We focus on early intervention and pre prison and pre-sentence training. Our aim is to show a reduction in anti social behaviour coupled with reduced imprisonment and cost savings for the whole justice system as well as the Irish taxpayer

Etruscan is a multi disciplinary team of professionals with experience from differing backgrounds. They span across Consulting Forensic Clinical psychology, Psychology, corporate finance, Law, Accounting.

Our intervention teams consists of Psychology Associates.

ALL supervised by Consultant Forensic Clinical Psychologist these are:

Dr. Margaret O' Rourke Consultant Forensic Psychologist  
UCC School of Medicine

Dr. Sean Hammond Consultant Forensic Psychologist  
UCC Faculty of Psychology

Etruscan use only evidence based assessments, measurement and interventions:

Risk, Need and Responsively with RAMAS Protocols

Assessment and Treatment of Emotions (RAMAS Anger Assessment Profile)

Assessment of Personality, strengths, problems and Assets

Our programmes are designed to change over time, as research feeds revisions, making them very specific to Irish society needs

Our Interventions used correctly can bring together experiences of Probation officers, Offenders, Gardaí, Social Workers, Victims, Academics and Third Parties.

They can have huge success in Ireland like similar programmes have had worldwide, such as, in Australia, USA and the United Kingdom.

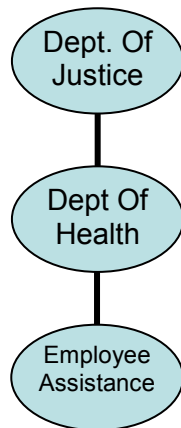
We can put the focus on rehabilitation from the outset and can be delivered with savings to the Justice and Health Departments. As well as the social bonus by treating perpetrators in the community helping family values and family units progress.

### **3. Summary of Our Aims and values:**

- To provide a Cost Benefit to Justice System
- To Improve the quality of life in Irish Society
- To Improve the behaviour and lifestyle of offenders and their family
- To Reduce the level of re-offence in less serious crimes
- To help to free up Court time for more serious offences
- To Help to reduce the prison numbers and make prisons safer places
- To Compile and Publish Research Data with an evidence base
- To provide Professional Job Creation & Training Positions

### **4. Proposal:**

What we propose is that life skills training to be included in sentencing policy/options for the judiciary and introduced at the cautionary stage when perpetrators are given cautions from superintendents. We also propose that our models can be used for training key workers (teachers, social workers, probation officers and Gardaí) so to recognize the issues behind anger, aggression and stress and to direct individuals for training before they become a prison statistic.



- Anti Social Behaviour is a huge problem in our society driven by Anger, Aggression, Stress and abuse of stimulants.
- Our Focus is on the balance of punishment and rehabilitation.
- Anger aggression and stress are the root cause of most crime and therefore most custodial sentences. Addressing these issues prior to first time imprisonment has the greatest saving to the Irish taxpayer

## **5. Background to Etruscan:**

Professionals from differing backgrounds got together to create a sustainable model for social change in Ireland. The multi-disciplinary team brought its experience together and put together an advisory board to advise further on matters.

Our Advisory Board consists of professionals from all aspects of the industry and plays a vital role in steering and guiding the business. We are delighted to attract such experience.

Advisory Board members

Fr. Peter McVerry Director of the Peter McVerry Trust

Sean O Halloran Chief Superintendent (Ret)

Ronan Maher Irish Prison Service Governor

Linda Lyons Solicitor

## **6. Illustration of Benefits with Crime Statistics:**

*2009 Statistics on Offences*

<b>Offence</b>	<b>2009 Report Total</b>	<b>Imprisonment/ Detention</b>	<b>Fines</b>	<b>Community Service/ Probation</b>	<b>Peace Bond</b>	<b>S/O, Dismiss, TIC, Other</b>
Public Order	64,748	6,039	11,789	8,598	1,764	36,558
Drugs	17,620	1,504	3,561	2,554	373	9,628
Road Traffic	333,161	5,161	73,272	7,527	720	246,481

Our crime statistics for the year 2009 above shows total number of offences brought to the district court for that year and then the amounts of those fined bound to keep the peace Struck out (S.O.) dismissed Taken into consideration (T.I.C) or other.

Unquantifiable costs associated with an assault and the prosecution of the perpetrator

<b>Victim costs</b>	Hospital doctor	Insurance	Loss time (family work etc.)	Victim Impact Costs
<b>Witness Costs</b>	Work time lost	Witness impact costs	Court appearances	Statement time
<b>Garda costs</b>	Investigating	Prosecuting	Court appearances	Administration
<b>Court Costs</b>	Legal aid	Court time High Court Bail	Adjournments/ Expert Witness costs	Witness /Jury expenses
<b>Prison costs</b>	Remand Costs	Escorts (in Custody)	Custody costs	Administration costs

The costs benefit of somebody choosing not to strike somebody because of our interventions the next time that they are angry or aggressive is huge.....

*Some of the Costs Incurred with Crime*

Time Saved is Unquantifiable, but example of 1% Change will show an Example of cost savings if less appearances in Court

<b>Person that needs to attend Court for each adjournment</b>	<b>10 appearances</b>	<b>3 appearances</b>	<b>Average cost saving @ € 50 per day</b>
Garda	500 @ 50 per Day	150	350
Accused (If He/ She has to take time off work)	800 @ 80 per day lost wages	240	560
Victim Witnesses	800 @ 80 per day lost wages	240	560 x 2
Solicitors Prosecution (Dublin Metropolitan area) and Defence	500 @ 50 per app.	150	350
Prison Officers (In Custody)	500 @ 50 per app.	150	350

## Cost Efficient Rehabilitation

- Certification on completion and attendance records made available to the courts
- Analysis of performance during programme
- Optional Aftercare and Referral
- Cut Court time with Pre-Trial Programme
- Cost Effective Sentencing option instead of incarceration
- Returns time to Courts Saving Costs improving quality
- Delivered by Professionals Evening and weekend options
- Possibility of delivery at the cautionary system with the assistance of an Garda Síochána

## 7. Our Initial Awareness Options and Interventions:

Assessment firstly with RAMAS here is an overview of its advantages

Lessons from Inquiries	PCI-R	HEW 70	RAMAS	Minglis	LSI-R	QASys
A standardised approach	Y	Y	Y	Y	Y	Y
Comprehensive focus	N	N	Y	Y	Y	Y
Management planning built in	N	Y	Y	Y	Y	Y
Clinical needs identified	N	Y	Y	Y	Y	N
Social needs identified	N	N	Y	Y	Y	Y
Suitable for every level of service	N	N	Y	?	N	N
Goes beyond violence	N	N	Y	Y	Y	Y
Actuarial base	Y	Y	Y	Y	Y	Y
Reliable and valid for US use	?	?	Y	?	?	?
Multi-agency design and utility	N	N	Y	Y	N	N
Acknowledges dynamic component	N	Y	Y	Y	Y	Y
Explicit measurement/statistical model	N	N	Y	Y	Y	Y
Integrates demographic information	N	Y	Y	Y	Y	Y
The checklist, a guide only	N	Y	Y	?	Y	N
Medication compliance monitored	N	N	Y	Y	N	N
Audit and follow through	N	N	Y	?	Y	Y
Safety net provision explicit	N	N	Y	Y	N	N
Crisis plan explicit	N	N	Y	Y	N	N
Trained and supported staff	Y	Y	Y	Y	Y	Y
Designed in UK context	N	N	Y	Y	N	Y

### Important Points about Risk

8. There is no such thing as zero risk !
9. Risk is Dynamic...needs to be assessed & monitored & tracked
10. Risk may be general/specific or both
11. Good risk assessment, management or audit can not be performed in isolation.
12. The biggest risk is not to take any risk at all
13. Having identified risk, there is an absolute duty of care to manage it.
14. Comprehensive risk management multi-featured, multi-sourced and multi-agency.

15. Some interventions can be harmful ! (not just medication but also...attitudes, values and beliefs and behaviour(s))
16. People with mental illness risk factors are in general a much higher risk to themselves than to others.
17. Pts presenting risk to others are highly likely to face other risks like DSH/suicide
18. Rigorous assessment and good practice can reduce risk
19. Good practice and effective risk management are the same.

Once testing has occurred we move to intervention base

- Understanding Anger (Initial Anger intervention)
- Keep your Cool (anger Intervention)
- DUI/DWI
- Drug & Alcohol Awareness
- Parenting Programmes

—EAP Programmes:

- Dealing With Anger in The Workplace
- Reducing Stress in The Workplace
- Dealing With Bullying in the Workplace

These are initial offerings we will be looking to expand on these with the Irish specific evidence that is collected as we progress.

### *Corporate Social Responsibility*

- This is a key element in our long term organisational strategy
- We wish to achieve our CSR goals in two main areas:
  - Provision of services to charitable trusts
  - Compilation & Publication of Research free to the public
- Cost Benefit is unquantifiable in the area of social benefit, but undeniable gain
- Save Court Time, Save Garda Time, Save Prison Costs, Victim, Witness and Insurance Costs.
- If used in Sentencing and An Garda Síochána Cautionary system Then less Anti social Behaviour = better society
- Specific data for Irish Societal needs

## **8. Appendix:**

We have conducted anger intervention training in Roscrea Co Tipperary with Social and community workers and would like to expand on this as up to now these workers did not have any anger intervention training.

An overview of the training included introductions to

The Power of Anger

Positive and Negative anger

Irrational beliefs and how they lead to anger outbursts

Stress and how it can increase anger if not managed

Assertiveness

Managing Conflict

Cognitive Distortions

Forgiving and effective communication

Planning to change

Aftercare

Each section was covered and assessments and plans outlined. The attendees now have workbooks to work with people that have anger problems and will be back for further updates and Continuous professional development in relation to the basic Anger intervention training.

WE are also starting a pilot programme with the HSE Drug task force in Cork in relation to anger interventions for people presenting with Anger and aggression issues.

RAMAS the Risk Assessment currently used in the US and the UK was developed by Intellectuals consulting with our group who are also part of University College Cork School of medicine and faculty of Psychology.

Definitions

### **•Risk Assessment**

–The systematic collection of information to determine the degree to which harm (to self or others) is likely at some point in time.

### **•Risk Prediction**

–The assigning of a probability to a person, indexing the likelihood of that person engaging in specific risk behaviour.

### **•Risk Management**

–The implementation of a set of values and principles integrated with a set of operational procedures and supports that enable a dynamic sensitivity to the individual's needs, vulnerabilities and evolving behaviours associated with risk. The purpose of these behaviours is risk minimisation and the provision of safe, sound and supportive services.



(BPS, 2006)

#### Possible Purposes of Risk Assessment

- Predicting future risk behaviour
- Predicting risk of offending or re-offending
- Involvement in decision making
- Processing through judicial system
- Section under Mental Health Act
- Suitability for rehabilitation or community placement
- Supervision needs
- Responsivity

#### Risk Assessment Limitations

- Clinical judgement & actuarial approaches both subject to bias & subjectivity...leading to restrictive practices
- ‘Relative or conditional risk assessments are more useful than absolute or probability assessments...
  - ...impossible to make specific probability or absolute likelihood estimates of individual future risk with any reasonable degree of scientific or professional certainty’(Hart, 2005)
- Hart, Michie & Cooke et al (2007)...caution using actuarial measures...poor precision & large margins of error

A solid and accountable risk assessment is the foundation stone of our organisation. Evidence base and the ability to expand for Irish societal needs is what is required in a modern Ireland.



PRISON OFFICERS'  
ASSOCIATION

**Prison Officers' Association**  
**Submission to the sub-Committee on Penal**  
**Reform**

**16<sup>th</sup> November 2011**

## **Introduction**

The Prison Officers Association received correspondence dated 9<sup>th</sup> November 2011, from Mr Alan Guidon, outlining amongst other things that a sub-Committee on Penal Reform had been established by the Joint Committee on Justice, Defence and Equality. The aforementioned correspondence stated that the sub-Committee agreed to invite written submissions from various groups outlining their suggestions for penal reform on matters directly related to the sub-Committee's orders of reference. The Prison Officers Association submitted a report on 18<sup>th</sup> May 2011, to the review group on Thornton Hall outlining our observations in respect of the proposed Thornton Hall project having regard for the present state of the Irish Prison system and the current economic challenges that we are all facing.

Along with our views on the proposed Thornton Hall project, this Report outlined our observations in regard to getting the best use out of what is currently available should it be decided that the proposed Prison at Thornton Hall be deferred. We are all now aware that the Thornton Hall project will not proceed in the immediate future. Therefore the Prison Officers' Association firmly believes that the observations we forwarded can clearly help to shape a modern Prison Service that will move forward in a progressive manner to achieve the desired outcomes, we believe all interested stakeholders in the Irish Prison system should aspire. The Prison Officers' Association as a major stakeholder wants 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. This report is compiled outlining our present observations on how best the Irish Prison system can reform by addressing problems related to the underlying headings:

- Humane Treatment
- Prison Overcrowding
- Misuse of Drugs
- Prisoner Violence
- Mental Illness in Prison

- Proper Sentence Management
- Better Use of Current Resources
- Independent Complaints Process
- Future Prison Building Projects

## **Humane Custody**

The front cover of the Irish Prison Service Annual Report 2009 outlines the Irish Prison Service Mission Statement as follows:

*“This mission of the Irish Prison Service is to provide safe, secure and humane custody for people who are sent to prison. This service is committed to manage custodial sentences in a way which encourages and supports prisoners in their endeavouring to live law abiding and purposeful lives as valued members of society”.*

To try and achieve the objectives of the aforementioned mission statement we must have humane custody for people committed to our prison system from the courts. This issue cuts across and is central to all areas of this report in particular the carrot and stick approach to offender behaviour patterns which must be brought into our prisons. It is still a fact that is mostly poor people from deprived areas of our society whom end up in prison. The vast majority have all the negative consequences of social exclusion such as high levels of mental illness, drug addiction, poor education, high unemployment and inadequate social skills. The end result of all this is that most young people who go to prison are likely to spend most of their twenties and thirties in and out of prison.

People who have been socially excluded from a very young age, who may have been put down at school from their earliest days as being below average because of their upbringing, that were brought up by parents often with drug and alcohol addictions enter our Prison System expecting just more of the same. The past and continuing system of warehousing does not work and will not work into the future.

Humane treatment where a young person is given reasonable verifiable targets to achieve for small rewards we believe holds the key for the future. A young person being placed into the Prison System expects prison to be the last place on earth they will receive encouragement and decent treatment. If we have a correct fair and well planned approach in place for a young person coming into prison from day one we may find a mechanism to beat back the high levels of re-offending. Humane treatment has to be the starting point however many of our Prisons today are unfortunately unfit for their purpose and are an insult to dignity for people to work in and be accommodated in. The issues of in cell sanitation and the detention of young people under the age of 18 in St Patrick's Institution must be addressed. The closure of the open juvenile facility at Shanganagh Castle by a previous Government was a retrograde step and a policy that should be reviewed.

### **Prison Overcrowding**

The majority of the stakeholders in the Irish Prison system have recognised now for several years the problems associated with prison overcrowding. For the Prison Officer working at the cold face overcrowding provides the perfect atmosphere for threats and actual violence. Prison overcrowding leads to competition for limited resources and aggression between inmates and against staff. It can contribute to higher rates of illness and even suicide, while overcrowding severely impedes offender rehabilitation.

All prisons must have a significant education, work training and rehabilitation infrastructure if we are to offer alternatives to prisoners. Some good work has been done in the past for example shortly after its opening in 1989 Wheatfield Prison could offer the majority of its prisoners good educational facilities or meaningful work in modern workshops, with single cell accommodation. Today nearly 90% of the original Prison, which was designed for 320, is doubled up. The new extension recently opened up to offer an enhanced incentivised regime for prisoners is to be doubled up despite the potential this new area has for the introduction of a genuine culture and regime change.

Wheatfield Prison today, 16<sup>th</sup> November 2011, is holding 650 prisoners however it does not have the educational or work training facilities to cater for the increased population. Prison staff working in such a system simply cannot fulfil the requirements of the Prison Service's

Mission Statement. We must move away from the stack them and rack them policy to looking immediately at the facilities we currently have. If the building of the proposed Thornton Hall Prison commenced immediately it would do nothing in the short term to alleviate the numerous problems being caused by prison overcrowding, nor will the concept of using bed capacity to attempt to hide this problem.

The Prison Officers' Association believes that we must move to the use of more open and semi open type accommodation within our current prison estate to try and address immediately the problems that are caused by Prison Overcrowding. This report will expand on this matter further under the Heading of Better Use of Current Resources.

### **Misuse of Drugs**

There is a serious problem of Drug misuse within our Prisons. People that are put into to Prison today with a drug problem will inevitably attempt to try and maintain that drug habit while they are in Prison unless there is a viable alternative.

Despite the introduction of enhanced security in recent years such as the use of Drug Detention Dogs and Airport type security searching for people entering our prisons many drug users continue to use drugs while in prison. It has further been reported by many ex-prisoners that they first took drugs while serving sentences in prison. The Prison Officers' Association link this directly to the issue of overcrowding and the regimes that presently exist in most of our prisons. Having completely drug free prisons is very difficult to achieve however this must always be our objective because if it isn't our objective we are admitting failure.

What the Prison Officers' Association believe should happen is that there should be an acceptance that prisons are a market for drugs and therefore drug use has to be tackled as drug use would in any community. Those involved in the drug trade must be tackled and isolated, there must be medical intervention available for those who want to get off drugs, there must be support available for those who don't want to become involved in the drugs trade in prisons. The drugs market is a violent market within prisons as it is elsewhere, where the vulnerable are abused and used and the bully thrives. There is an urgent need to tackle the demand for drugs in prisons alongside the security initiatives. We urgently need more

drug free areas where prisoners who wish to come off drugs can do so away from a drug filled environment. It is practically impossible to help drug addicts to come off drugs in non-drug free areas. The Prison Officers' Association see potential to link the tackling of drug misuse within our prisons into proper sentence management programmes, which can be run in new drug free areas, if we make better use of our present resources.

## **Prisoner Violence**

Unfortunately the level of violence whether it is prisoner on prisoner or prisoner on staff violence has continued to grow at an alarming rate without hardly a week passing without stabbings, assaults or worse having taking place. This is clearly a feature of the overcrowding difficulties, which must be addressed.

The social and cultural profile of those in custody is widely accepted. Young poorly educated people coming from a sub culture in which crime and violence are deeply rooted and as in society the gang culture within our prisons is widespread.

The Prison Chaplains published their report in November 2010. This report outlined their grave reservations with regard to the levels of violence in our prisons today. The CPT, who inspects prisons on behalf of the Council of Europe, has stated that three of our prisons, Mountjoy, Limerick and St. Patricks are unsafe both for prisoners and staff.

With bullying, intimidation and threats of violence being rife in many of our prisons approximately twenty per cent of the prison population are on protection for their own safety. This is a major impediment to the process of rehabilitation. The large percentage of prisoners on protection, for their own safety, is an extremely worrying development.

## **Mental Illness in Prisons**

Prisoners with mental health issues have become a growing problem in recent years in the Irish Prison system and this problem has not been addressed. At our Annual Conference this year we highlighted that there are only nine cells to accomadate mentally ill or mentally challanged prisoners, despite the well established fact that mental illness is a major issue within the prison population.

People with mental health problems, ranging from mild to severe, continue to end up in prison having committed various levels of criminal offences. However the underlying cause cannot be adequately addressed in a prison environment. The present Minister for Justice has acknowledged that imprisonment can aggravate mental health problems, heighten vulnerability and increase the risk of self-harm and suicide.

He also acknowledged that there is a higher prevalence of mental disorder in prisons than in the community at large and that in every prison there are people who should more properly be treated in some form of therapeutic environment, either secure or community-based. The Minister has stated that some of these people are casualties of the decision to close large mental hospitals without providing adequate community-based care and that there are circumstances in which it would be extremely helpful to have better provision outside prison for those with particular mental health needs.

In their report, the Thornton Review Group acknowledged that the problem of prisoners with mental health issues is one which needs to be addressed urgently. The Group also believed that people with mental health problems should be treated in a healthcare, as opposed to a prison, environment. The Prison Officers Association agree with this approach and that more resources are required to provide community based care and alternative accommodation to protect this vulnerable group of offenders.

### **Proper Sentence Management**

The Prison Officers' Association agree with the point made by Professor Andrew Cole in relation to the “one size fits all” approach to security presently used in the Irish Prison system which means that many prisoners are subjected to far more restrictions than is necessary which has obvious cost implications.

Sentence Management Programmes should be designed to suit each individual prisoner. Reward for cooperation, good behaviour and reaching set targets for prisoners must be introduced, the present system of giving all prisoners the same privileges regardless of their behavioural patterns simply makes no sense.



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 bonuses or promotion. It we are going to manage custodial sentences in a way which encourages and supports prisoners in their endeavouring 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. This can be organised from day one having assessed a prisoners capabilities. For example if a young person is illiterate when entering prison this should be a priority that needs addressing and should form part of that individual Prisoners Sentence Management Programme.

The Prison Officers' Association are very much in favour of the introduction of enhanced incentivised regimes for prisoners, which we have seen operating in Magilligan Prison, Northern Ireland and Manchester Prison, England. We see the introduction of the basic, standard and enhanced regimes as a very good method of moving the Irish Prison Service forward. This type of prison regime, places an onus on prisoners to act in a mature, mannerly fashion, continually showing good behaviour so that they can gain maximum benefit from the prison system. The Prison Officers' Association acknowledge that this is a two way process which will only achieve the maximum benefits if all stakeholders treat each other in the appropriate manner. This progressive regime system, which has great potential, must be fully implemented into the Irish Prison system.

### **Better Use of Current Resources**

It is inconceivable to think that during the celtic tiger era we were regularly placing prisoners on floors on mattresses in many of our prisons. This practice unfortunately continues on a daily basis.

The Prison Officers Association agrees with the viewpoint being put forward by the Irish Penal Reform Trust that priority must be given to the improvement of present conditions. This can be achieved by greater use of the present prison estate. We have seen in Magilligan Prison in Northern Ireland the use of portacabin type accommodation within closed prisons. Prisoners can be selected for this semi open type accommodation within a closed prison by their behavioural patterns and this links directly into humane treatment and the use of enhanced incentivised regimes where prisoners have more freedom within the confines of a

closed prison. Such regimes can also tie directly into prisoner release programmes for work training purposes by way of temporary release or by way of using prisoner electronic tagging programmes.

The entire prison estate should be analysed to find areas within our closed prisons for introducing semi open type facilities. The Prison Officers' Association believes that this is an achievable objective with there presently being scope at Wheatfield Prison for example, to review this concept, while there is three quarters of a perimeter wall already completed at Cork Prison around a significant area of land adjoining the prison which may offer the opportunity to construct and open up some form of prisoner accommodation.

This concept is favoured by many experts in the area of Prisons such as Professor Andrew Cole and Mr. Paul O' Mahoney. Although it is a culture change for those charged with running the Irish Prison system, we are of the belief that it may offer a viable productive alternative.

### **Independent Complaints Process**

The Prison Officers Association recently raised with Prison Service management our very serious concerns in respect of allegations being made by prisoners against grades represented by the Prison Officers Association. We previously raised this issue with the Minister for Justice, Equality and Defence, when we met him on 18<sup>th</sup> April 2011 and this matter was also raised with the Minister during the Presidential address at our Annual Delegate Conference. At that time we outlined that we had become aware that new procedures were soon to be introduced for prisoners to make complaints if they believed they were mistreated in Prison.

We are now aware that prisoners submitted numerous complaints in Cloverhill Prison, Mountjoy Prison, and St Patrick's Institution. A large number of these complaints relate to Prisoners allegedly being assaulted by Staff. This is a most alarming development for the Prison Officers Association as there has never been an abusive culture of any description in existence towards Prisoners in the Irish Prison System and in our view there never should be. There should also never be a system in place, which encourages floods of allegations that are malicious, vexatious or mischievous in nature. Prisoners will inevitably abuse such a system.

While the Prison Officers Association is of the belief that correct procedures should be in place to deal with such matters, such procedures must have sufficient and adequate safeguards for the protection of prison staff where complaints are vexatious in nature. Given the seriousness that the Prison Officers Association attaches to the recent influx of Prisoner complaints we will in the immediate future forward on to Prison Service management a Position Paper outlining our views as to how a Prisoner complaints process should be properly operated based on best international standards. It is our view as Stakeholders in the Irish Prison system that the interests of all can only be properly addressed by having an independent external mechanism in place for the review of prisoners' complaints.

### **Future Prison Building Projects**

The Thornton Hall project was put forward to the Prison Officers Association, as the answer to all the problems of the Irish Prison system however the Prison Officers' Association do not believe this would have been the case. The provision of additional high security cell accommodation designed to be doubled up in the future (future proofing) which was the term used for this plan, just by itself would not have addressed or improved the current state of the Irish Prison system. It is our belief that a number of issues must be examined including the level at which people are being imprisoned, what size prisons best suit our needs, what type of regimes will best help us reach our desired objectives and what can be done immediately to address the many difficult and demanding challenges we currently face.

The Prison Officers Association are now clearly of the view that there must be a wider crime policy that includes examining alternatives that can help reduce the Prison population and a Prison system that moves to more use of open and semi open type Prison facilities. Over the past number of years, the Prison Officers Association have attended at numerous events organised by the Irish Penal Reform Trust to explore the various different perspectives being put forward by many experts in the area of Prisons. While it is natural we would not agree entirely with all the ideas being put forward at such informative events we do agree with the views being put forward in respect of the concept of the super Prison.

Across Europe there are different views to penal systems. Britain recently confirmed its intention to build three so-called Titan Prisons that would each hold 2,500 inmates, while France where this model has operated is now moving back to building Prisons that will hold a

maximum of 600 prisoners. It is our opinion that it is important we learn from failure. The staff and Governor of Fleury-Mergogis, Frances Titan Prison point quickly to its faults outlining that managing large groups of inmates is very difficult as they are bolder and stronger. They state that the problem is made worse in a big impersonal jail, where there is massive staff turnover and when asked how he would advise the French Government in respect of the future Prison building programme the Governor of Fleury-Mergogis, Mr Joaquim Pueyo stated he would build Prisons for no more than 600 Prisoners.

Mr Joaquim Pueyo, is not on his own in this way of thinking. Professor Andrew Coyle, a very experienced Prison Governor and now director of the International Prisons studies centre at Kings College London, whom we heard speaking at an event, ran by the Irish Penal Reform Trust has stated inter-alia that, beyond a capacity of 300, Prisons become difficult to manage and problems multiply. The idea that there are economies of scale is an illusion. In Ireland, in particular, a “one-size fits all” approach to security means many prisoners are subjected to far more restrictions than is necessary and this adds greatly to costs.

The Prison Officers Association is of the view that that the Prison systems that operates in the Nordic Countries of Norway and Denmark deigned around smaller Prisons, holding between 200 to 300 prisoners offers a far better alternative for the Irish Prison system than that of the super type Prisons operating in the UK and the USA. We also have our views on where Prisons should be located. Given that most of our Prisoners still come from certain deprived areas and backgrounds visiting should not prove difficult for the families of offenders. The importance of visits to offenders must always be carefully considered.

It is also a fact that most major European cities have Prisons. Manchester Prison for example is within walking distance to the City Centre, as is Mountjoy Prison in Dublin. This offers quick access to ancillary emergencies services, for example the close proximity of Mountjoy Prison to the Mater Hospital is like having a Hospital on the Prison grounds. This is hugely advantageous given the type of work that we are performing in the Prison Service, the tendencies for violence within our Prison System and the high rates of self-harm.

## **Conclusion**

The Prison Officers Association is a major stakeholder in the Irish Prison system as the largest staff representative body. We are presently of the view now that the Thornton Hall project has been deferred, that there is an excellent opportunity for the Irish Prison system to take a long hard look at itself. There is also an excellent opportunity to look at what currently exists and how best we can use it. As already stated whether the Thornton Hall project commenced immediately or not it would have done nothing to address the day-to-day difficulties that we currently face.

The Prison Officers' Association are of the view that our current day-to-day problems must be our starting point and moves should be taken to address them immediately. A decision must then be taken regarding penal policy as to whether we wish to follow the UK based and US models of large super prisons or the alternative model in use in the Nordic countries. The Prison Officers' Association believes that the Irish Prison system would be best served by the use of smaller prisons in the long term with more use of open and semi open type facilities. We also believe that we should end the one size fits all approach to penal policy and move forward on the basis of the carrot and stick approach to improving offender behavioural patterns which can be best served by introducing on a National basis enhanced incentivised regime programmes.

## Submission from PACE for the Sub-committee on Penal Reform

PACE is a voluntary agency that works in the community with prisoners and ex-prisoners. PACE provides a range of accommodation, training and education programmes. PACE provides services that are designed to assist the preparation for release of long-term sentenced prisoners including life sentenced prisoners and assist the full release of former prisoners who have served a wide range of sentences for varying offences up to and including murder. As such PACE has a unique insight into the experience of the individual prisoner both before and after release. PACE has the capacity for 40 trainees in the PACE Training for Employment project and 29 places in our residential services offering low-high support. We currently have 17 prisoners attending our Training for Employment project as part of the day release programme from the Training Unit, we also have an additional twelve life sentenced prisoners availing of our accommodation services all of whom are at different points of release including a number who have been fully released.

The primary issues that arise from the work that we do with prisoners and ex-prisoners are as follows:

- **Short-term sentences** – From a PACE experience short-term sentences are a complete waste of time and resources. They serve no function in terms of crime prevention and/or community protection and only serve to normalise imprisonment as part of a way of life for a large number of PACE service users and others who have been imprisoned in this way. Our experience shows that short-term imprisonment does nothing to either prevent further re-offending or to assist with the rehabilitation of the individual.

The loss of liberty from the short-term imprisonment of men has a physical cost but at time is presented as no more than an inconvenience and/or a break from their current lifestyle and potentially connecting them with individuals who have a more sophisticated criminalised behaviour. The impact of short-term imprisonment on women is more devastating as they tend to be the primary care givers and the impact on their children of their removal is substantial. The nature of the crimes that result in short-term imprisonment are such that an alternatives to custody model could be rolled out fully and offer a wider variety of non-custodial sanctions than are currently available. The benefit of the use of prison as the last resort would be felt not just by the criminal justice sector but by society as a whole where the time that is spent in prison could be fed back into the community in a structured and positive way and the benefits of that would be felt both by the offender and the community.

Short-term sentences can also impact on the rehabilitation of an individual when they have completed on period of imprisonment and are engaged with us and working positively but an old charge results in them being re-imprisoned due to their criminal record which impacts on the work that has been done prior to that. The impact of this is to undermine the work that is done and to ensure that the new period of imprisonment has a more negative impact than necessary and to undermine any motivation to change that may have existed within the individual prior to re-imprisonment. PACE would recommend that imprisonment is only used for the more serious offences that warrant incarceration due to the nature of the offence and the safety issues that would arise if the individual remains free. The current system that results in individuals potentially bouncing in and out of prison frequently over a short period of time is

unsustainable, costly and ineffective. The fact that they continue to re-offend in spite of having served previous short-term sentences is a testament to the ineffectiveness of the system.

- **Physical conditions** – Whilst PACE takes referrals from every prison nationally, the primary source of referrals are the Dublin prisons. While the physical conditions within the newer prisons are fine, the worsening conditions within Mountjoy prison in particular has a negative impact on the prisoners. I appreciate that the prisoners have been sentenced to prison because they have committed crimes however the loss of liberty is the punishment and degrading conditions should not be part of the imprisonment experience. Poor physical conditions increase the level of violence within the prison, particularly when you consider how stressed the prison population is with regard to addiction and mental health issues and the bullying that happens within the prison. Add in degrading conditions and it is a potentially very dangerous situation for all involved, staff and prisoners. The men that we work with can give many stories of the impact of the poor conditions and how it makes it more difficult to manage addiction and mental health issues whilst in such an environment. There is no incentive for change or improvement when our living conditions are so poor.

Prison has the potential to be used to turn people lives around and to provide education and training opportunities that were not available to them within the community and therefore have a positive impact on their ability to reintegrate into the community when released.

- **Overcrowding** – the impact of overcrowding within the prison system at the moment is quite severe and negative. This links in to the above point on physical conditions and now unfortunately can be applied to nearly all the prisons that we received referrals from. From our perspective there are two main factors that over-crowding impacts on that are in addition to the poor physical conditions and these are as follows:
  1. The ability of the IPS to implement any positive regime is severely challenged when the focus is on crowd management. There are not enough education or training places within the prisons to cope with the current large numbers and the capacity of the prison to have a positive impact becomes substantially reduced. The focus becomes one of warehousing large numbers of people and the physical management of people rather than a positive and integrated regime.
  2. Overcrowding also has a substantial impact on early release and planning for release. Increasingly we are seeing people who were due to come to our services for accommodation or training being released without notice and becoming lost within the system again. This impact in terms of the assessment work that would have been carried out on the individual being wasted and the lack of communication between the operations of the prison and the probation service who make the referrals to us. We have had the experience of having a staff member go to the prison to do a follow-up assessment and waiting four hours to be told that the person had been released the previous week but no-one had informed the Probation service or PACE. The point of release for many prisoners is a very vulnerable time and the consequences for them of this sudden release can be very destructive. This occurs with all levels of sentences where we have had a life sentenced prisoner who had been on a phased release

programme being told he was being fully released with less than 24 hours notice and being devastated as he didn't have a chance to say goodbye etc. So the impact of overcrowding on our ability to plan releases and work with people in a constructive way cannot be overstated.

- **Temporary release** – This is an issue that PACE has substantial experience in working with and have seen work very well with long-term sentenced prisoners. This is an area that we would like to input on the further development of and to explore how it can become part of the sentencing plan and strategy. The reality is that for many long-term sentenced prisoners the supervision provided by the Probation service in the community is a vital part of their successful reintegration. We have the experience of working with high risk individuals who due to the nature of their sentence were not able to avail of temporary release but on completion of their full sentence they voluntarily signed up to Probation service supervision and they worked in partnership with PACE on the provision of services.
- **Remission** – the blanket right to remission with some sentences is unproductive and not efficient in terms of meeting the needs of the prisoner or of the community in terms of safety etc. PACE would like to see a more structured approach to the issue of remission with the prisoner having the opportunity to apply for remission after a set period of time and then demonstrating what level of remission they have earned and what their motivation is for this. Many prisoners need to be incentivised to use their time in prison in a more constructive way and also to participate in different processes that are designed to assess and manage risk. Remission is the biggest incentive that anyone can have to encourage positive and meaningful engagement with the prison services and with the Probation service.
- **Parole Board** – Our experience of working with life sentenced prisoners has shown us that the current Parole Board system is not as effective as we would like. Also the fact that the ultimate decision to release a life sentenced prisoner lies with the Minister makes the process unwieldy and subject to influence by the media. This means that high profile prisoners take longer to reach the point of their release primarily due to media interest in their cases than for any issues of public safety. The current system is slow and demoralising for prisoners as it is often unclear as to where they are in the process and how long it will take for decisions regarding release to be made. For those on their first point of release it is incredibly frustrating, for those who have been through the release process and been recalled it can be incredibly debilitating.
- **Role of the voluntary sector** – The role of voluntary sector agencies such as PACE that work in partnership with the Probation Service and with the IPS on the release and reintegration of prisoners and ex-prisoners needs to be recognised formally within the criminal justice sector and valued as an integral part of the successful reintegration of individuals back into the community. As an organisation PACE works with individuals who are extremely marginalised and have long histories of incarceration, addiction, homelessness and crime. We work with high risk, medium risk and high profile people who need a lot of assistance to move on from their experience of imprisonment.
- **Probation service** – the important role that the Probation service plays within the prison system also needs to be recognised and enhanced. Probation has a role both within the prison for those



already sentenced and in the community for those serving an alternative sanction and those coming out of prison who need ongoing supervision. The new community returns initiative highlights the flexibility of the service to respond to need and to meet the demands placed on it. However, there are concerns about the way the service is being stretched at present to meet all these needs and the value that is given to the work that they do.

- **Integrated Sentence Management** – PACE along with a number of other voluntary sector agencies is very supportive of the proposal to run Integrated Sentence Management throughout the Irish Prisons. This is an initiative that has the potential to make a very positive impact on the prison regimes. There are concerns however that doing it without the necessary resources will impact on it's effectiveness. ISM has the potential to work with people in a constructive way and to ensure that the time spent in prison is used well but like everything else it is important that it is resourced fully to ensure that it can achieve it's full potential.

The above represents a summarised synopsis of the issues that are most of concern to PACE at present.

Lisa Cuthbert

Director

16<sup>th</sup> November 2011



**IPRT Submission to the Sub-Committee on Penal Reform  
on Back-door strategies for reducing over-use of imprisonment**

**November 2011**

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building alliances and growing our organisation.

IPRT warmly welcomes the establishment of the Sub-Committee on Penal Reform and hopes that this submission will be of assistance to the Sub-Committee in examining the important questions set out in its Terms of Reference. In this Submission we focus on the issue of "back-door" strategies for reducing the prison population.

This submission addresses the following areas:

- A. The Context for Reform of Prisoner Release Mechanisms in Ireland**
- B. Current Law and Practice in Ireland**
- C. Law Reform and Models for Release of Prisoners**
- D. Reform of Parole Board and Decision-Making Processes**
- E. Necessary Changes to Prison Regimes**
- F. Community Service and Probation Supervision as Part of a Sentence**

We also include here at **Appendix G** a summary comparative view of equivalent systems in other jurisdictions.

IPRT is also currently conducting research on other areas which may be of relevance to the Sub-Committee, including the particular position of life-sentenced prisoners, and we hope to bring forward further proposals for reform shortly. More generally, we would like to offer our assistance and support to the Sub-Committee in any area of its work where the Sub-Committee feels we can be of assistance and we look forward to further engagement with Sub-Committee over the coming months.

## **A. The Context for Reform of Prisoner Release Mechanisms in Ireland**

1. As part of its submission to the Thornton Hall Review Group in May 2011, IPRT recommended a package of measures to reduce the prison population while ensuring public safety. Among the proposals we put forward was incentivised early release, noting that the swiftest and most immediately effective tactic to bring the prison population within safe custody limits is to release earlier some prisoners serving sentences.<sup>1</sup> IPRT suggested that this could be done in a safe and structured way with some reform of the present parole process, which would be preferable to the current relatively unstructured over-use of the temporary release system.
2. Following the publication of the Thornton Hall Review Group's Report in July 2011, IPRT strongly welcomed the Group's refusal to accept that the prison population "must continue its upward spiral and that the only response to increases in the prison population should be to build more and more prisons."<sup>2</sup> The Group's emphasis on alternatives to custody, in tandem with the potential for home detention and an incentivised scheme (including community service) for early release, indicated a significant and progressive shift in penal policy.
3. At the IPRT Annual Lecture in September 2011, the Minister for Justice and Equality welcomed the Thornton Review Group's recommendation on non-custodial sanctions. He specifically mentioned the development of a pilot scheme "under which offenders may be offered earned earlier release in return for community service" and his plan to introduce new guidelines to the Parole Board "for the application of a similar scheme to long-term prisoners."<sup>3</sup>
4. In his recent statement on the capital allocation available to the Justice Sector in 2012, the Minister observed that, while the development of Thornton Hall would have to be deferred, the Government remained committed to the recommendations contained in the Thornton Hall Review Group Report in July. Specifically, the Minister reiterated his commitment to establish a Penal Policy Review Group which will "undertake an all-encompassing strategic review of all aspects of penal policy" by the end of 2011, as well as an interdepartmental group to consider the issue of people with mental illness coming into the criminal justice system. Other key recommendations contained in the Review Group's Report, which are receiving priority attention in his Department, include:

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<sup>1</sup> *IPRT Submission to Review Group on Thornton Hall*, 2011, p. 7. IPRT's Submission is available at <http://www.iprt.ie/contents/2157> (last accessed 15 November 2011).

<sup>2</sup> *Report of the Thornton Hall Project Review Group*, 2011, p.64.

<sup>3</sup> *Irish Penal Reform Trust Annual Lecture 16th September 2011, 'Squaring the Circle: Penal policy, Sentencing offenders, and Protecting the Community'*. The Minister's speech is available at <http://www.iprt.ie/contents/2173> (last accessed 15 November 2011).

**“the introduction of an incentivised scheme for earned temporary release under which offenders who pose no threat to the community are offered early release in return for supervised community service. In this regard, a 6 month pilot project commenced in October, 2011 in which it is envisaged that a total of 130 prisoners will participate. To date, 16 prisoners have been released under the pilot scheme with a further 14 due for release within the next week. ”<sup>4</sup>**

5. IPRT believes that reform of parole and temporary release can have an immediate effect in terms of relieving current demand, but it can also have a longer impact by creating a more incentivised prison system for longer-term prisoners. At the same time, structured temporary release should continue to play its intended and important role in assisting the re-entry of long-term prisoners into society; and in that regard, it should be made available for all categories of offender.
6. In this submission, it is only possible to present a broad overview of the types of reform that are possible in this area. Appendix G contains a summary of models for parole and remission in other jurisdictions, including common law jurisdictions (England, Scotland, the USA, Canada, New Zealand and Australia), the Nordic countries (Norway, Sweden, Denmark and Finland) and civil law jurisdictions (Germany and France). Each country operates a system to grant early release to prisoners. Some operate what might be termed a discretionary release system, others a mandatory release system, while others have a mixed system.<sup>5</sup> Characteristics of the three systems are summarised below and possible advantages and disadvantages highlighted. As will be seen, most of these jurisdictions operate early release schemes either at the half-way or two-thirds point of the sentence, by comparison with the Irish system of remission at the three-quarter point. The submission includes IPRT’s suggestions for reform of the current system of granting remission, temporary release and parole.

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<sup>4</sup> See Minister Shatter announces capital allocation available to the Justice Sector in 2012, 10 November 2011.

<sup>5</sup> Tournier, Pierre V., “ Systems of Conditional Release (Parole) in the Member States of the Council of Europe”, Vol 1, 2004 at para.16, <http://champpenal.revues.org/378> (last accessed 15 November 2011). This article is based on the preparatory work for the recommendation of the Council of Europe on “Conditional release (parole)” adopted by the Committee of Ministers on the 24<sup>th</sup> September, 2003.

## **B. Current Law and Practice in Ireland**

7. There are three mechanisms for early release in Ireland, namely the Constitutional Power to Commute (whereby the Executive has the power to commute or remit any sentence under Article 13.6), Remission and Temporary Release/Parole.<sup>6</sup> The following discussion focuses on the latter two mechanisms, as they are more directly relevant to the brief of the Sub-Committee.

### **(a) Remission**

8. In the Irish context, remission is the process where prisoners can earn up to one quarter off their whole sentence by good behaviour.<sup>7</sup> A prisoner's sentence must be longer than one month to be eligible. Remission does not apply to prisoners who are serving a life sentence, or those who are in prison as a debtor or because of contempt of court.<sup>8</sup> In practice, remission is automatic if no offence is committed in prison. Prisoners released on remission having served their sentence are, not generally subject to any form of supervision whereas persons released on temporary release are subject to supervision by the Probation Service.<sup>9</sup>
9. The Prisons Rules 2007 permit up to one-third remission for prisoners who have shown further good conduct by "engagement in authorised structured activity" to such an extent as to satisfy the Minister that they are less likely to reoffend and will be better able to reintegrate into society.<sup>10</sup> However, it does not appear that there is any administrative system in place at present to measure such engagement.<sup>11</sup> Regarding the availability of enhanced remission, in May 2010 the former Minister for Justice, Dermot Ahern stated that:

"this additional concession will only be awarded in exceptional cases and where I am satisfied beyond any doubt that the prisoner concerned has demonstrated that she/he meets the requirements as set out in the Prison Rules. Perhaps I should also point to the fact that despite this additional opportunity to earn additional remission our remission rates are significantly below the level currently operating in the UK and Northern Ireland for automatic conditional release where

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<sup>6</sup> For a detailed discussion see O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008 available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>7</sup> S.I. No. 252 of 2007, Prisons Rules, 2007, Rule 59(1).

<sup>8</sup> Ibid, Rule 59(3).

<sup>9</sup> Parole Board Annual Report 2009, para. 10, available at <http://www.justice.ie/en/JELR/Annual%20Report%202009%20English%20Final.pdf/Files/Annual%20Report%202009%20English%20Final.pdf> (last accessed 16 November 2011).

<sup>10</sup> Ibid, Rule 59(2).

<sup>11</sup> *IPRT Submission to Review Group on Thornton Hall*, 2011, p. 7.

rates of 50% are in place. While there are a number of applications for extra remission under consideration at present, to date only one prisoner has been granted this concession.”<sup>12</sup>

**(b) Temporary Release**

10. The Criminal Justice Act 1960 empowers the Executive to grant temporary release to prisoners at any time before they qualify for ordinary remission and also to life prisoners who are ineligible for standard remission.<sup>13</sup> The Criminal Justice Act permitted the granting of “temporary release” rather than “early release” and it was envisaged that the prisoner would be released for a defined period with the expectation that they would return to prison at the end of that period unless granted a further extension.
11. The Criminal Justice (Temporary Release of Prisoners) Act 2003 specifies the criteria and conditions for grant of temporary release. Under the current scheme, prisoners may be granted temporary release at the absolute discretion of the Minister for Justice who considers a number of factors when deciding to grant temporary release including the offence committed, the individual’s family circumstances, attitude to rehabilitation, and employment and training skills.
12. Under the 1960 Act, temporary release should, chiefly, be used in two circumstances – (i) temporary release on compassionate grounds; or (ii) day to day release.<sup>14</sup> The first type is more common and is granted if there is a family emergency, such as a death or serious illness.<sup>15</sup> Prisoners may also be released to attend special family occasions such as weddings, christenings or communions. The second form is usually to participate in work outside the prison.<sup>16</sup> In some circumstances a prisoner may be accompanied by a prison officer (under escort), or may be unaccompanied.<sup>17</sup>
13. However, the system has also come to act as an early release or parole system.<sup>18</sup> The Thornton Hall Review Group noted that overcrowding has led to an increase in the number of prisoners granted temporary release, “from an average of 4.4% in 2007 to an average of over 17% in 2011, with the rates

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<sup>12</sup> See Parliamentary Question on Prison Releases, 13 May 2010, available at <http://www.kildarestreet.com/wrans/?id=2010-05-13.692.0&s=one+third+remission#g694.0.r> (last accessed 15 November 2011)

<sup>13</sup> See O’Malley, Tom. “The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland”, paper delivered at Fitzwilliam College, Cambridge, June 2008, p.9. available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>14</sup> Prison Act 2007, section 39(1).

<sup>15</sup> Mountjoy Prison Booklet, p. 41.

<sup>16</sup> Irish Prison Service, *Victims Charter*.

<sup>17</sup> Mountjoy Prison Booklet, p. 42.

<sup>18</sup> Ibid. p.10.

for Mountjoy and Cork being 21% and 35% respectively.”<sup>19</sup> Temporary release has, therefore, become an increasingly important administrative “safety valve” to ease the pressure caused by overcrowding, rather than as a means of encouraging good behaviour in prisoners, or a tool to facilitate rehabilitation. At the lower end of the scale, temporary release is, in fact, used as a “non-custodial alternative”, whereby people sentenced to short terms of imprisonment are released almost immediately.<sup>20</sup>

**(c) Excluded categories of prisoners**

14. Certain prisoners are not eligible for temporary release. Persons convicted of certain aggravated murders including murders of diplomats or a Garda or a member of the Prison Service in the course of their duty,<sup>21</sup> cannot be considered for temporary release unless for humanitarian reasons. Persons convicted of certain firearms offences which are the subject of presumptive sentences are ineligible for temporary release during the minimum term of their sentence unless for grave reasons of a humanitarian nature and only of such limited duration as justified by that reason. Persons convicted for the second time of section 15A of the Misuse of Drugs Act 1977 cannot be released until the date the prisoner becomes eligible for standard remission.<sup>22</sup>

**(d) Current remit of the Parole Board**

15. In 2001, the Parole Board was established by the Minister for Justice on an administrative non-statutory basis. The board's main role is to effectively manage long-term prison sentences so that prisoners are afforded the best opportunity to rehabilitate themselves and to advise the Minister for Justice and Equality in relation to the administration of such sentences,<sup>23</sup> including making recommendations as to whether the prisoner should be granted temporary release, (the official name for parole) and the conditions which should apply. In the context of preparing a prisoner for release, the Board can make a variety of recommendations including:

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<sup>19</sup> *Report of the Thornton Hall Project Review Group*, 2011, p.2.

<sup>20</sup> *Ibid*, p. 23.

<sup>21</sup> *Ibid*. See Section 3 of the Criminal Justice Act 1990.

<sup>22</sup> Misuse of Drugs Act, s.27(31) as substituted by the Criminal Justice Act 2007, a.33. Section 15A is the offence of having for the purposes of sale or supply a controlled drug with the street value of €13,000 or more. The same arrangement applies to section 15B offences which involve the importation of prohibited drugs. See O'Malley, Tom. “The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland”, paper delivered at Fitzwilliam College, Cambridge, June 2008, p.11, <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>23</sup> See Parole Board *Annual Report 2009*, para. 10, available at <http://www.justice.ie/en/JELR/Annual%20Report%202009%20English%20Final.pdf/Files/Annual%20Report%202009%20English%20Final.pdf> (last accessed 16 November 2011).

- A structured programme advising the prisoner should engage in therapy, education, work training, re-socialisation or outings;
  - A transfer to another prison, including a prison in a different location, or to an open institution;
  - A programme of short periods of temporary release leading to longer periods of temporary release.<sup>24</sup>
16. All decisions on release are taken by the Minister. As O'Malley has pointed out, the decision on a life prisoner's release date rests entirely with the executive branch of the government. This could be regarded as the exercise of a sentencing power which arguable should rest exclusively with the judiciary.<sup>25</sup>
17. According to the Parole Board's annual reports, which are the only publicly available source of information on the Parole Boards' operation, the Parole Board reviews prisoners serving fixed term sentences of eight years or more (but less than fourteen years) at the half way point of the sentence.<sup>26</sup> Prisoners sentenced to fourteen years or more (including those sentenced to life imprisonment) are reviewed after seven years. As there is no tariff set by the sentencing judge and since there is no formal provision for the release on licence of life prisoners, such prisoners can only be granted renewable temporary release.<sup>27</sup> The Parole Board advises the Minister for Justice of the prisoner's progress, the degree to which he has engaged with therapeutic services and how best to proceed with his future sentence. According to the 2009 Parole Board Report, where the Board does not recommend the prisoner's release, there is generally an annual review if the prisoner is serving less than ten years and a review every three years if serving more than ten years. IPRT cannot confirm the regularity of these reviews in all cases. If the prisoner breaches the release conditions set by the Board, he can be returned to prison.<sup>28</sup>

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<sup>24</sup> See Parole Board *Annual Report 2003*, p. 11, available at <http://www.justice.ie/en/JELR/parole%202002.pdf/Files/parole%202002.pdf> (last accessed 16 November 2011).

<sup>25</sup> See O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008, p.16, <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>26</sup> See Parole Board *Annual Report 2009*, p. 9, <http://www.justice.ie/en/JELR/Annual%20Report%202009%20English%20Final.pdf/Files/Annual%20Report%202009%20English%20Final.pdf> (last accessed 16 November 2011).

<sup>27</sup> See Parole Board *Annual Report 2009*, p. 11, <http://www.justice.ie/en/JELR/Annual%20Report%202009%20English%20Final.pdf/Files/Annual%20Report%202009%20English%20Final.pdf> (last accessed 16 November 2011).

<sup>28</sup> O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008 available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).



## C. Law Reform and Models for Release of Prisoners

18. While some jurisdictions allow inmates to be released automatically after a portion of the sentence is served, this is often irrespective of prisoner behaviour. Other jurisdictions favour a discretionary model, where release is based on assessments of behaviour or future risk and where, in some case, specific provision is made for the earning of remission or 'credit' for good behaviour. As can be seen in the Release Models chart contained in Appendix G, Ireland is one of relatively few countries provide for remission *in addition* to early release/parole. This section assesses the pros and cons of each model and makes recommendations for legislative changes to the current Irish "mixed" model.

### ***(a) Discretionary Systems***

19. Under the discretionary system, once a prisoner reaches a defined point in his or her sentence, a decision is made as to whether or not to release him or her and on what conditions of supervision. The discretionary system focuses on individualisation, in that the prisoner's particular circumstances are taken into account, both when deciding whether to grant early release and again when deciding what post-release supervision and conditions (if any) should be imposed.
20. A proclaimed advantage to the discretionary system is that as there is no guarantee of release, prisoners may be incentivised to engage in rehabilitation programmes in prison that make them better candidates for early release. These programmes should in fact aid offenders in their efforts to reintegrate into society, something which will both benefit the offender and help protect public safety. As each prisoner is subject to review, the public may view the discretionary system as safeguarding against the release of "dangerous" or "notorious" offenders.
21. A key disadvantage to the discretionary system is that, arguably, fewer prisoners will be released under it than under other systems as it takes substantial time and resources to review each prisoner individually. European countries which have discretionary systems have seen a decline in the granting of conditional release in recent years. There are a number of hypotheses for this including:
- (a) that conditions for release are often unattainable for certain social groups as there is difficulty finding stable accommodation and/or employment on leaving prison;
  - (b) authorities are reluctant to release the growing number of sex offenders and drug traffickers imprisoned; and/or

(c) countries use amnesties and/or collective pardons to deal more efficiently with prison overcrowding and maintaining discipline.<sup>29</sup>

### ***(b) Mandatory Release System***

22. The other main type of mechanism is where prisoners are released automatically at a certain point in their sentence, with individualisation only when it comes to choosing post-release conditions. Advocates of such systems emphasise the difficulty in defining scientific criteria for determining when an inmate should be granted conditional release. It is argued that in order to avoid highly diversified or unjust decisions depending on who makes them, it is better to prescribe the same treatment for all offenders.<sup>30</sup> Advocates stress that resources should be focused on personalising supervision (control and care measures in the community) and on defining individual conditions of release. Despite differences in treatment regarding conditions in the community, mandatory release systems claim to be essentially egalitarian.<sup>31</sup>
23. As a critique of automatic systems, public opinion may view the mandatory release system as being overly favourable to offenders. The public may fear that the authorities will be forced to release “unworthy” or “dangerous” offenders, albeit that conditions and supervision can be imposed. Detractors of the mandatory release system also claim that it may lead judicial authorities to impose longer custodial sentences, as well as reduce the incentive for prisoners to behave well in prison or to engage with rehabilitate services such as drug treatment if they have a clear release date for conditional release.<sup>32</sup>

### ***(c) Mixed System***

24. A mixed system combines the discretionary release system for long sentences with the mandatory release system for short sentences. Advocates for mixed systems question the merit of spending precious resources on numerous cumbersome, individual proceedings and argue that the selection process should be reserved for fewer cases, namely those involving long sentences. A mixed system exists in England and Wales where a general overhaul of the system was introduced in 1991. It introduced mandatory release for

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<sup>29</sup> Tournier, Pierre V., “*Systems of Conditional Release (Parole) in the Member States of the Council of Europe*”, Vol 1, 2004 at para.16, <http://champpenal.revues.org/378> (last accessed 15 November 2011)

<sup>30</sup> Tournier, Pierre V., “*Systems of Conditional Release (Parole) in the Member States of the Council of Europe*”, Vol 1, 2004 at para.21, <http://champpenal.revues.org/378> (last accessed 15 November 2011).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid, para. 30.

sentences of less than four years at the half-way point, with the possibility of supervision, with the discretionary system maintained for sentences of four years or more.<sup>33</sup>

## **Analysis and Recommendation**

- 25. The primary purpose of any system of prisoner release or parole should be the safe release of all prisoners whose detention is no longer necessary or useful in the interest of the public and in the interests of justice. If tackling overcrowding in Irish prisons is a primary aim of the reform of the parole system (and IPRT believes it should be), consideration will have to be given as to whether there are sufficient resources available to facilitate an efficient parole process within a fully discretionary system. At the same time, a mandatory system of release of prisoners may prove ineffective in ensuring public safety and assessing the risk posed by individual offenders.**
- 26. For these reasons, IPRT recommends that Ireland adopt a mixed model for the release of prisoners, whereby less-serious offenders become automatically entitled to release at a point of fixed proportion of their sentences and more serious offenders become eligible for parole at a point of fixed proportion of their sentence (similar to the model currently operating in England and Wales).**
- 27. The detail of any such system should be set out in legislation, but as a general suggestion, IPRT recommends that the following scheme might be considered:**
  - For persons sentenced up to 4 years (possibly excluding a few small categories of offenders), on good behaviour they should be eligible for release having served two thirds of their sentence.**
  - For persons sentenced to a period of more than 4 years, they should be eligible to be considered for release having served two thirds of their sentence.**
  - For persons in both categories, they should be eligible for earlier release, possibly after having served one half of their sentence, where they can demonstrate on objective grounds that they have made significant progress within a planned model of rehabilitation while in prison – this may be regulated within the Integrated Sentence Management model.**
  - Consideration should be given to a targeted increase of remission for certain categories of offenders such as drug users who engage with drug treatment services or offenders who successfully achieve literacy while in prison.**

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<sup>33</sup> Ibid, para.24.

#### D. Reform of Parole Board and Decision-Making Processes

28. Regarding long term prisoners, O'Malley has suggested that placing the Parole Board on a statutory footing might provide greater clarity as to the criteria by which release applications should be evaluated, that, *"there is no clear legislative mandate as to the factors that should be taken into account in making recommendations or as to the priority to be accorded to the various individual and social interest involved"*<sup>34</sup>.
29. When the Carlisle Committee in England and Wales reported in 1988 on the prison system, one of its strongest recommendations was that the Parole Board concentrate exclusively on the risk of a prisoner committing a serious offence if released and not engage in "resentencing" by considering the seriousness of the offence and aggravating circumstances. It is submitted that the focus on risk, as opposed to effective resentencing should be reflected in any new or amended legislation defining criteria to be considered by the Parole Board.
30. If prisoners can earn remission, they should have clear guidance as to the rules governing the earning thereof and, at the commencement of their sentence, all prisoners should, as far as possible, have a clear idea of when they might be released and this should be by reference to legislation. Earning such remission should also be attainable, i.e. not be merely a theoretical legislative possibility – if engagement with rehabilitative (education/training, drug treatment etc.) programmes is a pre-requisite, then such programmes need to be adequately resourced and accessible. Many jurisdictions, such as Scotland and New Zealand<sup>35</sup>, have introduced legislation setting out the operation of their early release systems.
31. IPRT has previously recommended that the Parole Board be made fully independent, so as to remove parole decisions from political control.<sup>36</sup> From the emerging jurisprudence of the European Court of Human Rights, and the jurisprudence of national courts when considering the requirements of Article 6 of the European Convention on Human Rights, it is increasingly clear

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<sup>34</sup> O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008, p.12, available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>35</sup> See *Criminal Justice Act 1985* and *Parole Act 2002*. See also New Zealand Parole Board website at <http://www.paroleboard.govt.nz/index.html>, last accessed 16 November 2011.

<sup>36</sup> *IPRT Submission to Review Group on Thornton Hall*, 2011, p. 7. See also the case of *Michael Brookes and Others v The Parole Board of England and Wales* and the *Lord Chancellor and Secretary of State for Justice* [2007] EWCH 2036 Admin, where the English High Court considered the independence of the parole board in that jurisdiction in terms of a number of criteria, including whether the board acts as "court or tribunal", in the sense of being sufficiently independent and impartial. Relevant questions included: Can there be an oral hearing and if so can it take the form of a tribunal or court?; Who prepares the information which the Board rely upon in making their decision and does the information provided include a 'view' if it comes from the executive?; How are the members appointed and what is their term of office? The making of rules and directions and funding issues were also relevant to the issue of independence.

that systems of parole must be as independent as possible of Government control.<sup>37</sup>

32. At present, the Parole Board only considers prisoners serving sentences of eight years or more. In common law countries such as England, Scotland, Australia and Canada, review by the Parole Board is not reserved solely for prisoners serving such lengthy sentences. O'Malley has suggested expanding the Board's remit to those serving sentences in the four to seven year category. Although prisoners serving less than eight years can presently be granted early release by virtue of the Government's powers under the Criminal Justice Act 1960, the current relatively unstructured over-use of the temporary release system is far from desirable. Expanding the remit of the Parole Board would provide an opportunity for careful consideration of the prisoner's suitability for release,<sup>38</sup> as opposed to the current system of ad hoc, unplanned early release of prisoners arising from the need to ease overcrowding.
33. Furthermore, consideration should be given to removing the restriction on certain categories of long term prisoner being considered for parole. Such restrictions generally do not exist in other jurisdictions. Such restrictions are disproportionate and unfair since they only take into account the offence and not the circumstances of the individual offender. Furthermore, regardless of the category of prisoner, incentivised early release has the capacity to benefit both the prisoner and the public. Since the prisoner is going to be released at some point (in all but the rarest circumstances), it is in the interest of public safety that he be encouraged by the prospect of early release to rehabilitate and prepare for reintegration into society. It is important to emphasise that such a change would only make currently excluded prisoners *eligible* for parole – they would not be entitled to release.
34. In light of developing international jurisprudence, IPRT believes that prisoners should be entitled to be legally represented in proceedings before the Parole Board,<sup>39</sup> notwithstanding the decision of the High Court in the 2001 case of *Barry v Sentence Review Group*<sup>40</sup> that prisoners are not entitled to legal representation at sentence review hearings. Legal representation, state-funded in some instances, is an accepted feature of parole hearings in other jurisdictions including England and Wales and New Zealand.<sup>41</sup> It is submitted that the right to legal aid is particularly strong in the case of those

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<sup>37</sup> See for example the recent decision of the English Court of Appeal in *R (Brookes) v. Parole Board* [2008] 1 W.L.R. 1950.

<sup>38</sup> O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008, p.13, available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

<sup>39</sup> *Ibid*, p. 14.

<sup>40</sup> [2001] 4 I.R. 167

<sup>41</sup> O'Malley, Tom. "The Ends of Sentence: Imprisonment and Early Release Decisions in Ireland", paper delivered at Fitzwilliam College, Cambridge, June 2008, p.14, available at <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222>, (last accessed 15 November 2011).

serving life sentences. A decision by the Parole Board not to recommend the release of a life prisoner is particularly onerous as the life prisoner does not have a release date to which he or she can look forward.

### **Analysis and Recommendations**

35. **The Parole Board should be granted independence and placed on a statutory footing, and should have the power to make binding recommendation on prisoner release, thereby removing parole decisions from political control.**
36. **Legislation underpinning the working of the Parole Board should set out the function of parole and criteria by which decisions should be made. In setting out the working methods of the Parole Board, the following key issues should be addressed:**
  - **Whether oral hearings take place in a tribunal or court-like venue? Who prepares the information on which the Board relies, and whether it contains a 'view' from the executive?**
  - **How are members appointed, and what is their term and security of office?**
  - **Who is responsible for rule making and directions?**
  - **How is the board to be funded?**
37. **Consideration should be given to broadening of the categories of prisoners who can apply for parole and to extending the remit of the Parole Board to examine sentences in the 4-7 year category. IPRT recommends that the incentive of parole or temporary release should be available to all categories of prisoners.**
38. **Legal aid should be available to life-sentenced and long-term prisoners for Parole Board hearings.**

## E. Necessary Changes to Prison Regimes Regimes in Prison

39. In a progressive prison system, there is a clear link between any scheme of “earned temporary release”, Integrated Sentence Management (ISM) and so-called “incentivised regimes”. IPRT submits that the meaningful development of ISM could, and should, play a crucial role in any scheme of earned temporary release, whereby risk and needs assessments of all prisoners would be conducted and a care plan constructed in which rehabilitative and reintegration programmes would be tailored to suit the recipients. Not only would such a system profit prisoners in addressing underlying personal issues or skills deficits, but it would also be of benefit to communities to which prisoners will eventually return.
40. If early release, either through remission or parole, is to be *earned*, then suitable rehabilitation, behaviour and training programmes should be available and accessible in prisons. No prisoner should be excluded from the possibility of gaining credit because the programmes available are not suitable to his intellectual abilities. The Inspector of Prisons has stated that three factors determine whether a prison is overcrowded: (1) inappropriate accommodation, (2) inadequate services and regimes and (3) threats to prisoner safety.<sup>42</sup> In order for the State to satisfy its domestic constitutional requirements and international obligations, all Irish prisons **must** provide proper accommodation, sufficient services and ensure prisoner safety.<sup>43</sup>
41. According to the Inspector, all prisoners wishing to avail of relevant structured activities are entitled to a minimum of 5 hours per day, five days a week, in addition to out of cell time and recreation time.<sup>44</sup> This is currently not the case in many Irish prisons, where libraries and workshops have been closed owing to low staffing levels. Staff shortages in Irish prisons have negative repercussions for the out of cell services available to prisoners.<sup>45</sup> Owing to the endemic overcrowding, many prisoners suffer from an impoverished regime. Unless overcrowding is tackled and prisoners have access to well in excess of 5 hours out-of-cell activities per day, it is difficult to see how an incentivised regime could function.

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<sup>42</sup> Inspector of Prisons, *The Irish Prison Population: An examination of the duties and obligations owed to prisoners*, 2010, p. 7.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, p. 19.

<sup>45</sup> Even in the economic boom staffing problems impacted negatively on prisoner services. See *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006*, p.24 where it is noted that the Irish authorities informed the CPT that due to a length dispute between the prison service and staff during 2004-2005, many services and activities in prisons were terminated or suspended. The CPT also observed that the number of prison officers in the medical unit at Mountjoy were regularly below complement and activities were often cancelled in St Patrick’s because no prison officer was available to assist the responsible educator.

42. Investment by the State in services to prisoners has not kept pace with the programme of prison building that has occurred. This discrepancy, combined with the public service hiring embargo which means that new staff cannot be hired if a prison officer or teacher leaves or retires, has reduced Irish prisons to mere warehouses of offenders. The IPS is incapable of achieving its goals of helping “every offender live as a law abiding person” and “contribute to their realising their potential” due to overcrowding. Insufficient staff and services make it impossible to provide each person in custody “conditions and services appropriate to their well-being and personal development”.<sup>46</sup>
43. In the English case of *Gill*,<sup>47</sup> the applicant was a prisoner with a learning disability, who was serving a life sentence (with a four year tariff). The applicant had served well over twice his tariff and was attempting to progress towards release. Due to his learning disability, he had been excluded from participating in offending behaviour programmes. He argued that his exclusion for such programmes constituted a breach of the Disability Discrimination Act 1995. The applicant had done well in the prison - he had engaged in work in the kitchen, had not been violent for several years, satisfied a number of drug tests and the probation board had been content for him to be transferred to a less secure facility. The court concluded that offending behaviour programmes were not the only means of achieving rehabilitation and that there were other relevant paths to release from prison. The court also found that the applicant was entitled to a declaration from the Secretary of State admitting that he had failed in his duty to provide the applicant with any offending behaviour programme.
44. An imaginative approach to earned temporary release is required if it is to yield positive results. For example, if drug using prisoners engage with drug treatment in prison, either by successfully completing the drugs detoxification programme at Mountjoy prison, becoming stabilised on methadone maintenance, or participating in drugs counselling, these achievements should count towards earned temporary release.

## Analysis and Recommendations

45. **Any moves to creative earned-release schemes or incentivised parole must be supported by necessary investment in rehabilitation, treatment and training programmes in the prison system. These should include a special focus on drug and addiction treatment. Integrated Sentence Management (ISM) should be established in all Irish prisons by the end of 2011 and ensure that it is “a prisoner-centred, multidisciplinary approach to working with prisoners with provision for initial assessment, goal setting and periodic review to measure progress” in practice, as well as on paper.**

<sup>46</sup> The Irish Prison Service *Annual Report 2010*, p.7.

<sup>47</sup> *Gill, R (on the application of) v Secretary of State for Justice* [2010] EWHC 364 (Admin), [www.bailii.org/ew/cases/EWHC/Admin/2010/364.html](http://www.bailii.org/ew/cases/EWHC/Admin/2010/364.html).



## **F. Community Service and Probation Supervision as Part of a Sentence**

46. Regarding the Minister for Justice's proposal to make community service a component of the earned temporary release scheme, the Canadian experience is of interest. Community service programs are administered in Canada by the Correctional Service of Canada (CSC).<sup>48</sup> According to CSC, most of Canada's federal offenders serve only part of their sentences in prison with part of their time served in the community, where they adhere to certain conditions and are supervised by professional staff of the Correctional Service of Canada. This includes high risk offenders.
47. Supervision, good programming and community involvement are the core principals of Canadian community service programs. Supervision involves the direct monitoring of and communication with offenders carried out by CSC community staff. "High risk" offenders have a higher degree of supervision. Supervision takes a holistic approach and is informed by various sources including the offender, police and family members. According to CSC, supervision alone does not help offenders change and it needs to be combined with good programming, tailored to the offenders' needs. Programmes are offered to enable offenders to cope with daily living, relationships and emotions and to upgrade educational skills or deal with specific issues such as sexual offences, and alcohol or drug abuse. In addition, the CSC considers community involvement as essential to success of such community corrections to help support the offender and community involvement means the community is willing to accept those offenders who reform themselves. The basic premise is that offenders' success in starting fresh depends partly on their own efforts and partly on the opportunities provided by the community at large. Community Correctional Centres (CCC) are also used to assist in offender rehabilitation.

## **Analysis and Recommendations**

48. **It is likely that if a scheme such as the one operated by the CSC were introduced in Ireland, the Probation Service would require an increase in funding to discharge its additional supervision duties effectively.**
49. **More generally, there has been little focus on Ireland on models of supervision for offenders while on community supervision or while release on license more generally. Any moves towards reform in this area should be informed by best international practice in community supervision.**

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<sup>48</sup> Full details of the Correctional Service of Canada are available on their website, <http://www.csc-scc.gc.ca/text/index-eng.shtml> including several reports on community service programs including evaluations and reports available here: [http://www.csc-scc.gc.ca/text/pa/eval\\_reports-eng.shtml](http://www.csc-scc.gc.ca/text/pa/eval_reports-eng.shtml)

## **APPENDIX G - Chart summarising models of parole and remission in certain jurisdictions**

The difficulty in outlining for the purposes of comparison the various parole and remission systems that exist around the world is that widely differing and complex sentencing systems exist in each jurisdiction. There may be sentences of definite or indefinite duration or sentences imposed on specific categories of offender. Different rules regarding early release sometimes apply to each type of sentence. As a result, the information provided below is by no means definitive. The key differences between the various systems include:

- The level at which remission or release dates are set
- The “judicial” or independent quality of the decision-making process in discretionary systems

The following table is broken down by categorising three types of jurisdiction:

- (a) Common law jurisdictions such as England, Scotland, Canada
- (b) Nordic countries – Norway, Sweden, Denmark, Finland
- (c) Civil law jurisdictions of France and Germany.

***(a) Common Law Jurisdictions***

<b>Country</b>	<b>System</b>
<b>England</b>	<p><b>An independent body, the Parole Board</b>, normally only reviews prisoners serving sentences longer than four years. Those serving shorter sentences are generally subject to automatic release at a certain point of their sentence.</p> <p><b>Determinate Sentences:</b> Prisoners serving up to one year are automatically released at the half-way mark. Prisoners are not supervised on release but may be returned to prison if they commit another offence punishable by personal restraint before the expiry of their sentence.</p> <p>Prisoners serving a one to four years determinate sentence are automatically released at the half way point. They are subject to a follow up regime including specific conditions and compulsory curfews until the three quarter point of the sentence. Offenders can be returned to prison if they break their conditions or commit an offence punishable by personal restraint before the expiry of their sentence.<sup>1</sup></p> <p>Prisoners serving a determinate sentence of more than four years are eligible for parole at the half way point of their sentence up until the two thirds point when they are automatically released. The <b>Parole Board</b> reviews these prisoners and considers whether they should be granted parole.</p> <p><b>Indeterminate Sentences:</b> (Sentenced to Life Imprisonment or to Imprisonment for Public Protection (IPP)). There is no automatic release for prisoners serving indeterminate sentences. The Parole Board considers whether it is safe to release the offender into the community after the minimum tariff set by the sentencing judge is served. Once the tariff has expired, cases are referred to the Parole Board at intervals of no more than</p>

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<sup>1</sup> "A New Parole System for England and Wales", published by JUSTICE, London, 2009, available at [www.justice.org.uk](http://www.justice.org.uk).

	<p>two years. The test for release is that the Parole Board is satisfied that detention is no longer necessary for the protection of public.<sup>2</sup> A life sentence remains a life sentence even after release as licence conditions remain in force until death. IPP prisoners are technically serving indeterminate rather than life sentences as they can make an application to the Parole Board for their licences to end after 10 years.<sup>3</sup></p> <p><b>Prisoners serving whole life orders</b> (where a court has imposed an indeterminate sentence and has not set a minimum period to be served) are not ever eligible for parole.<sup>4</sup></p> <p><b>Remission:</b> In 2006 the entitlement of English prisoners to one third remission was abolished.</p>
<b>Scotland</b>	<p><b>Prisoners serving a determinate sentence</b> of less than four years are automatically released unconditionally at the half way point.</p> <p><b>Short term sex offenders</b> are released on licence at the half way point. Conditions are set by the Scottish Government. <b>The Parole Board of Scotland</b>, which operates independently of the Scottish Government, is only involved if the offender breaches his licence and is recalled or is seeking re-release following recall.</p> <p><b>Prisoners serving long term determinate sentences</b> (more than four years) can be considered for parole by the Parole Board at the half way point. If not released, the Parole Board reviews the prisoner every twelve months until the two thirds point when the offender is released on licence into the community until the sentence end date.</p> <p><b>Extended sentence offender</b> (where court gives a custodial part and an extended part of the sentence): If the extended part makes the sentence over four years long, the Parole Board deals with release conditions only. If the custodial part is over four years, the prisoner will be considered for parole at the half way point. If not</p>

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<sup>2</sup> Ibid. The European Court of Human Rights held that a review of prisoner serving indeterminate by the Parole Board every two year after the tariff expires is not adequate in all cases to meet the requirement of Article 5(4) of the European Convention of Human Rights-*R (on application of George Loch) v Secretary of State for Justice [2008] EWHC 2278(Admin)*

<sup>3</sup> Prisoners' Advice Service at [www.prisonersadvice.org.uk](http://www.prisonersadvice.org.uk)

<sup>4</sup> The European Court of Human Rights in the recent case of *Vinter, Bamber & Moore v The United Kingdom*, Applications no. 66069/09, 130/10 and 3896/10, has been asked to rule on whether the whole life sentence constitutes inhuman and degrading treatment and is incompatible with Articles 3 and 5(4) of the Convention. Judgement is awaited.

	<p>released, the Parole Board reviews the prisoner every twelve months until the two thirds point when the offender is released on licence until the end of the extended part of the sentence.</p> <p><b>Life Prisoners</b> are told by the sentencing judge what the minimum period is that they must serve in prison (the “punishment part” of the sentence). The Parole Board will review the prisoner as soon as possible after the punishment part has expired. At the discretion of the Scottish Ministers and subject to a favourable recommendation from the Parole Board, the offender may then be released on life licence. They remain on licence for the rest of their life and may be recalled to custody for breaching the terms of their licence. If the prisoner is not released at the first review there is a legal requirement for a further review within two years. Subsequent reviews will be set by the Parole Board.</p> <p>Once a prisoner is subject to a licence, he must not fail to co-operate with any licence condition or he may be recalled to custody to resume serving his sentence.<sup>5</sup></p>
<b>Canada</b>	<p>Under the auspices of the Correctional Service of Canada, the National Parole Board has exclusive jurisdiction and absolute discretion to grant, deny, terminate or revoke parole for inmates in federal, territorial, and many provincial institutions, except for cases under the jurisdiction of provincial parole boards. Its main consideration is to evaluate any risk the prisoner may pose to the community before they release him.</p> <p><u>Day Parole</u> provides offenders with the opportunity to participate in on-going community-based activities. Ordinarily, the offender resides at a correctional institution or community residence. Offenders are also granted day parole in order to prepare for full parole and statutory release. Offenders who are serving sentences of three years or more are eligible to apply for day parole six months prior to full parole eligibility and those serving sentences of two to three years are eligible for day parole after serving six months of their sentence. Offenders serving life sentences become eligible for unescorted temporary absences and day parole three years before their full parole eligibility date (normally 25 years).</p> <p><u>Full Parole</u></p> <p><b>Offenders (except those serving life sentences for murder)</b> are eligible to apply for Full Parole after serving</p>

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<sup>5</sup> Ibid.

either one-third of their sentence, or seven years, whichever is less. Prisoners are automatically scheduled by law for a parole review within six months of their eligibility date.

**Offenders serving life sentences for first-degree murder** are eligible to apply for parole after serving 25 years. Parole eligibility dates for offenders serving life sentences for second-degree murder are set between 10 and 25 years by the court.

“Faint Hope Clause” Those convicted of murder, and who have served 15 years of their sentence can have their parole ineligibility period reviewed by a jury. The decision as to whether or not the offender may apply for parole is made by twelve members of the community sitting as a jury. If the jury agrees to an earlier parole date, the offender must still apply to the [National Parole Board](#) for a hearing on that earlier date. The National Parole Board will then consider whether the release would present an undue risk to society and whether the release would assist in rehabilitating the offender.<sup>6</sup>

A prisoner can appeal any decision of the Parole Board to the National Parole Board Appeal Division. The Appeal Division has jurisdiction to reassess the issue of risk of reoffending and to substitute its discretion for that of the original decision makers, but only where it finds that the decision was unreasonable and unsupported by the information available at the time the decision was made.<sup>7</sup>

**Statutory Release.** Most prisoners are entitled under the law to serve the last one-third of their sentence in the community if full parole has not already been granted. The decision whether to release a prisoner is not made by the National Parole Board but will generally be granted automatically. The Correctional Service of Canada has the authority to refer statutory release cases of offenders in federal custody to the National Parole Board if, in their opinion, there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence while on parole before the end of their sentence. These offenders may be kept in prison until the end of their sentence.<sup>8</sup> In some cases conditions of release will be imposed on prisoners released on statutory release. Offenders serving a life or indeterminate sentence are not eligible for statutory release.

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<sup>6</sup> Online Resource for Victims of Crime in BC at [www.victiminfo.ca](http://www.victiminfo.ca), accessed 03/11/11

<sup>7</sup> Correctional Service of Canada at [www.csc-scc.gc.ca](http://www.csc-scc.gc.ca), accessed 26/10/11

<sup>8</sup> Online Resource for Victims of Crime in BC at [www.victiminfo.ca](http://www.victiminfo.ca), accessed 03/11/11.

<p><b>USA</b></p>	<p>Different rules in relation to parole exists throughout the United States and this analysis is a merely a cursory summary of the U.S. federal system.</p> <p><b>The U.S. Parole Commission</b> may grant parole if (a) the inmate has substantially observed the rules of the institution; (b) release would not depreciate the seriousness of the offense or promote disrespect for the law; and (c) release would not jeopardise the public welfare. Federal prisoners are generally eligible for parole according to the type of sentence received from the court. The "parole eligibility date" is the earliest time the offender might be paroled. Unless the court has specified a minimum time for the offender to serve, or has imposed an "indeterminate" type of sentence, parole eligibility occurs upon completion of one-third of the term.<sup>9</sup></p> <p><b>Offenders serving a life sentence or a term of 30 years</b> or more will become eligible for parole after 10 years.<sup>10</sup></p> <p><b><u>Remission</u></b>  "Good Time Credits". Both the date of earliest eligibility for parole release, and the maximum duration the prisoner can be held if parole is never granted, are usually reduced as a reward for good behaviour in prison (good time credits), based on evaluations made by prison officials. Under U.S. federal law, prisoners serving more than one year in prison get 54 days a year of good time for every full year served in excess of one year.<sup>11</sup> Some states make additional credits available for prisoners who participate fully in any programs designed to help a prisoner, upon his release from jail, reintegrate society and find gainful employment.</p>
<p><b>New Zealand</b></p>	<p><b>The Parole Board of New Zealand's</b> role is to assess the risk that long term offenders might pose to the community if they were to be released before the end of their sentence. The Board also sets conditions of release for offenders.</p> <p><b>Prisoners serving sentences of under two years</b> are released automatically at the half way point.</p> <p>Offenders sentenced under the Parole Act 2002 to a determinate prison term of more than two years, must be released when they reach their Statutory Release Date (the end of their sentence) - if they have not been</p>

<sup>9</sup> United States Parole Commission at [www.justice.gov/uspc/questions.htm](http://www.justice.gov/uspc/questions.htm), accessed 29/10/11.

<sup>10</sup> Ibid.

<sup>11</sup> Title 18, United States Code, Section 3624(b).

granted parole before this date. They become eligible for parole after serving one third of their sentence. If they have reached their Statutory Release Date, the Board's only role is to set conditions for release.

**Prisoner serving long-term fixed sentences** under the Criminal Justice Act 1985 are eligible for parole at the one third mark. If he has not already been granted parole, the prisoner must be released at his Final Release Date (FRD), which is the two thirds point of the sentence. If the prisoner has reached the FRD, the Board only sets release conditions. There is facility for the Department of Corrections to apply for offenders sentenced to certain serious crimes to be detained beyond their FRD.<sup>12</sup>

**Prisoners serving sentences of life or preventative detention** are eligible for parole once they have served the minimum sentence set by the sentencing judge. If no date was set by the court, the prisoner is eligible for parole after serving ten years. For offenders serving sentences of preventative detention, the court must set a minimum non parole period of five years.

**The Parole Board** must consider an offender for parole at least once in every twelve months after he becomes eligible. A prisoner can apply for early referral to the Parole Board citing exceptional circumstances. When a prisoner is referred to the Parole Board, it is empowered to release a prisoner if satisfied that he will not pose an undue risk to the safety of the community within the term of his sentence. The prisoner is released to serve the remainder of his sentence on conditions and/or under supervision. The prisoner can be recalled within the term of his sentence if he poses an undue risk to the safety of community or he breaches conditions of his release or commits an offence punishable by imprisonment

The Parole Board can consider compassionate release for offenders who are either seriously ill or unlikely to recover or have recently given birth to a child. If granted compassionate release, an offender will be subject to release conditions and may be recalled to prison if these conditions are not followed.<sup>13</sup>

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<sup>12</sup>New Zealand Parole Board website at <http://www.paroleboard.govt.nz/index.html>, accessed 28/10/11.

<sup>13</sup> Ibid.



**(b) Nordic Countries**

<b>Norway</b>	<p>There are no life sentences in Norway, Prisoners serving a determinate sentences can be sentenced to a maximum of twenty one years imprisonment. Prisoners sentenced to an indeterminate sentence can be sentenced initially to a maximum period of twenty one years with parole eligibility at ten years. If the Parole Board considers that the prisoner continues to pose a danger to society it can extend the prisoner's sentence by a further five year at a time.</p>
<b>Sweden</b>	<p>Persons serving fixed-term sentences are conditionally released when two thirds of the sentence has been served. Prisoners may not be conditionally released until they have served at least one month of their sentence. Those released are subject to a probation period corresponding to the remaining term of their sentence, although a minimum of one year. A person sentenced <b>to life imprisonment</b> can be conditionally released only after his or her sentence has been commuted to time-determined sentence.<sup>14</sup> Misconduct during the parole period can result in the parolee being required to serve part or all of the remaining sentence in prison.<sup>15</sup></p> <p>In 2001, the "close supervision" release system was introduced. This gives inmates the opportunity to leave the institution a maximum of four months before commencement of the conditional release period. Under this system, the offender is kept under close supervision by means of electronic tagging.</p>
<b>Denmark</b>	<p>The Minister of Justice or any person authorised by him decides whether a person is to be released on parole.<sup>16</sup></p> <p><b>Prisoners with a prison sentence of three months or more</b> are usually released on parole when they have served two thirds of their sentence. In about 25% of cases, inmates are refused release at this stage, either because the prisoner is not willing to accept the conditions for the release, or because the prison deems that the risk of reoffending is too high.</p> <p>Prisoners may also be released on parole when half the sentence has been served if warranted by very special</p>

<sup>14</sup> "The Prison and Probation Service in the Community", publication of Kriminalvarden, available at [www.kriminalvarden.se](http://www.kriminalvarden.se), accessed 01/11/11.

<sup>15</sup> Kriminalvarden website at [www.kriminalvarden.se](http://www.kriminalvarden.se), accessed 01/11/11.

<sup>16</sup> Lars Bo Langsted, Peter Garde, Vagn Greve, *Criminal Law in Denmark*, Kluwer Law International 2010.

	<p>circumstances, for example if the inmate or his spouse or children suffer from a serious illness.</p> <p>Certain categories of offenders may be released on parole when half the sentence, but not less than four months, has been served if the prisoner has made a special effort to avoid reoffending, for example, by completing relevant education or participating in treatment for drug or alcohol addiction or other corrective behavioural programmes in prison. A prisoner may also be released on parole where the overall circumstances make it unnecessary that he serves the remainder of the sentence in prison and rather should instead carry out community service. This will apply to prisoners with a stable personal situation who have no addiction problems and whose offence does not reflect a criminal pattern.</p> <p>As a rule, a prisoner can only be released on parole if a suitable lodging and work, training, education or financial support has been secured. In addition, the prisoner must be willing to comply with the conditions for release. <b>Prisoners serving life sentences</b> can only be released on parole after serving at least twelve years of their sentence. Prisoners sentenced to security detention can only be released on parole by the court.<sup>17</sup></p>
<b>Finland</b>	<p>Prisoners who have not been in prison for three years prior to the current sentence can be released at the half way point of the sentence. If the offence was committed when the offender was under twenty one years old, he can be release at the one third point. Otherwise, the offender is released on parole at the two thirds point or the halfway point if the offence was committed when the prisoner was under twenty one years old. Release on parole is possible when at least 14 days of the sentence has been served.</p> <p>On certain conditions, prisoner's sentences to serve the full term of the sentence can be released on parole after serving five sixths but at least three years of the sentence. The Helsinki Court of Appeal decides on the release. Prisoners sentenced to life imprisonment can also be released on parole. The Helsinki Court of Appeal decides on whether the prisoner will be released. Release on parole is possible when at least twelve years of the prison sentence has been served. If the offence was committed when the prisoner was under twenty one, the corresponding time is ten years. Life sentence prisoners can also be released by the pardon of the President of the Republic.<sup>18</sup></p>

<sup>17</sup> Rentzmann, William. "Prison Policy, Prison Regime and Prisoners' rights in Denmark", available at <http://fondationinternationalepenaleetpenitentiaire.org>, accessed 02/11/11.

<sup>18</sup> Criminal Sanctions Agency of Finland at [www.rikosseuraamus.fi](http://www.rikosseuraamus.fi).

***(c) Civil Law jurisdictions***

<b>France</b>	<p>The French system is court based and highly judicialised. Decisions regarding early release are made by Tribunals of Judges, a judge sitting alone for most decisions and a three judge Tribunal for fewer decisions.<sup>19</sup></p> <p>Early release is not automatic. <b>“First time” sentenced prisoners</b> may be granted conditional release halfway through their sentence. <b>Recidivists</b> must have served at least two thirds of their sentence before being allowed to do the rest in the community under the authority of a sentence-enforcement judge and under the surveillance of the probation services. There are exceptions for persons with specific parental responsibilities.<sup>20</sup></p> <p>Prisoner serving <b>life sentences</b> will have to wait 15 years before applying for conditional release. If the sentencing court has added a <i>période de sûreté</i> to the sentence, the person will have to wait for the end of this period before applying for conditional release.<sup>21</sup></p> <p><b>Remission.</b> There are two categories of remission. The first is remission for good behaviour. The second is remission for “good efforts and social rehabilitation” and a prisoner can earn both. The amount of remission varies in the first category depending on the length of sentence and on the second category depending on whether the prison is a first time offender or a recidivist.<sup>22</sup></p>
<b>Germany</b>	<p>Parole decisions are made by the court system.<sup>23</sup></p> <p><b>Prisoners are automatically</b> considered for parole after serving one half of their sentence if they have no previous sentences and the sentence is less than two years or after serving two-thirds of their sentence in other cases not involving a life sentence.</p> <p><b>Prisoners serving a life sentences</b> are considered for parole after serving 15 years in prison.</p>

<sup>19</sup> “Factsheet-France-Legal System (Release)”, publication of Prisoners Abroad, p.2 at [www.prisonersabroad.org.uk](http://www.prisonersabroad.org.uk).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.p.3.

<sup>22</sup> Ibid.p.5.

<sup>23</sup> “Finding Direction: Expanding Criminal Justice Options by Considering policies of other Nations”, Justice Policy Institute, April 2011, available at <http://www.justicepolicy.org>, accessed 25/10/11.



OIFIG AN ARD-RÚNAÍ, AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ  
OFFICE OF THE SECRETARY GENERAL, DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

Mr Alan Guidon  
Clerk to the Joint Committee on Justice,  
Defence and Equality  
Leinster House  
Dublin 2

**Re: Sub-Committee on Penal Reform - Invitation for Submission**

Dear Mr Guidon,

I refer to your recent correspondence with this Department about the above matter and I now enclose a written submission from the Department of Justice and Equality.

The note contains information on remission, temporary release, parole and the community return scheme.

Yours sincerely,

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Brian Purcell  
Secretary General

24 November, 2011

## **Information Note On Early Release From Prison.**

### **Remission**

1. The Prisons (Ireland) Act 1907 provided the original legal basis for remission and stated that prison rules may provide that a prisoner may "*earn by special industry and good conduct a remission of a portion of his imprisonment, and on his discharge his sentence shall be deemed to have expired.*" Up to 2007, Rule 38 of the Rules for the Government of Prisons 1947 (S.I. No. 320) determined that a prisoner serving more than a month "*shall be eligible by industry and good conduct to earn a remission of a portion of his imprisonment not exceeding one-fourth.*"

Women prisoners used to be entitled to one-third remission under the 1947 Prison Rules but that discrimination in favour of women was held unconstitutional in the 1980's. Prisoners sentenced to life imprisonment are not entitled to remission. In practice prisoners are advised of their release date calculated on the basis of remission on entering the prison system. In the context of disciplinary proceedings, a Governor can impose a sanction involving loss of remission for bad behaviour.

2. Rule 59 of the 2007 Prison Rules (S.I. 252) provides that a prisoner shall be eligible by good conduct to earn a remission of sentence not exceeding one quarter. In addition the Minister may grant greater remission in excess of one quarter but not exceeding one third where a prisoner has shown good conduct by engaging in authorised structure and that as a result the prisoner is less likely to re-offend and will be better able to reintegrate into the community.

### **Temporary Release**

3. The Criminal Justice Act 1960 (No. 27) as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003 No. 34 provides for temporary release. The Minister may direct the release from prison, for such temporary period and subject to such conditions as may be specified, of a sentenced prisoner



- to assess the person's ability to reintegrate,
- to prepare the prisoner for release,
- to assist the Gardaí,
- on health or humanitarian grounds,
- to ensure the good government of the prison, or
- to maintain good order and the humane management of the prison.

The generally accepted view is that the risk to the community is reduced by planned re-integration of offenders compared with their return to the community on the completion of their full sentence.

Candidates for temporary release are identified by a number of different means but primarily on the recommendation of the Prison Governor or the therapeutic services in the prisons. The prisoner, their family or their legal representative can also apply for consideration of such a concession. Recommendations are also made to the Minister in relation to long term sentence prisoners by the Parole Board. It is important to note however that it does not necessarily follow that a prisoner will receive temporary release even if the recommendation is to that effect.

Before a final determination a number of factors may be taken into account including: -

- the nature and gravity of the offence to which the sentence being served by the person relates
- the sentence concerned and any recommendation made by the Court in relation to the sentence imposed
- the period of the sentence served by the person
- the potential threat to the safety and security of the public should the person be released
- the person's previous criminal record
- the risk of the person failing to return to prison at the expiration of

the period of temporary release

- the conduct of the person while in custody or while previously on temporary release
- any report or recommendation made by the Governor, the Garda Síochána, a Probation & Welfare Officer, or any other person whom the Minister considers may be of assistance in coming to a decision as to whether to grant temporary release
- the risk that the person might commit an offence during any period of temporary release
- the risk of the person failing to comply with any of the conditions of temporary release
- the likelihood that a period of temporary release might accelerate the person's reintegration into society or improve his prospects of obtaining employment

The Irish Prison Service has also judiciously used temporary release as a means of reducing numbers in times of serious overcrowding. Each case is examined on its own merits and the safety of the public is paramount when decisions are made. In addition, all releases are subject to conditions, which in the vast majority of cases include a requirement to report on a regular basis to the offender's Garda Station. Of course, any offender who breaches his or her conditions may be arrested and returned to prison immediately by the Gardaí. Public safety is the paramount consideration in any decision on granting temporary release.

Most prisoners will benefit from temporary release at some stage. Periods of temporary release granted can vary greatly from a few hours following a family bereavement to, for example, a requirement to report to the prison every 12 months in the case of a life sentenced prisoner who has been released into the community a considerable time ago.

The Irish Prison Service also utilises temporary release as part of its

programme of sentence management. Temporary release is used to facilitate the rehabilitation and reintegration of prisoners into society. Rather than releasing prisoners straight into the community at the end of their sentence, it is in everyone's interest that prisoners who do not pose a high risk to the public are reintroduced into society in a planned and structured way. The generally accepted view is that the risk to the community would be reduced by planned re-integration of offenders compared with their return to the community on the completion of their full sentence.

On Monday, 14 November 2011, 799 prisoners were on temporary release. The number on temporary release equates to 15% of the total prison population. Statistics on the average number of prisoners on temporary release from 2006 to 2010:-

Year	Number
2010	732
2009	535
2008	273
2007	153
2006	140

#### **Parole**

4. The legislation on temporary release is the basis for our existing system of release for long term prisoners on the recommendation of the Parole Board. The Minister intends to place the Parole Board on a statutory footing and in that context, he will be reviewing the parole process.



## **Community Return Scheme**

5. The legislation on temporary release is also the basis for the recently introduced incentivised scheme for earned temporary release under which offenders who pose no threat to the community are offered early temporary release in return for supervised community service.

The Thornton Review Group recommended that *“the problem of overcrowding in prison can be addressed, as part of an integrated package of measures, by the back door strategy of increasing the number of prisoners on discretionary temporary release....The Review Group supports the introduction of a scheme for earned temporary release coupled with a requirement to do community service.”*

On foot of this recommendation, a Pilot Community Service Early Release Scheme was introduced with effect from early October. The pilot is being overseen by steering group which will consider bi-monthly progress reports on issues arising and a final pilot evaluation report with recommendations by 31<sup>st</sup> March 2012. It is envisaged that the pilot will last for 6 months and that a total of 130 prisoners will participate.

Prisoners currently serving sentences of more than one year and less than five years who have served in excess of 50% of their sentence, are of good behaviour and been co-operative with services in prison are considered for inclusion in this Temporary Release pilot programme with the exception of the following categories:

1. Prisoners serving under 1 year
2. Lifers
3. Current sex offenders
4. Prisoners serving sentences for murder
5. Prisoners serving sentences for manslaughter
6. Subversive prisoners
7. Prisoners with future court\remand dates

The Irish Prison Service in considering suitability of a prisoner for Temporary

Release with a condition of community service will take into account:

- the nature and gravity of the offence to which the sentence being served by the person relates
- the sentence concerned and any recommendation made by the Court in relation to the sentence imposed
- the potential threat to the safety and security of the public should the person be released
- the person's previous criminal record
- the risk that the person might commit an offence during any period of temporary release
- the risk of the person failing to comply with any of the conditions of temporary release

Eligible prisoners should have established accommodation in the community, be available, suitable and willing to complete community service work as directed by the Probation Service and there must be suitable work available. A specified number of community service days work are included as a condition in a Temporary Release order. The number of days will be proportionate to the planned full period of Temporary Release. In general prisoners will be required to complete three days community service work each week unless in exceptional cases for every 2 weeks early release.

A total of 16 prisoners have been released under the scheme to date, with a further 14 planned for release within the next week. A further 54 prisoners deemed suitable by IPS have been referred to the Probation Service for assessment as regards suitability and placement.

**Submission to Sub-Committee on Penal Reform.**

**Care after Prison (CAP)**

***An information & referral service to deal with the social and reintegration issues of individual persons recently released from prison, residing in the Dublin postal districts, 2 & 8, so as to assist in their rehabilitation and address recidivism.***

**Whitefriar Street Community Centre,  
56, Aungier Street,  
Dublin 2.**

**November 2011.**

Administration details:-

Office-56 Aungier Street, Dublin 2-Stephen Doyle.

Telephone 01-4720973.

[Email-careafterprison@gmail.com](mailto:Email-careafterprison@gmail.com)

Company Registration Number-506754

Contact person for this submission-Paul Mackay-Chairman

[paulwmackay@hotmail.com](mailto:paulwmackay@hotmail.com) 01-4972842/087-2444037.

***Document announcing a new voluntary body providing an information and referral service catering specifically for the immediate needs of ex-prisoners on their release from prison and residing in the Dublin Postal Districts, 2 & 8.***

**Dated November 2011**

**Objective.**

With the assistance of the Whitefriar Street Community Centre, the City of Dublin YMCA Centre and its residential unit at Peter's Row, **CAP-Care after prison** set up a new independent committed **information and referral service** for recent ex- prisoners residing in the Dublin postal districts, 2 & 8. The aim is to provide a free open service to ex-prisoners wishing to resettle in the immediate area and those originally from the area. This service provides ex-prisoners, from these specific postal districts, one on one support and gives them the opportunity for rehabilitation. It also affords them the ability to experience crime free lives where they could, by appointment, drop in and seek **information and referral** on any of the following and/or any other general related matters:-

- ***Social welfare entitlements.***
- ***Temporary accommodation and housing needs.***
- ***Support for drug/alcohol and other addiction issues.***
- ***Health care.***
- ***Training and Education.***
- ***Working opportunities.***
- ***General Counselling.***

Records identify that people from certain postal districts in Dublin City make up most of the prison population of the Republic of Ireland. Addressing the issues of rehabilitation and the current high rate of recidivism could be key measures in combating crime and at the same time assist in reducing the constant level of overcrowding in Irish prisons. Most offenders, unfortunately, come from disadvantaged backgrounds.

There is an immediate need to address this situation and endeavour to break the never ending constant cycle of anti social behaviour that eventually leads to imprisonment. **CAP** wishes to provide **information and referral** on the services available to ex-prisoners and how they may be accessed. Providing **information and referral**, on topics viewed in general as common knowledge, may seem trivial but not so to most ex-prisoners who suffer from low self-esteem and in some cases low IQ, with possible issues of mental health. Ex-prisoners face certain social issues, like exclusion from their communities and family members, due to their criminality and imprisonment.

### Addressing rehabilitation, recidivism and social exclusion.

Correctional services often have to address a lifetime of combined State and other service failures. When prisoners are released not all agencies are pro-active in identifying them and their immediate particular needs. Indeed there is evidence that ex-prisoners are actively de-prioritised. Many experience real obstacles in engaging in training/educational or drug programmes on release; these pale into insignificance compared with the difficulties they encounter in accessing accommodation/ housing needs and social welfare entitlements.

Responsibility and accountability for rehabilitation can sometimes be very unclear. The problems in prisoners' lives are often highly complicated and inter-related. They require a co-ordinated multi-agency response, within prison, across the crucial transitions between community and custody, and sustained long term care after release. Without this they are likely to fall between the gaps in the available services. This task is made more complex by the need to assess the risks posed by released prisoners to public safety, and in some cases, to manage any potential threats across a number of areas. However, joint-working mechanisms are not robust enough, and are not backed by shared targets, leverage, or up-to-date management information. For those employed in the prison service or in the community, the opportunities and rewards for innovation in rehabilitation work are currently far too limited.

Prison processes, both in the reception and release of prisoners, could be better designed to promote rehabilitation so as to identify and tackle factors influencing re-offending. Prisoners are losing housing and employment opportunities and accruing debt for want of basic procedures, dedicated resources and expertise. For those who do increase their employability, the requirement to disclose their convictions to a potential employer can be a significant barrier, resulting in discrimination. The current arrangements, unfortunately, do not get the balance right between the need to protect the public and the importance of enabling those who do not pose a significant risk of harm to move into legitimate employment.

### Short-term prison sentences

Those persons sentenced to less than a 12 months custodial sentence, and aged over 21 years of age, are not required to be supervised on release by the Probation Service. As a result, they are set free in a completely unmanaged fashion. Nothing is generally done for them on release. Indeed because there is no agency responsible to supervise and meet their needs very little is done in the preparation for their release. **Yet young short-term prisoners have the highest rates of re-offending.** Unfortunately, not enough is being done to engage with these ex- prisoners, their families, victims, communities, and voluntary organisations and others in the area of rehabilitation. **CAP** intends to address some of these gaps and deficiencies, in a limited but pro-active manner, for those residing in Dublin postal districts 2 & 8.

Current systems are not always geared to deal with the different factors affecting the re-offending of certain groups of prisoners, particularly women, young adults, black and minority ethnic groups, and remand prisoners. The challenges presented by juvenile prisoners are distinct, and the Government has recognised this by putting in place a separate tailored system for them.

### **General matters.**

In most cases ex-prisoners, upon release, are returning to and seeking support from the communities where they committed their crimes. Understandably, the relationship of trust and forgiveness are issues for both. Ex-prisoners can develop a deep mistrust of State services within prisons or directly linked to prisons. Therefore participation can be low and slow in addressing social issues; issues normally seen as trivial to the general population, but to an ex-prisoner just released, may be the difference between returning to prison and having a successful release.

Such issues can lead to ex-prisoners not seeking helpful **information and referral**. By simply not knowing how to address their problems frustration may lead to further criminal acts. By having an **information and referral service**, where ex-prisoners can link into and gain **information** on their social welfare entitlements, on housing opportunities, available education and work training programmes, addiction counselling and those other services available within the area and linking into same, could be a major benefit. This may ease the reintegration process that each individual ex-prisoner requires upon release. By assisting ex-prisoners in seeking help from those services which best addresses their needs, making appointments for them and speaking with the service providers on their behalf thereby providing proper and helpful introductions.

Seeking **information and referral** on matters of interest to ex-prisoners such as training and/or educational opportunities may help guide an individual towards services that address other key issues like rehabilitation, offending behaviour, anger management, addiction problems all evident in re-offending behaviours. The aim of this service is to be multi functional so as to allow ex-prisoners on leaving prison address their needs and issues by linking into services that specialize in their areas of interests and needs. Also, by assisting people in transition it is possible to help them rehabilitate and reduce re-offending attitudes.

### **Counselling and other services**

A free counselling service is available at the Whitefriar Street Carmelite Community Centre. Linking in with this service will be beneficial for ex-prisoners

In referring ex-prisoners to after care services may aid them in their rehabilitation and allow for planning their crime free futures. The Dublin YMCA Accommodation Project at Peter's Row, the Carmelite Community Centre and the Citizen Advice Bureau at Whitefriar Street already have available many services that **CAP** could link in with, such as the following:-

- 1. Support with re-integration and rehabilitation.***
- 2. Temporary accommodation and housing needs***
- 3. Citizen advice and information***
- 4. Personal development courses.***
- 5. AA / NA / CA addiction programmes.***

6. *Cookery classes.*
7. *Computer classes.*
8. *Self esteem classes*
9. *Professional development*
10. *Health awareness*
11. *Hygiene classes (to help spruce themselves up)*

### **Conclusion**

Having an **information and referral** service that helps ex-prisoners address issues for themselves and provides for their rehabilitation should benefit the wider community. Certainly having services, as outlined above and managed from the Whitefriar Street Community Centre, should give ex- prisoners a sense that he/she is being assisted and welcomed back into the community they left behind.

It is unclear exactly as to the number of ex-prisoners released each year into the communities based in the Dublin postal districts, 2 & 8. However, statistics indicate that the prison population is largely made up of people living in Dublin City. Many of these people have never held a driving licence, had a bank account or identification of any kind and in today's society you can't pay bills or acquire services without identification.

The pilot project is being jointly managed by Whitefriar Street Community Centre and the YMCA, which commenced in early October 2011 for a six month period to the end of March 2012. Hopefully more relevant information will become available at the end of the pilot period so to allow CAP to move forward in a meaningful way.

# **Submission to Sub-Committee on Penal Reform**

## **Professor Ian O'Donnell**

This submission addresses ways of reducing Ireland's prison population without placing the population at risk, whether the risk is thought of in terms of additional criminal victimisation or increased expense. Crime and punishment do enough harm and cost enough money as it is. It is hardly controversial to suggest that the €65,359 spent on every prison place in 2011<sup>1</sup> could be better spent in numerous ways that are more beneficial to offenders, victims, families and communities.

### **Translating recommendations into action**

Discussions about crime and punishment tend to have a circular feel to them. Numerous reports over the past thirty years have recommended rebalancing the system away from the prison. What is striking is the extent to which the same recommendations are restated and all the while the prison population continues to rise. It is probably fair to say that there is a reasonable degree of consensus about what needs to be done. This can be summarised as follows: to reserve prison for the most serious (or dangerous) offenders; to minimise the harms that incarceration causes to them and their families; and to deal with all other offenders in the community as efficiently, effectively and humanely as possible.

There is one report that it might be appropriate to review at this juncture, namely that of the Sub-Committee on Crime and Punishment.<sup>2</sup> It is twelve years since this body reported but the issues it dealt with – alternatives to prison and more efficient use of fines – and the recommendations made, remain pertinent. This raises the critical question about how to translate into action, recommendations that have achieved a measure of consensus.

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<sup>1</sup> Irish Prison Service (2012) *Annual Report 2011*, p. 2

<sup>2</sup> Sub-Committee on Crime and Punishment of the Joint Committee on Justice, Equality, Defence and Women's Rights (2000) *Report on Alternatives to Fines and the Uses of Prison*.



So what was the Sub-Committee's report about? What was the position taken by Oireachtas members more than a decade ago on the issues that are under consideration again today? Several of the key observations, conclusions and recommendations are listed next. A quick perusal will show that the passage of time has not rendered them less pertinent.

1. Greater recourse to imprisonment is not the only way in which the problem of crime can be addressed.
2. Those without financial means are more likely to receive an immediate sentence of imprisonment than a fine.
3. A package of measures should be formulated to increase the use of fines and reduce the number of fine defaulters going to prison. Before a sanction for non-payment can be imposed, all of the available enforcement measures should be considered by the courts.<sup>3</sup>
4. The number of prison places 'required' to protect society is to a large extent a political calculation and, 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.
5. Statistical models should be designed to show how many prison spaces would be required under different sets of prevailing conditions, based on a detailed analysis of sentencing practice around the country.

The Sub-Committee noted that Ireland was in the happy situation of lagging behind other countries which had experimented with an increased use of imprisonment. It recommended that the opportunity presented by a relatively small prison population should be seized and that an effort should be made to ensure that other countries' mistakes were avoided so, where possible, unintended consequences could be 'designed out' of Irish penal policies.

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<sup>3</sup> The number of fine defaulters committed to prison rose from 1,335 in 2007 to 7,514 in 2011.

There have been substantial increases in prisoner numbers since the Sub-Committee reported. This means that the need for swift and effective action is all the more pressing. There are several areas where progress could be made to reduce the prison population and these are addressed next.

### **Shrinking the Prison Population**

#### *i) Supporting Temporary Release*

The law allows for Temporary Release (TR), generally on humanitarian or family grounds or to facilitate vocational training. This can be granted on a (renewable) daily basis, or for a fixed period of time, or can extend until the sentence expiry date. The willingness to exercise discretion in favour of prisoners and their families says something about the emphasis a prison system places on trust. It is a more eloquent expression of faith in the individual's capacity to rise to expectations than any mission statement or set of performance measures.

The granting of TR to a significant number of prisoners every Christmas used to be a defining characteristic of the prison system.<sup>4</sup> There has been a steep decline in the granting of this privilege. On average between the early 1960s and the mid-1990s more than one in eight prisoners was allowed home for Christmas. There were some bumper years from a prisoner perspective, such as the record number of 390 in 1995, which amounted to 18 per cent of the prison population at the time. This seems to have marked the end of an era with the numbers granted Christmas TR falling thereafter against the background of a rising prison population. By 2000 the rate had fallen to 9 per cent and the figure for last year was 4 per cent.

Part of the explanation for this downward shift must lie in the emergence of a more diverse prison population, including a greater number of prisoners on remand (who are ineligible for TR) and from overseas (who may lack the requisite community contacts). But it may also indicate a punitive shift within

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<sup>4</sup> See Ian O'Donnell and Yvonne Jewkes (2011) 'Going home for Christmas: Prisoners, a taste of freedom and the press,' *Howard Journal of Criminal Justice*, 50: 75-91.

the criminal justice system and the emergence of a less-forgiving mentality on the part of those with whom the power to grant TR resides.

TR is important because it is effective. A follow-up study of 19,955 releases from Irish prisons showed that prisoners who, during their sentences, were occasionally allowed to venture outside for vocational or family-related purposes were significantly less likely to be re-imprisoned.<sup>5</sup> This held true up to four years after their eventual release and is a clear empirical demonstration of the benefits, other than humanitarian, of maintaining prisoners' social capital. When prisoners repay trust with good behaviour there are financial and social benefits for society more generally.

### *ii) Reforming Parole*

Little has changed in parole decision-making in Ireland for more than half a century. The process remains avowedly political and lacks formality, transparency and independence. The Minister for Justice and Law Reform makes a determination on the issue of release for every life-sentenced and long-term offender (those serving eight years or more who have served at least half of the sentence), having received a recommendation from the Parole Board.<sup>6</sup>

The secrecy surrounding the parole process does not serve prisoners, decision-makers, victims and victims' families, or the public. The scrutiny of parole in other jurisdictions has facilitated greater levels of accountability, produced research to assist in restructuring both the process and individual decision-making, and fostered a more open approach to the provision of information to prisoners, the public and victims.

While there has been little critical attention paid to the system at the level of law, policy or operations, for life sentence prisoners things have changed dramatically. Lifers released on licence today will have spent a decade longer in

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<sup>5</sup> Eric Baumer, Ian O'Donnell and Nicola Hughes (2009) 'The porous prison: A note on the rehabilitative potential of visits home,' *The Prison Journal*, 89: 119-26.

<sup>6</sup> See Diarmuid Griffin and Ian O'Donnell (2012) 'The life sentence and parole,' *British Journal of Criminology*, 52: 611-29.

custody than their counterparts who were released in the early 1980s: 17 years as opposed to 7.5 years.

There is one step which could be taken without delay. This is to widen the parole window. At present this is excessively narrow. One statistic will illustrate this: in Finland, parole is possible after 14 days, while in Ireland, the earliest possible review is after 1,460 days. Why not make parole a possibility for anyone sentenced to four years or more?

### *iii) Remembering Remission*

Enhanced remission (33 per cent as opposed to the standard 25 per cent) is allowed under the prison rules for those who take part in treatment programmes. The potential of this facility to reduce sentences has not been exploited. Employing it more widely would serve several purposes. In particular it would incentivise prisoners to take part in programmes that reduce the threat they pose, reduce prison overcrowding, usher in a more structured approach to release, and save money.

### **Concluding Thought**

Politicians have sometimes shown commendable restraint when it comes to setting the tone of the debate about crime and punishment. The Sub-Committee referred to above is an example of this. The challenge is to create a context where citizens believe the penal system to be legitimate and trust legislators to formulate rational, effective and proportionate responses; and where legislators are confident enough to challenge the centrality of the prison at every opportunity. Getting this right is extremely difficult but vitally important.

**22 August 2012**

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# Submission to Oireachtas Sub-Committee on Penal Reform

Peter McVerry SJ

(For a fuller discussion of the issues below, and more, see the Jesuit Centre for Faith and Justice's comprehensive report, *The Irish Prison System: Vision, Values, Reality*, available on the website: [www.jcfj.ie](http://www.jcfj.ie))

1. I have been working with young homeless people for the past thirty-five years. Many of them have an addiction to alcohol and/or drugs. Most of them have spent time in prison, some on many occasions. I first started visiting prisons in 1975. I now spend most of my weekends visiting Mountjoy Prison, Cloverhill Prison, Wheatfield Prison and St. Patrick's Institution. Through these visits, I keep contact with people whom I knew prior to their imprisonment, and while I am in the prisons, other people come up to me for a chat, or to ask me to do something for them, such as make a phone call.
2. Obviously, one cannot discuss the prison system in isolation from what is happening in the community. People come into prison from the community, and will eventually return to the community. Some come into prison because of the inadequacy of homeless services, or addiction services, or mental health services and will return to the same inadequate services on release. However, the period immediately upon release is critical to the future outcome for a person. Co-ordination between the Irish Prison Service and other agencies to ensure a smooth and appropriate transition is vital but often very inadequate.
3. There is a need to address some simple, urgent and immediate problems, which impact heavily on prisoners on release.
  - Acknowledging that a Community Welfare Officer visits some of the prisons with a view to helping prisoners who may be homeless on release – and this is a very welcome development – the reality is still that in many instances prisoners are released with a couple of euro in their pocket. The next day (the following Monday, if they are released on a Friday or at the weekend) they attend the office of the local Community Welfare Officer who will give them a sheaf of forms to fill out. They frequently have to wait at least one week and up to three weeks (occasionally up to several months if the person is on disability allowance) before they will receive any welfare payments. If they have no family or friends to financially support them, they are reduced to robbing immediately on release. This is a problem which I encounter on an almost daily basis. It is a very simple, easily resolved, issue but it causes huge problems for the person who is released.
  - Many people leave prison with no accommodation arranged for them. They join the ranks of the homeless. While the appalling state of the homeless services is not the responsibility of the prison service, releasing people into homelessness is almost guaranteed to lead to further offending.
  - Many people leave prison with no medical card and hence no access to necessary medication. One young man, who was well known to me, was receiving medication for his mental health problems while in prison but, on release, had no medical care



and no access to medication. Six weeks later, he was dead. The lack of a medical card is again an issue which creates huge difficulties for some people leaving prison but one that could be easily resolved.

4. It seems absurd to me that a person can be in the care of the State for months or even years, yet the State can show itself unwilling or unable to organise accommodation, welfare payments and medical cards for them prior to release.

If such simple, but important, issues cannot be properly dealt with, what hope is there that the more difficult and intransigent problems will be addressed?

5. Over the years, I have seen many changes in the prison system, some of them very positive and some of them very negative. Amongst the positive changes have been significant improvements in the physical conditions of some prisons, or of units within prisons, improvement in the health services available, wider access to methadone treatment, expansion of the excellent education services etc.

Nevertheless, overall, basic living conditions have significantly deteriorated. The negative changes include the overcrowding within most of our prisons – which has led to the multiple occupancy of cells becoming not just the norm in practice, but the established policy of the Irish Prison Service – the continuing availability of drugs, the growing violence within most of our prisons and the decreasing access to rehabilitative facilities within prison.

## 6. Overcrowding

The most fundamental issue facing the prison service is overcrowding. The daily average of persons in custody has risen as follows:

<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
3,321	3,544	3,881	4,290	4,390

The statistics mask the human face of overcrowding. For instance, at the time of writing, a 66 year old man has spent three weeks on a mattress on the floor in Wheatfield Prison.

Overcrowding prevents the other major issues – drug availability, violence and lack of access to rehabilitative facilities – being adequately addressed. For example, Wheatfield Prison, when it opened in 1989, was a model prison: there were 320 cells, for 320 prisoners, and almost every prisoner had access to either education, training, kitchen work or other useful activity at all out-of-cell times. Then bunk-beds were put into most cells, and a new extension of 174 cells was built. Today, there are over 700 prisoners in Wheatfield Prison (and it is the intention to put bunk beds into the 174 cells in the new extension in the near future) *but not a single extra classroom or workshop has been added.*

## ***Recommendations***

- 1) Alternatives to imprisonment for those convicted of less serious offences should be mandatory. In 2011, of 12,990 people committed to prison under sentence, 8,070 were sentenced to less than three months. While those serving less than three months only account for about 1.2% of the numbers in prison on any particular day, the detention of these 8,070 persons imposes a huge administrative and financial burden on the system, as each prisoner has to be processed, medically examined, accommodated, even if only for a brief period, and personal files prepared and stored. Meanwhile, even a short prison sentence can have a devastating impact on an individual and his or her family, perhaps resulting in a loss employment, or loss of a welfare payment, and loss of accommodation.
- 2) One-third remission for good behaviour should be introduced (currently it is one-quarter). This was recommended by the Whitaker Report in 1985. In the UK (hardly a model for enlightened prison policy!) one-half remission is the norm. However, during the remission period, the person is supervised by the Probation Service and if any problem arises, they are recalled to prison to finish their sentence.
- 3) A small number of prisoners are elderly; some are in poor health, and should be in a nursing home, not a prison. In December 2011, there were 102 people over the age of 60 in Irish prisons. Four were over 80 (hardly posing a threat to society!), 16 were between 70 and 80, and 82 were between 60 and 70.<sup>1</sup> Even if their offences require on-going imprisonment, detaining them in very expensive high-security prisons is neither appropriate nor cost-effective.

## **7. Drug Misuse**

Despite the best efforts of the Irish Prison Service to restrict the flow of drugs into prison, there is ready availability of drugs within many (though not all) of our prisons. The effort (and expenditure) devoted to reducing the *supply* of drugs in prisons, far exceeds that devoted to reducing the *demand* for drugs in prison.

While the majority of those going to prison have an addiction, there are only nine detox/treatment beds within the whole system (located in the Medical Unit of Mountjoy prison) to help people come off drugs.

The provision of drug counselling services within the prisons is a very welcome development, but the effectiveness of these services is limited by the fact that prisoners continue to live in a drug-filled, overcrowded environment and have limited access to constructive activity during the day. The boredom, even meaninglessness, of such an existence is a primary driver of drug misuse and creates a drug culture within some of our prisons which is difficult to escape – a reality which poses huge difficulties for new prisoners who are not drug users, and for prisoners who are trying to deal with their addiction.

Prison authorities *are* attempting to provide drug-free wings for prisoners, but overcrowding makes this very difficult. I personally know about forty young people who never used drugs

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<sup>1</sup> *Dáil Debates*, Vol. 750, No. 2, 15 December 2011, p. 516, PQ 239, 40561/11.



prior to going into prison or St. Patrick's Institution but who came out addicted to heroin. In some cases, they had to share a cell with an active drug user.

### ***Recommendations***

- 1) In some Scandinavian countries, every prisoner is offered access to drug treatment services within one month of being admitted to prison. If someone is sentenced to six months or longer in prison, there exists an ideal opportunity to help them deal with their addiction during their sentence. In my experience, many prisoners would take the opportunity if it were available. A major expansion of drug detoxification and treatment facilities is urgently required.
- 2) In the 1977 Misuse of Drugs Act, before drugs were even a problem in Ireland, some far-sighted civil servant included a provision that a person with an addiction could be sent to a custodial drug treatment centre, in lieu of prison. While they would still be remanded in custody, the intention was that if they successfully completed the programme, they would escape any further custodial sentence. Thirty-five years later, no such custodial drug treatment centre exists. To my mind, this is the single most important provision that would make a difference to the drug culture in our prisons.

## **8. Violence**

Assaults on prisoners by other prisoners have become a regular feature of prison life. The Irish Prison Service *Annual Report 2010* recorded that there were '1014 incidents of violence among prisoners during the year' – but added that this included 'very minor incidents'.<sup>2</sup> No figure was provided for assaults on prison officers – but these do, of course, occur, and anecdotal evidence suggests they are increasing. Interestingly, no information about the incidence of inter-prisoner violence is provided in the Annual Report for 2011.

Many of the serious assaults on prisoners by other prisoners involve 'striping' a prisoner's face with a blade, leaving a permanent scar which may run down the whole side of the face.

The European Committee for the Prevention of Torture (CPT), following its visit to Ireland in 2006, highlighted the high levels of inter-prisoner violence and, in its strongest statement yet regarding Irish prisons, it assessed Mountjoy Prison, Limerick Prison and St. Patrick's Institution as 'unsafe, both for prisoners and for prison staff'.<sup>3</sup>

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<sup>2</sup> Irish Prison Service, *Annual Report 2010*, Longford: Irish Prison Service, 2011, p. 20. (Available: [www.irishprisons.ie](http://www.irishprisons.ie))

<sup>3</sup> Committee for the Prevention of Torture (CPT), *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006*, Strasbourg: Council of Europe, 10 October 2007, par. 38, p. 21 (Available: [www.cpt.coe.int](http://www.cpt.coe.int))



On a recent visit to Mountjoy, I was talking casually to a prison officer, who told me that he had been working there for the past twenty years, and, now, for the first time in his life, he no longer felt safe coming in to work.

Apart from the actual recorded incidents of violence, there is considerable bullying and intimidation of prisoners within our prisons. This is also a very prevalent, and very worrying, feature of life within St. Patrick's Institution for young offenders. Huge pressure is placed on vulnerable prisoners to bring back drugs when attending court or hospital. Gang feuds outside prison continue within prison. Scores are settled within prison. Some people going into prison align themselves with one or other of the criminal gangs within prison for their own protection – but on release, they cannot then dissociate themselves from the gang.

The fear of assault has resulted in a significant number of prisoners requesting to be placed in isolation from others. In November 2011, there were 364 prisoners on extended lock-up, 178 of them on 23-hour lock up, and 44 of them being young people in St. Patrick's Institution. One prisoner, well known to me, completed four years on 23-hour lock up and is now seriously damaged, emotionally and psychologically.

The overcrowding in our prisons makes it very difficult to adequately segregate prisoners. Some wings may have different groups who cannot be allowed out of their cells at the same time. Segregation therefore limits, or even excludes completely, access to constructive or rehabilitative facilities within the prison. Furthermore, the policy of building large prisons or expanding existing ones (Wheatfield – over 700, with a further addition of another 100+ to come; Midlands – soon to reach 900; Mountjoy – usually over 700, but currently around 600, as one wing is closed for renovations; Cloverhill – over 400; the proposed Thornton Hall – 2,200!) makes it difficult to segregate prisoners.

### ***Recommendations***

- The issue of inter-prisoner violence is closely related to the problem of drug misuse both outside and within prison and so effective and co-ordinated measures to address this issue *in prison and in the community as a whole* are essential if the downstream problem of inter-prisoner violence is to be dealt with.
- In any future plans for the re-development of existing institutions or the provision of new prisons there should be a move away from the pattern of the last two decades which has seen such a striking increase in the number of very large prisons. Over 80 per cent of prisoners in Ireland are in prisons which hold more than 200 persons, and around 50 per cent are in prisons of 600 or more. This reliance on large prisons is completely at variance with internationally recognised best practice.
- The principle of single-cell occupancy, which was an accepted feature of Irish prison policy until the mid-1990s, and which is a requirement of the European Prison Rules of the Council of Europe (of which Ireland, is of course a member), needs to be restored immediately. Clearly, with over 60 per cent of prisoners currently forced to

share cells it will take time and radical changes in policy to achieve a situation where single-cell occupancy is the norm. But the abandonment of the principle, and the aspiration ever to make it a reality, by both the Department of Justice and the Irish Prison Service has to be considered one of the most serious failures in policy and planning in the past two decades – and one that has implications far into the future, as prison accommodation that is built now with cell-sharing the norm, will be in use for many decades to come.

## **9. Rehabilitation**

The educational services provided by the VECs within the prison are generally of a very high standard. Similarly, some of the workshops provide high quality training. However, access to the school and workshops are restricted to a minority of prisoners.

The Irish Prison Service will quote figures of 38% of prisoners who attend school. While this is true, the figures have to be interpreted. The 38% presumably includes those who attend school perhaps two mornings a week, but may be walking around the yard the other three mornings and five afternoons. There may be 30 prisoners assigned to a particular workshop but, in reality, if you visit the workshop, there may be only eight prisoners there. This is due to the embargo on recruitment which has resulted in over 70 instructor training posts lying vacant. Hence a workshop which should have two instructors may only have one, and the number of prisoners who can attend at any one time is correspondingly restricted. The ‘official’ figure for attendance at workshops is a reality only on paper.

### ***Recommendations***

The highest priority should be given to providing constructive activities for every prisoner during all out-of-cell times. While this will require investment and a suspension of the embargo on new recruitment, it is worth recalling that very considerable investment was put into the Operational Support Unit and the K9 unit (to screen and search everyone who enters any of our prisons for drugs or other forbidden items) because it was considered sufficiently important to do so.



### **Summary of Recommendations**

1. All prisoners, on release, should have welfare payments, suitable accommodation and medical cards arranged in advance of release.
2. Alternatives to imprisonment for sentences of six months or less should be mandatory on the judiciary.
3. One third remission for good behaviour should be introduced immediately and the person placed under the supervision of the Probation Service for the remainder of their sentence.
4. Those who are elderly or in poor health should be removed from the prison system altogether into a more appropriate setting.
5. Addiction services within prison should be expanded so that every prisoner who requests help should be able to receive it within a reasonably short period of time.
6. A custodial drug treatment centre should be established immediately.
7. The focus of any future plans for the re-development of existing institutions or the provision of new prisons should be towards smaller units.
8. Single cell accommodation should be the norm, as required under the European Prison Rules of the Council of Europe.
9. Expansion of the educational and training workshops should be a priority, with the objective of enabling every prisoner to use their out-of-cell time constructively.

**31 August 2012**

# **SUBMISSION BY MR. JOHN COSTELLO CHAIRMAN OF THE PAROLE BOARD TO THE OIREACHTAS SUB-COMMITTEE ON JUSTICE**

**August 2012**

## **Parole Board: Introduction:**

The Parole Board was established by the Minister for Justice, Equality and Law Reform to review the cases of prisoners with longer term sentences and to provide advice in relation to the administration of those sentences. The Board commenced its operations in 2001.

As a general principle, it is only the cases of prisoners who are serving sentences of eight years or more that are reviewed by the Parole Board and these must first be referred to the Board by the Minister for Justice. In the normal course, the Board will review cases of prisoners sentenced to eight years imprisonment or more, but less than 14 years, once half of that sentence has been served. In cases of prisoners sentenced to 14 years or more or to a life sentence the Board will review the case after seven years has been served. However, it should be noted that section 5 of the Criminal Justice Act 1999 precludes the Board from reviewing prisoners convicted of certain Drug Offences, many of whom receive an automatic sentence of 10 yrs. I believe the Parole Board should review those prisoners. The Board provides advice to the Minister by way of recommendations. When formulating its recommendations, the Board's paramount concern is the potential risk to members of the community which the release of a life sentenced prisoner or the early release of a determinate sentenced prisoner could pose. The main factors taken into account in each individual case are:

- (a) the nature and gravity of the offence;
- (b) sentence being served and any recommendations made by the judge;
- (c) period of the sentence served at the time of the review;
- (d) threat to safety of members of the community from release;
- (e) risk of further offences being committed while on temporary release;
- (f) risk of the prisoner failing to return to custody from any period of temporary release;
- (g) conduct while in custody;
- (h) extensive engagement with therapeutic services, and
- (i) likelihood of period of temporary release enhancing reintegration.

The cases of 65 prisoners were referred to the Board for review during 2011 and all were invited to participate in the process. 45 prisoners accepted the invitation while 20 declined. The total caseload for 2011 was 205 - that is a combination of new cases and cases at second or subsequent review stage. Second or subsequent reviews generally take place on an annual basis in the case of prisoners serving less than ten years and normally within two/three years in other cases. However, fourth, fifth and subsequent reviews may take place on an annual basis in appropriate cases.

## **Sentence Management and temporary release and Remission**

Primarily, we are an advisory board only. It means that when we have finished our deliberations in any case we make a detailed recommendation to the Minister for Justice. In that recommendation, we indicate the steps that should be taken by the prisoner to improve him or herself to lessen the risk of re-offending and to enhance their prospects of release at the earliest opportunity. Our principal role is not just recommending temporary release of prisoners but it is to manage their sentence and indicate what courses they should or should not do, the attitudes they should adopt, what psychiatric or psychological services should be provided for them and, in general, how they can best manage serving their sentence so that their prospects of a release as soon as possible are maximised. Our role, therefore, is primarily in sentence management and secondly in advising on temporary release when appropriate, but the one is absolutely bound up in the other. A co-

operative prisoner who does the courses recommended to him and who does what he can do rehabilitate himself is thus maximising his prospects of release.

I want to recognize the enormous contribution made by the 3488 staff in the Irish Prison Service who served 17,318 prisoners in 2011, of whom 4313 were in custody last November.

As at November 30th, 2011, some 291 prisoners (7.9%) were serving life sentences and another 290 (7.8%) were serving determinate sentences of ten years or more. Accordingly, the numbers of prisoners reviewed by the Parole Board are only a small percentage of the total number of persons in custody. In relation to remission, prisoners have an automatic right to remission of one quarter of their prison sentence. However, part of this remission may be cancelled as disciplinary punishment. In relation to temporary release there are two kinds of temporary release:

A. Day-to-day temporary release. This is normally to go to a job outside the prison during the day and return to the prison at night. This is usually considered when a prisoner is coming close to the end of their sentence.

B. Full temporary release either for a specified period or until the end of the sentence. This is normally granted on compassionate grounds in cases where urgent family or domestic circumstances arise. It is also considered if a prisoner has been progressing well on day-to-day temporary release.

However, there is one very important distinction between prisoners released on remission and prisoners released on temporary release (TR) or parole, as it is commonly known. When a prisoner leaves prison having served his sentence and availing of all the remission that he is entitled to, he walks out the prison doors a free man but with no supervision whatsoever. If, however, a prisoner is granted temporary release then whilst on that temporary release, whatever the charge against him may be, he is subject to the supervision of the probation authorities whilst he is on such release. This can, in theory, last for the rest of his life if he is granted parole from a life sentence.

This is extremely important because when prisoners leave prison, if they are not given the back-up of supervision, it is very easy for them to resume whatever activity got them into trouble in the first place. The workers in the Probation Service are dedicated, and, in my opinion, are extremely good at their work. If they are looking after a prisoner they will take good care of that prisoner and do everything in their power to ensure that that prisoner does not offend again. Thus, a prisoner qualifying for parole or TR has the benefit of the supervision of an efficient Probation Service and a person released on remission does not have any such benefit. The importance of this cannot be over-emphasised.

The Minister for Justice, Equality and Defence has also stated that he is examining the possibility of allowing the Board to consider granting parole to those who were sentenced to terms of five years or more, with the possibility of it requiring those granted parole to undertake community service for a period following their release. I welcome these comments of the Minister. However, reducing eligibility to five years will significantly increase the numbers of cases coming before the Parole Board. The logistics of managing this increase will need to be thought through, both in terms of the capacity of the Parole Board to manage its increase and the capacity of the relevant services (particularly the Probation Service and the Psychology Service) to meet the demand for reports.

Having met with senior members of the Irish Prison Service Psychology Service, they have indicated that there is only a limited benefit to an individual prisoner if he or she is reviewed by the Parole Board before they have completed the relevant therapeutic and rehabilitation programmes recommended. The Psychology Service believes that they cannot prepare a thorough and detailed report on an individual prisoner, for the Parole Board, until after the relevant courses have been completed by that prisoner.

#### **Workload of the Parole Board:**

Despite the best endeavours of our hard working secretariat, there are always arrears of cases where prisoners have not been reviewed on time. As at April 19th last, there were seven outstanding cases for review from 2010 and 27 outstanding cases for review from 2011. I am conscious that in Northern Ireland relevant legislation has imposed time limits on the Parole Commissioners for the review of each prisoner.

The Irish Penal Reform Trust has also recently stated that: "In order to comply with the speediness requirement of Article 5(4) of the ECHR, prisoners should be automatically scheduled by law for a parole review within six months of their eligibility date. If a prisoner does not secure release at a parole review, follow-up reviews should be scheduled every year for sentences under ten years and every two years for sentences over ten years."

Accordingly, the priority of the Board in 2012 is to ensure that all prisoners will have their cases reviewed on time from 2013 onwards. If it is not possible to review a prisoner on time, then the prisoner will be written to by the Parole Board and will be informed when his review date will take place.

#### **Criticism of the Parole Board:**

The IPS Psychology Service has stated as follows: "Anecdotal evidence on the ground suggests that many prisoners on finite sentences find the experience of participating in the Parole Board process frustrating because the decision making process can be slow and in some cases offenders have been released from prison before the decisions emanating from the PB process come through. Consequently, there can be a lack of credibility and confidence among this cadre of prisoners in the PB process. This is reflected in the number of those serving finite sentences who declined the invitation to engage with the PB. Efficiently processing those on finite sentences who come before the PB under current eligibility criteria would seem to be an important first step before contemplating the inclusion of those serving lower sentences."

Because of these delays in the parole process, as mentioned above, almost 30% of prisoners have declined to be reviewed by the Parole Board. However, the vast majority of these refusals are from prisoners who will receive remission or Temporary Release, before or shortly after they should be reviewed by the Parole Board. The Board, however, has to try and incentivise fixed term prisoners to participate in the parole process. During the next year the Board hopes to develop an information and education programme for prisoners, I am also hoping to visit all prisons and address the relevant groups of prisoners on the benefits of engaging with the Parole Board. At present we are updating an information booklet and PowerPoint presentation before commencing the education programme with prisoners.

#### **Training of Board Members:**

In Northern Ireland, the Parole Commissioners, have regular training sessions and have a four-day induction training scheme for new commissioners. We have no formal training for Board Members. However, I have introduced a procedure whereby, prior to each board meeting, a guest speaker will address the Board for an hour or so on matters relating to the parole process. In addition, we are hoping to hold board meetings in a number of prisons so that Board Members can become aware of the relevant prison facilities available to the prisoners.

#### **Parole Board on a statutory footing?**

The Irish Penal Reform Trust has stated the following: "The Parole Board should be granted independence and placed on a statutory footing, thereby removing parole decisions (and in order to reflect the principle of progression decisions to transfer prisoners from closed to open prisons or to

permit long-term prisoners to avail of day-to-day release so as to engage with work or reintegration projects in the community as a prelude to eventual release on license) from political control."

Minister Alan Shatter, quite independently, has stated that he wishes to introduce legislation to place the Parole Board on a statutory basis. I would welcome this development.

However, at present, a lawyer can write to the Parole Board and make submissions on behalf of any prisoner being reviewed by the Parole Board. However, no legal representation is permitted when a prisoner is interviewed by two members of the Parole Board.

If the Parole Board is placed on a statutory footing, then I believe prisoners may advocate for independent legal representation.

### **Sex Offenders:**

The IPS Psychology Service has developed the Building Better Lives Programme (BBL) which is a therapeutic programme for men who acknowledge that they have committed a sexual offence and who have a desire to build a better life for themselves. The programme is structured in three modules.

The first module is entitled Exploring Better Lives. The aim of this group is to help participants to recognise how they can bring about positive change in their lives. This module lasts for approximately two months. Shortly after completing this module participants progress to the next group.

The second module, Practicing Better Lives, aims to help those participating to develop a better understanding of the factors in their lives that contributed to their offending. This module lasts for approximately six months.

The third module, Maintaining Better Lives, provides ongoing support for the participants who are serving long sentences for sexual offences. This module will help prisoners to maintain the benefits they achieved in the previous modules and gives help to link up with community supports. This module lasts for approximately four months. Before joining this last module prisoners should have completed the Practicing Better Lives module at least one year prior to beginning this module.

The Inspector of Prisons, Judge Michael Reilly, has stated as follows: "In order to have the Building Better Lives Programme operate at its most efficient it should be extended into the community in order that those prisoners who have participated in all modules would receive ongoing assistance and monitoring to enable them to maintain better lives post their release and going forward. It should be possible to harness the goodwill of people in the community who, after receiving appropriate training, could, under the guidance of the Psychology Service in the prison and working with the Probation Service, assist in the reintegration of such prisoners into the community after their release."

I support these sentiments entirely.

Dr. Esther Lonergan, the senior psychologist working with Sex Offenders within the IPS, has stated that there have to be more incentives for prisoners to participate in programmes such as the Building Better Lives Programme. For example, she states, that there are no early release programmes for successful completion of a sex offender programme or other personal incentive. In addition, once a prisoner has fully served their sentence, there is no provision whereby geographical restrictions can be imposed on that person unless it has been included by the sentencing court in a

post release Supervision Order. These are obviously issues which need to be examined.

I personally met a number of prisoners in Arbour Hill who were participating in the Building Better Lives Programme. They were very enthusiastic about the programme and said that they had all benefited substantially because of this programme. However, they were critical of other prisoners who did not participate in this programme. They believed it was unfair that other prisoners, who took no part in rehabilitation programmes, would obtain the same remission of their sentence as prisoners who participated in all the therapeutic programmes available. They were firmly of the view that there should be earned remission of a sentence and not automatic remission as presently exists. I also met with Dr. Esther Lonergan and Paul Murphy, Head of Psychology in the Irish Prison Service in June. In addition, Dr. Lonergan gave a presentation to the Parole Board on the various programmes for sex offenders. Both of them were concerned that the Parole Board were reviewing sex offenders, in the past, who had not participated in or completed the Building Better Lives Programme. They said that unless such a therapeutic programme was undertaken by a sex offender, it would be very difficult for the Psychology Service to make any proper assessment of that prisoner for the benefit of the Parole Board.

One possible solution is that prisoners who refuse to participate in the Building Better Lives Programme, or other therapeutic programmes, for no good reason, should no longer benefit from automatic remission and might have their remission revoked in appropriate circumstances. However, this would be a matter for the legislature to determine. In addition, in an article in The Irish Examiner dated Monday, February 27th last, it stated that: "Two-thirds of convicted sex offenders due to be released from prison this year have not engaged with prison psychologists, which could have helped lower the risk of re-offending. Latest figures show there are 319 convicted sex offenders in custody, with 114 due for release in 2012. However, according to figures supplied to The Irish Examiner by the Prison Service just 39 (34%) have engaged with prison psychologists in relation to their offending behaviour."

The article continued: "A spokesman for the Prison Service said more offenders may take part in the programme during the year. He said 124 sex offenders were released during 2011, of whom 49 (40%) had engaged with prison psychologists. An additional five took part in other interventions."

This is obviously a major concern if substantial numbers of sex offenders have not engaged with the therapeutic services prior to their release back into the community.

#### **Life sentence prisoners:**

It is the policy of the Board to review these prisoners after seven years. However, public statements by the Parole Board in the past, and by various Ministers for Justice, did indicate that anything between 12 to 14 years is the least a life sentence prisoner can expect to serve prior to being considered for release.

In practice, however, many prisoners serving life sentences, only begin to co-operate with therapeutic services in the prison, when their review is taking place by the Parole Board. Accordingly, the challenge for the Board is to incentivise these prisoners, to participate in a meaningful way, in all the necessary rehabilitation courses, where possible, even though these prisoners may not be released until many years later. Perhaps there could be some incentives given to those prisoners who participate in an engaged manner with the Parole Board.

I recently interviewed a prisoner who had been sentenced to life imprisonment and who had been in prison for well over 15 years. It was quite obvious that he had become institutionalised and did not want to leave prison. This is a problem for certain long-term prisoners.



However, in a completely different case, the Parole Board has recommended to the Minister, that a prisoner who has served 12 years of a life sentence should be considered for parole. This person was an exceptional prisoner who participated in the community in a valuable way, most days, and returned to prison every evening.

From my experience on the Parole Board to date, I believe that for most prisoners serving a life sentence, there is, quite often, clear evidence to show that if a prisoner is not released into the community, after serving many years in prison, it may become too late to successfully reintegrate him into the community at a later date.

There has been some criticism of the Parole Board review of life sentenced prisoners. In this regard, the Irish Prison Chaplains' annual report of November 2010 stated as follows: "As long-term and life sentenced prisoners come under the remit of the Parole Board, the ultimate decision around the management of their sentence rests with the Minister. The review process often involves long delays which can be enormously frustrating. It is clear that the average time now served in prison on a life sentence has been raised considerably. There is a sense that the whole process has become more and more politicised. At times, in spite of a consensus of opinion regarding positive moves from every service working with an individual the final decision still rests with the Minister. A recommendation resulting from long years of therapeutic work can be totally ignored and the person left frustrated, lost, and anxious. This can have a negative effect on other prisoners as it undermines the credibility of the review process and devalues the engagement and progress that has taken place."

In addition, in an article by Diarmuid Griffin and Ian O'Donnell, in the British Journal of Criminology, in January 2012, entitled: "The life sentence and parole" they state as follows: "Little is known about the experience of life sentence prisoners in Ireland. During a visit by the ECPT (2011) a number of complaints were received from life sentence prisoners regarding the lack of a structured sentence plan making it difficult to know what the Board required of them when they became eligible for release. It is plausible to suggest that the lack of certainty, legal or otherwise, experienced by life sentenced prisoners in Ireland contributes to its pain of indeterminacy, and the discretion afforded to decision makers in the application of vague and shifting criteria serves as an aggregating factor. The avenues available to a life sentence prisoner to challenge the decision or process are extremely limited in Ireland. In England and Wales, life sentence prisoners are entitled to an oral hearing before the Parole Board; a legal representative can make submissions on the parole dossier, request an independent report where there was a conflict in assessment, call witnesses to the hearing and contest the evidence presented. Similar provisions simply do not exist in Ireland."

#### **Prisoners sentenced in the United Kingdom:**

A problem that we have not addressed in Ireland, arises when Irish prisoners are sentenced in the United Kingdom, or an other foreign court, and transferred back here to Ireland. If they are transferred from the United Kingdom they come here and are subject to our laws and thus they lose a large percentage of remission. In the United Kingdom, remission is much higher and quite often we review the case of a prisoner sentenced to life in the UK with the tariff of a specific number of years.

After sentence, if a prisoner elects to apply to serve a sentence here in Ireland he loses the benefit of the tariff. However, the Board has been assured that the authorities have explained the situation to each prisoner at the time of transfer. But, this is still a difficult matter to explain to prisoners who are subsequently reviewed by the Parole Board.

**Press/media intrusion:**

The Irish Prison Chaplains' Report for 2010 states as follows: "Over the years reports from prison chaplains have highlighted serious concerns about a certain kind of media coverage that is both distasteful and irresponsible. In the past year we have seen media waiting at a hospital for a prisoner to arrive for an outpatient appointment. We have seen the most appalling sabotage of another man's post release placement. We regularly see details of individuals and incidents covered in the papers. Families struggling to cope with the death of a loved one in custody are often faced with the added burden of the dehumanisation of the deceased by the media. This is sometimes done before all relatives have been informed of the death.

Apart from the sensationalising of certain cases, there is now a growing tendency to fabricate stories.

Vulnerable prisoners are often targeted as subjects for stories that have no foundation in reality. We have serious concerns in relation to the sources of some of this coverage. How can internal matters relating to individual prisoners serving their time be made available with no recognition of the rights of the individual and their family? The question as to who is making the information available needs to be addressed and appropriate action taken."

If prisoners who have served their sentence are released back into the community I believe it is going to make the rehabilitation all the more difficult if press or media do not give them any privacy. I believe the power of the media in this regard does need to be examined.

**Vulnerable categories of prisoners:**

There are two categories of prisoners which particularly concern me. On May 31st, 2011, I understand that there were 102 people over the age of 60 in prison. The Inspector of Prisons, Judge Michael Reilly, in his report on an inspection of Arbour Hill Prison dated December 2011 has stated the following: "A significant number of elderly prisoners are no longer well enough to engage in the programmes available as outlined in this report. I have witnessed a blind man trying to take his daily exercise in the yard with no other aid than his white stick. I have witnessed another prisoner trying to get around his cell and the immediate space outside his door on the landing with a Zimmer frame. I have witnessed men with dementia and those that are incontinent. The prison and outside agencies give instruction and practical help to prisoners with sight and mobility problems which greatly assist such prisoners in their daily lives. It is not part of my mandate to engage in policy matters but the Irish Prison Service and local management must be conscious of the requirements of the coterie of prisoners referred to in this section differs greatly from those required by the majority in the prison system. The management of such prisoners requires different skills, resources and regimes than those found in a medium secure prison such as Arbour Hill. It is a policy matter for others to decide how best to accommodate such prisoners so that their needs are met in an appropriately secure setting."

I agree wholeheartedly with these sentiments.

The second vulnerable category of prisoners that concerns me are prisoners who have an intellectual or learning disability. The Irish Penal Reform Trust estimated that four in ten children (under 16 years) on custodial remand have a learning disability. In addition the Irish College of Psychiatrists, in their annual report of 2007 stated: "Where intellectually disabled offenders are concerned there was a complete absence of any structured service for this population."

Accordingly, I believe that there should be a specialised approach given to this group of prisoners.

An interdepartmental group on mental health and the criminal justice system was established earlier this year. It is going to make recommendations which will have important implications for diverting

the mentally ill from prison and ensuring that those in prison receive appropriate treatment. However, this group was not specifically asked to consider prisoners who have an intellectual or learning disability.

**Remission:**

Minister Alan Shatter stated in his speech on April 30th last that "one of the issues I am currently considering is the area of remission as it is my view that a review of this particular subject is long overdue."

The Irish Penal Reform Trust in a position paper on reform relating to remission, temporary release and parole earlier this year has stated: "The Prison Act 2007 provides for 33% remission to be available to prisoners who engage with rehabilitation services. To date it seems that there is no practical mechanism for prisoners to access this enhanced remission regime. IPRT recommends that standard remission should be increased for all categories of prisoner which favours a graduated approach like the one operating in the UK. Standard remission levels should be increased from 25% to 33% for all prisoners, independent of good behaviour or engagement with services. A system of incentives could also be implemented for certain categories of offenders or with reference to certain rehabilitation services which would require the establishment of a transparent administrative scheme to allow such prisoners to allow for enhanced remission."

In addition, as mentioned already, I believe that remission should not always be automatic and should be dependent on each prisoner partaking in the appropriate therapeutic courses or rehabilitation courses recommended for them by the Irish Prison Service, the Psychology Service or the Probation Service.

**Temporary release:**

Lisa Cuthbert, Director of PACE, stated the following, last November, to the Dáil Sub-Committee on Penal Reform: "Temporary release has the potential to be used as an important incentive to encourage people to engage with prison services in a more creative way. It can encourage people to feel they are making a positive contribution to their own release and can take back some control over their future. For many of the people with whom we work - particularly life sentenced prisoners where their sentence is indeterminate - there is no sense of autonomy or control as to how they can earn their release. We must look at temporary release in a refreshed renewed way. If employed effectively, it gives people an opportunity to take back some autonomy by providing a way for them to contribute to their own positive sense of management, and, ultimately a positive outcome for their release into the community."

I agree with these sentiments.

The Jesuit Centre for Faith and Justice, in a report, the Irish Prison System (March 2012) has stated that: "Where prisoners serve their sentences in a co-operative and well behaved manner, they should have a real prospect of moving progressively to less secure locations including open prisons. They should have the prospect of additional early release on a conditional basis."

The other advantage of temporary release, is that the prisoner is subject to the supervision of the probation authorities while on such release. This can, in theory, last for the rest of a person's life if granted parole from a life sentence. However, with remission, there is no supervision whatsoever.

Perhaps, there could be closer coordination between the Board and the Prison Service to try and achieve more engagement with prisoners in the parole process.

The Criminal Justice (Temporary Release of Prisoners) Act 2003 states the factors which should be considered when assessing a person for temporary release. There is no guidance as to whether any particular factors are to be treated as more important than others. In addition, other factors not mentioned could be taken into account in the review process. For example, I believe that temporary release could be justified on the grounds of compassion or medical grounds in certain circumstances.

### **Reintegration of prisoners:**

Minister Alan Shatter in a speech to the Irish Penal Reform Trust on September 16th, 2011, stated: "I have long held the view that the reintegration of offenders into society must be at the core of the prison system."

In addition, Mr. Justice Geoghegan, of the Supreme Court, in a speech to the Prison Chaplains of Ireland, said that it would be ideal that what every one should aim for was the full rehabilitation of a prisoner so that he or she could resume the position as a member of the public and as a good citizen. If they were fully rehabilitated then the system had worked ideally for them. I agree with these sentiments.

However, a major problem with reintegration of prisoners in the community is the problem of homelessness. In a report by the Irish Penal Reform Trust in 2010 it is stated: "Homelessness and the provision of suitable accommodation was by far the most frequently mentioned difficulty facing prisoners and the service provider supporting them on release."

The Director of PACE, Lisa Cuthbert, has stated that prisoners released back into homelessness or unsuitable accommodation are much more likely to re-offend. Figures for 2010 indicate that 939 prisoners accessed the Homeless Persons Unit of the HSE. This is another major issue which has to be examined in the light of greater number of prisoners being released back into the community.

### **Mandatory sentences:**

On January 19th last, the Law Reform Commission published a consultation paper on mandatory sentences. In its consultation paper, the Commission noted that the only completely mandatory sentence in Ireland was the life sentence for murder. Judges have no discretion here and must impose a life sentence, and do not even have the power to suggest any specific minimum sentence, unlike the position in Northern Ireland where the sentencing judge can recommend a minimum life tariff.

The main recommendations in the consultation paper were:

A. The Commission supports the recommendations that the proposed Judicial Council be empowered to develop and publish suitable guidance or guidelines on sentencing and also provisionally recommends that these would have regard to decisions of the Court of Criminal Appeal, to the sentencing principles discussed in the Consultation Paper, and to information in databases such as the Court Service's Irish Sentencing Information System.

B. The Commission provisionally recommends that while the use of the entirely mandatory sentence may be applied to the offence of murder, it should be amended to provide that on the date of sentencing, the Court should be empowered to indicate or recommend that a minimum specific term should be served by the defendant having regard to the particular circumstances of the offence and of the offender.

C. The Commission provisionally recommends that the presumptive sentencing regime, as it applies in the case of certain drugs and firearms offences, should not be extended to any other offences but should be reviewed because, while it was succeeded in one objective, namely increased severity of

sentences for certain drugs and firearms offences, it has not been established that it has achieved another general aim of the Criminal Justice System, namely reduced levels of criminality.

The Irish Penal Reform Trust, in a position paper on mandatory sentencing in November 2009 states as follows: "Perhaps the strongest objection to mandatory sentencing is that it is a blunt sentencing tool, which applies the same sentence to all offenders who have committed the same crime. As a result such sentences carry with them much potential for injustice. As Zimring puts it 'we lack the capacity to define into formal law the nuances of situation, intent, and social harm that condition the seriousness of particular criminal acts'."

I personally would agree with the recommendations of the Law Reform Commission in its consultation paper. I believe it would also assist the Parole Board in reviewing life sentence prisoners, if the Court indicated or recommended a minimum specific term which should be served by an individual prisoner.

#### **Recent initiatives:**

Firstly, I would like to welcome the initiative recently announced for the Community Release Scheme. I also welcome the introduction of a new Incentivised Regimes Policy and the continuing of the roll out of the Integrated Sentence Management Programme. I am also delighted that a Community Integrated Plan will be developed, nine months prior to the release of any prisoner back into the community. In addition, I am glad that the Irish Prison Service intends to work in partnership with the Parole Board to increase the number of long-term or life sentenced prisoners being reviewed on an annual basis. I also want to welcome the new three year strategic plan for the Irish Prison Service which was announced on April 30th last. All these initiatives are most welcome developments and all associated with these initiatives should be warmly commended.

#### **Conclusion:**

The Parole Board is mindful of the needs of victims of crime and is conscious that the Irish Prison Service provides a Victim Liaison Service to keep victims of crime informed of significant developments in the sentence management of certain offenders. Any victims of the relatives, once they have opted to avail of this scheme, will be informed as a matter of course in advance of the Board's review of the case. The victims are given an opportunity to make a submission to the Board. The Board, as it has acknowledged on a number of occasions, will take into consideration the views of the victims and the impact on their lives prior to making any recommendations.

Before every Board Meeting, Board Members have to read a few hundred pages of reports and background information on the prisoners being reviewed. All of this information is provided by the Irish Prisons Services, Governor's of Prisons, Medical Personnel, Psychologists, Probation Officers, the Gardaí, Prison Review Committees and other service providers and Prison Chaplains from time to time. Our Board could not function without this huge amount of professional assistance and I want to formally recognize and convey my sincere thanks to all these service providers for the enormous assistance they give to prisoners, their families and community at large.

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John Costello  
Chairman Parole Board

31 August, 2012

## Submission to Oireachtas sub-Committee on Penal Reform, from Kevin Warner, August 2012

### BACKGROUND

In my early years I taught in schools and an adult education college. Then, for 30 years (1979-2009), I worked in the Department of Justice/Irish Prison Service as Co-ordinator of Education, a Principal Officer post in which I had responsibility for the development of prison education across the prison system. So, over many years, I was involved at senior management level in policy formation and many significant developments, not just in relation to the provision of education but in relation to the prison system as a whole. Over all those 30 years, I had close engagement with, and knowledge of, prisons, prisoners and prison staff throughout the country. I was involved in prison work at the time of the Whitaker Report (1985) and *The Management of Offenders* (1994), the growth of substantial prison education in all prisons, and the construction of many new institutions.

For nearly all my time as the Co-ordinator of Education, I was also significantly involved at an international level in prison education and general penal policy issues. I chaired a Council of Europe 'expert group' in the 1980s, was the founding Chairperson of the European Prison Education Association (EPEA) and spent four months of 1995 in California as a Fulbright Scholar – where I gained extensive, if very disturbing, insight into US prison policy and practice. I have published many articles in Europe and North America.

In my view, there was a marked 'punitive turn' in Irish penal policy around the mid to late-1990s. The numbers imprisoned more than doubled in less than 15 years, prison conditions and regimes deteriorated greatly, and a more negative and demonising attitude towards those in prison took hold. One of my personal responses to these developments was to ask myself "where in the world do they do things in a better way?" So, I pursued a PhD with UCD through which I studied penal policy in Nordic countries, in Denmark, Finland and Norway in particular. I believe the detailed explorations that I undertook of penal policy in those countries show many significant and practical lessons for Ireland.

At the end of 2009, I 'retired' from the Public Service, but I see myself as still very much engaged in public service through research, writing and campaigning in relation to penal policy and practice. I contributed to the recent policy paper of the Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (2012, available on [www.jcfj.ie](http://www.jcfj.ie)).

### PENAL REFORM

I believe there are multiple areas crying out for reform in our prison system, whether we look at it on a macro level (sentencing, the total numbers in prison, the prison estate) or look at things on a

micro level (the conditions in cells, the treatment of men and women held in prison, the lock-up times, the segregation within prisons). It seems to me that I can best convey to the sub-committee what I see as the main problems, and the solutions to these problems, by offering three items I have written recently, and so I attach these as Appendices. As suggested by your guidelines, I also give an 'Executive Summary' below which highlights my main points, including from these articles, in the form of Recommendations. As your sub-committee has a particular focus on alternatives to imprisonment, I thought it would be helpful to re-iterate what the Whitaker Committee had to say on this issue, and so I also include some of their proposals as Recommendations also.

It is worth recalling that the **Whitaker Committee** was the only one ever commissioned by an Irish Government to investigate the penal system as a whole. Although their extensive report in 1985 contained, in my view, great insight, wisdom and practical proposals, it has been shamefully neglected. I refer to part of what the Whitaker Report has to say in two of the three attached papers (appendix A and B). Whitaker's proposals for 'basic living conditions' in prisons and the committee's recommendations for containing the prison population are particularly relevant today. However, the 'models' that can be seen currently in Nordic countries (see Appendix A) are perhaps even stronger evidence that there are far better ways – and far less costly ways – of doing things in our prison system.

**Appendix A** (pp.5-32) is an article due for publication this autumn which essentially summarises my PhD research, but with updated data. This article also draws out particular **aspects of Nordic prison systems which I see as offering 'lessons' for Ireland**. I highlight eight such lessons Ireland could take from these countries in Part 5 (pp.25-29), but I hope I have the sub-committee's forbearance for including the whole article – in case some of you wish to look more closely at incarceration policy, the nature of prison regimes or the attitudes towards prisoners in Denmark, Finland or Norway.

**Appendix B** (pp.33-44) is an article that will be published in the September 2012 issue of *Working Notes*, the publication of the Jesuit Centre for Faith and Justice that deals with social and economic policy. This article analyses **the deterioration of basic living conditions in Irish prisons**, especially in relation to cell-sharing, lock-up times and sanitary arrangements. It does so by describing present conditions against the standards set out in Whitaker. It also notes where the Inspector of Prisons has compromised on these basic standards.

**Appendix C** (pp.45-6) is a short article I had published in the *Irish Examiner* in July. It is critical of the so-called 'incentivised regime' that the IPS proposes to introduce. This scheme entails **drastic cuts, of 28% on average, to an already very meagre allowance or gratuity** that is paid weekly to all men and women in prison. Despite the Orwellian title of the scheme, all payments are to be reduced, but some will be reduced more than others. Differentiated levels of payment (to be called 'basic', 'standard' and enhanced') correspond to different entitlements to other 'privileges' like family visits, phone cards and gym access. Given the present state of regimes – with hundreds on 20 to 23 hour

lock-up every day, severe segregation and the consequential curtailment of education and work, and a widespread lack of access to services – I believe it will also be impossible to implement such a scheme in a just way. It is a retrograde development, negative, mean-spirited and punitive in the attitude it demonstrates towards people in prison. I sincerely hope the sub-committee call for its reversal.

There are a few other points I wish to emphasise, the first in relation to **Ireland's level of incarceration**. As stated in Appendix A, Ireland used to have a similar rate of incarceration to Nordic countries but began to diverge radically from that level from the late 1990s. Ireland had 2,054 in prison in September 1995, but that has more than doubled to some 4,400 today, a current rate of incarceration of 98 per 100,000. (Whitaker wanted a rate of about 50). However, as well as imprisoning now at a rate that is far more than any Nordic country, we have a rate that is also higher than Germany (with a rate of 83), Netherlands (87), Switzerland (76) and Slovenia (64).

Ireland's recent imprisonment binge bears little if any relation to its level of crime, which is relatively unchanged. Yet, this extra imprisonment of over 1,500 people at a time is exceptionally costly and destructive. The real average cost is now about €75,000 per person per year (a figure that is regularly understated by the IPS). Moreover, prison is usually very damaging for the person incarcerated, and often for his or her family, and increases his or her chances of returning to prison at another time (i.e. prison itself is highly 'criminogenic'). Because of overcrowding, imprisoning these additional people is also very damaging for the prison system and those who should be sent to prison.

There are two other important areas where Ireland is now very significantly out-of-line with best practice in other countries. This can be seen in the **low proportion of prisoners held in open prisons**, and in the very low proportion of sanctions served in the community rather than in prison. As is shown in Appendix A, Ireland has only about 5 per cent of its prison population in open prisons (in Shelton Abbey and Loughan House), while Denmark, Finland and Norway all have at least six times that level, with about one-third of their prison populations in open centres. The profiles of their prison populations are much the same as ours, so if this arrangement works for them it can also work for us. Open prisons cost about half as much to run, give rise to less institutionalisation and are much more helpful in enabling people return to society. Changing the balance in our 'prison estate' over time to have a higher proportion in open prisons is surely a 'no brainer'!

As noted in Appendix A (p.26), **in the five Nordic countries, 62 per cent of sanctions overall are served in the community, while in Ireland a corresponding figure is less than 30 per cent**. This points to a huge over-reliance on imprisonment in Ireland, in comparison with the Nordic countries, and is an indication that we do not use prison 'as a last resort'. Since Norway and Finland have lower percentages on probation compared to prison than the other Nordic countries (although both have over 40 per cent of sanctions being served in the community), the comparisons between Ireland and



Denmark and Sweden are even starker. In 2008 (the last year for which I have been able to get such figures), Denmark has 68 per cent of its 'clients in the correctional service' in probation, and 32 per cent in prison. In Sweden, 67 per cent were in probation compared to 33 per cent in prison. The scope for Ireland to switch from using prison to using community service, early conditional release and so forth is clearly enormous.<sup>1</sup>

## EXECUTIVE SUMMARY

The following recommendations are based on information and arguments set out above, in the three attached articles and in the Whitaker Report.

1. Reduce the prison population by 1,500.
2. Have one-third of prisoners in open prisons.
3. Operate a greater number of smaller prisons than fewer smaller ones.
4. Have out-of-cell time of at least 12 hours.
5. Have single-cell accommodation for all prisoners, with access to separate toilet facilities at all times.
6. Put at least as much effort into drug-treatment as into drug control.
7. Give greater recognition to prisoners' citizenship and membership of society.
8. Ensure public participation in formulating the future direction of the prison system.

*(Recommendations 1-8 are drawn from Nordic experience and are discussed in Appendix A, pp.25-29. Recommendations 4 and 5 are discussed in more detail in Appendix B).*

9. Grant remission at the two-thirds stage, rather than at three-quarters, of a sentence, but give half remission to juveniles.
10. Have regular judicial review of all sentences of five years or more.
11. Allow supervised release at any stage of a sentence if recommended by all the services operating in a prison.
12. Extend and strengthen non-custodial penalties.

*(Recommendations 9 to 12 are all in the Whitaker Report [see p.12 and p.44, and Chapter 5] and are part of its case for using prison as a last resort and setting an upper limit to the prison population of about 50 per 100,000 – which would be about 2,300 in today's terms. Remission in the UK and Nordic countries tends to be significantly greater than in Ireland.).*

13. Reverse the recently-announced cuts in the gratuity paid to all prisoners, and the related introduction of different levels of payments and 'privileges'.

*(The background to Recommendation 13 is provided in Appendix C).*

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<sup>1</sup> The Nordic figures used here are drawn from Ragnar Kristoffersen (ed.), *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden, 2004-2008* (Correctional Service of Norway Staff Academy, Oslo, May 2010), pp.19-20. Definitions given on p.9 state that 'entries to prison sentences' consist of "persons who have started serving a sentence in the relevant period" and that "fine defaulters are not included"; 'entries to the probation service', on the other hand, "refer to persons who have started some form of sentence or order administered by the probation service, and who are not imprisoned at the same time" and include "those on conditional release with supervision".

## APPENDIX A

### **Resisting the New Punitiveness: Penal Policy in Denmark, Finland and Norway – and some lessons for Ireland.<sup>2</sup>**

Kevin Warner.

## INTRODUCTION

This paper presents the results of PhD research into the penal policies of Denmark, Finland and Norway. Essentially, the investigation asked whether the increase in punitiveness in relation to prison systems that is presumed to occur under the ‘culture of control’ of late modernity (Garland, 2001) can be found in these Nordic countries. The scale of imprisonment, the ‘depth’ of imprisonment, and the perception of the person imprisoned were all examined. The prison systems were investigated through analysis of documentation and recorded interviews with key personnel, supplemented by visits to a representative range of prisons. While there have at times been some signs of ‘new punitiveness’, especially in Denmark and Norway, in general it can be said that none of these Nordic countries have followed the path predicted by Garland.

Part 1 of this paper probes what Garland’s analysis implies for prisons, and suggests that penal developments under the ‘culture of control’ can be identified via three key criteria. Each of these criteria is then studied in the three Nordic countries: the scale of imprisonment (Part 2), the depth (or quality or content) of imprisonment (Part 3), and the representation of those held in prison (Part 4). A concluding Part 5 indicates some lessons that arise for Ireland. Ireland’s penal system had much in common with Nordic countries until the mid-1990s, especially its penal ‘philosophy’ and a similar level of incarceration, although its prison conditions have generally lagged well behind. However, Ireland has recently diverged more from Nordic norms, exhibiting many of the features Garland describes.

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<sup>2</sup> This is a shortened and updated version of a paper given at the Fifth Irish Criminology Conference at University College Dublin in June 2009. The PhD thesis on which it is based is available on [www.epea.org](http://www.epea.org). The research was mostly conducted between October 2006 and July 2008. Quotations in italics are from research interviews.

## PART 1: GARLAND'S 'CULTURE OF CONTROL'

### ***Three summary criteria of punitiveness***

In *The Culture of Control* (2001), Garland sets out 12 'indices' of the change he sees in the overall crime control field. Most of these relate to imprisonment, in particular a switch in aims from rehabilitation to retribution and protection, penal populism, a steep rise in incarceration, greater emphasis on control and less on offering assistance, and negative characterisation of people involved in crime - "stereotypical depictions of unruly youth, dangerous predators and incorrigible career criminals". (Garland, 2001, p.10)

The Garland indices relevant to imprisonment can be consolidated into the three criteria of punitiveness already mentioned: the scale and depth of imprisonment, and the representation of the prisoner.<sup>3</sup> Thus, for example, *the scale* is affected by the switch to retributive and protection functions for prisons, as well as by the assertion that 'prison works'. *The depth* is shaped by the vengeful attitudes incorporated in Garland's second index ("punitive sanctions and expressive justice"), as well as by the change in criminological thinking from a welfare-focused to a controlling perspective. Almost all indices impact on *the way the person held in prison is seen*: whether as part of society, as implied by the concept of rehabilitation, or as the stereotypes often painted in politics or the media; whether narrowly as an 'offender', as suggested by much of the new managerialism, or more broadly as "the whole person bearing in mind his or her social, economic and cultural context", (Council of Europe, 1990, p.8)

### ***Penal welfarism***

It is important to note what it was this 'new punitiveness' (Pratt *et al*, 2005) or 'culture of control' was presumed to have replaced. Garland refers to the earlier outlook as 'penal welfarism', a broad paradigm that held sway for most of the twentieth century. Key attitudes in this paradigm included seeing prison as a last resort, wanting to minimise security and 'normalise' life within prison, and regarding prisoners as members of society. The "basic axiom" of penal welfarism was "that penal measures ought, where possible, to be rehabilitative interventions, rather than negative retributive punishments". (Garland, 2001, p.34) Garland sees penal welfarist features as "part of the wider scheme of things... integral

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<sup>3</sup> Another useful regrouping of Garland's indices is provided in Kilcommins *et al* (2004), who combine several features, reducing the full 12 indices to six.

elements of the post-war welfare state and its social democratic politics". (p.28) Penal welfarism assumed that "*the state was to be an agent of reform as well as repression, of care as well as control, of welfare as well as punishment*" (p.38, emphasis in original) and "claimed to bring all individuals into full social citizenship with equal rights and equal opportunities." (p.46)

Garland stresses that, in the new crime control field, "new practices and mentalities co-exist with the residues and continuations of older arrangements". (p.167) However, the 'penal mode' of penal welfarism has become "more prominent... more punitive, more expressive, more security-minded... The welfare mode, as well as becoming more muted, has become more conditional, more offence-centred, more risk conscious." (p.175) Those who commit offences are "less likely to be represented in official discourse as socially deprived citizens in need of support. They are depicted instead as culpable, undeserving and somewhat dangerous". (p.175)<sup>4</sup>

### ***Measuring severity***

This paper will explore the three criteria of punitiveness in the Nordic countries thematically. The scale of imprisonment and aspects of the 'depth' are amenable to quantitative examination. The rate of incarceration (the prison population per 100,000 of the country's population) is widely accepted as a broad-brush-stroke measurement of penal severity. However, the depth of imprisonment, is more difficult to assess, having both quantitative and qualitative aspects.

Tangible features which indicate the depth of a prison system, are, for example:

- the physical arrangements in cells, and whether these are shared or not;

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<sup>4</sup> Examples of such stereotyping from Ireland include the front-page headline of the *Irish Daily Star* (9/2/09) which ran "DNA tests to nail jail scum", with the term "scum" clearly referring to prisoners in general; two (factually incorrect) references by RTE journalists to Mountjoy Prison being "full" of violent prisoners (RTE television news, 25/4/09, and on radio, 16/6/09); and the equation by the Minister of Justice of life-sentence prisoners with dangerousness on a radio programme ('Morning Ireland', 12/6/09). A recent Director General of the Prison Service routinely spoke of prisoners as "a threat to the public", including the whole population of the main woman's prison.

- the amount of time spent out of cells;
- the extent of structured activity (work, education, therapy, sport, etc);
- the extent of prison leave;
- the proportion in open prisons.

In assessing such features in Denmark, Finland and Norway, information came variously from documentation, as a result of specific enquiries, or during prison visits or interviews. The more qualitative aspects of the content of imprisonment, crucial to how prisoners might experience imprisonment, were explored particularly in interviews and assessed on visits to prisons.

The third criterion, whether people in prison are seen inclusively or exclusively in relation to society, is the most difficult to assess. Inferences of inclusion or otherwise were drawn from what interviewees said, from criminological or other literature, from policy or political statements and from particular practices. For example, one can take as indicative of an inclusive attitude the presence of strong policy in relation to resettlement, while indications in another direction can be gleaned from the use of demonising or other negative language.

## **PART 2: THE SCALE OF IMPRISONMENT**

Garland built his analysis of the emergence of a culture of control, and, within that broader context, greater severity in penal matters, on developments in the USA and Britain in the late twentieth century. His presumption was that new patterns in crime control in America and Britain would sooner or later apply “elsewhere in the developed world”. (Garland, 2001, p.viii) A core question for this research, then, was whether such trends could be found in Nordic countries.

While the USA’s rate of incarceration of 730 is notorious, much lower rates of 154 for England and Wales and 155 for Scotland still stand out as among the highest in Western Europe.<sup>5</sup> Levels of imprisonment have risen enormously in the US since 1973, and in Britain

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<sup>5</sup> The figures in this section come from [www.prisonstudies.org](http://www.prisonstudies.org), on 20/8/12. This is the website of the London-based International Centre for Prison Studies, which has an academic partnership with the University of Essex.

since 1993. By comparison with Britain, or even with Ireland, the Nordic countries incarcerate far fewer people. Recent rates of incarceration and prison populations are:

Denmark	<b>74</b>	4,091	(on 1/4/11)
Finland	<b>59</b>	3,189	(on 1/1/11)
Norway	<b>73</b>	3,602	(on 1/5/11)
Sweden	<b>70</b>	6,669	(on 1/10/11)
Ireland	<b>98</b>	4,401	(on 3/5/12)

### ***Denmark***

While prison numbers in Denmark have risen recently, this population was about 3,400 in 2008 (a rate of 63) and averaged that level for 20 years previously. Punitive impulses have come from the political field, leading to increased sentences, a clampdown on drugs and restrictions on prison leave, but these have been offset by alternatives to custody, supportive drug treatment and a policy which enables many to be released ahead of the conventional two-thirds point of sentence. Such balancing features derived mainly from a coherent penal-welfarist 'philosophy' among the 'experts' running the prison system.

Lappi-Seppala describes some Nordic countries highlighting punitive policies, but more quietly softening these and introducing alternatives to custody, and this description is particularly relevant to Denmark:

A functional differentiation seems to prevail between sanctions policies and criminalization policies. Reforms in specific offences tended to lead in a more severe direction, whereas the changes made in the system of sanctions mostly had the opposite effect. In many cases, changes and innovations in the system of sanctions functioned as a safety valve, easing the pressure created by politically motivated reforms in the realm of criminalization. (Lappi-Seppala, 2007, p.219)

### ***Finland***

In Finland too, there have been some longer sentences for certain sex, drugs and violent offences, but these greater punishments were limited in scope and more than offset by the drive to find alternatives to custody, such as community service and the virtual abolition of

prison for non-payment of fines. Finland's prison population has fallen almost continually from a high level just after World War Two –except for an upward swing from 1999 to 2005, which has now turned decisively downwards again. Esa Vesterbacka, the Director General, spoke in 2007 of additional alternatives being introduced, such as conditional early release and electronic monitoring. These have clearly been effective, with the rate falling from 67 in 2007 to 59 in 2011. Reducing prison numbers is a government objective.

Nils Christie says: "Finland's penal history illustrates that prison figures are not created by crime, but by cultural/political decisions... laws were changed, fines used more often, prisons less." (2000, pp.53-54) He credits much of the responsibility for this to "the intellectual-administrative elite" with responsibility for crime policy. In relation to the recent decarceration, the Director General noted that a refusal by the Ministry of Finance to a request some years earlier for more prison spaces was a positive thing. The Finance Ministry's view was that it was better to reduce the prison population. Acknowledging that there is a tendency for any given prison capacity to be soon filled up, Esa Vesterbacka compared this to a lack of cupboard space in one's kitchen at home – when new cupboards are acquired they are quickly filled up also.

### **Norway**

Prison populations rose in Norway in the early years of this century, from a rate of 59 in 2002, but the rate has remained relatively static in the low 70s since 2006. One may find traces of Garland's indices of punitiveness in Norway in some longer sentences and a stress on protecting the public. However, the latter idea leads not to more imprisonment as Garland describes, but to a commitment to offer help towards change and resettlement. This is evident in the government's White Paper on punishment (Norwegian Ministry of Justice and the Police, 2008), which is notable for its strong focus on rehabilitation and its recognition that this is best achieved outside prison or in open prisons. The political and administrative leadership have declared a commitment to reduce prison numbers via alternatives and early releases, although they have yet to see large progress in this direction.

## **PART 3: THE DEPTH OF IMPRISONMENT**

The physical conditions of imprisonment and the way prisoners are treated are also indicators of penal severity. (2007, p.4) Evans and Morgan say:

Countries with the lowest incarceration rates tend also to have the shallowest systems, that is a high proportion of prisoners in small, relatively open institutions with liberal regimes. Rising incarceration rates tend to be accompanied by the growth of more restrictive prison regimes. This... reflects a political will to get 'tough on crime' (1998, p.325)

Former British Home Secretary, Michael Howard's, promulgation of both 'prison works' and 'austere prisons' is an illustration of how the scale and depth of imprisonment tend to move together.

### ***Open prisons***

An important indicator of the depth of imprisonment is the extent to which sentences are served in open prisons. The view in Nordic countries is that open prisons have fewer detrimental effects and better facilitate reintegration. They rely primarily on relationships and on the prisoner's sense of responsibility, rather than on physical restraints. Denmark holds 34 per cent of its total prison population in open centres, Finland 32 per cent and Norway 36 per cent. This contrasts sharply with Ireland, where the rate is barely 5 per cent.<sup>6</sup> Thus, each of these Nordic countries has *at least six times* the proportion in open institutions as Ireland. These figures include remand prisoners, but when one looks only at *sentenced* prisoners in Denmark, it transpires that a large majority of 59 per cent were in open rather than closed institutions (Kristoffersen, 2010). As well as being seen to have fewer detrimental effects, the cost of holding someone in an open prison is about half that of a closed prison in Nordic countries.

### ***Small prisons***

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<sup>6</sup> Danish and Norwegian figures are from Kristoffersen (2010) and relate to 2008 (yearly average). Finnish figures are from personal communication with an official in the Criminal Sanctions Agency on 15/10/09 and relate to October 2009; she noted Finland's aim to raise this proportion to 35 per cent by 2011. The Irish Prison Service's *Annual Report 2011* gave the daily population averages for Ireland's two open prisons, Loughan House and Shelton Abbey, as 122 and 102 respectively, a total of 224; the daily average for the prison system as a whole was 4,390.



Nordic prisons tend to be small relative to most other Western countries, with no prison in any Nordic country holding more than 400 prisoners.<sup>7</sup> The average population in a prison is about 150 for sentenced prisoners in Denmark (and about 25 in local remand prisons), about 130 in Finland, while in Norway the average prison size is approximately 65. The general assumption is that such smaller institutions will have less institutionalisation, restriction and bullying. Having more small prisons rather than fewer large ones also means more prisoners can be held near their homes and families.<sup>8</sup>

### ***Regime features***

Other notable aspects of regimes for sentenced prisoners in Denmark, Finland and Norway are:

- single-cell accommodation for almost all prisoners;
- proper sanitation arrangements (although some 'slopping-out' still continues in Finland);
- out-of-cell time that is generally 12 to 14 hours, with strong activity such as work, training, education and therapy;
- an increasing tendency to facilitate 'self-management' whereby prisoners carry out their own daily tasks such as cooking and cleaning;
- substantial prison leave;
- sentence planning and a concomitant willingness to release prisoners early;
- substantial drug treatment;

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<sup>7</sup> Pratt says: "These countries have a large number of small prisons, often with 100 inmates or fewer... The largest prison in the region, in Sweden, holds around 350 inmates". (2008, p.120) However, Oslo Prison had 392 in November 2006, and the new Turku Prison had places for 350 in July 2008.

<sup>8</sup> Such thinking is taken furthest in Iceland, as described by the Assistant Director of Iceland's Prison Administration, Erlendur Baldursson, who says that "small institutions function better" because "the problems that emerge, and there are problems in all prisons, are more visible and can therefore more easily be discussed and solved." (Baldursson, 2000, p.7). His idea of smallness is an institution with 10 to 20 places, which describes four of Iceland's five prisons. The one 'large' prison is Litla Hraun, with 87 places, where he sees "increasing levels of traditional problems", such as drug abuse and personal conflicts (Baldursson, 2000, p.8).

- very few young people imprisoned.<sup>9</sup>

This picture will be elaborated on below.

### ***Denmark – the new East Jutland prison***

Despite an increased emphasis on security and a recent reduction in prison leave in Denmark, the 'depth' of prison remains very contained, best exemplified by the high proportion in open prisons. However, examining the new high-security closed prison of East Jutland is just as revealing. It opened in October 2006, holds 228 and is situated amid farmland and rolling hills which can be seen from most parts of the prison. A principle in the construction of East Jutland was that there should be 'scattered, low buildings toning down the institutional impression'. Although it has the highest security in Denmark, there is a sense of space inside, not just in the way the perimeter wall is modulated to afford views to the countryside beyond, but within the walls also, where there is a high ratio of open space to buildings.

There are five accommodation sections spaced apart, A to D each comprising 48 places, and E, which holds 36 and has the highest security. D is dedicated to full-time drug treatment. Prisoners may traverse the central area between sections several times a week, walking past the football field and lake to a central building or 'culture centre', which holds a sports hall, church, library and a self-service shop where prisoners buy groceries and personal accessories. Security is strong, with a high perimeter wall and a fence beyond that, and 200 CCTV cameras.

Living spaces, which look like good-quality student accommodation, are made up of units of six single rooms grouped around a well-equipped kitchen, sitting area, laundry facilities and a balcony. Prisoners have keys to their own rooms and staff have keys to second outside locks used to close doors at 9.30pm. Rooms measure 12.5 square meters, including a separate bathroom, and each has a sofa-bed, desk, chair, television, clear unbreakable glass windows and an air-vent. Each six-room unit opens on to a lobby area shared with other units, where there are recreational facilities. As in other Danish prisons, men and

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<sup>9</sup> Figures for under 18-year-olds in prison systems given on [www.prisonstudies.org](http://www.prisonstudies.org) on 20/8/12 are as follows: Denmark 0.3 per cent, Norway 0.2 per cent, Finland 0.1 per cent. By contrast, Ireland had 1.9 per cent, England and Wales 1.5 per cent, and Scotland 1.4 per cent.

women mix, although a woman may opt to be in a single-sex unit. There are usually fewer than eight women in East Jutland, the vast majority of female prisoners in Denmark being in open prisons. The staff to prisoner ratio of 1.14 to 1.<sup>10</sup>

While security is high, in many ways the prisoner's day within East Jutland is similar to that in other Danish prisons, including open prisons. Out-of-cell time is 14.5 hours per day, from 7am to 9.30pm. Prisoners must be in occupation for over seven hours each day, making up the 37-hour week. From 3.30pm to 9.30pm, they are free to go about their daily tasks – shopping, washing, cooking, eating, recreating. They may spend this time outdoors if they wish. Work is similar to that offered elsewhere in Danish prisons, such as the processing of textiles, metal, wood or paper. Education consists, as elsewhere, of normal adult education courses. There are programmes such as anger management, as well as drug treatment.

The same effort to create as much normality as possible is evident in visiting facilities. There are 14 standard visiting rooms, each fairly similar to the prisoner's own room, with arm-chairs and a coffee-kettle in addition. There are also two 'visiting flats' where a family can come to stay with a prisoner for a day or two. Each of these has a double-room for adults, another room with bunk-beds for children, a kitchen/dining/sitting area, and an opening on to a small courtyard. All these visiting facilities adjoin a garden area which includes some children's play facilities.

East Jutland has managed to reconcile the imperatives of 'care' and 'custody', or what the Director General, William Rentzmann, called "*the soft and the hard*", opposites that are notoriously difficult to hold in balance. A high level of security has been achieved while also doing justice to the progressive principles that govern life in Danish prisons<sup>11</sup> – relating activities in the prison to normal life in the community, achieving a measure of openness and enabling prisoners to take responsibility for at least some aspects of their own lives.<sup>12</sup>

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<sup>10</sup> There are 261 full-time equivalent staff of all disciplines to the 228 prisoners at East Jutland.

<sup>11</sup> These principles are explained further in Part 4 below.

<sup>12</sup> In February 2008, two months after the visit to East Jutland for this research, the Council of Europe's CPT visited the prison. Their description and assessment of the institution corresponds very closely with that given above. (Council of Europe CPT, 2008, pp.30-31) Additionally, the CPT examined the special units in Section E for "negatively strong inmates" and note that material conditions and activities there were excellent and similar to the other units, except for "the limited amount of outdoor space available to them". (Council of Europe CPT, 2008, p.23)

## **Finland**

In interview, the Finnish Director General, was frank in detailing the shortcomings of his prison system. His points related mainly to structural issues: the continuing practice of 'slopping out', which affects close to 500 prisoners and is being slowly phased out; the sharing of cells which affects '*a couple of hundred*'; insufficient drug treatment; the confinement of a small number of sentenced prisoners (in '*tens*' rather than '*hundreds*') to cells for up to 23 hours a day, mainly because of fear of other prisoners; and the lack of a full day's activity for many prisoners.<sup>13</sup> Thus, while physical conditions in Finland may not match those in Denmark, the prisons are less subject to the new restrictions experienced in the latter. So, while there are shortcomings in Finnish prisons, there is steady, if slow, improvement, enhanced by a new sentence-planning process.

Resettlement is a key concept, with a stress on social supports. Housing, unemployment, drugs, alcohol and mental health are seen as the main challenges in ensuring successful reintegration. The recognition of the social dimension here corresponds to a phrase that is often cited in Finland: "Good social policy is best criminal policy." Clearly, the management of the prison system have an inclusive view of prisoners, regarding them as full members of society, an issue to be explored further in Part 4.

## **Norway**

Conditions for most prisoners in Norway are relatively good, illustrated by an average of 13 hours out-of-cell time for sentenced prisoners, a strong range of activities such as work and education, and virtually none of the substandard sanitation that characterises many systems. The Director General, Kristen Bolgen Bronebakk, spoke of a need to differentiate more between types of prisoners, suggesting "*a stricter regime*" for "*the organised crime group*", who are clearly seen as a small minority, while recognising that drug-users "*are not really a threat to society, more a threat to themselves*". The 2008 White Paper repeats this dual approach: "Some convicted persons will require stricter regimes, others more open. The Government will deploy measures along both these tracks." (Part 5) Overall, however, it is

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<sup>13</sup> Ireland's conditions are considerably worse than Finland's. See points 4 and 5 in Part 5 of this paper.

clear that the government envisages improved regimes for most prisoners, and a significant increase in the proportion in open prisons, already at 36 per cent, to at least 40 per cent.

Despite recent curtailment, prison leave is more substantial than elsewhere. Major cities have halfway houses from which prisoners go out of prison to work or education during the day. In addition, prisoners normally get home leave after serving one-third of their stated sentence. The norm then is 18 days per year in a closed prison and 30 days in an open, although prisoners will often transfer from a closed to an open institution at the one-third point. Prisoners pay for travel home themselves.<sup>14</sup> Approximately 25,000 leaves were given in 2005; less than 0.5 per cent defaulted, including late returns.

Asked to identify the strengths and weaknesses of the prison system, the Director General said the main weaknesses related to the isolation of, and lack of activity for, many pre-trial prisoners, and the confinement of a small number of high-security prisoners. She identified as the key qualities of Norwegian prisons:

*The personnel. And the emphasis put on treating everybody with respect, not using more harsh methods than absolutely necessary. I think when you visit a prison in Norway, what people say to me afterwards is that they note the atmosphere and the relationship between inmates and security officers...Security officers are not locked into their own cubicle, they are out there together with inmates.*<sup>15</sup>

The role envisaged for prison staff is centred on relating to prisoners, captured in the official slogan that reflects a decision to change the emphasis of their work: “from guard to social worker – a paradigm shift”.<sup>16</sup> This changed role is particularly evident for the ‘personal officer’ (also called ‘contact officer’), who has the responsibility for supporting usually no more than three prisoners in dealing with their sentences and planning their futures.

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<sup>14</sup> Most prisoners in Norway are paid 51 NOK per day, the same standard rate applying whether they attend school, work, programmes or other organised activity. This amounts to about €32 per week. (2008 figures). In Ireland, the 2012 rate is €16.45 per week, but the Prison Service plans an average reduction of 28 per cent to this rate.

<sup>15</sup> Certainly, nothing in the three Norwegian prisons visited for this research, nor in three others visited subsequently, would give rise to a questioning of that statement; the atmospheres and the relationships seemed good.

<sup>16</sup> Similarly, in Denmark, prison officers are expected to carry out four main tasks which relate to security, welfare, occupational supervision and leisure-time guidance.

## **Bastoy open prison**

The open prison on the island of Bastoy has achieved some fame within the Norwegian prison system and beyond, and is referred to in the recent White Paper as a model to be copied elsewhere. It is run on “*ecological principles*” and the idea that (as the Governor, Oyvind Alnaes, expressed it) “*people can change behaviour. We believe that if you treat each other with respect, they will treat you with respect back.*” This thinking is put into practice in many ways, including in joint seminars between staff and prisoners. The Governor explained the ecological principles:

*We think that it's not one small factor that changes people. There are lots of factors. And the ecological thinking is a circle of thinking, everything is tied together... Education, working, training, and so on... We raise horses here, an old Norwegian race. And we also produce calves and when you are a prisoner and work in the agriculture department, you would get the responsibility for a cow. And that's how we train responsibility in action. This is your cow... you have to give the cow food. And when the calves come, you have to take care of the calf. You have literally to take it out... And this is teaching and training responsibility in action. This is also a way of building, or training and teaching, empathy.*

Such a holistic approach is clearly a very different way of developing responsibility than Canadian-style behaviourist ‘programmes’ with their narrow focus on the criminogenic.

## **Resilient penal welfarism**

In Norway, penal welfarism is clearly identifiable in the thinking of both the administrative and political leadership of the prison system, and this lies behind much of the restraint on punitiveness. Shortly before the Norwegian government published its White Paper in 2008, the Deputy Minister for Justice, Terje Moland Pedersen, gave an interview for this research. He was explicit at several points in distinguishing his government's approach on penal matters from what was happening elsewhere in Europe. He said:

*The main issue is rehabilitation, to try to reintegrate criminals into civil society... We have also some discussion that they have in every country about security and safety, and what's security for prisoners, security for the people that work in the prison, and security for society. But I think the most important thing is what we are trying to achieve about rehabilitation.*

This priority given to rehabilitation over security seems set to have major impact on the depth of imprisonment. When asked about the escalating emphasis on security in many prison systems elsewhere, Pedersen said:

*I think we are going in a different way. It is very important that we have prison with high security, but not so high... I think most of the people in the prison should stay in the prison with lower security.*

He made clear that what he meant by 'low security prisons' were open prisons such as Bastoy:

*We call it, for the debate, a prison with low security. We are going to have more of that kind of prison. And also we're looking at the possibility of having a prison where prisoners should take care of themselves... that they have to make their own food, maybe they could be able to have some work outside the prison area and earn some money, and control the day more than they do today. Because I think if they were able to do that it would also be easier for them to go back to the normal life afterwards. And I think that Bastoy is a really good example....We think how to use the prisons with high security even less than we are doing today.*

Garland says: "Where the older criminology demanded more in the way of welfare and assistance, the new one insists upon tightening controls and enforcing discipline." (2001, p.15) On that basis Norway is certainly following 'older criminology', given, for example, that the Director General was of the view that "*prison should be bearable*" and also said: "*We have enough of the locks and gates and cameras... we need to have more activities.*"

## **PART 4: THE REPRESENTATION OF THE PRISONER**

### ***Nordic countries: The larger social context***

Turning now to the third criterion of punitiveness, the research sought to decipher how the men and women held in prison were perceived, within the prison system and within wider society. This was an attempt to assess whether they were, in Garland's terms, "represented in official discourse as socially deprived citizens in need of support", or "depicted instead as culpable, undeserving and somewhat dangerous". (2001, p.175) In all three countries studied, human rights thinking and socially-inclusive attitudes (both related to the universal welfare state) counteract the stereotyping of prisoners typical of the 'culture of control'. Prisoners are widely seen as citizens, as members of the larger society. It is also recognised

that prison has 'detrimental effects', damaging bonds with the wider community, and so should be used as 'a last resort'.

Such thinking is central to a Danish document setting out the principles for prison and probation work (Ministry of Justice, 1994), the 2006 Prisons Act in Finland and the 2008 White Paper on prisons in Norway. All broadly resonates with Council of Europe (2006) policy. A sense of the prisoner's larger social context is kept to the fore in Nordic countries. In other words, not *all* responsibility for change is put on the shoulders of the individual, as it tends to be in the US and UK; there is usually a consciousness of contributory social factors to crime, and to reform.

This awareness is well captured in Finnish prison authority statements, such as the following:

Among the prisoners there are more and more offenders who have consciously chosen a criminal career and who are reluctant to quit it in the short term. However, the bulk of the prison population still consists of persons who have drifted into crime and who are socially maladjusted. Alcohol and other drug problems would seem to be major factors in current crime in Finland. (Ministry of Justice, 1999, p.6)

The same policy document gives as a goal for the prison system "supporting and encouraging the convicts in leading a life without crime", but also sets a goal of "influencing society as a whole in order to make work with this orientation possible". (Ministry of Justice, 1999, p.7) In this thinking, society needs to be worked with and changed, as well as people in and from prison.

Are Hoidal, Governor of Oslo Prison, said of those held in his prison: "*80 per cent of them need help*". In a survey of Norwegian prisoners, Skardhamar found that housing, money and work were major problems. He says: "Inadequate living conditions should not necessarily be considered a cause of crime, but as a narrowed opportunity structure where other choices are limited." (Skardhamar, 2003, p.39)<sup>17</sup>

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<sup>17</sup> Nilsson's (2003) research on social exclusion and recidivism among prisoners in Sweden found that problems of employment, education, housing and finance (in that order) are significantly associated with recidivism. In addition, "Time spent in prison serves to reduce the chances of living a



### ***Denmark: the ‘Six Principles’ for Prison and Probation work***

A widely-accepted philosophy in the Danish penal system remains resilient, even though buffeted by different approaches coming from politicians in particular. This ‘philosophy’ is well expressed in *A Programme of Principles*, the statement of six principles adopted in 1993 (Ministry of Justice, 1994). These principles begin:

#### *1. Normalisation.*

The daily activities of the Prison and Probation Service shall in general...be related to normal life in the general community...

#### *2. Openness.*

Prison and probation work shall be organised so that the offender is offered good opportunities to make and maintain contact with the ongoing life of the community...

#### *3. Exercise of Responsibility.*

Prison and probation work shall be so organised that the offender has the opportunity to develop a sense of responsibility, self-respect and self-confidence and become motivated to actively strive for a crime-free life...

These three principles have been referred to as the ‘three cornerstones’ of Danish penal policy (Rentzmann, 1992).

Such principles also underpin the Danish view that open prisons should be the norm. Open prisons incorporate a greater degree of normalisation, enable prisoners to have more interaction with the outside community and take responsibility for more of their own lives. The representation of the prisoner in the *Principles* document, then, suggests a normal citizen, a member of the community, one who can be trusted to a large extent. Prisoners’ citizenship is also acknowledged in Denmark, as elsewhere, via their rights to vote, appeal to the ombudsman and form representative groups.

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conventional life – with a legitimate income – and thereby contributes to marginalisation and social exclusion.” (Nillson, 2003, p.80)

While there has been some decline in the perception of the prisoner in Denmark, especially in the political sphere, the evidence does not suggest the kind of radical swing from penal welfarism to a culture of control that Garland describes. Employers still actively seek released prisoners for work. Inclusive concepts persist in other areas too, such as the accepting and positive view of the prisoner inherent in the *'principle of acknowledgement'*<sup>18</sup> used at Moglekaer open prison. The Head of Employment there gave striking examples of what he means by this: a paedophile can be moral in other respects; a thief can be a good parent. This approach seeks to find the positive qualities in prisoners, to acknowledge these and try to motivate the prisoners accordingly.

### ***Finland: prisoners as members of society***

The representation of the prisoner in Finland can likewise be examined by probing principles, practices and attitudes to gauge whether those in prison are seen inclusively, or in stereotypical terms and as 'other'. Analysis suggests the former is the dominant approach. The 2006 Prison Act, the primary framework for penal policy in Finland, stresses that prisoners retain basic rights. The substantial focus on resettlement, and helping prisoners in relation to issues such as work, housing and addiction, reflects the view that criminal policy is part of social policy.

There is far more to the Finnish idea of rehabilitation than narrowly 'addressing offender behaviour', which indicates a one-dimensional perception of the prisoner.<sup>19</sup> A course at Kerava Prison, for example, seeks "the holistic rehabilitation of the client", recognising the social dimension in a way offence-focused programmes seldom do. This course addresses issues such as housing, finding meaningful activity like work or education, and help within and beyond prison with addiction and mental health. The goal "is to support the client to find new contents for life and reinforce the experience of meaningful life".<sup>20</sup> That wider perspective is evident too in the manual for the assessment and allocation of prisoners and their involvement in the formation of a sentence plan (Criminal Sanctions Agency, 2004). The approach is to look for strengths as well as weaknesses, and it is expected staff must listen to and collaborated with prisoners.

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<sup>18</sup> This is reported to be based on the thinking of the German writer, Axel Honneth.

<sup>19</sup> Such narrow and one-dimensional views of the prisoner are challenged in Warner (2007), and Costelloe and Warner (2008).

<sup>20</sup> Information on this course comes mainly from a brochure in English describing it.

The recognition that imprisonment weakens the bond with wider society is at the heart of Finnish penal thinking, and hence its decarceration policy:

The prison sentence shall be enforced so that the punishment will involve only deprivation of liberty. The harmful effects caused by the loss of liberty shall, as far as possible, be mitigated. The punishment shall be enforced so as not to unduly render difficulties, but rather facilitate, the readjustment to society. The conditions in penal institutions shall, as far as possible, be arranged to correspond to those prevailing in the society. (Ministry of Justice, 1994, 1.4)

### ***‘To support the self-esteem of the prisoner’***

The idea that those in their charge were mainly “*members of the community*” in need of help was pervasive among those interviewed in Finland. Such thinking is part of a deep and long tradition in Finnish penology, exemplified by K.J.Lang, an earlier Director General of the prison system. Lang translated the Finnish term for the prison service, ‘Vankeinhoito’, as “care of prisoners” (p.65). He noted that most prisoners are “socially and psychologically disabled...deprived of all chances to develop and use what we can call their stronger parts.” (p.66) They have, Lang said,

... very low expectations of success. They (or a majority of them) experience domestic and street violence in their childhood, often as victims. They have also been exposed to violence in their later life... they are poorly educated and unskilled and have been unemployed for long periods or all of their lives. (p.66)

Asking “what are the needs of our customers?”, Lang made what might be regarded as a remarkable statement for a Prison Service Director General:

First of all prisoners/clients need to improve their self-confidence. Therefore all our efforts when organising correctional services should be analysed as to their ability to support, uphold and redress the self-esteem of the prisoner. (p.67)

He stressed the importance of work, training, education, “medico-social treatment” and “the need for shelters” - since “our customers...have been mistreated and abused both inside and outside the institutions we put them in”, they should be offered in prison “shelter and

protection in time, space and social environment.” (p.67) It would be hard to find a more welfarist statement from the leader of any prison system. This philosophy continues to be a core part of the outlook of those running the prison system in Finland; the culture of control has made few inroads there in relation to the representation of the prisoner.

### ***Norway: reasserting the social dimension***

Although there is evidence of some narrowing of focus to *individual* responsibility in Norwegian penal policy around the turn of the century, the social dimension has been strongly reasserted recently. The idea of the prisoner as part of society, but someone in need of help, is brought out strongly in the 2008 White Paper. Just before it was issued, the Deputy Minister for Justice, Terje Moland Pedersen, spoke of the welfare state as a factor shaping the debate. He explained the Nordic welfare state model as “*about how everyone is going to carry for everyone*”, and this meant “*that it is possible for us to have another kind of discussion about how we use prison and how we sentence people than I think it can be in some other countries*”. For Pedersen the key issue was “*the people who really need help*”. He added: “*I think it’s about humanity and it’s about [whether] you succeed in handling poverty.*”

This White Paper is titled, in its ‘English summary’ form, *Punishment that works – less crime – a safer society* (Norwegian Ministry of Justice and the Police, 2008). It suggests that fewer should be in prison, that more of those imprisoned should have lower security, that regimes should be improved and focused on rehabilitation. The White Paper is unquestionably penal welfarist and socially inclusive in outlook, even if it speaks of strict regimes for a minority and in places cloaks discussion in the language of the culture of control.<sup>21</sup>

Penal welfarism is also suggested by core ideas in the White Paper:

The smaller the difference between life inside and outside prison, the easier the transition from prison to freedom. The normality principle is therefore a loadstar for penal implementation policy. It is also in accordance with the principle that deprivation of liberty is the actual penalty and that the stay in prison shall not be more

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<sup>21</sup> That the emphasis on protection in the 2008 White Paper leads to more ‘liberal’ policies rather than greater incapacitation is reflected in the statement: “Penal implementation out in the community is more effective for rehabilitation than prison and is therefore the best long-term protection.” (Norwegian Ministry of Justice and the Police, 2008, Part 2)

onerous than security considerations demand... Strengthening the normality principle means organising a daily routine in prison that as far as possible reflects the society outside the walls. (Part 3)

The concept of the prisoner here is of a 'normal' member of society.

### ***'A competition between pictures'***

Showing a tabloid headline that translated as "Blitz at Oslo emergency ward: PRISONER SHOT FREE by masked gang",<sup>22</sup> one governor stressed that only about 10 per cent of prisoners were dangerous in this manner. Most prisoners, he said, "*are the poor guys.*" An issue in Britain and the USA is that 'the dangerous guys' come to be seen as typical of prisoners, rather than as a small minority, and this is a basis for vengeful and punitive attitudes. Nils Christie, strongly critical of presentations of prisoners as 'monsters', said: "*The danger is now that these very physical famous criminals shall in a way cover the picture. So we think they are the prisoners. It's even competition between pictures now.*" One senses, however, that in Norway the negative stereotypes have not won this 'competition between pictures' and the entire prison system has not been moulded in response to the minority.

In its representation of prisoners the White Paper goes strongly against the grain of the 'new punitiveness'. Prisoners are seen as members of society who "enjoy the same rights as everyone else", if not always the same access (Part 4). Social services are obliged to provide for them "in the same way as to other citizens" (Part 4). It is noted that many prisoners "belong to the poorest and most alienated sectors of our society" (Part 4). The report lays great stress on the government's "return to society guarantee", which is declared to be "a public responsibility" (Part 4).

In this inclusive view of prisoners, it is the explicit ruling out of stereotyping that is most striking. The White Paper says that "it is only a minority that constitute a threat to public or individual safety" and specifically warns against their 'demonising' (Part 2). In similar calming vein, it states that "policy must not be based on individual incidents" (Part 1). In

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<sup>22</sup> The newspaper was VG on 7/9/03.

Norway, the perception of the person held in prison among the public, politicians and especially the prison administration, is for the most part holistic and inclusive.<sup>23</sup>

## **PART 5: CONCLUSION: EIGHT LESSONS FOR IRELAND**

There are many lessons that a country such as Ireland could take from examination of the prison systems of Denmark, Finland and Norway – countries of similar size to Ireland. The possibilities for constructive modelling are vast. Here I will highlight eight possible lessons in relation to penal policy:<sup>24</sup>

### **1. Reduce the prison population by 1,500**

Currently (May 2012), Ireland has some 4,400 men and women in prison, a rate of incarceration of 98 that has risen sharply in recent years. Although Denmark, Finland and Norway all have higher overall populations than Ireland, all have lower prison populations. Ireland had a rate of incarceration close to, or even lower than, these Nordic countries until the mid-1990s, yet now has a rate that ranges from 30 to 66 per cent higher, as was evident in figures given earlier. Nils Christie quotes K.J. Lang as saying: “The number of prisoners has very little to do with crime. [It] is rather caused by the general situation of confidence in society and of the political equilibrium.” (2000, p.51, Christie’s translation)<sup>25</sup>

Were Ireland to return to the rate of incarceration it adhered to until the mid-1990s (usually below 60), or were it to match the much lower rates in Nordic countries today, it would have in the region of 1,500 fewer in prison, a prison population of,

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<sup>23</sup> Prisoners’ input was also sought for the White Paper: “In six prisons dialogue conferences were held in which both inmates and staff participated and discussed what a good day in prison would look like for them.” (Part 5)

<sup>24</sup> Similar prescriptions for the Irish prison system are given in more detail in the policy paper of the Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (Dublin, 2012).

<sup>25</sup> The current Director General of the Finnish prison system is clearly of the same view. He wrote:

The prison population rate seems to be more connected with other factors describing the state of society than with the quantity and quality of crimes. Identifying these connections creates a basis to carry out long-term criminal policy instead of leaning to more and more severe sentences whenever a single brutal crime agitates the public. (Vesterbacka, 2005, p.5)

say, 2,700 to 3,000.<sup>26</sup> Indeed, a government committee of inquiry into the penal system in the 1980s proposed an even lower rate of about 50 (Whitaker Report, 1985). A range of modest adjustments, all of which have been demonstrated in the countries examined (and most of which were advocated by Whitaker), would achieve such a reduction; for example, ceasing to use prison for non-payment of fines or debt,<sup>27</sup> finding more alternatives in the community for shorter sentences in particular, allowing drug-dependent prisoners to undergo treatment in the community, applying remission at the two-thirds point, and granting more prisoners early release on parole, including some life-sentence and other long-term prisoners. Most of these possibilities are present in the Irish criminal justice system already, but are often only used in a limited way.

The nub of the problem is Ireland's over-reliance on imprisonment, rather than alternatives in the community, as a sanction for crime. Of those who "served a correctional order" in the five Nordic countries in 2008, "62% served a probation order, while 38% served in prison" (Kristoffersen, 2010, p.19). While data in Ireland may not be precisely comparable, the general picture is unmistakable: the proportions in Ireland are broadly reversed, with less than 30 per cent receiving sanctions in the community under the Probation Service, compared to over 70 per cent being imprisoned. This is evident in the IPS and Probation Service reports for 2011: the total number of orders for supervision and community service made in 2011 was 7,223<sup>28</sup>; the total number of committals to prison for that year was 17,173<sup>29</sup>. Clearly, Ireland has considerable scope for resorting to imprisonment far less often.

## 2. Have one-third of prisoners in open prisons

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<sup>26</sup> The 2008 report by the 'McLeish' commission set up by the Scottish government, *Scotland's Choice*, suggested a target prison population of 5,000, radically reduced from its current level which is over 8,000.

<sup>27</sup> The IPS *Annual Report 2011* states: "The number of committals to prison as a consequence of the non-payment of a court ordered fine during 2011 increased by 12.4% on the 2010 figure, i.e., from 6,683 in 2010 to 7,514 in 2011" (p.28). Elsewhere, it is stated that in a 'snapshot' of the prison population on 30/11/11 there were 20 in custody for non-payment of a fine (p.21).

<sup>28</sup> The Probation Service, *Annual Report 2011* (Navan, 2012), p.40. Note that Part Suspended Sentences and Post Release Supervision Orders, which are only activated upon release from custody, are not included here.

<sup>29</sup> Irish Prison Service, *Annual Report 2011* (Longford, 2012), p.20.

As was seen above, Nordic countries make far greater use than Ireland of open prisons, which cost far less, give rise to less institutionalisation and offer better prospects of resettlement.<sup>30</sup> A critical improvement in the quality of regimes in Ireland would be brought about by having one-third of all prison places in open prisons (say, 1,000 in open prisons in a total prison population of 3,000). This would involve decommissioning some closed prisons and acquiring new replacement facilities that would be suitable as open centres. It would also involve adapting work practices and prison officer training, as staff in open prisons must rely more on relating to prisoners. At present, no open facility exists in the Irish prison system for women, nor is there an open facility now for young men aged under 21 (since the closure of Shanganagh Castle in 2003).<sup>31</sup>

### 3. Operate a greater number of smaller prisons than fewer larger ones

Ireland has 4,400 people in just 14 prisons and its four largest prisons are each bigger than any institution in any Nordic country.<sup>32</sup> The *average* prison size in Ireland is now over 300, at least twice the average in Norway, Finland or Denmark, whose averages range from 65 to 150. It is generally recognised that problems such as institutionalisation, bullying and the need for segregation are less in smaller locations – and there is no evidence of economies of scale being obtained in Ireland from having larger institutions. Yet, Ireland's prisons grow ever bigger, with the Midlands Prison set to hold over 1,000 shortly.

### 4. Have out-of-cell time of at least 12 hours

In Nordic countries, more than 12 hours out-of-cell time of is the norm for sentenced prisoners, while it tends to be no more than seven hours (and often far less) in most Irish prisons, even though Ireland's staffing ratio is close to the levels in Norway and Finland.

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<sup>30</sup> These outcomes also derive from home leave. Home leave in Nordic countries, despite some recent restrictions, is significant. Ireland could well implement Norway's policy of 18 days leave a year from a closed prison and 30 days from an open prison from when one-third of stated sentence is served.

<sup>31</sup> Moreover, in the open prisons visited in the three Nordic countries, one found that sex offenders were not precluded, as they effectively are from open prisons in Ireland. Several other categories of prisoners are also precluded in the Irish system.

<sup>32</sup> These four are Wheatfield (which had a daily average of 671 in 2011), Mountjoy (616), Midlands (586) and Cloverhill (433).



The Whitaker Report dealt with these issues, saying prisoners should have:

...normally (and always when a prisoner so desires) private sleeping accommodation in a single cell... access to toilet facilities at all time... much more out-of-cell time (at least 12 hours), the present lock-up time of 16 hours a day being excessive...flexible access to participation in ordered activity, such as education and work, to recreation facilities and to welfare services. (1985, pp.13-14)

Over a quarter of a century later, little has improved overall with regard to such matters in Ireland.

5. Have single cell accommodation for all prisoners, with access to separate toilet facilities at all time

Single-cell accommodation is almost universal in Nordic countries, while in Ireland about 60 per cent of all prisoners must share cells – a problem compounded by high lock-up time and undignified sanitary arrangements.<sup>33</sup> The European Prison Rules specify that prisoners should normally be able to sleep in individual cells.<sup>34</sup> The problems associated with high lock-up times, multiple occupancy, inappropriate sanitation and drug-taking in prisons (see point 6 below) all tend to reinforce each other.

6. Put at least as much effort into drug treatment as into drug control

Given extensive drug problems among prisoners, a combination of Finland's approach to supply control and Denmark's approach to demand control offer a good strategy within prisons, combined with the proposal in the 2008 Norwegian White Paper that more prisoners with drug problems be released to undertake treatment in the community. The Finns have

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<sup>33</sup> Answers to parliamentary questions asked by Ciaran Lynch, T.D., on 24/11/11 revealed that 60 per cent of prisoners shared cells, nearly all of whom had to defecate and urinate in each other's presence; that 'slopping out' still applies to 845 prisoners (20 per cent); and that 178 were on '23-hour lock-up'.

<sup>34</sup> The European Prison Rules (Council of Europe, 2006) state:

“18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.”

not applied airport-type screening nor mandatory drug-testing universally, but they do conduct urine tests where prisoners *volunteer* to go to open prisons or on drug treatment programmes or to drug-free units. Denmark guarantees drug treatment within two weeks to any prisoner who requests it and who still has at least three months to serve. Extensive and generally full-time voluntary drug treatment is available in virtually every prison in Denmark.

#### 7. Give greater recognition of prisoners' citizenship and membership of society

There is much more that Ireland could learn from Nordic countries about respecting the dignity and citizenship of people in prisons. Positively facilitating the right to vote would be one step, as happens without question in Nordic countries.<sup>35</sup> Another would be to allow the kind of prisoner representative groups (*Toverikunta*) that exist in prisons throughout Finland, where prisoners also have access to the ombudsman in the same way as citizens in the outside community.<sup>36</sup>

#### 8. Ensure public participation in formulating the future direction of the prison system

Ireland could truly learn from the deliberative process that was involved in the shaping of the Norwegian White Paper, bearing in mind that an Irish White Paper on crime is in preparation. The Norwegian government and prison administration consulted seriously and widely with the public and within the prison system (among staff and prisoners). Such a process would help address a problem set out by Loader:

We need to design institutional ways of living with, and seeking to make as inclusive and as informed as possible, the mediated public contests about crime and punishment that have become a recurrent feature of our times... (2006, p.582)

Loader argues for “the lost political art of taking the heat out of crime – an art that pressingly needs to be reinvented in ways that can help temper the impatient, illiberal climate that has come to pervade the politics of security in England and Wales today”. (2006, p.583) Such a lost political art might be found, in part, in the manner in which the Norwegian government generated wide-ranging public involvement in the shaping of its 2008 White Paper.

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<sup>35</sup> Prisoners in Ireland were granted the vote in 2006 (Behan and O'Donnell, 2008), but research by Cormac Behan indicates barriers to them exercising their franchise in practice.

<sup>36</sup> The Whitaker Report stated: “Prisoners should be given the right to have grievances investigated by the Ombudsman”. (1985, 2.33)

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## **Redefining Standards Downwards: The Deterioration of Basic Living Conditions in Irish Prisons and the Failure of Policy**

**Kevin Warner**

### **Introduction**

The phrase ‘redefining standards’ might be assumed to imply a commitment to higher, more rigorous, standards, along with the more effective enforcement of such standards. In the case of the Irish prison system, however, we have seen over the past two decades alarming examples of where standards have been re-defined *downwards*, so that, for a majority of those detained in our prisons, basic living conditions have significantly deteriorated and the experience of being in prison has become even more burdensome and damaging.

### **The Whitaker Standards for ‘Basic Living Conditions’**

Only once in the history of the Irish State has the Government commissioned a comprehensive investigation into the penal system as a whole. This resulted in the *Report of the Committee of Inquiry into the Penal System*, which was published in 1985 and is commonly known as the ‘Whitaker Report’, after the Committee’s chairman, T. K. Whitaker.<sup>i</sup>

The Whitaker Committee was scathing in its criticism of the Irish penal system, and of its management by the Department of Justice. It proposed radical changes in thinking and policy – reflected in its advocacy of three key underlying principles: ‘minimum use of custody, minimum use of security and normalisation of prison life’.<sup>ii</sup>

The Committee set out in some detail what it called the ‘basic living conditions’ which should be provided for those held in prison.<sup>iii</sup> These included: a balanced diet, normal clothing, a clean and hygienic environment, physical and mental healthcare comparable to that available in society as a whole, care of children born in prison, and freedom to practice religion. In the view of the Committee, ‘basic living conditions in prisons should correspond broadly to those available to persons with an average disposable income’.<sup>iv</sup>

In this article, I highlight five particular ‘basic living conditions’ listed by the Whitaker Committee which seem to me to be of critical importance. These five conditions are defined in quite tangible ways by Whitaker, and so are amenable to monitoring and assessment.

The Committee’s report stipulated that prisoners should have:

‘Normally (and always where a prisoner so desires) private sleeping accommodation in a single cell.’

‘Ready access to toilet facilities at all times.’

‘Much more out-of-cell time (at least 12 hours).’

‘Flexible access to participation in ordered activity, such as education and work, to recreation facilities and to welfare services.’

‘Liberal visiting arrangements with minimum of supervision (especially of family visits) and maximum allowance of personal contact.’<sup>v</sup>

Such key prescriptions for our prison system, and the philosophy underpinning them, were very much in tune with mainstream European thinking on penal matters, as can be seen by examining the European Prison Rules, which were agreed by the countries of the Council of Europe in 1987.<sup>vi</sup> (These Rules were revised in 2006.<sup>vii</sup>)

### **What’s the Story Now?**

If ‘normalisation’ is a cornerstone of penal policy, and living conditions in prison are to be related to those ‘on the outside’, then one would expect basic conditions in prisons to improve over time, in line with improvements in living conditions in society as a whole. In some ways this *has* happened: for example, food in prisons is much better now than it was thirty years ago. However, in many instances, living conditions in Irish prisons are now far worse than those so severely criticised by the Whitaker Committee in 1985. We can see this by examining the situation regarding the five key conditions listed above.

#### ***Single Cells***

When Whitaker reported, nearly all those held in prison were in single cells, although the report noted that a limited degree of ‘doubling up’ had begun in Arbour Hill Prison and in Cork Prison. However, the Whitaker Committee was insistent that people in prison were entitled to single cells.

In the years since the Committee reported, Irish prison authorities have abandoned this basic condition in both policy and practice. *Today, 60 per cent of prisoners must share cells,*<sup>viii</sup> and this sub-standard arrangement is aggravated by excessive lock-up times and inappropriate sanitation.

#### ***Toilet Facilities***

The Whitaker Committee saw it as elementary that those in prison should have ‘ready access to toilet facilities at all times’. From the general tenor of its report, it is reasonable to assume that the Committee envisaged *proper toilets* that could be *used in private*. This is not how things are today. Some 20 per cent of all those in prison in Ireland (about 850 men) are required to ‘slop out’, i.e., urinate and defecate in buckets or other containers that must then be emptied elsewhere at unlock time.

The Irish Prison Service, in its Strategic Plan 2012–2015, has committed itself the provision of in-cell sanitation in all locked cells, and thus to the ending of slopping out.<sup>ix</sup> This is

obviously a welcome development. However, while the situation regarding slopping out is well-known, and has been widely condemned, there is much less public awareness of the humiliating and degrading arrangements that are the lot of a much greater number of people in prison. In the words of the Minister for Justice and Equality, 1,885 prisoners are ‘required to use normal toilet facilities in the presence of others’.<sup>x</sup> This amounts to about 44 per cent of the prison population. This situation arises, of course, from the prevalence of shared cells, very few of which have separated toilets. Something of this reality is conveyed by the Inspector of Prisons, who describes the implications for women in Limerick Prison of having to share a cell that is less than nine square metres:

*The toilets, while screened from the door, are not otherwise screened. The toilets are not covered. I have observed food trays and towels being used as toilet covers. When there is more than one prisoner in a cell a prisoner attending to her sanitary or washing requirements does so within feet and in full view of her fellow prisoner. The situation is far worse when there are three prisoners in a cell.*<sup>xi</sup>

We can say, therefore, that elementary standards of dignity and decency (and often hygiene) are affronted by the sanitary arrangements currently in place for a majority of people in prison in Ireland today: *two out of three are required to either ‘slop out’, or attend to sanitary requirements right in front of others, or both.*

### ***Out-of-Cell Time***

The effects of both cell-sharing and undignified sanitary arrangements are greatly worsened by the extremely lengthy lock-up times imposed on the vast majority of those in prison in Ireland. At the time the Whitaker Committee reported, most prisoners were locked up for sixteen hours a day. The Committee saw this as ‘excessive’, and said that people in prison should be out of their cells for ‘at least 12 hours’ each day.<sup>xii</sup>

However, for the great majority of prisoners this 12-hour minimum out-of-cell time was not to be and, for them, matters have, in fact, worsened, not improved. The eight hours out-of-cell time, which had been the norm, has been eroded: now, out-of-cell time is only six or seven hours, in practice. Moreover, a significant number of people in prison experience an especially severe degree of confinement, being locked up in cells for over 18 hours, and in some cases for up to 23 hours, a day. The majority of these are ‘protection prisoners’, who are considered to be under threat or at risk were they to remain among the general population of the prison.<sup>xiii</sup> On 21 November 2011, 364 prisoners were locked up in excess of 18 hours a day, 178 of whom were locked up for 23 hours or more.<sup>xiv</sup>

### ***Access to Structured Activities***

The Whitaker Committee wanted all people detained in prison to have access to a full day’s structured activity (such as education, work, training, welfare and psychology services), so as to constructively use their time and as part of ‘personal development’ programmes. While staffing and facilities for these services have expanded since 1985, the increases have not, in general, matched the enormous surge in the prison population. In addition, lengthier lock-up



times, an inordinate emphasis on ‘security’ and, in particular, severe segregation in most prisons have seriously hampered access to these services for great numbers of people in prison.<sup>xv</sup>

### ***Contact with Family and Friends***

The Whitaker Committee saw no reason why most men and women in prison should not have reasonable means of keeping in contact with those close to them on the outside. This included ‘freedom to write and receive letters without censorship’ and to make telephone calls.<sup>xvi</sup> (Were the Committee reporting today, it would presumably include access to email contact in its list.) The reality is, however, that the level of contact with the outside world envisaged by the Committee does not happen in Irish prisons.

Whitaker also envisaged ‘liberal visiting arrangements’ with ‘maximum allowance of personal contact’, especially for family visits. Again, the reality today is very different. The inadequacy of the visiting arrangements in many Irish prisons is conveyed by the Report of the Committee for the Prevention of Torture following its visit to Ireland in 2010. The Report said in reference to Cork Prison:

*The visiting arrangements in Cork Prison are totally unsuitable. Up to 12 prisoners were placed shoulder to shoulder on one side of a wide table running the length of the room communicating with two or three visitors each on the other side of the table. The table was fitted with glass partition (some 15cm high) and conversations were conducted with raised voices as visitors and prisoners competed to be heard; the resulting cacophony of sound can easily be imagined. Prisoners were forbidden to have any physical contact with their visitors, including with children. Those who defied the ban were subject to a disciplinary punishment. Such a systematic ban on physical contact between prisoners and their families, in particular their children, is unreasonable, given the search procedures in place.*<sup>xvii</sup>

In their response to this criticism, the Irish authorities baldly stated: ‘the Irish Prison Service does not intend to amend the policy with regard to screened visits’.<sup>xviii</sup>

### **The Principle of Single Cell Accommodation**

John Lonergan, former Governor of Mountjoy Prison, makes the case for the importance of single cell accommodation when speaking about the detention of women in the Dóchas Centre:

*Doubling up in single rooms seriously erodes the values promoted in the centre – women having privacy, their own space and above all personal safety. If you are in prison and you have to share accommodation with another prisoner, you are never on your own, not for a minute. People crack up when they don’t have their own space.*<sup>xix</sup>

The need to have one’s own safe space applies equally to male prisoners, as I’m sure John Lonergan would agree. Requiring men or women in prison to share cells degrades individuals

and fosters stress, violence and drug abuse. Peter McVerry speaks of personally knowing over forty young men who acquired a drug habit in prison, directly as a result of being forced to share cells with drug-users.<sup>xx</sup>

Problematic prison conditions tend to reinforce each other. It is for reasons such as these, as well as regard for people's dignity and health, that Whitaker and the Council of Europe insist on single cells. The Department of Justice also previously aspired to having single cells for all – at least up until the mid-1990s. By that time, about 28 per cent of those in prison were obliged to share cells.<sup>xxi</sup> The Department's 1994 policy document, *The Management of Offenders*, spoke of the need to provide about 300 additional places to eliminate the 'doubling up' that was then occurring, and it envisaged a 50 per cent reduction in this doubling up as a 'defensible five year target'.<sup>xxii</sup> Clearly, at that point the Department still subscribed to the principle of single cell accommodation.

However, the aspiration to this basic standard was abandoned by prison authorities with the construction in the late 1990s of Cloverhill Prison. In its *Report for 1999 and 2000*, the Irish Prison Service refers to the opening of this, 'the State's first-ever dedicated facility for remand prisoners', and states that: 'The Prison has accommodation for approx. 400 prisoners in a combination of single, double and triple cells' (emphasis added).<sup>xxiii</sup> Since then, the assumption that doubling-up is acceptable has been a feature of most prison planning, as is evident in new facilities in Castlerea, Wheatfield, Midlands and Limerick prisons, and Ministers for Justice and the Irish Prison Service now routinely speak of prison 'spaces' rather than cells.

In the official announcement at the end of February 2012 of a new unit to be built on a site adjacent to the existing Cork Prison, the Minister for Justice and Equality referred to the provision of 'a new, modern 250 space prison' which would 'eliminate the practice of prisoners having to slop out [and] provide adequate and suitable accommodation for all prisoners in accordance with our national and international obligations ...'.<sup>xxiv</sup>

However, the announcement gave no indication that the new prison would have as the norm single-cell accommodation – as would be required to meet international standards. On the contrary, the official announcement stated that the decision regarding Cork Prison was based on a report on options for replacing or redeveloping the prison, prepared for the Minister by the Irish Prison Service, which suggested that the most feasible option would be the construction of a 150 cell prison near the existing building. In other words, the proposed 'new, modern' Cork Prison will, it seems, provide single-cell accommodation for, at most, 50 of the 250 people to be detained there.<sup>xxv</sup> Thus have sub-standard arrangements become endemic in the Irish prison system.

## Reports of the Inspector of Prisons

The current Inspector of Prisons, Judge Michael Reilly, has made some trenchant and incisive criticisms of the prison system. He has been especially critical of, for example, overcrowding, slopping out, and the inadequacy of complaint and investigation procedures.

However, in outlining the specific standards which the Irish prison system should be expected to meet, the Inspector of Prison has in some instances compromised on the clear and basic standards set out by the Council of Europe (and reflected in the Whitaker Committee Report). This is of all the more concern because both the Irish Prison Service and the Minister for Justice have been citing these lower standards to justify their policies, while ignoring the standards of the Council of Europe (in, for example, the European Prison Rules). It must be remembered that these Council of Europe standards are *minimum* requirements, intended to have application if a large number of countries, with varying levels of economic development.

In particular, reports of the Inspector of Prisons have set significantly lower standards for prisons in relation to the first three of the five Whitaker ‘basic living conditions’ described above – that is, *single cell occupancy*, *sanitation arrangements*, and *out-of-cell time*.

In addition, the standards set out have little to say about another Whitaker condition, detailed above, pertaining to visiting arrangements and the need to maintain family contact.

Furthermore, while reports by the Inspector of Prisons have been critical of a tendency to increase the number of spaces provided in prisons without a corresponding increase in services and activity, they have not given sufficient attention to the fundamental problems arising from *the pattern of prison development* in Ireland in recent years. This has resulted in a prison system now dominated by large prisons, including some accommodating over 600 people. There are serious negative implications arising from such a pattern of development, including an inevitable tendency to a ‘one-size-fits-all’ approach to security, and a need to provide for the segregation of different groups, the consequences of which include the likelihood of curtailed access to structured activity such as education and work training.<sup>xxvi</sup>

Some specific instances of where the proposals of the Inspector of Prisons appear to go below the standards agreed by the Council of Europe will be now be explored, drawing mainly on the substantial document, *The Irish Prison Population – An Examination of Duties and Obligations Owed to Prisoners*, issued in 2010.<sup>xxvii</sup>

### ***Shared Cells***

Perhaps it is understandable that the Inspector of Prisons, facing the appalling conditions in many Irish prisons, would feel compelled to lower standards and set more reachable targets for the authorities on some aspects of imprisonment – understandable, but hardly acceptable, especially in relation to the critical issue of single cell accommodation. The *Duties and Obligations Owed to Prisoners* document presents a sharp analysis of overcrowding, and correctly defines this phenomenon in a way that includes threats to safety, and the absence of appropriate services and regime. In relation to cell accommodation, however, it is stated that:

*As a general principle I have concluded that best practice in Ireland should be that cell sizes should conform to the following sizes:-*

- (a) For single occupancy – 7m<sup>2</sup> with a minimum of 2m between walls. Such cells should have in-cell sanitation. It would be preferable to have the sanitary facilities screened.*
- (b) For each additional prisoner – an additional 4m<sup>2</sup> (Example: 2 prisoners – 11m<sup>2</sup>, 3 prisoners – 15m<sup>2</sup>, 4 prisoners 19m<sup>2</sup>).<sup>xxviii</sup>*

An illustration of just how severely cramped are such spaces is provided in an article by Patrick Hume, in which he contrasts the standards proposed above with the minimum floor-space requirements for children in pre-schools. He notes that the recommended extra space for an additional adult confined to a cell for most of his or her waking hours is *less* than what regulations require for an additional child present in a pre-school for only a few hours.<sup>xxix</sup>

The *Duties and Obligations* document states that, in reaching conclusions regarding minimum cell size, account has been taken of, *inter alia*, the Irish Constitution and domestic law, international instruments and the European Prison Rules.<sup>xxx</sup> Reference is made to 18.1 of the European Prison Rules (2006), which sets out a principle that prison accommodation ‘shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene’. However, no reference is made to 18.5, 18.6 and 18.7 of the European Prison Rules, which are much more specific and tangible:

*18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.*

*18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.*

*18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.<sup>xxxi</sup>*

Thus, the European Prison Rules, like the report of the Whitaker Committee, envisage single cells being the norm, with departure from this standard only allowable in what would be exceptional circumstances beneficial to the person in prison. The Rules then add three other qualifications which would further limit such exceptions. The omission of reference to Rules 18.5, 18.6 and 18.7 in the *Duties and Obligations* document seems very strange indeed – and it leads to the document setting down requirements for cell accommodation which fall well below the European agreed minimum standards.

Even stranger is that the same omission occurs in the report of the Thornton Hall Review Group (2011), because that report purports to present a very full exposition of the European Prison Rules. Like the Inspector of Prisons, the Thornton Hall Review Group quotes 18.1 of the Rules – the general principle relating to accommodation – but then neglects to quote further and makes no mention of the single cell requirement that is clearly set out in 18.5.<sup>xxxii</sup> Neither does the Review Group make any reference whatsoever to the Whitaker Report. It is not surprising, then, that the Group came up with proposals that would result in 80 per cent

cell-sharing in the main part of Thornton Hall, and 86 per cent cell-sharing in the main part of Kilworth, if the building of these prisons were to proceed in line with its recommendations.<sup>xxxiii</sup>

### ***Shared Sanitary Arrangements***

In Brian Keenan's extraordinary book, *An Evil Cradling*, in which he tells how he was kidnapped in Beirut and held captive with John McCarthy, he vividly describes the severe unpleasantness and embarrassment they both endured when their guards failed to turn up *on one occasion* to allow them out of their cell to use a toilet.<sup>xxxiv</sup> Yet this, in one form or another, is the situation facing *most* prisoners in Ireland *every day*.

The Inspector of Prisons *does* recognise – and condemn – the inappropriateness of people, 'attending to ... sanitary ... requirements ... within feet and in full view' of each other, as can be seen in his comment on Limerick Prison, quoted earlier. However, in general, while his reports vividly and vehemently criticise slopping out, they essentially ignore the more widespread problem of people in prison being 'required to use normal toilet facilities in the presence of others'.<sup>xxxv</sup>

Given the architecture of most Irish prisons, an acceptance of cell-sharing means having to accept inadequate sanitary arrangements. Those who sleep in the same cells, and sit about together in the same confined space for the greater part of the day, have no choice but to use the toilet in front of each other. The 'screens' around toilets in a few locations, to which reference is made in some of the reports of the Inspector of Prisons, are of little benefit.

Most of us don't live in toilets. We don't eat our meals there, or study or watch TV in them. Even where there is only one person in a cell or room, the toilet facility should be separate. Only 40 per cent of all who are in prison in Ireland are lucky enough to have single cell accommodation, and of these very few have their toilet facility separated. These few are in locations such as the Dóchas Centre (and only a minority there now have single rooms) or in the new accommodation sections of Loughan House or Shelton Abbey.

### ***'The Greater Part of the Day'***

In stating that men and women in prison should be out of their cells for 'at least 12 hours' each day, the Whitaker Committee set a very clear-cut standard, although one well in advance of conditions at the time – and, as already noted, even further in advance of arrangements today. This standard, however, is eminently achievable – for example, 12 to 14 hours out-of-cell time is currently the norm for sentenced prisoners in Nordic countries.<sup>xxxvi</sup>

With such unlock time, it is then possible, even in high-security prisons in countries such as Denmark, Finland and Norway, to enable those in prison to engage in a normal, full day of work or education or both. This is generally not possible in Irish prisons today.<sup>xxxvii</sup> Such unlock periods also support 'normalisation' in that they can facilitate those in prison carrying out their own daily tasks such as cooking and cleaning. However, given the sub-standard arrangements in cells in Ireland, with most of those held in prison sharing accommodation,

and sanitation being very inappropriate, the most obvious benefit of more out-of-cell time would be to enable those in prison to get away from these conditions for longer periods.

In discussing regimes in general, the *Duties and Obligations* document cites the stipulation of the European Prison Rules that all prisoners should be offered ‘a balanced programme of activities’, and sufficient time out of cells for ‘an adequate level of human and social interaction’.<sup>xxxviii</sup> Reference is made to the concept, in the European Prison Rules, that ‘imprisonment is by the deprivation of liberty a punishment in itself’ so that regimes should not ‘aggravate the suffering inherent in imprisonment’.<sup>xxxix</sup> Furthermore, the document cites a *General Report* by the Council of Europe Committee for the Prevention of Torture which argues that *remand* prisoners should have ‘the greater part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature’, with regimes for those sentenced being ‘even more favourable’.<sup>xl</sup> Clearly, Ireland falls short of these standards in relation to the great majority of remand and sentenced prisoners.

In the *Duties and Obligations* document a chapter is devoted to describing in detail the conditions in each of the prisons in Ireland, and in these chapters there are several references to people in prison needing to be ‘out of the cells for most of the day’ (par. 8.15) or out of their cells ‘during the greater part of the day’ (par. 15.6). At first sight these references might be taken as indicating support for the Whitaker standard of 12 hours-plus out-of-cell time.

However, it becomes clear from the context, and the kind of regime which operates in practice in most of the prisons being described, that the concept of ‘the greater part’ or ‘most of’ the day envisaged here is not that envisaged in the Whitaker Report, but something much weaker and more nebulous, probably not even the major part of the waking day or of day-light hours. It appears that the current norm of about seven hours unlock time might even satisfy the criteria of the *Duties and Obligations* document. This is a far cry from what Whitaker proposed, and another disturbing example of redefining standards downwards.

## **Conclusion: Reversing the Punitive Turn**

The deterioration in prison conditions in Ireland in the past two decades, and the corresponding decline in accepted standards, should be seen in a wider context. There has been a severe hardening of attitude and policy in political and administrative fields in relation to penal matters. This has been a trend in most English-speaking countries, and is variously described as part of a ‘culture of control’ or as a ‘new punitiveness’.<sup>xli</sup>

A ‘punitive turn’ is obvious in Ireland since the mid-1990s, evident by a more than doubling of the number of people held in prison, by the worsened conditions described in this article, and by more excluding and demonising attitudes towards those who fall foul of the law and are sent to prison.<sup>xlii</sup>

The overcrowding, the poor conditions and the negative attitudes to the men and women who are in prison are all interlinked, and tend to reinforce each other. Likewise, improved conditions are most likely to be achieved by reversing the incarceration binge of recent times (through more enlightened legislation and sentencing, and the development of alternatives to



custody) *and* through a change in public and political attitudes, so that those in prison are recognised as citizens, as members of the community, as ‘whole persons’.

When it set out minimum ‘basic living conditions’ for those held in prison, the Whitaker Committee did so in a context where it also proposed serious efforts to reduce the numbers held in prison, and where it recognised the humanity, the rights and the social situations of people in prison. The policies and attitudes in relation to prisons and prisoners which are prevalent in Ireland today go very much against the grain of what was proposed in the Whitaker Report.

It is not surprising then that various Ministers for Justice and the Department of Justice have ignored this official government inquiry. It is more surprising, however, that bodies having a role in shaping and overseeing prison policy and practice, such as the Office of the Inspector of Prisons and the Thornton Hall Review Group, have so neglected the report.

The Whitaker Report, its core philosophy, and the clear standards it set out for operating prisons, merits revisiting. It offers far wiser guidance than is found in official thinking in recent times.

At the time of its publication, the Report had only a very small print run and was soon unavailable; it has never been reprinted. These are very good reasons why we should seek it out in obscure corners of libraries, and pay close attention to the policies and standards it outlined. In particular, the ‘basic living conditions’ it proposed are essential to underpin for citizens who are imprisoned elementary levels of dignity, privacy, safety, health, purposeful activity and contact with the outside world.

## Notes

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

<sup>ii</sup> *Ibid.*, p. 90.

<sup>iii</sup> *Ibid.* See pp. 13–14 and p. 61 for discussion of ‘basic living conditions’.

<sup>iv</sup> *Ibid.*, p. 13.

<sup>v</sup> *Ibid.*, pp. 13–14. Alison Liebling, while recognising the importance of such material standards, is rightly more concerned ‘with less easily quantifiable features of the prison experience, and in particular, with perceptions of justice, fairness, safety, order, humanity, trust, and opportunities for personal development’, which she calls the ‘moral performance’ of the prison (Alison Liebling, *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life*, Oxford: Oxford University Press, 2004, p. 50). However, I would contend that the material standards and the less tangible ‘moral performance’ are often closely inter-related, and have deteriorated in tandem in Irish prisons since the mid-1990s.

<sup>vi</sup> Council of Europe, Committee of Ministers, *Recommendation No. R (87) 3 of the Committee of Ministers to Member States on the European Prison Rules*, Adopted by the Committee of Ministers on 12 February 1987. (Available at: [www.coe.int](http://www.coe.int))

<sup>vii</sup> Council of Europe, Committee of Ministers, *Recommendation Rec (2006) of the Committee of Ministers to Member States on the European Prison Rules*, Adopted by the Committee of Ministers on 11 January 2006. (Available at: [www.coe.int](http://www.coe.int))

<sup>viii</sup> This information was provided in letter on 20 December 2011 by the Minister for Justice and Equality, Alan Shatter TD, in response to a written Dáil Question tabled by Ciarán Lynch TD, on 24 November 2011 (*Dáil Debates*, Vol. 747, No. 5, 24 November 2011, p. 1034, PQ 163, 36793/11). The Minister's reply provided data relating to 1 December 2011, and stated that 2,567 out of a prison population of 4,313 were *not* accommodated in a cell on their own.

<sup>ix</sup> Irish Prison Service, *Three Year Strategic Plan 2012–2015*, Longford: Irish Prison Service, 2012, p. 35. (Available: [www.irishprisons.ie](http://www.irishprisons.ie))

<sup>x</sup> Information about toilet arrangements in prisons is given in a letter on 20 December 2011 by the Minister for Justice and Equality, Alan Shatter TD, in response to a written Dáil Question tabled by Ciarán Lynch TD on 24 November 2011 (*Dáil Debates*, Vol. 747, No. 5, 24 November 2011, p. 1034, PQ 164, 36793/11). On 21 November 2011, out of a total of 4,269 people in prison, 845 had to 'slop out'; 1,885 others were required to use normal toilet facilities in the presence of others, and the remaining 1,539 were sole occupants of a cell with a normal flush toilet or had 24 hour access to toilet facilities.

<sup>xi</sup> Inspector of Prisons, *Report on an Inspection of Limerick Prison 25 November 2011 by the Inspector of Prisons, Judge Michael Reilly*, Nenagh: Office of the Inspector of Prisons, November 2011. (Available at: [www.inspectorofprisons.gov.ie](http://www.inspectorofprisons.gov.ie))

<sup>xii</sup> The Whitaker Report, *op. cit.*, p. 14.

<sup>xiii</sup> The Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality*, Dublin, 2012, p. 31. (Available at: [www.jcfj.ie](http://www.jcfj.ie))

<sup>xiv</sup> See reply to written Dáil Question tabled by Ciarán Lynch TD on 24 November 2011 (*Dáil Debates*, Vol. 747, No. 5, 24 November 2011, pp. 1034–5, PQ 165, 36794/11).

<sup>xv</sup> The Jesuit Centre for Faith and Justice policy paper on the Irish prison system, published in March 2012, analyses such shortcomings in considerable detail. See: Jesuit Centre for Faith and Justice, *op. cit.*, in particular, chapters 4 and 5.

<sup>xvi</sup> The Whitaker Report, *op. cit.*, p. 14.

<sup>xvii</sup> *Report to the Government of Ireland on the Visit to Ireland Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010*, Strasbourg: Council of Europe, 10 February 2011, par. 99, p. 48. (Available at: [www.cpt.coe.int](http://www.cpt.coe.int))

<sup>xviii</sup> *Response of the Government of Ireland to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its Visit to Ireland from 25 January to 5 February 2010*, Strasbourg: Council of Europe, February 2011, CPT/Inf (2011) 4, p. 61. (Available at: [www.cpt.coe.int](http://www.cpt.coe.int))

<sup>xix</sup> John Loneragan, *The Governor: The Life and Times of the Man who Ran Mountjoy*, Dublin: Penguin Ireland, 2010, p. 153.

<sup>xx</sup> Peter McVerry SJ made this point at the launch of the Jesuit Centre for Faith and Justice policy paper, *The Irish Prison System*, *op. cit.*, on 14 March 2012. He made the same point on RTE's 'Morning Ireland' earlier the same day. See also: Peter McVerry SJ, 'Drug Policy: Need for Radical Change', *Working Notes*, Issue 67, September 2011, p. 7. (Available at: [www.jcfj.ie](http://www.jcfj.ie))

<sup>xxi</sup> The Department of Justice 1994 policy document, *The Management of Offenders*, gives the average daily prison population as approximately 2,175 (p. 27), and states that about 300 additional places would be needed to eliminate doubling up (p. 31). It is reasonable, therefore, to estimate that some 600 prisoners – just under 28 per cent – were at that time sharing cells (*Department of Justice, The Management of Offenders: A Five Year Plan*, Dublin: Stationery Office, 1994).

<sup>xxii</sup> *Ibid.*, p. 31.

<sup>xxiii</sup> *Irish Prison Service Report 1999 and 2000*, Dublin: Irish Prison Service, p. 5 and p. 28. For a description of Cloverhill's origins and present conditions, see Jesuit Centre for Faith and Justice, *op. cit.*, pp. 50–51.

<sup>xxiv</sup> Department of Justice, 'Minister Shatter announces consideration being given to the construction of a replacement prison in Cork as part of an overall strategy to reduce overcrowding', Press Release, 29 February 2012. (Available: [www.justice.ie](http://www.justice.ie))

<sup>xxv</sup> Irish Prison Service, *Unlocking Community Alternatives: A Cork Approach*, Longford: Irish Prison Service, 2012, p. 7. (Available: [www.irishprisons.ie](http://www.irishprisons.ie))

<sup>xxvi</sup> The Whitaker Report suggested that prison size should not exceed 100. The case for smaller prisons is also set out by the Jesuit Centre for Faith and Justice in: *The Irish Prison System: Vision, Values, Reality*, *op. cit.*, pp. 37–38.

<sup>xxvii</sup> Judge Michael Reilly, Inspector of Prisons, *The Irish Prison Population – An Examination of Duties and Obligations Owed to Prisoners*, Nenagh: Office of the Inspector of Prisons, July 2010. (Available at: [www.inspectorofprisons.gov.ie](http://www.inspectorofprisons.gov.ie))



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<sup>xxviii</sup> Inspector of Prisons, 2010, *op. cit.*, par. 2.3, p. 10. The majority of cells in Arbour Hill do not meet the Inspector's minimum size for one, yet many of these have two people detained in them. Cells in E block, Portlaoise, also fail to meet this low minimum requirement for single cells. In many prisons, including Cork, Limerick, Midlands, Mountjoy, St Patrick's Institution and the Training Unit at Mountjoy Prison, large numbers of prisoners are doubled up in cells well below the minimum size for two people suggested by the Inspector of Prisons.

<sup>xxix</sup> Patrick Hume SJ, 'Overcrowding and Cell Capacity in Irish Prisons', *Working Notes*, Issue 67, September 2011, pp. 16–22. (Available at: [www.jcfj.ie](http://www.jcfj.ie))

<sup>xxx</sup> Inspector of Prisons, *op. cit.*, par. 2.4, p. 10..

<sup>xxxi</sup> Council of Europe, European Prison Rules 2006, *op. cit.*

<sup>xxxii</sup> A major flaw of the report of Thornton Hall Review Group is the serious disconnect between the lofty principles outlined in the beginning of the report and the Group's concluding proposals. See *Report of the Thornton Hall Project Review Group*, Dublin: Department of Justice, July 2011. (Available on [www.justice.ie](http://www.justice.ie)) For a fuller critique of this report, see Kevin Warner, 'An open policy for prisons would serve us all better', *The Irish Times*, 11 August 2011.

<sup>xxxiii</sup> The Thornton Hall Review Group recommended there should be '300 cells capable of accommodating 500 prisoners' in the main part of the proposed Thornton Hall prison (p. 68). This would mean there would be 400 (80 per cent) sharing in 200 cells and just 100 in single cells. For the main part of the proposed prison at Kilworth, Co. Cork, the Group recommended 200 cells accommodating 350 prisoners (p. 70). This would result in 300 (86 per cent) sharing in 150 cells and only 50 in single cells.

<sup>xxxiv</sup> Brian Keenan, *An Evil Cradling*, London: Hutchinson, 1992, pp.113–14.

<sup>xxxv</sup> This is how the Minister for Justice and Equality, Alan Shatter TD, describes the situation. See reply to written Dáil Question tabled by Ciarán Lynch TD, 20 December 2011, (cf endnote 10).

<sup>xxxvi</sup> See Kevin Warner, *Resisting the New Punitiveness? Penal Policy in Denmark, Finland and Norway*, (unpublished PhD thesis), especially prison descriptions in chapters 5, 6 and 7 2009. (Available at: [www.epea.org](http://www.epea.org))

<sup>xxxvii</sup> See, for example, the Jesuit Centre for Faith and Justice, *The Irish Prison System*, *op. cit.*, especially the sub-section, 'Work and Work-Training', pp. 66–67.

<sup>xxxviii</sup> European Prison Rules 2006, n. 25.1 and 25.2.

<sup>xxxix</sup> European Prison Rules 2006, n. 102.2

<sup>xl</sup> Council of Europe, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT Standards*, Strasbourg: Council of Europe, CPT/Inf/E (2002), n. 47, p. 17.

<sup>xli</sup> See David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press, 2001 and John Pratt *et al* (eds.), *The New Punitiveness: Trends, Theories, Perspectives*, Cullompton: Willan Publishing, 2005.

<sup>xlii</sup> See Kevin Warner, "'Valued Members of Society'? Social Inclusiveness in the Characterisation of Prisoners in Ireland, Denmark, Finland and Norway', *Administration*, Vol. 59, No. 1, May 2011, pp. 87–109.

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## Negative, miserly, punitive

*Analysis by Kevin Warner*

[This article appeared in *The Irish Examiner* on Tuesday, July 31, 2012]

THERE has been much misleading 'spin' around several recent initiatives in the prison system.

This applies, in particular, to the announcement by the Irish Prison Service that it is to introduce a range of 'gratuity' payments for those held in prison, supposedly to reward good behaviour while punishing those who are disruptive or refuse to engage with rehabilitative services.

In reality, what the prison service proposes is to significantly cut, for all prisoners, what is already a very meagre payment. But it is more punitive towards some rather than others.

At present, all prisoners receive a daily gratuity of €2.35 (€16.45 per week). This is meant to cover the purchase of personal items like soap or toothpaste, and whatever else those in prison choose to buy from prison shops, such as sweets, cigarettes, batteries for radios, or newspapers. It is already a pathetically low payment, considerably lower, for example, than the allowance of €19.10 judged barely sufficient and paid to asylum seekers housed in direct provision centres.

A very high number of men and women in prison do not have any other means, and so are left in very straightened circumstances. As prison governors and others working in the system know, this results in their families feeling great pressure to supplement the gratuity by lodging money with the prison on behalf of their son, brother or partner.

Many families can ill afford to make such payments, especially when they may have a further financial burden to carry in travelling long distances to make prison visits. For such families, the financial pressure is about to be worsened considerably.

The present daily allowance of €2.35 is to be cut for everyone, to either an 'enhanced' rate of €2.20, or a 'standard' rate of €1.70, or a 'reduced' rate of €0.95. In addition, prison authorities will also now deduct a further 15% from these rates towards the cost of television in cells and phone calls. What a person in prison gets at present will be cut by 28% on average. The prison service expect to save close to €500,000 per annum through these cuts.

I worked for many years as national co-ordinator of prison education. At one point, over 10 years ago, I was a member of a Department of Justice working group set up to look at prisoners' gratuities. I was very struck at that time by the vivid accounts, given by the two governors on the working group, of the poverty experienced by many in prison, the pressure experienced by their families and the dismal circumstances under which many leave prison. Thousands walk out of prison gates carrying their few belongings in black plastic bags, broken in spirit, and stony broke.

The reason why I, as head of prison education, and a representative of the Work and Training Sector, were on this working group was because senior Department of Justice management were very mindful of a requirement in the European Prison Rules that different activities in prison (such as education, work or treatment) should have the same status and level of payment. The thinking behind this rule is that whatever activity, or combination of activities, are chosen, they should be the ones that meet the needs of the person in prison.

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They should be the ones that help that person cope with imprisonment, develop skills and aptitudes, and prepare as well as possible for resettlement in the community.

The new regime breaches the Council of Europe's European Prison Rules in introducing differential payments as between those engaged in work in prison, who are to get €1 a day extra, and those in education or treatment. The philosophy of rehabilitation and reintegration has been replaced by the philosophy of the workhouse. One wonders also what is to be paid to those confined to their cells for 23 hours a day, supposedly for their own 'protection'.

The director general of the Irish Prison Service has said: "We want to encourage prisoners to join the programmes, the education, the supports, take the drug counselling so we can create a safer society."

So, why pay more to those who work in cleaning or maintenance?

I would also strongly contest the suggestion in this statement that men and women in prison need financial pressure to egg them into education, training or counselling.

Over the years, I have found an enormous demand among prisoners for such services, and money had nothing to do with this.

The new arrangements raise further fundamental questions. The image conveyed is that adequate services and activities are there, readily available. This sadly is not the case, especially in the larger prisons.

Hundreds of prisoners are locked in cells for over 20 hours, even as many as 23 hours, each day. They can have no meaningful involvement in programmes. Moreover, the access of the average prisoner to services such as education and training can also be very limited, due to lock-up times of close to 17 hours a day, and due to the severe segregation now affecting all the larger prisons. Recently, over 80 prison officer posts in work-training were vacant. And the funding for some of the most successful prison education programmes (such as the Open University) has been drastically cut in the last few years.

It is to the credit of this government that, when they came into office, they reversed some of the most severe cuts affecting the poorest, such as restoring the minimum wage and exempting the lowest paid from the universal social charge. They have also held the line on basic welfare rates.

However, the decision to severely reduce prisoners' gratuity represents a failure to maintain this policy of shielding the poorest. It also suggests a negative, miserly and punitive way of thinking about those of our citizens held in prison.

\* Dr Kevin Warner was national co-ordinator of prison education from 1979 to 2009, when he retired. He contributed to the recent policy paper of the Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (available on [www.jcfj.ie](http://www.jcfj.ie)).

## **Submission to the Sub Committee on Penal Reform**

### **Personal details**

I have been a lecturer in Sociology for the past 30 something years in University College Cork and have lectured and researched on the issue of crime over this period. I am the author of many articles and the first sociology text on crime in Ireland published by Cork University Press in 1996 and currently being revised. A full research profile can be found at <http://publish.ucc.ie/researchprofiles/A024/cmccullagh>

In the 1980s I produced a report along with Prof. Powell for the Youth Foundation on alternative ways of dealing with young offenders. I was also on the board of the Cork Auto Crime Diversion project for ten years.

### **Submission**

1. For me a key consideration is what this committee expects to find that no other one has? For a start it is probably asking the wrong question. What is there we don't know about penal reform in Ireland. The issue has been in the public domain since at least the 1970s. It began with a report from a group chaired by Sean MacBride and – if memory serves me Joe Costello was a member and the Department of Justice branded it the work of subversives. Continue on through the 1980s with the report of the Bishops Committee on Social Welfare and the first official investigation of the prison system, the Whitaker Committee. Follow on through the 1990s and into this century and there has been no shortage of reports and proposals for reform, a number of them produced by Committees of the Dail.

Where do we end up? With the letter from the Chaplains of Mountjoy Prison system on the appalling state of the prison and yet another set of well worked out proposals, this time from Peter Mc Verry.

These share two things in common. One is that they all advocate a reduction in the prison population and see alternatives to custody as the means through which this can be achieved. The second thing is that they have all largely been ignored and have failed to have significant impact on how the penal system operates. Despite all of the reports and suggestions the prison population has risen fairly consistently and it would appear inexorably since the 1970s.

So why has there been such a level of failure and what can this committee do that the others have failed to achieve? The issue is not a shortage of ideas and information, any basic text on prison reform will tell you how to do it. The issue is the lack of political will to change the system and the fear of tabloid coverage and talk show fascism if radical proposals are made.

2. This is not to say that there haven't been a plethora of projects set up with some, generally vaguely stated, aim of diverting from prison, reducing offending or tackling drug use. Indeed the claim to achieve these has become a necessary part of any proposal to provide recreational resources in deprived and not so deprived communities. Few of these proposals have been systematically evaluated in terms of their effect on offending but they have added important facilities to many areas. The overall impact of such alternatives is what criminologists characterize – with a certain lack of verbal felicity – as bifurcation. This is where the prison population increases at the same time as the number of people involved in alternatives to custody also increases. It is one of the classic ironies of social control. The attempt to reduce the prison population has had little impact on the numbers in prison but it has increased the number involved in alternatives to prison. It is also known as “widening the net”.

We now know a fair amount about how this happens.

Traditional models of diversion have looked at the role of the courts and their sentencing strategies and said that if we changed these we could reduce the prison population. What they ignored is the fact that when such alternatives are offered the police may be more willing to prosecute minor offenders (so called soft end offenders)– that previously they would have released. The Gardaí, for example, charge less than half of the number they arrest so they have flexibility. They may put people into the system because of a belief that access to such projects would do them some “good”.

There is also the entirely human thing that many projects find it easier to work with “soft end” offenders. They tend to be more pliable and hold out more likelihood of success. So-called “hard end” offenders are more challenging and difficult and success can be harder and less immediate. Some studies suggest that the impact of non-custodial intervention on their criminal careers is not immediate; they may continue to be involved in crime. But the crime can be of the more minor variety and such criminal careers peter out rather than end with a satisfying and readily documented finality.

So the key criterion for evaluating the utility of any alternative to custody has to be its success in targeting “hard end” offenders. Setting up projects to deal with public order offences is a waste of time and money as many such offenders are not repeat ones and those that are will come to police attention for more serious offences. Setting up projects to deal with those involved in serious property crime is more useful. The situation in relation to drugs is more complex.

We also need to assess the value of such projects not just on an individual basis but also in terms of the impact that they have on the overall size of the prison population. Local and contextual factors are important in the

success or failure of individual projects but the overall success of a policy of alternatives to custody has to be a reduction in prison numbers.

3. A factor that must also be considered here is that part of the appeal of alternatives to custody is that they are supposed to be cheaper than prison. This is probably not true. The average cost of a prisoner is high but the marginal cost of putting another person in prison isn't quite that significant. The manner in which the apparent cheapness of such projects has been guaranteed is through the use of an "arms length" strategy by the Department of Justice. This involves funding local projects but running them through voluntary committees. These may be useful in involving communities but they raise the usual questions of who in communities gets involved and they seldom have young people on them. They also mean that staff have no career structure or career progression or indeed the kind of career security that is necessary to do the kind of work that they do. That fact that workers in such projects invest the level of energy and commitment that they do is a tribute to their idealism but the level of staff burnout and turnover is high. If we want such people to work with "hard end" offenders we have to reward them appropriately.
4. A final consideration in this short submission is the wider question of how prison systems change. Three factors are important. One is when prisoners themselves revolt against prison conditions and then something has to be done. The second is when the courts start imprisoning middle class offenders, a factor of some significance in the development of open prisons and other alternatives in United States. This is however unlikely here as the call for the use of imprisonment with corporate criminals is as old as the call for the reform of the prison system. There may be a few tokenistic prosecutions but don't expect a significant increase in prisoners in Mountjoy with Dublin 4 as their address in the near future.

The third factor is probably the key one. Some prison reform in other jurisdictions has occurred when the judiciary has closed prisons as a result of human rights abuse, overcrowding and ineffectiveness. In many cases this has had little impact on crime levels but it has produced imaginative solutions, often community based. The area of juvenile justice is a case in point.

It is also one of the least observed but most significant facts about the decline in crime in New York that contrary to public and media perceptions it has been accompanied by a decline in incarceration, a decline made possible by the development of imaginative alternatives.

So I would suggest that the most concrete thing that the committee can do is to call for the immediate closure of Mountjoy Prison. Though I suppose you could be liberal about it and give them a year to do it. Remember if Mountjoy was a hospital and had the same record of failure

to “cure” people and where patients left with more illnesses than they went in with, it would have been closed long ago.

But then Mountjoy is not unique. The first prison in the modern sense of the term was set up in the United States in 1776 and was judged a failure within a decade of this. The record of the curative impact of prison hasn’t increased very much since then.

## An Assessment, Monitoring and Outcome Measurement System for Offender Rehabilitation and Reintegration Programmes

### *A submission to the Sub-Committee on Penal Reform*

**Summary:** The development of community based services for offenders has not always been marked by adherence to best practice based on empirical evidence. Expediency, personal conviction and a sincere desire to do “something” to respond to anti social behaviour and criminality in our communities are historically more common drivers. This submission to the Sub-Committee on Penal Reform explores some of the contemporary research and evidence relating to the efficacy of various approaches used in implementing offender rehabilitation programmes. The author outlines a particular model at work in the Cornmarket Project. Mindful of current economic constraints and the increased reporting requirements placed on organisations in receipt of state funds, the submission emphasises the importance of having in place an easy to use, valid and reliable outcome measurement system for programmes dealing with offender reintegration and rehabilitation.

**Key words:** Cornmarket, COAIM, functional analysis, logic model, outcomes, rehabilitation, recidivism, criminogenic , behaviour change, efficacy, motivation.

### Introduction

The Cornmarket Project was established in 1999 as a multi -agency response to criminality and substance misuse issues. The project is based in the county of Wexford which has a population of 145,000 people and is located in the south east corner of Ireland, about one hundred and twenty kilometres south of Dublin. The project deals with approximately two hundred and fifty individual clients per year, one hundred and seventy of whom on average will be direct referrals from the Probation Service. The project is under the umbrella of Wexford Local Development (WLD)<sup>1</sup>, the local development company in Wexford mandated to deliver rural development, social inclusion and community development programmes on behalf of the Irish government.

The Cornmarket project receives core funding from the Department of Justice and Equality, through the Probation Service. Additional funding is provided by FAS, the Irish state training agency, through the Community Employment Programme<sup>2</sup>, Department of Education through the local Vocational Education Committee<sup>3</sup>, the Department of Health, through the HSE<sup>4</sup>, the Department of the Environment, Community and Local Government<sup>5</sup>, through the WLD and other state agencies and departments. The steering committee comprises of representatives from the funders, An Garda Síochána, local authorities and the local community.

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<sup>1</sup> [www.wld.ie](http://www.wld.ie)

<sup>2</sup> <http://www.fas.ie/en/communities/community+employment/default.htm>

<sup>3</sup> [www.cowexfordvec.ie](http://www.cowexfordvec.ie)

<sup>4</sup> [www.hse.ie](http://www.hse.ie)

<sup>5</sup> [www.envirom.ie/](http://www.envirom.ie/)

<sup>5</sup> [www.welfare.ie](http://www.welfare.ie)



Cornmarket has a multi-disciplinary approach in providing a continuum of services for medium to high risk offenders. The programmes delivered include one-to-one behaviour change counselling based on individualised action plans, a targeted offender outreach service, a daily structured open access/drop-in service dealing with advocacy and case work, a six month Behaviour Change and BTEI (back to education initiative<sup>6</sup>) programme and a 12 months training, reintegration and progression programme. The programmes are delivered in the four main urban areas of County Wexford; Wexford Town, Gorey, Enniscorthy and New Ross. The Cornmarket Project operates six days a week and also provides two late night services to facilitate those on probation, in employment or engaged in main stream training or education.

The services are managed by the project coordinator and delivered by a team of twelve qualified staff members with additional support from part time sessional workers recruited on the basis of programme needs. Financial management and governance is provided by WLD. Because Cornmarket is under the aegis of WLD, clients have access to other WLD services such as guidance and employment services, early school leaver supports, traveller community services, further training and education opportunities, grant aid and child care provision.

### **The Context of the Project**

The project has an outcomes focussed, community facing and client centred approach. Cornmarket's primary goal is to work in collaboration with the Probation Service and other partners to ensure positive change in offenders and a reduction in recidivism. The methodologies used are underpinned by evidence-based behavioural interventions to enhance client motivation for successful participation in the rehabilitation and reintegration programmes delivered by the project. This approach acknowledges individual difference in terms of age, gender, ethnicity and culture, problem severity, recovery stage, and level of supervision needed. Offenders also respond differently to different treatment and rehabilitation approaches.

A review of the first ten years of the project in 2010 (The Cornmarket Project, Ten Years Responding to Drugs and Criminality in Wexford, WLD.) emphasised the importance of a strong professional working relationship between the project and the Probation Service. This relationship is reinforced by regular joint meetings to discuss and monitor each offender's progress using a case management approach. Cornmarket adds value to the work of the Probation Service by addressing issues of offender motivation, problem solving and skill-building to diminish criminal behaviour and enhance resistance to substance misuse.

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<sup>6</sup> <http://www.education.ie/home/home.jsp?pcategory=11397&ecategory=14965&language=EN>

Only a small percentage of those requiring intervention for drug and alcohol related problems seek help voluntarily (Redonna, K, et al. 2009). In light of this, the Criminal Justice System provides a unique opportunity to intervene and disrupt the cycle of substance misuse and crime in a cost effective manner.

Findings (Pearson and Lipton, 1999, Leukefeld et al. 2002, Knight and Farabee, 2004, McCollister et al. 2004) show that providing comprehensive substance misuse treatment and rehabilitation for criminal offenders works; reducing both substance abuse and recidivism.

Given the increasing prison population, attributable in large part (O'Mahony, 2008) to substance misuse related offences accompanied by high rates of recidivism (Wexler and Fletcher, 2007) it is a matter of public health and safety to continue to make substance misuse treatment and rehabilitation a key component of the Criminal Justice System. Furthermore, addressing the reintegration needs of substance misusing offenders is critical to reducing overall crime and other drug related societal burdens, such as primary health care costs and dealing with the consequences of anti social behaviour in communities. Research has shown that substance misuse treatment and rehabilitation can be effective even when an individual enters it under legal mandate (National Institute on Drug Abuse, 2007)

### **Key Operating Principles**

The work of the Cornmarket project is underpinned by empirically validated, evidence based methodologies. In particular, the use of Motivational Interviewing (Miller and Rollnick, 2002) Cognitive Behavioural Therapy (Milkman and Wanberg, 2007) the Stages of Change Model (Prochaska and DiClemente, 1984) and Structured Relapse and Recidivism Prevention techniques (adapted from Herrie and Watkin-Merek, 2006) are important in promoting positive behavioural change and reducing recidivism. In their work on effective responses to offending, Brown, et al.(2011) make the point that critiques of recent and past intervention programmes for offenders have repeatedly commented on the uneven and poor quality of implementation, the ambiguity or absence of a theoretical rationale and conceptual base, and flawed evaluations. They further state that the lack of a clear rationale makes it likely that a programme will become a disconnected set of activities, with problems such as:

- services provided, sanctions and incentives used, and community resources tapped, all in an ad hoc and fragmented fashion
- individual staff pursuing their own direction and inclinations
- target-group criteria referrals and selection not matched to the most appropriate programme or person

- a lack of coherence and continuity between programme components, features and processes
- offenders major difficulties or needs not being met, leaving gaps in service or wasted opportunities (Brown et al. 2011)

Brown and her colleagues also identify a series of principles guiding the design of effective programmes and interventions. These are integral to the work of the Cornmarket Project and include:

- 1) that the level of service intervention should match not only the client's risk level i.e. medium to high, but also their stage of readiness and willingness to change.
- 2) interventions should focus on those modifiable aspects that contribute most highly to the client's continued offending behaviour based on the ten criminogenic factors or dynamic risk areas listed later on in this article.
- 3) it is imperative to match programmes to the learning style and capability of the client so as to increase the likelihood that he or she will respond in a positive fashion.
- 4) programmes located in the community yield more effective outcomes. This is not to dismiss institutional or residential based work, but reflects the need to apply the skills learnt in real life.
- 5) programmes should be (a) multimodal – focusing on more than one antecedent to problematic behaviours (b) skills oriented – such as problem solving and developing social and coping skills and (c) utilise approaches which draw on empirically validated research. This is known as the treatment and rehabilitation modality principle,
- 6) programmes should adhere to best practice methods by including monitoring and review during and after programme delivery. This is to ensure consistency, and to maintain quality assurance (the fidelity principle).

### **Outcome Measurement**

Over the past few years there has been an increased emphasis on having effective assessment, monitoring and outcome measurement systems in place for organisations in receipt of state funds. Although these are worthy and necessary, the implementation of such requirements presents a real challenge to many organisations including those delivering rehabilitation and reintegration programmes for offenders. Most organisations, both statutory and non-statutory, are accustomed to evaluating programmes and recording outputs but are relatively new to the concept of outcome measurement. The integration of a workable, valid and reliable system into their current working environment poses a distinct challenge to many services. However, no single assessment or outcome measurement system is universally accepted as the best (Penna, 2011). While acknowledging the need

for thorough and accurate information, research literature (Madan, R, 2007) on this topic suggests that comprehensiveness needs to be balanced by brevity to ensure routine application and compliance (Madan, R, 2007)

The literature points out that the process of measurement is as important as the outcome measure itself (Hatry, van Houten, Plantz and Greenway, 1996). In accepting this premise we need to be mindful of:

- a) using an approach that involves clients in a meaningful way in a system that can potentially have a significant impact on their lives
- b) ensuring that the chosen approach can be used in an easy and consistent way by staff and facilitators and
- c) putting in place a system that can be relied on to satisfy the informational needs of funders and a range of other stakeholders (Delaney, 2006)

In considering the overall effectiveness of assessment and outcome measurement systems, we also need to be mindful of the need for the non-statutory sector to integrate their efforts more closely with statutory providers of services. For this to work, we need to develop an integrated case management approach to our work. This presents a particular challenge that must be discussed and overcome at a local level. The COAIM System can help to facilitate this development.

### **The COAIM System**

COAIM is a locally developed assessment and outcome measurement process; the acronym COAIM, stands for Change Outcome and Impact Measurement. CO is a prefix meaning 'with, together, in association', and AIM in this context means 'to achieve something'. The COAIM System emphasises the fostering of a collaborative approach between the facilitator and client. It uses the generic terms "client" to indicate programme participant, service user, substance misuser, customer, offender, drug abuser, alcoholic, patient etc., and "facilitator" to mean key worker, project worker, housing officer, counsellor, therapist, drugs worker, case manager, probation officer, social worker, doctor, nurse, outreach worker, psychologist etc.

The COAIM System comprises a set of tools for assessment, monitoring and outcome measurement incorporating Theory of Change (McKinnon et al., 2006) and Logic Model (Kellogg Foundation, 2004) methodologies with Motivational Interviewing (Miller and Rollnick, 2002) and the Stages of Change Model (Prochaska and DiClemente, 1984) to provide a user friendly, reliable system. Through the use of motivational interviewing strategies, the COAIM System facilitates and enhances the development of positive change with clients.

One way of describing outcome measurement is as a process that involves: *Who* receives *what* from *whom* at what *cost* and with what *effect*. However, why develop an outcome measurement system that only meets informational needs? Why not ensure that such a system can also be used for assessment and monitoring while enhancing the likelihood of positive change with our clients?

With this challenging brief as the blueprint, the COAIM System was developed in 2006 (Delaney, 2006) based on a set of graphic and easy to use tools to assess, monitor and measure outcomes while enhancing the likelihood of a reduction in recidivism amongst offenders.

A strong driver for reliable assessment, monitoring and outcome measurement systems has been to satisfy funders and other decision makers. The COAIM System also recognises the importance of the client perspective and involvement in the measurement of their participation in rehabilitation and reintegration programmes. It is hard to ignore the issue of system integrity if client input to the measurement of programme efficacy is excluded. Therefore, the COAIM System challenges conventional methods of measuring programme outcomes where the client is the passive recipient of programmes and services and the facilitator decides how beneficial those services are or were for the client! (Delaney, 2006).

The COAIM System ensures consistency and maximises effectiveness, by stipulating the use of motivational interviewing by facilitators, (Delaney and Weir, 2004, McMurren, 2009,). In addition, all problem areas or antecedents for the client are connected and worked on, ensuring a genuine holistic approach. The COAIM System promotes a case management approach; a “joined up” way of working among the programmes, agencies and departments dealing with offenders.

The COAIM System provides the facilitator with a framework within which to engage the client in a planned, collaborative yet directive manner. This approach optimises the potential for positive outcomes and ensures effective mapping and measurement of programme and service delivery. Properly implemented, using the tools of motivational interviewing, the approach creates the circumstances whereby the client develops the self-efficacy necessary to ultimately take ownership of continuing positive change at an individual level (McMurren, 2009).

### **Background to the COAIM System Tools**

All organisations in receipt of state funds are now, or will be, required to base their service level agreements and business plans on some version of the logic model approach i.e. they are expected to set out how an intervention such as a project is intended to produce particular results. The development of the COAIM System in 2006 as a way of measuring outcomes was based on the use of a programme theory (Rossi, Lipsey and Freeman, 2004) approach to working with offenders and

substance misusers. This theory identifies the link between an intervention and the intended or observed outcomes. (Funnell, S, 2011).

Using programme theory (Rossi, Lipsey and Freeman, 2004) as a way of ensuring effective measurement of outcomes is not a new concept. Programme theory or logic models set out how an intervention (such as a project, a program, or a policy) is understood and is intended to produce particular results.

The United Way, a non-profit organisation in the USA, published a guide to developing and using models for outcome measurement (Hatry, van Houten, Plantz and Greenway) in 1996. Moreover, the Kellogg Foundation produced a logic model guide (W.K.Kellogg Foundation, 2004) in which they expounded a linear template of five components: inputs, activities, outputs, outcomes and impacts. This particular five component logic model provides the framework for the COAIM system approach:

COAIM five stage logic model				
Programme Resources or Inputs	Programme Activities	Programme Outputs	Programme Outcomes	Programme Impact
Resources needed to operate the programme	Processes, tools, events, technology and actions that are an intentional part of the programme implementation	Types, levels and targets of service delivered	Specific changes in programme participants' behaviour, knowledge, skills, status and level of functioning	Changes to organisations, communities, or systems as a result of programme activities within seven to ten years

The COAIM System is particularly effective in mapping and measuring the three stages of the model dealing with Programme Activities, Outputs and Outcomes. However, the Resources and Impact areas are often more difficult to predict with any great degree of certainty.

The tools of the COAIM System are predicated on assessing, targeting and measuring factors that *can* be changed in the lives of offenders, known as *dynamic factors*. Those that cannot be changed are *static factors* and include prior record or family criminality. Early onset of criminal behaviour is a very good predictor of future behaviour, and it is a risk factor that cannot be changed: if you were first arrested at age ten you will always have been first arrested at age ten.

Synthesising the findings of Lipsey and Wilson's (1998) meta-analysis, the research outcomes of Latessa (2004) and Andrews, Bonta and Gendreau (2006) the COAIM System concentrates on the following known criminogenic or dynamic risk factor areas (Andrews, Bonta & Gendreau, 2006) which are listed as the ten primary areas in the COAIM System that need to be addressed with offenders:

1. Attitudes and Cognitive Style
2. Offending Behaviour
3. Pro-Social Activities
4. Anger and Emotion Management
5. Drug and Alcohol Misuse
6. Lifestyle and Associates
7. Training and Employability
8. Accommodation
9. Financial Issues and Debt
10. Relationships and Family Issues

Andrews and his colleagues in their research point out that focus on non-criminogenic factors such as self-esteem, fear of punishment, physical conditioning (such as outdoor pursuits) and developing offender's creative abilities through art and music will not have a significant effect on recidivism rates (Andrews and Bonta 1994, 2006). Studies (Gendreau, French and Taylor, 2002) have shown that programmes that target four to six criminogenic risk factors more than non-criminogenic risk factors can have a thirty percent or more effect on recidivism while programmes that target more non-criminogenic risk factors have virtually no effect (Gendreau, French and Taylor, 2002). A lot of programmes targeting non-criminogenic needs are not producing significant effect on recidivism.

Lipsey and Wilson (1998) conducted a systematic review of the evidence for effective intervention with those whose offending behaviour was deemed to be serious. They reviewed more than 200 studies relating to offenders and looked at the evidence in relation to those who were non-institutionalised and institutionalised. A summary of their findings (Brown, S, et.al. 2011) highlights the most and least effective types of treatment and interventions measured by recidivism rates for non-institutionalised younger people outlined in the table below:

<b>Type of treatment or intervention used with non-institutionalised offenders</b>			
<b>Positive effects- consistent evidence</b>	<b>Positive effects- less consistent evidence</b>	<b>Mixed, but generally positive effects</b>	<b>Weak or no effects</b>
Individual counselling  Interpersonal skills: attitudes and cognitive style, pro-social activities, anger and emotion management, relationships and family issues, substance misuse, etc.	Multiple/continuum of services  Advocacy casework  Restitution/probation	Employment related programmes  Academic programmes  Group counselling programmes	Outdoor pursuits, physical fitness  Deterrence programmes  Vocational skills programmes: car fixing, carpentry, artwork, music, painting, gardening etc.

This research suggests that community based programmes that demonstrate good evidence of effectiveness include behavioural therapies, intensive case management, a multi-systemic approach and interpersonal skills training.



## Methodology

The COAIM System uses what is referred to as the Functional Analysis instrument which is both a motivational and a measurement tool developed to enhance positive change in collaboration with the client. The facilitator uses this tool to engage with the client in scoring and recording how they experience and see their situation at:

- a) commencement with the service,
- b) during the programme, and
- c) at the conclusion of engagement with the service

This is done by the facilitator and client jointly using the COAIM Rating and Mapping Guide to map progress on the Functional Analysis instrument. At the start of the offender's engagement with the programme or service an assessment with reference to the ten main criminogenic or risk factor areas is carried out by the facilitator with the client. The facilitator uses the Functional Analysis instrument with the COAIM Rating and Mapping Guide to allocate a numerical value or "score" to each of the ten areas or issues and to map the current situation. The completion of this initial Functional Analysis or assessment forms the baseline against which future client progress will be measured.

Following completion of the Functional Analysis instrument the computed scores and indicators are used to inform the offender's individual action plan which looks at each main area or risk factor separately. During the process the facilitator, using the strategies of motivational interviewing, discusses with the client a realistic set of steps to determine what areas need to be worked on first and what activities need to be prioritised.

It is not unusual to have a discrepancy between the client's perception of where they consider themselves to be on the Change Tree scale and the reality of their current behaviour and situation as assessed with the facilitator. A facilitator skilled in motivational interviewing will use this situation as an opportunity to further resolve ambivalence, deal with resistance and increase client motivation for positive change.

Where progress already exists in relation to one or more of the ten risk factor areas, the facilitator works with the client to cement and enhance this situation through the use of Structured Relapse and Recidivism Prevention techniques (adapted from Herrie and Watkin-Merek, 2006). During the time that the client is engaged with the programme or service the Functional Analysis is again periodically completed mapping progress towards achieving the overall goals and outcomes. This serves two main purposes. Firstly, as a motivational enhancement tool by showing in a graphic manner the client's progress. Secondly, it enables the facilitator to continue to map and score the various areas and issues and make changes to the offender's Action Plan, if necessary.

At completion or disengagement from the programme or service the Functional Analysis is used as a final or exit assessment. The results of this are compared with the initial baseline and interim assessments. The information derived from this comparison informs the COAIM Data Table Instrument and is then used to compute change across the main areas originally established as priorities at first engagement. In addition, the numerical data concerning the ten risk factor areas is collated and aggregated and used to measure change and progress relative to the overall desired goals and outcomes as established by the client and facilitator. This approach is in contrast to other outcome measurement systems that consider problem areas in isolation and not in this holistic manner.

### **Implementing the COAIM System and Improving Practice**

The Cornmarket Project has trained and developed facilitators to equip them with the necessary knowledge, skills and attitudes to effectively implement the COAIM System. The training includes:

- Understanding the Change Outcome and Impact Measurement System and an overview of theory of change and logic model approaches.
- Integrating the Stages of Change Model and the COAIM Rating and Mapping Guide
- How to assess, record, map and measure change and outcomes using the various instruments specific to the COAIM System
- Using motivational Interviewing to enhance positive engagement and to ensure uniformity of approach in assessment and outcome measurement with offenders
- Effective use of the tools of Structured Relapse and Recidivism Prevention

Facilitators are guided in practice by the COAIM Implementation Manual (Delaney, 2006). During their training, each facilitator develops the knowledge and skills required to use the manual effectively. The manual (Delaney, 2006) contains all the materials and instruments needed to deliver the programme. It also contains clearly written sections on: Using the COAIM System, developing an Effective Logic Model, the Stages of Change Model, Motivational Interviewing and Relapse and Recidivism Prevention strategies. The manual is used on an ongoing basis post training to ensure consistency and quality control in programme delivery.

### **Strengths of the COAIM System**

The COAIM System is first and foremost a practical, graphic and user friendly method for mapping and measuring the impact of service delivery on clients' i.e. measuring outcomes. Through the use of motivational Interviewing as the medium, the COAIM System facilitates meaningful engagement with clients and enhances motivation for sustained positive change.

The COAIM System enables introduction of monitoring and evaluation considerations at the planning stage of a programme linking them to the implementation and management of the programme. It helps a programme to be specific about the clients it targets, the changes it expects to see, and the strategies it employs and, as a result, be more effective in the results it achieves.

It is particularly valuable for monitoring and evaluating programmes whose results and achievements cannot easily be understood with quantitative indicators alone and require deeper insights of a qualitative, contextualised story of the change process.

Because the COAIM System can extract and compile data on an individual client or whole programme it can also be used to indicate trends and highlight emerging issues for organisations. Such data can help inform future strategic and business plans by assisting in identifying priority areas to reducing recidivism.

The COAIM System can also be beneficial at a number of levels in helping to improve practice i.e.

- having more effective interventions and improved interaction with offenders
- improving communication amongst those involved in the delivery of different services
- benchmarking between services and programmes, and
- assisting policy making, enabling research and securing funding

The COAIM System does not stop at measuring outputs but maps client's progress from assessment, through engagement, to conclusion on the programme and measures change and outcomes.

### **Challenges of the COAIM System**

In order for the COAIM System to function well, resources are required, such as well-trained staff, systems, equipment, and space. If a programme has an insufficient number of staff trained in Motivational Interviewing to operate the COAIM System or if the staff members do not have the appropriate knowledge and skills in implementing the Stages of Change and Structured Relapse and Recidivism Prevention models, it will be difficult for the programme to achieve the objectives established.

Even though an organisation may have existing data collation systems in place, the data gathering must be carried out as specified by the COAIM System implementation manual i.e. within a logic model framework, for the final evaluation to be able to attribute outcomes to the system.

Furthermore as the interim and final evaluations collect data based on the actual activities implemented, substantial differences between the stated design and the actual activities i.e. programmes without a logic model framework, will undermine the assessment process.

If the programme activities being implemented are different from those planned, then what is being evaluated is essentially a different programme from that initially proposed. While the evaluation can assess the activities implemented, it cannot assess the programme itself, since the logical connection between activities and goals and objectives has been broken.

Process and outcome evaluations require organisations to produce a great deal of data. It is crucial that organisations document the activities of their clients and staff/key workers and the services provided using the COAIM System instruments (COAIM Action Plan, the Functional Analysis instrument, the COAIM Rating and Mapping Guide and the COAIM Data Table instrument). Organisations must develop the initial and overarching measures to assess their progress in achieving goals and objectives, and must systematically measure changes in the clients through the laying down of a logic frame module. The programme must have in place, or have the capacity to develop, procedures to generate the data required for the COAIM System. The initial assessment and interim evaluations cannot commence until these data collection procedures are in place.

Finally, it is often said that *impacts* are what we hope for but *outcomes* are what we work for. Further developmental work remains to be done on the COAIM System model to provide a reliable system for measuring long term impact of programmes using the COAIM System.

### Conclusion

Government departments, funders and other stakeholders are increasingly seeking that creditable and validated outcome measuring systems are in place as a pre-requisite to continued funding. We hope this submission will make a positive contribution to the work of the Sub-Committee on Penal Reform and to the wider discussion on evidence based best practice rehabilitation programmes for offenders.

Historically the development of services for offenders has not always been marked by adherence to best practice based on empirical evidence. Expediency, personal conviction and a sincere desire to do “something” to respond to anti social behaviour and criminality in our communities have been more common drivers. Policy development in Ireland concerning offender reintegration strategies seeks an increasing use of community options rather than custodial interventions while also seeking a reduction in expenditure. We are now in a new era that presents both challenges and opportunities. We must develop new approaches and ways of working to meet the needs of today for the users of the services, the funders and the communities in which we all live.

Those charged with effecting positive change in areas such as offender reintegration and rehabilitation are asked to demonstrate programme efficacy, value for money and evidence in relation to client outcomes. We suggest that the COAIM System together with its range of tools can assist in meeting these requirements and thus enhance quality of service delivery.

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## ***Preventing Homelessness among prisoners on release: A submission to the Oireachtas Sub-Committee on Penal Reform.***

### **Introduction.**

Focus Ireland welcomes the work of the Oireachtas Sub-committee on Penal Reform and has followed the deliberations of the Sub-committee with interest. We particularly welcome the opportunity to draw the attention of the committee to the experience of Focus Ireland in the area of resettlement of prisoners on release and the relationship between homelessness and penal policy.

For well over a decade Irish policy on homelessness has recognised the link between prison and homelessness. Reducing the incidence of homelessness among released prisoners was recognized in the first National Homelessness Strategy (2000)<sup>i</sup> and is a key element in the National Strategy to Prevent Homelessness (2002)<sup>ii</sup>. It has featured in all subsequent local, regional and national homeless strategies.

Reflecting this strategic framework and our own experience, over the last number of years, Focus Ireland has worked closely with the Irish Prison Service, and other partners, on a number of innovative and exploratory projects to reduce the likelihood of homelessness among released prisoners. This work is not just important as part of a coherent strategy to prevent homelessness, but can also play a significant role in reducing re-offending and so reducing public expenditure. Building upon our experience in these Prison In-Reach projects, Focus Ireland would like to take this opportunity to outline our current and planned work in this area, and present some of the lessons from this work for consideration in the Report of the Joint Committee.

### **Focus Ireland and Prison In-Reach**

Focus Ireland works to prevent people becoming, remaining or returning to homelessness. The organisation was founded in 1985 by Sr. Stanislaus Kennedy. Our vision is that Ireland will be a place where *'everyone has a right to a place they can call home'* and the organisation works to make this vision a reality.

Focus Ireland has a long established history of working with members of the prison population. For many years our youth service has maintaining contact with the significant number of our customers who have received custodial sentences, by visiting them in prison and ensuring a service link on their release. Focus Ireland long recognised that an experience of prison custody is a prevalent feature among our customers (for instance, in 2006, 33% of the 600 customers who accessed our youth services were in prison at some point).

However establishing consistent and meaningful interventions proved a challenge to

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our non-specialist services. From the mid'00s, Focus Ireland worked with the Irish Prison Service and other partners (including the Homeless Persons Unit and the Probation Service) to develop a service response to this issue. Our first In-reach Project, in partnership with these agencies, officially opened in 2007 in Cloverhill Prison in Dublin; since then similar programmes have been established on a pilot basis in Cork and Limerick.

Initially these programmes were funded by Pobal, but they are now funded almost entirely by Focus Ireland's public fundraising efforts.

Using an Intensive Care and Case Management model, closely targeted on particularly vulnerable prisoners with multiple difficulties and a high risk of homelessness, these services work to break the cycle of homelessness, offending and custody. With a focus on the most vulnerable prisoners, In-reach Services try to ensure that people leaving prison have a home to go to or are supported until such a home can be obtained.

We are currently in the process of finalising independent evaluations of these prison In-Reach services and we plan to publish these evaluations in the New Year.

## **Prison and Homelessness – a revolving door: the research.**

The experience of Focus Ireland's front line staff, that many prisoners end up homeless on release and that many homeless people end up in prison, is substantiated in a wide body of academic research.

In 2002, Focus Ireland and PACE (the voluntary organisation providing services for offenders and former offenders) examined the link between prison and homelessness. The study<sup>iii</sup> found that 45% of people interviewed said that homelessness was a key factor contributing to re-offending following release.

Ireland has a high rate of criminal recidivism: research by the UCD Institute of Criminology published in 2008 showed that 25 per cent of people who had been released were back in prison within a year and that almost 50 per cent had returned within four years of release.<sup>2</sup>

A study of reintegration services in Ireland, carried out by the Irish Penal Reform Trust in 2009/2010<sup>iv</sup>, noted the multiple and complex issues that arise in relation to reintegration following imprisonment. The study drew attention to the reality that the provision of services to facilitate re-integration varies across the prison system so that, in practice, access depends on which institution a person happens to be detained in during the period leading up to release. Likewise, there is wide variation in the provision of the type of support services in the community which someone who has been released from prison might need to access.

## **How Does the In-Reach Service Work?**

The three In-Reach Services have broadly the same approach, with variations to meet the particular needs of the prisoners in the different regimes. The service collaborates with a range other services to identify individual prisoners who are at high risk of becoming homeless on release and actively supports men and women who have been caught in a cycle of homelessness, offending behaviour and

imprisonment. The service is able to adapt quickly so as to meet the changing needs of service-users, both pre- and post-release. The aim is to deliver a face-to-face service to those with high needs and a history of leading 'chaotic' lives, and to build up a supportive and strong relationship with service-users.

The ability of the In-Reach Service to adapt to meet the changing needs, circumstances, expectations and goals of service-users allows for a continuity of support, even in cases where service-users temporarily disengage from the service or return to prison. The model of service delivery aims to be fully adaptable, responsive, intensive and inclusive.

The In-Reach staff generally link in with those referred to the service and arrange to meet them in prison (i.e. pre-release). For example, of the 53 people who engaged with the In-Reach Service in Limerick between July 2009 and July 2011, 51 were met in prison pre-release. On average, four meetings were held with each service-user in Limerick prior to release. There were variations in the intensity of the pre-release work – for instance, one service-user attended 19 pre-release sessions. This reflects the nature of intensive case management, where more intensive interventions are provided to those with greater and more complex needs.

The support needs of people who engage with the service (such as accommodation, addiction, mental health, education and employment) are assessed by the project worker. Based on this holistic needs assessment, a case management plan is prepared in agreement with the service-user and implemented by the project worker. Where the ex-prisoner has multiple needs, the project worker liaises with pre- and post-release services (for example, addiction services, education providers) to put in place the supports required.

The In-Reach Service staff work directly with the Homeless Persons Unit to secure accommodation options for service-users, and also liaise directly with other accommodation providers. Without this crucial intervention, the service-users would struggle to ensure that accommodation was in place upon their release. Post-release, service-users are supported by the In-Reach Service to settle into long-term accommodation, engage with their local community, address particular problems in their lives, and reduce their vulnerability to returning to offending behaviour.

During its two-year pilot period, the Dublin In-Reach project successfully supported 57 men to move from prison to community living. A total of 39 of these service-users, who had previously experienced homelessness or were at risk of homelessness upon release from Cloverhill Prison, were supported into long-term housing. In the Dublin area, between 40 and 50 people who have been in prison benefit from this programme annually.

## **Female prisoners and homelessness**

Patterns of offending, incarceration and homelessness are very different among men and women, yet very little attention has been paid to the particular issues faced by women in these circumstances, particularly in Ireland.

Recent work on homeless women by Paula Mayock of Trinity College has demonstrated the prevalence of women moving between homelessness and prison. She reports that:

*All who reported histories of incarceration (eleven out of sixty) had lengthy homeless histories and also confronted major difficulties in securing housing subsequent to leaving prison. Upon release, many moved directly to emergency hostel or other unstable accommodation, which most often served to further entrench them in a cycle of housing instability, drug use, and repeat offending.<sup>v</sup>*

It is estimated that a cohort of some 50 women appear to be in a cycle of homeless services and prison. Focus Ireland is currently working in collaboration with a number of other organisations from both the homelessness and prisoner-welfare sectors to propose an integrated intervention which would have the capacity to break this cycle for these women, and intervene to prevent other women entering this pattern.

## Some key Lessons from our work

While Focus Ireland has developed and operates its Prison In-Reach Services in close partnership with the Irish Prison Service, the Probation Service and the Community Welfare Service<sup>vi</sup> (in Dublin through the Homeless Persons Unit), the following lessons are those we draw ourselves from our work and are not put forward as the views of any of our partners.

It is important to note that *sentencing policy*, and in particular the high level of short- term custodial sentences in the Irish system, has a major impact on the relationship between incarceration and subsequent homelessness. A comprehensive response to preventing homelessness among offenders would have to address this issue of sentencing policy and the need for wider use of non-custodial sentences. However, in this submission we confine ourselves to policies which would assist the Irish Prison Service and related services respond to the pattern of sentencing which currently exists.

The key lessons which we have gained from our work, which we believe can usefully inform the forthcoming Strategy are:

### 1. Need for Timely Assessment and Preventative Responses.

***The needs of all prisoners in relation to access to accommodation should be assessed sufficiently in advance of release:***

Ideally this assessment would be undertaken with all prisoners as they enter the prison service. This would help to ensure that particularly where there is vulnerability to homelessness or a need for additional supports to maintain accommodation on release that provision could be made to meet this need prior to release. This assessment would also identify prisoners who have a particularly high risk of homelessness on release (for instance those who were homeless on committal, those who have lost the place they lived before committal or those with particular mental health conditions). Such prisoners could be identified for more intensive interventions in addition to those available from the CWOs and Probation Service, such as those provided by Focus Ireland.

***Specifically in the case of short-stay prisoners there is an additional value to early assessment and advocacy for the protection of the existing home:***

Focus Ireland is aware of instances whereby people with short term sentences/remand, who were in receipt of Rent Supplement or in a local authority tenancy, have lost their home upon release because the Community Welfare Service or Local Authority was unaware of their situation. While provision is made in the guidelines to for Supplementary Welfare Allowance to maintain rent supplement payments for short-periods of imprisonment, these are frequently not invoked.



For prisoners on short-sentences/remand including within the committal process an assessment of the existing housing situation, and advocacy/intervention as appropriate with the Community Welfare Service or relevant local authority, can help to prevent homelessness, at very low cost.

## 2. The value of Intensive Case Management in a relatively small number of cases.

**Where a high risk of homelessness is assessed a Case Manager should be assigned:** Intensive Case Management in particular benefits prisoners with multiple vulnerabilities as a single professional takes on the responsibility to co-ordinate the range of agencies that seek support the prisoner. The Case Manager would be responsible for bringing together all relevant key-workers/support workers and for acquiring further support provision where necessary. This approach can significantly reduce the potential of such vulnerable prisoners withdrawing from support structures, and ensures a more efficient interaction of the limited resources available to the participating agencies.

Intensive Case Management is not necessary in the case of the majority of prisoners, the broader supports provided by Community Welfare Officers and the Probation Services are fully effective in most cases. However, our experience with Focus Ireland's Prison In-Reach services indicates that the provision of an adequately resourced Intensive Care and Case Management Service can intervene to prevent homelessness on release for a significant minority of vulnerable prisoners. Given the high costs of custody and of homeless accommodation this is a cost effective approach. An intensive service, such as that provided by Focus Ireland In-Reach, requires an effective and well defined referral service through the broader prison welfare services. This ensures both that all potential beneficiaries are reached and that only those prisoners who require this level of support are provided with it.

## 3. Specialist Post-release accommodation

**There is need for an increased supply of specialist post-release accommodation.** Focus Ireland believe that the shortage of specialist post-release accommodation for high needs prisoners needs attention if case management is to achieve the best results. In these cases diverting the person away from homeless services to supported accommodation where their needs can be directly addressed would be beneficial.

This was one of the key recommendations in the Government's National Homeless Prevention Strategy (2002). In a recent review of progress on this Strategy, this recommendation was found not to have been achieved<sup>vii</sup>. The 2002 Prevention Strategy envisaged the Irish Prison Service (with the Probation Service) as providing such transitional housing. Neither organisation now sees this as part of their role. While this is a reasonable stance, there is a requirement for a new integrated strategy to ensure that some agency is tasked with providing such accommodation.

In the pilot In Reach projects operated by Focus Ireland, we were able to provide such accommodation from our existing housing stock at crucial points in the release experience of prisoners. The Prison Service could identify such accommodation in partnership with relevant Social Housing bodies or homeless organisations, such as Focus Ireland.

## 4. Development and review of procedures with other State actors

**There is a need to regularly review the special arrangements with other actors.**

Innovations such as the procedures in place with Local Authorities to ensure

completion of a Housing Needs Assessment and application in advance of release are very valuable. However Focus Ireland has found that where the person is held on remand and released or has a short-term sentence they can still fall through the cracks. Timeframes for periodic reviews of procedures such as those in place with Local Authorities should be established to gauge their continued operation and effectiveness across the prison population.

## 5. Problems related to temporary and early release

***There is a need for improved information sharing in cases of Temporary and Early Release:*** In our experience, many of the incidents of post-release homelessness are related to Temporary or Early Release, particularly where this has been unplanned. The procedures associated with these releases can mean that, even in the cases where the prisoner has been identified as at risk of homelessness and engaged with Case Management services, the case manager may not always made aware that the person will be imminently released.

It is important to recognise that for many prisoners with an experience of homelessness, a period on remand can lead a person to evaluate their experience of homelessness or addiction and to a resolve to 'change'. In this way the release process should be seen as a significant opportunity in the reform process. However in too many of these cases, the person is released without supports and struggle to find the supports they need.

Administrative systems for alerting the Prison authorities of the status of such prisoners during the release process have been established in Clover Hill and provide a good model which could be applied elsewhere, with appropriate amendments to reflect the different prison regimes.

Furthermore, it is important that, for all prisoners on release, there is an information strategy in place to ensure that they are fully aware of how to access housing, medical, psychological and support as needed.

## 7. Funding for services

**Services need access to reliable long-term funding, and would prove cost effective.** Focus Ireland Prison In-reach services have demonstrated that they provide an effective intervention for a cohort of prisoners who are at risk of homelessness and have multiple needs. International evidence strongly supports the view that such interventions reduce recidivism and other social costs and so provide a medium term saving to the taxpayer.

While these In-reach services were initially provided with funding to operate (primarily from Pobal) they now are funded by Focus Ireland public fundraising efforts.

In the current economic climate, with cut-backs in Government support to other vital service which we run, this does not provide a secure basis for long-term planning and development of these services. Secure, long-term funding for these interventions would represent value-for-money and would permit them to operate more effectively, putting the learning into practice and developing closer relationships with their state partners.

## Conclusion

We hope that this submission will be of value in the thinking of the Sub-Committee as it reflects on the priorities for penal reform.

We believe that the points made in this submission have a general relevance to programmes to prevent homelessness among former prisoners irrespective of how they are operated. However, it should be noted that Focus Ireland greatly values the opportunity which it has been offered in working in partnership with the Irish Prison Service (and other partners) in the three In Reach Programmes outlined above and we believe we have a continued and enhanced contribution to make to this work.

We would be happy to discuss any aspect of this submission with the Sub-Committee or arrange a visit to any of the services referred to.

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<sup>i</sup> Homeless – An Integrated Strategy (2000) Department of Environment.

<sup>ii</sup> National Preventative Strategy (2002) Department of Environment.

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,1798,en.pdf>

<sup>iii</sup> Claire Hickey, *Crime and Homelessness*, Dublin: Focus Ireland and PACE, 2004.

<sup>iv</sup> Irish Penal Reform Trust, *"It's like stepping on a landmine ...": Reintegration of Prisoners in Ireland*, Dublin: IPRT, 2010, p. 3. (Available: [www.iprt.ie](http://www.iprt.ie))

<sup>v</sup> Paula Mayock and Sarah Sheridan. Women and Homelessness in Ireland Research Paper 1, February 2012.

[http://www.womensaid.ie/download/pdf/womens\\_journeys\\_to\\_homelessness\\_2012.pdf](http://www.womensaid.ie/download/pdf/womens_journeys_to_homelessness_2012.pdf)

<sup>vi</sup> At this point the Homeless Persons Unit was part of the HSE, it has since transferred with the Community Welfare Officers service to the Department of Social Protection.

<sup>vii</sup> Catherine Maher, What is Preventing Prevention? 2012

<http://www.focusireland.ie/files/catherine%20maher%20-%20whats%20preventing%20prevention.pdf>



23/11/2012

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### Introduction:

CAP is an independent not for profit organisation established in October 2011. It is a partnership forged between the City of Dublin YMCA (CDYMCA) and Carmelite Community Centre (CCC). CAP provides a range of free information, referral and support services in a safe environment to individuals affected by imprisonment. In so doing, it strives for ex-prisoners to be reintegrated into their communities, leading crime-free lives. In conjunction with initiatives undertaken by other actors, this will ultimately lead to safer communities and a smaller prison population. CAP seeks not to replicate or duplicate the work of other organisations working in the field but rather work collaboratively with other actors to access the most appropriate services for individuals. CAP is an organisation with a simple agenda; to work with ex-prisoners post release with a view to enabling them manage their lives and avoiding reoffending.

CAP has a passionate and skilled board of directors and an experienced team of staff and volunteers (two of whom are ex-prisoners). With extremely limited financial resources, it has, since inception, achieved the following:

- Worked with 133 service-users (280% increase on planned number of clients) of both sexes and all ages.
- Provided pre-prison support to five men going to prison and six family members.
- Provided pre-release support to eleven prisoners.
- Dealt with an average of 20 information queries each week.
- Providing client-centred key working to 72 ex-prisoners.
- Provided counselling to 49 ex-prisoners.
- Commenced a peer support service for ex-prisoners.
- Worked with a very wide range of external agencies.
- Engaged in organisational development and awareness-raising.

Early signs are encouraging. The high rate of initial engagement and retention of a group of people that is generally viewed as difficult to engage and retain in aftercare services is promising and, hopefully, a good predictor of positive long-term outcomes. To date, the reconviction rate for CAP service-users is 0%. Personal stories testify to the organisation's successes thus far. Further information on the organisation can be found in the impact report **"Care After Prison: An emerging success story"**.

### **CAP Findings - International best practice**

“Having strong family support, in particular a supportive spouse, significantly increases the likelihood of successfully desisting from criminality. A recently published report on the integrated family support service offered by the Prison Advice and Care Trust in the UK revealed that for every £1 invested, in the region of £11.41 worth of social value is created.” [Sources: Deirdre Healy, *Betwixt and Between: The Role of Psychosocial Factors in the Early Stages of Desistance*, Journal of Research in Crime and Delinquency, 47 (4) and Ben Estep and Natalie Nicholles, *Economic study of Integrated Family Support Programme*, New Economics Foundation, London, 2012.]

CAP recognised the importance of family support in the role of reintegration and desisting from crime from inception in October 2011. Strong links were made with family mediation services and support was offered to families and those affected by imprisonment through the CAP office. Family members avail of the free counselling service and information service offered by CAP.

“Staff and volunteers have a range of life, work and educational experiences. CAP is testing a peer support model, based on the Scottish Routes out of Prison project, in which two of its key workers are themselves ex-offenders. Early indications are not only that this model is working well, but that for many clients, this is the key to the success of CAP.” [Source: [www.thewisegroup.co.uk/content/default.asp?page=s5\\_2\\_1](http://www.thewisegroup.co.uk/content/default.asp?page=s5_2_1)]

CAP is an equal opportunities employer and is open to recruiting staff and volunteers from an array of different backgrounds. Criminal history should not deter someone from applying to work with or volunteer with CAP. The information service provided to those affected by imprisonment requires an in-depth knowledge of the system and regimes and therefore this service will always be informed by ex-offenders. CAP has also found that service-users welcome this aspect of the CAP service and feel that they can speak in a non-judgemental and safe environment. This, along with a culture of equality, has led to the high engagement and success rates. [Please note that any offences involving child protection or sex offences will exclude someone from taken on to work/volunteer with CAP]

“Finally, CAP intends to watch closely the results of the ONE service for resettling short sentenced male prisoners financed through England’s first Social Impact Bond.” [Source: [www.onesib.org](http://www.onesib.org). There is ongoing communication between the CDYMC and the YMCA Cambridge & Peterborough, which is a partner in ONE. [http://www.mdrc.org/announcement\\_hp\\_341.html](http://www.mdrc.org/announcement_hp_341.html)]

### **Social impact bonds:**

In September of 2010 social finance Ltd a UK company launched the world’s first social impact bond. Targeted at reducing prison recidivism, the Peterborough pilot generated worldwide interest in the potential of this innovative financial instrument.

At Its core social impact bonds are about partnership and collaboration. By working closely with the government, investors, non-profit organizations and teaching the values of social impact bonds we may realign incentives for delivering social outcomes. Making an argument for public funding and philanthropy support for social impact bonds will make our collective efforts to improve the lives of individuals and over all communities in need more measurable and successful in the battle to reduce recidivism.

Care after Prison (CAP) feels this approach is both innovative and ultimately a promising way to reduce the tax payer’s expense, and transfer performance risk from Government to investors who may be more able to price and bear it, and reward high performing non-profits with long term growth capital to scale proven innovations.

## **CAP Recommendations:**

### **1.**

Provide funding to current community based organisations, such as CAP, who are working with international best practice models and achieving success to date. In order to continue and grow on the success of the pilot phase CAP requires core funding. This funding would allow CAP to continue to measure its impact, successes and learning's. CAP's continuation in the sector would mean that it will then be best placed to work with the Sub-Committee on future innovative early release programmes.

The home secretary in the UK recently announced his government's plan to support a mentoring type organization using some ex-offenders as mentors to (meet ex-offenders at the gates of the prison) to start the support that is hoped will reduce recidivism. The home secretary said the government would look to non-profits & other organizations through performance based incentives and returns on investments to manage the scheme. This announcement would be in line with CAP's view on the community return orders and other early releases in operation in the republic of Ireland at present.

**2.** Develop policies to allow the piloting of performance driven social impact bonds. The organizations best placed to receive social impact bonds will have in place systems to measure their interaction with ex-offenders and their impacts. Studies show that the cycle of reoffending needs to be measured over a 3-4yr period before results can be accurately assessed.

### **3.**

That the Department of Justice, Irish prison service incorporate a work release and volunteer programme as part of the ISM programme.

This programme would offer an alternative to other release schemes as the prisoners involved would be engaging with the Integrated sentence management (ISM). The engagement would be from the earliest point of the commencing of their imprisonment and would allow a more in depth profile of offenders throughout their sentence and assist the decision makers as to the suitability of candidates for Temporary release. For offenders learning to work towards a future developing a work ethic where achieving goals becomes the norm not just a one off accomplishment would be a radical progression.

ISM would be able to record the engagement of offenders under their care and measure progression of offenders more accurately. This type of scheme would support a more accountable and transparent temporary release process with a community friendly approach to rehabilitation. For this type of scheme to work as broad a set of stakeholders as possible is required. This wide spread of organisations to provide placements for offenders & ex-offenders is vital. This type of release scheme could be supported by organisations such as Care after prison in a mentoring capacity.

*Stephen Doyle*

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