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# Discussion document on the rights and needs of remand detainees

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.

This discussion document explores the rights and needs of remand detainees in Ireland. It is intended to stimulate discussion and reflection among experts and stakeholders to inform IPRT’s position on the broad issues.

### Note on definitions

In Ireland, the terms ‘remand’ and ‘remand in custody’ primarily refer to the detention of accused persons before trial, but also to people who have been convicted but who are waiting to be sentenced. This document confines the term to prisoners who are untried and unconvicted, since this accords with the categorisation of the Irish Prison Service[[1]](#footnote-1) and the *Prison Rules 2007*, under which ‘unconvicted’ prisoners have certain enhanced rights in respect of visits[[2]](#footnote-2) and access to private medical care at their own expense.[[3]](#footnote-3)

## Introduction

Prison management must ensure that the individual’s unconvicted status is manifested in their treatment.[[4]](#footnote-4) The opening line of the Introduction to the *Irish Prison Service Three Year Strategic Plan 2012-2014* reads:

The Irish Prison Service is responsible for the receipt of all persons held on remand, persons held on immigration related matters and offenders sentenced to terms of imprisonment and for the safe care and secure custody of all of those committed to it by the courts.[[5]](#footnote-5)

The first clause of this sentence marks the only reference to remand prisoners in the document. The lack of further discussion about, or focus on, the rights and needs of remand prisoners suggests that the Irish Prison Service failed to give due consideration to this group of prisoners when developing its strategic plan. This omission is regrettable, especially because the Strategic Plan is progressive in many other respects, making firm commitments to tackle prisoner numbers, to give effect to the principles of normalization, progression and reintegration, to enhance sentence management and improve the prison estate.

In relation to prisoner programmes and improving sentence management, the IPS committed to develop specific strategies (in conjunction with other key stakeholders) for younger prisoners, women prisoners, older prisoners, sex offenders, prisoners requiring protection, violent offenders and those suffering from mental illness.[[6]](#footnote-6) Notably absent is a commitment to develop a specific strategy for remand prisoners. This is particularly disappointing since remand prisoners should enjoy special treatment and access to an enhanced regime on account of their untried and unconvicted status. They should also always be detained in separate facilities to convicted prisoners.[[7]](#footnote-7) However, Rule 71 of the *Prison Rules 2007* only commits to provide separate detention for remand prisoners ‘as far as practicable and subject to the maintenance of good order and safe and secure custody’.[[8]](#footnote-8)

A core problem within the Irish prison system is overcrowding which has resulted from a steady increase in the prison population over the past decade. This has been a persistent problem since the middle of the 1990s and has led to an increased likelihood that prisons such as Cork and Limerick, which take in remand prisoners in the Munster region, might end up housing remand prisoners in cells with convicted prisoners originally designed for single occupancy. These remand prisoners may also have to ‘slop out’[[9]](#footnote-9) in such cramped and degrading conditions.

As part of its submission to the Thornton Hall Review Group in May 2011, IPRT noted that the most immediately effective approach to bring the prison population within safe custody limits[[10]](#footnote-10) is to release earlier some prisoners serving sentences.[[11]](#footnote-11) Another approach to reducing the prison population would be to remand fewer people in custody pending trial and establish much-needed bail supports and services and accommodation in the community to improve compliance with bail conditions, particularly in respect of young people and women accused of minor offences.

In this position paper IPRT investigates:

1. the human rights dimension of the remand issue;
2. recent European Union developments relating to pre-trial detention;
3. Irish remand figures;
4. the profile of remand detainees;
5. the current law governing the refusal of bail for adults and children;
6. the desirability of recasting the law to include a statutory presumption in favour of bail and
7. the need to establish bail services and supports in the community.

## 1. The human rights dimension

Various international human rights instruments provide that untried prisoners:

1. should be detained separately from convicted prisoners,[[12]](#footnote-12)
2. should sleep in single rooms,[[13]](#footnote-13)
3. may wear their own clothes; if clothes are provided by the prison, they must be different from those worn by convicted prisoners,[[14]](#footnote-14)
4. should not be forced to work but should be offered the opportunity to do so,[[15]](#footnote-15)
5. may, if they choose, access food at their own expense from outside the prison, subject to maintaining good order,[[16]](#footnote-16)
6. may, at their own expense, be visited and treated by their own doctor or dentist,[[17]](#footnote-17)
7. should be able to inform their family immediately of their detention and should be given all reasonable facilities to communication with and receive visits from family and friends,[[18]](#footnote-18)
8. may, at their own expense, obtain books, newspapers, writing materials and other items for hobbies,[[19]](#footnote-19)
9. should be informed of their right to legal advice[[20]](#footnote-20) and should be able to communicate with and receive visits from their lawyer without restriction and in confidence,[[21]](#footnote-21)
10. should benefit from a special regime[[22]](#footnote-22) or, at their request, have access to the regime for sentenced prisoners.[[23]](#footnote-23)

### Imprisonment as a last resort

The UN Standard Minimum Rules for Non-Custodial Measures(the Tokyo Rules)state that the government should avoid detaining suspects prior to trial. Despite this, Ireland currently has no legislation providing for imprisonment as a last resort for adult offenders in relation to the use of pre-trial detention or otherwise. IPRT has repeatedly called for the enactment of such legislation.[[24]](#footnote-24) We would suggest that if a presumption against imprisonment is acceptable in the context of the *Children Act 2001*, it should be acceptable more generally, with judges exploiting all community-based alternatives before they even turn to imprisonment.

### Reasons for pre-trial detention

Where a person who has not been convicted is detained, Article 5(1)(c) of the European Convention of Human Rights (ECHR) applies, according to which a ‘**reasonable suspicion**’ must exist that s/he has committed the offence of which s/he is accused. This should be read in conjunction with Article 5(3), which provides for trial within a reasonable time.[[25]](#footnote-25)

The respect for liberty is paramount under the ECHR. Accordingly, to justify the detention of a person who is presumed innocent, there must be ‘*a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty*’.[[26]](#footnote-26) It follows that a system of mandatory detention on remand is incompatible with Article 5(3) of the Convention.[[27]](#footnote-27) Article 5 requires that after the detainee’s initial appearance before a judge or officer, a decision must be taken speedily whether to release the detainee, on conditions if necessary.

Under Article 5(2) once arrested the person shall be informed promptly, in a language which he/she understands, of the reasons for such arrest and the charge against him/her. Refusal of bail may be justified on various grounds including the risk of abscondment; interference with justice; the prevention of crime; the preservation of public order; and the safety of the person.[[28]](#footnote-28) Significantly, ‘the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants’ is also permitted under the ECHR.[[29]](#footnote-29) However, the individual should only be detained if one of these grounds applies, and a condition of bail could not mitigate the risk in question. The authorities must consider measures to counteract any risks, such as requiring security to be lodged or court supervision.[[30]](#footnote-30) They are obliged to give proper consideration to any offer of a financial guarantee to ensure the accused’s presence at the hearing.[[31]](#footnote-31)

### Length of pre-trial detention

Case-law of the European Court of Human Rights (ECtHR) has made clear that the authorities must exercise ‘special diligence’ throughout detention on remand. In other words, it is not enough for them to have demonstrated that one of the risks set out above exists and cannot be reduced by any bail condition. They must then act expeditiously from the day the accused is placed in custody until the day the charge is determined.[[32]](#footnote-32) Factors relevant to assessing whether they have acted expeditiously include the complexity of the case; the conduct of the accused; and the efficiency of the national authorities. A further and ongoing obligation arises ‘*to review the continued detention of a person pending his trial with a view to ensuring his release when the circumstances do not justify the continued deprivation of liberty*’.[[33]](#footnote-33)

**In Ireland there is no statutory maximum duration of remand detention for either adults or children who are accused of criminal offences**. The only stipulation is that individuals may not be detained for longer than 30 days between court appearances. Even so, the right to a trial within a reasonable period of time is outlined in Article 38.1 of the Constitution, which states:

*No person shall be tried on any criminal charge save in due course of law.*

It is clear from statements of the ECtHR that Article 5 protects the right of any person deprived of their liberty to be put on trial ‘within a reasonable time or be released pending trial’. Article 9 (3) of the International Covenant on Civil and Political Rights also affirms this right, while Article 9.5 of the ICCPR states that anyone who has been the victim of ‘unlawful detention shall have an enforceable right to compensation.’ [[34]](#footnote-34) Recommendation Rec (2003)20 of the Council of Europe (2003) recommends that young people should be remanded in custody for no longer than six months before their commencement of trial.[[35]](#footnote-35) Such a practice already exists in England.[[36]](#footnote-36)

It is a serious problem with the current Irish remand scheme that people may technically be detained on bail for longer than the maximum sentence for the offence with which they are charged. It may also be that in some cases remand is used in lieu of short sentences. Such a practice, while perhaps not widespread, is a breach of the affected person’s due process rights since they are innocent until proven guilty and would have the benefit of being considered for temporary release if actually convicted, a mechanism to which remand prisoners do not have access. Persistent low level offending would be more effectively addressed in holistic community-based alternatives to prison than frequent, short trips to prison either on remand or under sentence.

### Points for consideration

* Despite the Tokyo Rules, Ireland has no legislation providing for imprisonment as a last resort for adult offenders. A presumption against imprisonment is found in the *Children Act 2001.*
* Contrary to international legislation, in Ireland no statutory maximum duration of remand detention exists, for either adults or children who are accused of criminal offences. This is contrary to international legislation. This situation risks people being detained on bail for longer than the maximum sentence, and remand being used in lieu of short sentences.
* According to Article 9.5 of the ICCPR, anyone who has been the victim of unlawful detention has an enforceable right to compensation.

## 2. Recent EU developments regarding pre-trial detention

The European Union (EU) recognises that detention issues, relating both to pre-trial detainees and convicted persons, are primarily the responsibility of Member States. Despite the principle of subsidiarity, the EU has nonetheless taken certain legislative steps in the area of detention.

### European Supervision Order: supervision as an alternative to pre-trial detention

In 2004 the Commission adopted a *Green Paper on mutual recognition of non-custodial pre-trial supervision measures*[[37]](#footnote-37)*,* which is relevant to foreign nationals in pre-trial detention. After some initial delay,[[38]](#footnote-38) a Framework Decision was adopted in 2009 on *the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention*.[[39]](#footnote-39) The framework gave Member States until December 2012 to implement this instrument in their own national law. It is designed to facilitate provisional release for foreign suspects in the pre-trial stage, enabling a non-custodial supervision measure to be transferred from the Member State where the detainee is suspected of having committed an offence to the Member State where he or she is normally resident, thus reducing pre-trial detention of non-resident EU citizens.

The European Supervision Order (ESO) provides for several alternative types of supervision to be applied instead of pre-trial detention, such as an obligation: to inform the competent authorities of any change of residence for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings; not to enter certain localities in either state; to remain at a specified place during specified times;; to report at specified times to a specific authority; and to to deposit a certain sum of money or to give another type of guarantee or an obligation to undergo treatment for addiction. It also imposes a limitation on leaving the territory of the executing State.

The system is, however, discretionary for the issuing Member State and the Commission has noted that it is, therefore, hard to predict how national courts will apply the system and how it will interact with the European Arrest Warrant system.[[40]](#footnote-40) Fair Trials International has expressed concern that many EU countries’ justice systems are not ready to make full use of the potentially valuable ESO which, it suggests, could save resources and ease the severe overcrowding that blights prisons in over half of all Member States.[[41]](#footnote-41)

### Initiatives under the Stockholm Programme 2010–2014

In 2009 the Council adopted a *Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings*. With respect to pre-trial detention it stated that:

*The time that a person can spend in detention before being tried in court and during the court proceedings varies a lot between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands.[[42]](#footnote-42)*

The Roadmap set out six priority issues on desirable legislative initiatives: (a) translation and interpretation; (b) information on rights and about the charges; (c) legal advice and legal aid; (d) communication with relatives, employers and consular authorities; (e) special safeguards for vulnerable suspected or accused persons, and (f) a green paper on pre-trial detention. The Roadmap was annexed to the Stockholm Programme adopted in 2010, which recognises that the protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union and is essential in order to maintain mutual trust between the Member States and public confidence in the Union.[[43]](#footnote-43)

### Green Paper on Detention

The most significant development in EU law with regard to pre-trial detention was the publication in June 2011 of the Commission’s *Green Paper on the application of EU criminal justice legislation in the field of detention*.[[44]](#footnote-44) The Commission stated that its priority in the area of criminal justice is to ‘strengthen procedural rights by way of minimum rules for suspects or accused persons in criminal proceedings,’[[45]](#footnote-45) noting that overcrowding and poor treatment undermine the trust necessary to underpin judicial cooperation.[[46]](#footnote-46) It defined pre-trial detention as the period until the sentence is final, which:

should only apply after the court determines that defendants pose a substantial risk of flight, a threat to the safety of the community, victims or witnesses, or a risk of hindering investigations. The status of detained defendants should, however, be monitored in all cases and their eligibility for release reviewed throughout the adjudication period. … The proportionality principle in criminal matters requires that coercive measures, such as pre-trial detention or alternatives to such detention, are only used when this is absolutely necessary and only for as long as required.[[47]](#footnote-47)

The Commission then addressed the length of time in pre-trial detention,which varies among Member States. It noted that according to ECtHR case law, the widest possible use should be made of non-custodial supervision measures and it stated that non-nationals are often denied release because they have fewer ties in the jurisdiction and that some countries have no maximum length of pre-trial detention. The Commission also noted that both the ECHR and Article 47 of the *Charter of Fundamental Rights of the EU*[[48]](#footnote-48)provide that everyone shall be entitled to trial within a reasonable time or to release pending trial, and that release may be subject to guarantees to appear for trial.

In the view of the Commission, the right to pre-trial release is an important right unless there are overriding reasons for keeping the individual in pre-trial custody,[[49]](#footnote-49) and it noted that there is a recurring obligation for authorities in charge of criminal investigation and prosecution to justify the extension of the suspect’s pre-trial detention regularly.[[50]](#footnote-50) The Commission had regard to *Council of Europe Recommendation 2006-13 on remands in custody*,which lays down conditions for remands in custody and safeguards against abuse and recommends measures for periodic review of the justification for remanding someone in custody. The Commission sought submissions as to whether minimum rules on these issues would improve mutual confidence.[[51]](#footnote-51) IPRT made a submission to the Green Paper and supported the concept of minimum rules.

The Green Paper also addressed the question of detention conditions,which it noted is an area in which rules have primarily been created by the ECHR, the CPT and the Council of Europe. The Commission found that the non-binding *European Prison Rules*[[52]](#footnote-52) adopted by the Council of Europe in 2006 are a ‘comprehensive guidance on the running of prisons and the treatment of prisoners’, and it expressed the view that future EU action in this filed ‘could play a part in ensuring equivalent prison standards for the proper operation of the mutual recognition instruments’.[[53]](#footnote-53)

### Points for consideration

* Minimum standards can be developed and procedural rights can be strengthened by way of minimum rules for suspects or accused persons in criminal proceedings in the EU, with the widest possible use being made of non-custodial supervision measures.

## 3. Overview of remand detainees in Ireland

### Irish remand figures

Figures for 2011 reveal that 4,546 people – **26% of all prisoners** – were committed to prison on remand in Ireland.[[54]](#footnote-54) Of these, 4,017 were male and 475 were female.[[55]](#footnote-55) In total, 21% of the total female committal population comprised females on remand, while 27% of the male remand population made up the total number of male committals. In 2011, 2.4% of the remand committals were held under immigration law.

In 2011, the daily average number of remand prisoners was **624**.[[56]](#footnote-56) The majority of these were detained in Cloverhill (344), followed by Castlerea (64) and Limerick (41). The majority of female remand prisoners were held in the Dóchas centre (29) with few detained in Limerick prison (3).

On 28 February 2013, there were 329 remand prisoners at Cloverhill prison (74.3% of the 443 prisoners held), 73 at Castlerea (20% of 363 prisoners), 40 at Cork prison (16.7% of 239 prisoners), 40 at Limerick prison (18.4% of 217 prisoners).[[57]](#footnote-57) Nine of the 26 17-year-old boys at St Patrick’s Institution on the same date were held on remand, amounting to 34.6% of the population. A total of 21 of 123 women were held on remand at the Dóchas centre (17.1%). On that date, the total percentage of prisoners on remand was 15.1%.[[58]](#footnote-58)

The majority – 19% – of these remand prisoners (111 of 596 people) were detained on drugs charges, while the next largest group (17% or 102 people) were remanded on theft and related charges. Only 4.5% were on remand for homicide offences, 6% for sexual offences, 10.7% for ‘Attempts/Threats to Murder, Assaults, Harassments and Related Offences’, while 5.2% were held in pre-trial detention for public order offences, 3.3% for criminal damage offences and 2.6% for road traffic offences.[[59]](#footnote-59)

Remand populations in other common law jurisdictions vary from 15% to 29%. As stated above, the overall remand prison population in Ireland for the year 2011 equated to 26% of the total prisoner population, which means that Ireland’s recorded remand rate is at the upper end of the scale compared to other common law countries. IPRT previously called on Government, the Courts Service and the Irish Prison Service should conduct an analysis of how many people remanded in custody go on to receive a custodial sentence to assess the necessity of using this measure to the extent it is currently used.[[60]](#footnote-60)

### Conditions of detention for remand prisoners

Article 3 of the European Convention on Human Rights prohibits torture and treatment or punishment which is inhuman or degrading.The *Prison Rules 2007* provide that unconvicted prisoners have enhanced rights to visits (Rule 35(3), phone calls, including to conduct business affairs (Rule 46(4)) and to receive private medical care (at their own expense) (Rules 72 and 73). Unconvicted prisoners should also be accommodated separately from convicted prisoners ‘in so far as is practicable’ (Rule 71).

#### Overcrowding in Cork and Limerick prison

Given the scale of overcrowding, remand prisoners in Cork and Limerick prison are likely to be housed with convicted prisoners in cells designed for single occupancy and may also be subjected to the degrading practice of ‘slopping out’. In 2011 the Minister for Justice and Equality stated that 63% of untried prisoners were housed separately in purpose-built accommodation in Cloverhill Remand Prison (374) and in the remand block (the ‘Grove’ unit) of Castlerea prison (55).[[61]](#footnote-61) The remaining **37%** of remand prisoners were housed in Limerick Prison and Cork Prison, where the Minister stated his obligation to separate all untried prisoners from convicted prisoners via the establishment of a proposed new Munster prison at Kilworth.[[62]](#footnote-62) However, to date there has been no progress made on the Kilworth prison and, the project was officially put on hold in 2012 due to the financial crisis.

In *Unlocking Community Alternatives – A Cork Approach 2012*, the Prison Service instead proposed the ‘construction of a new 150 cell block with all related and supported ancillary services will be provided on the adjacent car park site’ adjacent to the existing prison at Rathmore Road.[[63]](#footnote-63) An environmental impact survey on the proposed new prison has been undertaken. Following the capital allocation of €24 million to the Department of Justice in Budget 2013, construction work should commence in 2013,[[64]](#footnote-64) in conjunction with essential refurbishment and construction works in Mountjoy and Limerick Prisons. In June 2013, the Prison Development (Confirmation of Resolutions) Bill 2013 (second stage) was introduced in the Oireachtas by Minister of State Kathleen Lynch, which gives planning permission for the proposed new prison in Cork. Regarding Limerick prison, the current plan is to demolish the early 19th century A and B wings of Limerick Prison and replace them with modern cellular accommodation – including full in-cell sanitation - on a site adjacent to the prison, with construction commencing in August/September 2013 with completion/commissioning in June/July early 2015.

#### Recreation and education for remand detainees

The *Prison Rules* *2007* state that an unconvicted person may engage in authorised structured activity with the consent of the governor (Rule 72(1). He/she may also participate with convicted prisoners if the governor consents to this (Rule 72(2). Furthermore, the governor may ‘arrange for the provision of such facilities as he or she considers appropriate to an unconvicted prisoner to enable him or her to engage with his or her regular employment’ (Rule 72(3).Despite these provisions, it is likely that in practice, few (if any) remand prisoners are facilitated in engaging with their regular employment while detained pending trial. The fact that remand prisoners are not entitled to temporary release is a further barrier to the continuance of their employment.

Young people detained on remand are held in one of the centres that make up the children detention school system or at St. Patrick’s Institution: young males under 17and young females under 18 are remanded at one of the children detention schools (Oberstown Boys School, Oberstown Girls School or Trinity House), while young males aged 17 years are remanded at St. Patrick’s Institution in Dublin. The recent report into conditions at St Patrick’s Institution by the Inspector of Prisons revealed it to be an extremely dangerous prison with one of the most serious drug problems of all Irish prisons and a small number of abusive staff who intimidate and use violence on prisoners.[[65]](#footnote-65) This makes it a wholly unsuitable place to detain remand prisoners who are innocent until proven guilty (and may, in fact, be acquitted in due course, or if convicted, receive a suspended sentence, community service order or probation order), especially those who are children.

Irish research on the experience of young people on remand conducted in 2008 has highlighted that the majority of young people on remand found that the few hours they were able to spend out of their cells were characterised by boredom as few facilities were provided. [[66]](#footnote-66) Freeman’s study also revealed that apart from their daily visitation and prison shop rights the young remand prisoners believed that their rights were no better than sentenced prisoners despite the fact that they are legally entitled to an enhanced regime. Young remand prisoners alleged that prison officers could not identify prisoners on remand and had limited or no knowledge of the entitlements of remand prisoners. Despite not being in prison for punishment, all remand prisoners were locked in their cells for a similar amount of time to sentenced prisoners; 13 hours for females and 18 hours for males.[[67]](#footnote-67)

#### Indeed, for remand prisoners from counties other than Dublin, being accommodated at St Patrick’s Institution or the Oberstown complex might effectively render the right to enhanced visits meaningless.[[68]](#footnote-68) Similarly, for women remand prisoners not from Dublin who are detained in the Dóchas centre, or those not from Limerick who are remanded at the female prison there, they may equally be unable to exercise their right to enhanced visits if family members, including small children are unable to embark on long journeys to appear at the prison for a 15 minute visit.The Incentivised Regime Policy: penalising remand prisoners?

This issue of accessing enhanced status and privileges is of relevance to the remand prisoner population in Ireland also. In launching the IPS Three Year Strategic Plan in April 2012, Minister Shatter described the proposed Incentivised Regime Policy as providing ‘for a differentiation of privileges between prisoners according to their level of engagement with services and quality of behaviour.’[[69]](#footnote-69) In the wake of this, the IPS introduced three new levels of gratuity payment – €0.95, €1.70, €2.20[[70]](#footnote-70) – to replace the previous €2.35 daily allowance. The gratuity is usually spent on toiletries, cigarettes, newspapers, batteries for radios, etc. According to Dr. Kevin Warner, this gratuity scheme would worsen the financial burden on prisoners’ families, violate the European Prison Rules, and penalise the hundreds of inmates who are “on protection’ and therefore unable to participate in employment or any other meaningful activity.”*[[71]](#footnote-71)*

IPRT submits that the scheme is also **likely to penalise remand prisoners** who may choose to exercise their right under the Prison Rules 2007 *not* to engage with authorised structured activities, since the Minister’s comments on the scheme seem to suggest that remand detainees will start at the standard level like all other new committals and may either become enhanced if they engage with education services or work, or be demoted to basic level if they fail to so participate. The new schemes, therefore, undermine the right of remand prisoners not to engage with such activities under Rule 72(1) of the *Prison Rules 2007* which provides: ‘An unconvicted prisoner may, with the consent of the Governor, engage in authorised structured activity, but shall not be required to engage in such activity.’

Given the special untried and unconvicted status of remand prisoners, they should arguably be paid at the highest gratuity level, irrespective of their engagement with work and education services. Remand prisoners might legitimately exercise their right under Rule 72(1) to opt out of authorised structured activities in order to apply for bail or to focus on preparing their defence, because they are too upset or worried about the uncertain duration of their imprisonment to engage meaningfully with rehabilitative services, or because they are being remanded in a prison that caters primarily to sentenced prisoners (e.g. Cork, Limerick, St Patrick’s Institution, the Dóchas Centre or Castlerea) and they want to minimise their contact with such prisoners. Making remand prisoners’ access to an enhanced regime or incentives dependent on active engagement with work and education violates their right *not to engage* under Rule 72(1) of the *Prison Rules 2007*.

Moreover, providing remand prisoners with access to authorised structured activities with which they want to engage can be challenging for prison administrations, not least because of the uncertain duration of the prisoners pre-trial detention. In 2002 and 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)condemned Cloverhill prison, Ireland’s only dedicated remand prison for having an inadequate regime. The 2006 Report of the Committee reads: ‘The CPT noted that the regime of activities in Cloverhill Prison had not improved since their last visit in 2002. It remained very underdeveloped. At the time of the visit, besides inmates tasked with cleaning duties, only some 23 inmates were involved in an activity with another 30 or so using the gym every say. The recent development of education and training facilities was welcomed, although they were not operating at the time of the visit. The CPT recommended that efforts to develop the programmes of purposeful activities of a varied nature be intensified.’[[72]](#footnote-72) In the Inspector of Prison’s 2010 Annual Report, he described Cloverhill as overcrowded and said that there ‘are not adequate services and regimes in this prison.’[[73]](#footnote-73)

In March 2013, the Minister for Justice responded to a parliamentary question on the regime and services available to remand prisoners at Cloverhill as follows:

In relation to Cloverhill Prison, which is the largest remand prison, given the transitory nature of the prisoners it is not practical to provide the full range of long-term programmes that is available to sentenced prisoners in other prisons. There is a small education unit which currently has an enrolment of about 110 prisoners. Work training activities are provided in the kitchen, laundry, industrial cleaning and grounds maintenance and has a capacity in excess of 40 prisoners.[[74]](#footnote-74)

While the uncertainty surrounding the length of time that any given remand prisoner will stay in prison is problematic and frustrating both for the individual him/herself and the prison administration (particularly when overcrowding is a persistent problem), lack of clarity in this regard does not absolve prison management from providing remand prisoners with an adequate regime, preferably with remand specific programmes, including bail information schemes, assistance with welfare benefits and housing etc on offer. Since a quarter of all prisoners held at Cloverhill prison are sentenced prisoners (114 prisoners out of 443 on 28th February 2013),[[75]](#footnote-75) it is likely they would be given priority over remand prisoners in accessing the 40 work training placements, as well as the 110 places in the education unit.

*Remand Prisoners: A Thematic Review* also revealed that the ‘resettlement strategies in place rarely took account of the needs of the remand population, and some inspections noted that remand prisoners had been excluded in resettlement strategies or a resettlement needs analysis.’[[76]](#footnote-76) While the UK study acknowledged the difficulties inherent in charting remand prisoners’ period in custody due to the unpredictability of outcomes of court appearances and the prisoners’ release date, the review concluded that this very fact ‘emphasises the need for oversight from a case manager to make best use of the defendant's time in custody.’[[77]](#footnote-77)

### Points for consideration

* An analysis of how many people remanded in custody go on to receive a custodial sentence would enable an assessment of the necessity of using this measure.
* The accuracy of remand-specific statistics could be improved by inter-agency working involving Central Statistics Office, the Statistics Unit in the Department of Justice, the Gardai and the Courts. As regards linking remand detention to particular charge(s), possible use could be made of a common identifier through PULSE ID.
* Ireland has no strategy for remand prisoners and case management for sentenced prisoners is still only in its infancy. This makes it likely that insufficient time and effort is expended to conduct risk and needs assessments at the committal stage and to manage remand prisoners as effectively as possible, given the inherent uncertainty regarding their duration of pre-trial imprisonment.
* Remand prisoners should arguably be paid at the highest gratuity level of the mandatory Incentivised Regimes scheme, due to their special (untried and unconvicted) status, irrespective of their engagement with work and education services.
* Despite the uncertain term of their incarceration pending trial, remand prisoners are likely to benefit from a prisoner-centred, multidisciplinary approach to case management with provision for initial assessment, goal setting and periodic review to measure progress.
* The development of a strategy for remand prisoners by the Irish Prison Service could help ensure that their unconvicted status is manifested in their treatment and conditions of detention.
* The Minister for Justice has a statutory obligation to separate remand detainees from convicted prisoners, which is not being fulfilled.

## 4. Current law regarding the application and refusal of bail in Ireland

### The general application of bail in Ireland

Where a person is arrested and charged with an offence in Ireland, he or she will be brought before a District Court as soon as possible. The District Court judge may either remand the accused in custody or release them conditionally whereby the accused will enter into a bail bond with or without surety. The amount of money specified in the bail bond is set by the judge. If granted bail the accused or their surety (e.g. a parent or spouse) must pay into court at least one-third of the amount of money promised in the bail bond. This money will be returned if the accused appears in court when required. The Director of Public Prosecutions can appeal the decision to grant bail or the conditions of bail to the High Court. If the District Court refuses bail, the accused will be remanded in custody. This decision can be appealed to the High Court. People who are charged with treason, war crimes, murder, attempted murder, conspiracy to murder or piracy, genocide and certain offences under the *Offences Against the State Act, 1939* and the *Official Secrets Act, 1963* will have to apply to the High Court via their legal representative, as the District Court does not have the power to grant bail for these offences.

Whether or not the District Court judge will grant a person bail depends on several factors, such as whether the accused was caught red-handed, ever breached a bail bond before or is likely to flee, the seriousness of the offence, among other factors.

### The scheme for adult offenders

In the seminal Irish case of People (Attorney General) v O’ Callaghan from 1966,[[78]](#footnote-78) the Supreme Court held that the sole purpose of bail was to secure the attendance of the accused at trial. This principle meant that the denial of bail to prevent a defendant committing crimes while awaiting trial would not only breach the presumption of innocence but would also infringe the constitutional rights of the accused and undermine due process values permeating the Irish legal system. However, this was dealt a death blow following intense pressure in the mid-1990s from the Gardaí, DPP and politicians arising from media reports about the frequency of offences committed by people on bail. Following media-generated panic over a perceived increase in offending by people while on bail, the constitution was amended, effectively neutralising the effects of the O’Callaghan principles in 1996.

The Sixteenth Amendment of the Constitution adopted in 1996 provides for the refusal of bail to a person charged with a **serious offence** where it is reasonably considered necessary to prevent the commission of a serious crime by that person. *The Bail Act 1997* was enacted to give effect to this amendment and lay down in legislation the clear guidelines for the provision of bail. Section 2(1) declares that:

‘Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.’

Under Section 2 of the 1997 Act various factors are considered when deciding whether to refuse bail and remand an individual in custody because it is ‘reasonably considered necessary to prevent the commission of a serious offence by that person’, including:

* The nature and degree of the seriousness of the offence with which the accused person is charged and the sentence likely to be imposed upon conviction
* The strength of evidence behind the charge
* Any conviction of the accused person for an offence committed while he or she was on bail
* Any previous convictions of the accused person including any conviction the subject of an appeal to a court
* Any other offence in respect of which the accused person is charged and awaiting trial.

Significantly, the court might also take into account the fact that the accused person is addicted to a controlled drug under the *Misuse of Drugs Act 1977*.

Subsequent significant changes to the *Bail Act 1997* include Sections 6 and 7 of the *Criminal Justice Act 2007.* Section 6 of the 2007 Act obliges the accused person to supply a personal statement as a precondition for bail for serious offences,[[79]](#footnote-79) while Section 7 ‘modifies the general rule on the admissibility of opinion evidence and gives evidential status to an expression of opinion’ [[80]](#footnote-80) by certain members of the Gardaí in bail proceedings under Section 2 of the *Bail Act 1997* whether refusal of bail is reasonably considered necessary to prevent the commission of a serious offence by the applicant.

Regarding Section 6 of the 2007 Act, the Irish Human Rights Commission has stated that the relevance and purpose of the statement are questionable: ‘For example, the applicant’s source of income and possession of assets do not have any direct bearing on his or her likelihood to stand trial, interfere with witnesses or commit offences while on bail.’[[81]](#footnote-81) In terms of gathering all the disparate bits of information, while Section 6(5)(a) of the 2007 Act permits the court to make an order to extend the period for production of the statement, the IHRC notes that ‘implications of a delay on the applicant is continued detention.’[[82]](#footnote-82) According to the IHRC, the provision ‘raises serious concerns for the applicant’s right to personal liberty and adherence to the principle that everyone is presumed innocent until proven guilty.’[[83]](#footnote-83)

In relation to Section 7 of the 2007 Act and the evidential status afforded to a senior Garda’s opinion in a bail application, the IHRC expressed ‘concerns regarding the purpose and appropriate weight that should be attached to an expression of opinion and the potential it may have in determining the granting or refusal of a bail application.[[84]](#footnote-84) It could in effect amount to executive detention of the accused; refusal of a bail application being a responsibility that rests under law with the judiciary alone.’[[85]](#footnote-85)

As Section 2 of the 1997 Act makes clear, consideration of these factors is contingent on the accused being charged with a **serious offence** in the first instance. If the accused is charged with a low level offence, such as a public order offence, possession of a drug for personal use, or even Section 2 assault (which has a maximum of 6 months imprisonment), bail should be granted.

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| **In the 2011 case of *MJELR v Zielinski***[[86]](#footnote-86) the applicant, a Polish national resident in Ireland, was the subject of an EAW issued by the Polish authorities in August 2009, having being convicted to a number of robbery with violence offences in his country of origin. Following an appearance before the High Court in November 2010 in accordance with Section 13 of the *European Arrest Warrant Act, 2003*, he was remanded in custody to Cloverhill prison pending the Section 16 hearing on the matter. The case involved an application to be released on bail pending that hearing. The Minister for Justice objected to bail being granted on the basis that there was a real risk that the applicant would abscond and thus avoid serving his sentence in Poland. The applicant’s bail request was refused on the basis that a real and substantial risk existed that he might abscond and be unavailable for surrender to the requesting state pursuant to s. 16 of the 2003 Act. |

The dearth of information regarding the use of remand makes it difficult to draw firm conclusions as to whether the law is generally being applied appropriately, as per Section 2 of the *Bail Act 1997*. However, it is clear from the wording of the provision that people should not be denied bail unless they have been charged with a serious offence and the judge has a reasonable suspicion that they will commit a further serious offence – punishable with five years imprisonment or more – while on bail.Then, and only then, should the additional factors be taken into account. If there is not a substantial risk that the accused will commit a serious crime if released on bail, consideration of his or her criminal record, or history of addiction etc. should not be relevant.

#### Misapplication of remand

Many people who are remanded in custody have mental health problems or issues with homelessness and are generally so remanded on charges for minor offences (and if they have a criminal history it also involves minor offending), which suggests that the current bail law is often being misapplied to grant respite to the communities in which the accused people live or, perhaps, in an effort to offer interventions such as drug treatment in prison to needy individuals, or because the chaotic nature of their lives means that the accused may find it difficult - without support – to adhere to bail conditions which may be imposed,[[87]](#footnote-87) e.g. to refrain from contact with certain people or being at certain people or abstaining from alcohol or drugs.

#### Imprisonment as a last resort

IPRT has long called for imprisonment to be used as a last resort. This principle should be afforded even greater weight in relation to people who have yet to be tried and convicted of any criminal offence. In the UK, when an accused person is brought before a court on foot of a criminal charge or charges, Section 4(1) of the UK *Bail Act 1976* ensures that he or she will not lose his or her liberty by being remanded in custody unless there are pressing reasons in the public interest for doing so. Many of the exceptions to this right to bail are similar to those contained in Section 2 of the Irish *Bail Act 1997.* Under Section 2 of the *Bail Act* 1997 there is no express presumption in favour of the granting of Bail. A judge’s decision to remand a person in custody as a precautionary measure to prevent the commission of a serious offence depends on a number of factors discussed above.

Section 2 of the 1997 Act would be greatly improved if it were amended to provide for a legal presumption in favour of the accused person being granted bail. The exceptions to bail can then be specified, of course, but the starting point should be that bail will be granted unless convincing evidence is adduced in support of remanding the accused in custody. Moreover, an obligation on judges to clearly state in open court their reason(s) for deciding to remand the accused in custody pending trial,[[88]](#footnote-88) and to record such reasons in writing, would greatly improve the transparency and accountability of the judicial decision-making process. This would benefit not only the accused person and their family members, but also criminal justice and penal reform analysts whose research would benefit from the frequent publication of statistics and trends on the reasons behind decisions to remand in custody.

In March 2013, the Minister responded to a question on reform of bail laws, stating that:

bail law must be continually reviewed to ensure that all possible avenues are taken to protect the public against the commission of crime, particularly serious crime, by persons on bail.   
 The review is of course subject to constitutional and European Convention of Human Rights requirements in relation to the right to liberty. The provisions of the European Convention on Human Rights restrict the extent to which the right to bail can be limited. There is a constitutional presumption in favour of bail, since, in the eyes of the law, a person is innocent until proven guilty.

#### The ‘no real prospect’ test

The ‘no real prospect’ test is contained in Schedule 11 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. The Prison Reform Trust summarise the ‘no real prospect’ test as being designed:

to remedy the misuse of custodial remand by establishing a test of a reasonable probability that the offence is imprisonable as a criterion of whether the court can deny bail. The no real prospect test would mean that defendants should not be remanded to custody if the offence is such that the defendant is unlikely to receive a custodial sentence. The test will not restrict custodial remand for serious crimes, nor where there is a risk that the person will, if released on bail, engage in domestic violence.[[89]](#footnote-89)

In Irish law, a similar test would mean that an accused person with addiction or mental health issues who faces charges for low level criminality, such as public order offences, would not be remanded in custody on the basis that there would be no real prospect that he or she would be unlikely to receive a custodial sentence, since their offence is not a serious one (under Section 2 of the *Bail Act 1997*) in the first place.

### The scheme for child offenders

With regard to young people a presumption against detention is contained in Section 143(1) of the *Children Act 2001*:

The court shall not make an order imposing a period of detention on a child unless it is satisfied that detention is the only suitable way of dealing with the child and, in the case of a child under 16 years of age, that a place in a children detention school is available for him or her.

However, Section 88 of the same Act, which deals with remand, gives very little guidance in relation to the factors to be taken into account by a judge when deciding whether or not to remand a child in custody. Moreover, there is no express presumption in favour of the granting of bail in Section 88 of the 2001 Act, although it could perhaps be considered to be implicit in Section 143(1). If a judge decides to detain a young person on remand, he or she must explain the reasons for doing so, in language that is appropriate to the young person’s age and level of understanding (under Section 88 of the 2001 Act).

According to Seymour and Butler in *Young People on Remand* (2008), a judge’s decision not to grant bail may be influenced by ‘the need for time to undertake an assessment of the young person’s needs or to find a suitable care placement for them’.[[90]](#footnote-90) However, Section 88(13) of the 2001 Act explicitly precludes judges from remanding a child ‘if the only reason for doing so is that the child is in need of care or protection’.

#### Detention of children as addressed in international human rights law

The UN Convention on the Rights of the Child was ratified by Ireland in 1992. Article 40(4) of this Convention provides that a variety of alternatives to institutionalisation should be available to ensure that children in conflict with the law are treated in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. Such alternatives include care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, among others. Other articles of this Convention are also relevant; for example, Article 40(2)(b) provides that a child who is in conflict with the criminal law has the right: (i) to be presumed innocent until proven guilty; (ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians; and (iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body.

#### Children on remand in Ireland

In practice, most children and young people in Ireland are granted bail in Ireland. Under Section 90(1) of the *Children Act*, many conditions may attach to a child being granted bail including for example that they reside with their parents or guardian, that they receive education or training, and that they report to a Garda Síochána station at specified intervals. Notwithstanding these conditions, no support or supervision is provided to children while on bail; perhaps unsurprisingly many fail to comply with bail conditions imposed.

Lack of support while on bail is exacerbated by the fact that young people can be exposed to lengthy periods of pre-trial detention; those included in Freeman’s research (2007) spent between two and 360 days remanded in prison custody, of whom one-fifth had been on remand for between seven and 12 months.’[[91]](#footnote-91) This is contrary to the *Children Act 2001*, which states that young people should be detained in custody for the shortest amount of time possible and as a measure of last resort. It also breaches Article 37(b) of the UN Convention on the Rights of the Child. Moreover, as Freeman observed, such periods are longer than the average sentence in Ireland, suggesting that many young people ‘were not even being detained due to the nature of the alleged offence but rather other alternative reasons’.[[92]](#footnote-92)

Seymour and Butler (2008) identified the following means of supporting a young person to comply with bail: ‘courtroom communications, minimising time delays in processing cases and bail support schemes’.[[93]](#footnote-93) Significantly, in their research some of the professionals who worked directly with young people stated that judges tended to assume that young people understood the requirements of bail because some of them had frequent court appearances, but this assumption ‘did not take account of the educational and cognitive difficulties experienced by many young people appearing before the courts.’[[94]](#footnote-94) The authors found that while young people generally could recount the bail conditions imposed on them, they were less clear about the consequences of non-compliance.[[95]](#footnote-95) This lack of insight was partly largely to their immaturity, their poor educational attainment and/or cognitive ability, as well as their ‘reduced capacity to resist peer pressure compared to adults.’[[96]](#footnote-96) Most young people only understood the seriousness of non-compliance with bail conditions when remanded in custody for breaching them.

While Section 88(4) of the *Children Act 2001* obliges judges to explain to a young person their reasons for remanding him or her in custody, there is no requirement to explain the decision to grant bail or the consequences of failing to adhere to bail conditions set under Section 90 of the Act.

With regard to the sometimes lengthy delays between the start and conclusion of cases in the Children Court,[[97]](#footnote-97) Seymour and Butler’s research found that this had a two-fold impact on young people, giving them an ‘unclear message about the consequences of their behaviour’ and placing them ‘at increased risk of re-offending and of breaching their conditions of bail, and, as a result, it increases their risk of detention on remand.’[[98]](#footnote-98)

### Remand of females

On 16 July 2012, almost a quarter of the female prison population were on remand.[[99]](#footnote-99) Women are more likely than men to be remanded to prison for offences that would not lead to a custodial sentence.[[100]](#footnote-100) This often results in serious consequences for children of imprisoned mothers. Remanding women in custody creates costs for local authorities in looking after children, as well as the woman’s employment prospects. It may also result in the loss of local authority housing.

The reasons behind the remand of high numbers of women may be similar to the reasons behind the high remand figures for young people – i.e. chaotic lifestyles, inability to adhere to bail conditions without supports in the community, inability to pay the bail bond etc, rather than the fact that they pose a real risk of committing serious offences if released on bail. There is a strong case that bail services and supports should be provided in the community to women who might otherwise be remanded into custody because of the risk factors identified in the previous paragraph.

In 2007 the published report by Baroness Jean Corston, *A Review of Women with Particular Vulnerabilities in the Criminal Justice System* recommended that women's prisons in the UK be shut down and replaced with small, geographically dispersed multi-functional custodial centres. She recommended that women unlikely to receive a custodial sentence should not be remanded in custody; and that they must never be sent to prison for their own good, to teach them a lesson, for their own safety or to access services such as detoxification. She also recommended that more supported bail placements for women suitable to their needs must be provided and defendants who are primary carers of young children should be remanded in custody only after consideration of a probation report on the probable impact on the children.[[101]](#footnote-101)

### Points for consideration

* As per Section 2 of the *Bail Act 1997*, bail should only be denied if an accused person has been charged with a serious offence and the judge has a reasonable suspicion that he or she will commit a further serious offence – punishable with five years imprisonment or more – while on bail.
* If Section 88(4) of the *Children Act 2001* was replicated in the relevant legislation for adult offenders, the court would be required to explain reasons for detaining an adult on remand in open court, in language that is appropriate to the person’s level of understanding.
* Refusal of a bail application is a responsibility that rests under law with the judiciary alone; Sections 6 and 7 of the Criminal Justice Act 2007 are therefore inconsistent with an accused person’s right to personal liberty and presumption of innocence.
* Amendment of Section 2 of the *Bail Act 1997* to provide for a legal presumption of bail being granted, with exceptions spelled out, would mark a step towards upholding the principle of last resort.
* An obligation on judges to clearly state in open court their reason(s) for deciding to remand the accused in custody pending trial, and to record such reasons in writing, would greatly improve the transparency and accountability of the judicial decision-making process, benefitting the accused person, their families and criminal justice and penal reform analysts.
* Introduction of a provision similar to the ‘no real prospect’ test in Irish legislation would mean that an accused person with addiction or mental health problems facing charges for low level criminality would not be remanded in custody.
* The development of holistic community-based accommodation and day centres could represent a step towards constructively dealing with the needs and vulnerabilities of those whose offending behaviour is intrinsically linked to unmet needs and vulnerabilities.
* Strict adherence to Section 143(1) of the *Children Act 2001*, and the provisions of the UN Convention on the Rights of the Child, would mean that young people would not be remanded in custody for low level offending primarily because of difficult life circumstances.
* Clearer information from judges to young people regarding reasons for granting bail and consequences of failure to comply could lead to a reduction in the number of young people remanded in custody due to breaking bail conditions. This could be addressed through an amendment of the Children Act 2001.
* In criminal cases involving children and young people, the combined impact of long delays between commission of the offence, the apprehension of the young person and the sentencing stage, can reduce the impact of the court process and the consequences arising from offending behaviour.
* Implementation of the Corston recommendations could reduce the need for (and arising costs of) providing care for the children of women in custody, as well as improve the employment prospects of women in the criminal justice system.

## 6. The need to establish bail services and supports in the community

International evidence suggests that bail supports and services improve compliance with bail conditions, particularly where the accused person had a chaotic life and complex personal challenges. The overriding aims of bail services and supports are said to be the prevention of offending on bail, ensuring appearance at court and reducing remands to custody to the essential minimum.[[102]](#footnote-102) They might be particularly effective in reducing recourse to the remand of young people, women and those with mental illness due to breach of bail conditions because of personal difficulties and unstable lifestyles.

In the context of children and young people accused of offences, Seymour and Butler state that examples of bail supports include:

* bail information schemes
* bail support/supervision schemes
* remand fostering
* bail hostels
* bail reviews on custodial remand.[[103]](#footnote-103)

People who breach bail, especially women and young people who have been charged with low level offences and do not pose a risk of committing serious or violent offences, might be more effectively dealt with by bail support schemes, which allow the accused to remain within their community and address offending-related behaviour in a familiar environment.[[104]](#footnote-104)

In addition to **preventing offending** for the duration of the bail period, help with offending related difficulties is reported to be of benefit even after the remand period.[[105]](#footnote-105) Research conducted in Scotland found all interviewees except one to have experienced a **positive change in their behaviour** over time, including a desire to avoid trouble or jail, learning to avoid conflict situations and refraining from drinking or taking drugs.[[106]](#footnote-106)

In terms of **court appearances**, bail supports and services have had a significant impact in ensuring that young people in particular attend court. An evaluation of schemes in England and Wales found that young people attended all court hearings in 94% of programmes,[[107]](#footnote-107) while in Ontario, Canada, 81% of bail supervision programme clients attended all of their court appearances.[[108]](#footnote-108) This not only improves the prospects of clients successfully completing bail, but also increases court efficiency by avoiding failures to appear.

Bail supports and services have also been effective in **reducing the number of remands to custody**, with the aforementioned evaluation in England and Wales showing a direct correlation between an increase in the use of bail supports and services and a decrease in the number of young people being remanded in custody. In Victoria, Australia, a bail support programme contributed to reducing the number of defendants remanded: all interviewed magistrates said that they would have remanded individuals were it not for the programme.[[109]](#footnote-109) Data for bail supervision services in Scotland also shows that 80% of those completing their bail supervision period did not receive a custodial sentence, strongly suggesting that the service fulfilled its aim of restricting the use of custody.[[110]](#footnote-110)

In addition to the efficacy of bail supports and services in relation to the stated aims and benefits, research has also shown that such schemes are **more cost effective** than custodial remands. In Ontario, Canada, for example, bail supervision and verification programmes cost approximately $3 a day per client in comparison to custody costs of $135 a day per inmate.[[111]](#footnote-111) Similarly in Scotland, off-setting the cost of supervised bail against the reduction in prison costs from reduced use of remand over a three year period resulted in a net benefit of between £2 million and £13 million.[[112]](#footnote-112)

A pilot bail support programme for high risk young offenders was due to be established in Dublin and Limerick in 2008, before being rolled out nationwide in 2009 under the National Youth Justice Strategy. In December 2008, then Minister for Children and Youth Affairs Barry Andrews promised the development of bail support for young people as a main priority contained in the strategy in 2009. However the promising programme was never set up due to ‘costs and planning’ issues.[[113]](#footnote-113) In response to a series of parliamentary questions on bail reform in March 2013, the Minister for Justice and Equality made it clear that there are ‘no plans to develop bail supports and services in the community as part of bail reform.’[[114]](#footnote-114) This is most regrettable, since the preceding discussion of the profile of remand detainees and the over-use of remand for women and young people reveals that too many people charged with minor offences, who do not pose a grave risk to society are remanded in custody primarily because of problematic personal characteristics such as addiction, mental illness and homelessness. Australian research from 2006 reveals a similar trend in Victoria, whereby ‘remandees demonstrated statistically significant declines in seriousness of criminal history at the same time as there were indications of increasingly sever drug and alcohol abuse and mental health problems.’[[115]](#footnote-115)

### Points for consideration

* Evidence from the UK, Canada and Australia shows that bail services and supports can lead to a positive change in the behaviour of offenders, increase the rate of court attendance by young people, reduce the number of remands in custody, and are more cost effective than custodial remands.

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1. See, for example, *Irish Prison Service Annual Report 2011*, p. 21 available at <http://www.irishprisons.ie/images/pdf/annualreport11.pdf>. [↑](#footnote-ref-1)
2. *Prison Rules 2007*, Rule 35(3). [↑](#footnote-ref-2)
3. Ibid, Rules 73 and 74. [↑](#footnote-ref-3)
4. Coyle, A. (2002) Pre-Trial Prisoners and all others under Detention Without Sentence, p.117 in *A Human Rights Approach to Prison Management,* International Centre for Prison Studies: London. [↑](#footnote-ref-4)
5. Irish Prison Service *Three Year Strategic Plan 2012-2014* (2012), p. 3. [↑](#footnote-ref-5)
6. Ibid, Strategic Action 3, p. 27. [↑](#footnote-ref-6)
7. See Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the*

   *Universal Periodic Review: Ireland*, March 2011, paragraph 21, available at <http://www.ihrc.ie/download/pdf/ihrc_report_to_un_universal_periodic_review_march_2011.pdf> which states: “The IHRC **recommends** that separation of sentenced and remand prisoners should

   be enforced.39 Remand prisoners should be detained in separate facilities from convicted

   prisoners.” [↑](#footnote-ref-7)
8. *Prison Rules 2007*, Rule 71 provides: “Unconvicted prisoners shall, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be accommodated in areas that are separate from those in which convicted prisoners are accommodated or to which convicted prisoners have access, and convicted prisoners shall, as far as is practicable, not be permitted access to areas to which unconvicted prisoners have access at those times when unconvicted prisoners have such access.” [↑](#footnote-ref-8)
9. Where no in-cell facilities exist, prisoners urinate and defecate in buckets or portable units in the cell during lock up, which is generally from 7.30pm to 8.00am and mealtimes during the day. [↑](#footnote-ref-9)
10. Significant reductions in occupancy levels are required in the Dóchas Centre, Mountjoy, Cork, Wheatfield, Limerick and Midlands prison.

    See IPRT (2011) *IPRT Submission to Review Group on Thornton Hall,* p.8 available at <http://www.iprt.ie/files/IPRT_Submission_to_Review_Group_on_Thornton_Hall.pdf> [↑](#footnote-ref-10)
11. Ibid, p. 7. [↑](#footnote-ref-11)
12. Article 10(2)(a), ICCPR; Rules 8(b) and 85, Standard Minimum Rules; Rules 18.8 and 18.9, European Prison Rules

    (Recommendation (2006)2 of the Committee of Ministers to member states on the European Prison Rules adopted

    by the Committee of Ministers on 11 January 2006) (EPR). The Standard Minimum Rules permit no exception to the need for separation while the European Prison Rules only permit exceptions with the consent of prisoners. [↑](#footnote-ref-12)
13. Rule 86, Standard Minimum Rules; Rule 96, European Prison Rules. [↑](#footnote-ref-13)
14. Rule 88, Standard Minimum Rules; Rule 97, European Prison Rules. [↑](#footnote-ref-14)
15. Rule 89, Standard Minimum Rules; Rule 100, European Prison Rules. [↑](#footnote-ref-15)
16. Rule 87, Standard Minimum Rules. [↑](#footnote-ref-16)
17. Rule 91, Standard Minimum Rules. [↑](#footnote-ref-17)
18. Rule 92, Standard Minimum Rules; Rules 99a and 99b, European Prison Rules. [↑](#footnote-ref-18)
19. Rule 90 Standard Minimum Rules; Rule 99c, European Prison Rules. [↑](#footnote-ref-19)
20. Rule 98, European Prison Rules. [↑](#footnote-ref-20)
21. Rule 93 Standard Minimum Rules; Rule 98.2, European Prison Rules; supported by general provisions stating that everyone charged with a criminal offence shall be able to prepare a defence and communicate with counsel, such as Article 6(3), European Convention on Human Rights or Article 14, ICCPR. [↑](#footnote-ref-21)
22. Rule 84(3), Standard Minimum Rules. [↑](#footnote-ref-22)
23. Rule 101, European Prison Rules. See also Recommendation (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Committee of Ministers on 27 September 2006 which contains detailed standards on the detention of remand prisoners. [↑](#footnote-ref-23)
24. See IPRT *White Paper on Crime IPRT Response to Discussion Document 3 Organised and White Collar Crime* (2011 p. 15 and *IPRT Position Paper 5 Penal Policy with Imprisonment as a Last Resort* (2009). [↑](#footnote-ref-24)
25. *Wemhoff v FRG* (1968)1 EHRR 55. [↑](#footnote-ref-25)
26. *Ilijkov v Bulgaria* (2001). [↑](#footnote-ref-26)
27. *Caballero v UK* (2000) 30 EHRR 693. [↑](#footnote-ref-27)
28. Article 5(1) European Convention of Human Rights. [↑](#footnote-ref-28)
29. Ibid, Artcile 5(1)(e). [↑](#footnote-ref-29)
30. *Tomasi v France* (1992) 15 EHRR 1. [↑](#footnote-ref-30)
31. *Neumeister* 1 EHRR 91. [↑](#footnote-ref-31)
32. *Kalashnikov v Russia* 36 EHRR 587. [↑](#footnote-ref-32)
33. *McKay v UK* (2006) 44 EHRR 827. [↑](#footnote-ref-33)
34. ICCPR, Article 9.5. [↑](#footnote-ref-34)
35. *Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 16 provides: “When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.” [↑](#footnote-ref-35)
36. See Sections 12 and 13 of the *Children (Secure Accommodation) Regulations 1991*. Section 12 provides: “Subject to regulation 13 a court may from time to time authorise a child to whom Section 25 of the Act applies to be kept in secure accommodation for a further period not exceeding 6 months at any one time.” Section 13 provides: “(1) The maximum period for which a court may from time to time authorise a child who has been remanded to local authority accommodation under Section 23 of the Children and Young Persons Act 1969 to be kept in secure accommodation (whether the period is an initial period or a further period) is the period of the remand. (2) Any period of authorisation in respect of such a child shall not exceed 28 days on any one occasion without further court authorisation.” [↑](#footnote-ref-36)
37. COM (2004) 562 of 17.08.2004. [↑](#footnote-ref-37)
38. In 2006, the Commission published a proposal for a *Framework Directive on the European supervision order in pre-trial procedures* but it was not adopted; see COM (2006) 468 of 29.08.2006. [↑](#footnote-ref-38)
39. Council Decision 2009/829/JHA of 23.10.2009. This repealed *Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record*. [↑](#footnote-ref-39)
40. Ibid, p.7. [↑](#footnote-ref-40)
41. See Fair Trials International *Report, Detained without trial: FTI’s response to the European Commission’s Green Paper on detention* (October 2011), at p. 4. [↑](#footnote-ref-41)
42. Council Resolution on a *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*, 2009/C 295/01 of 30.11.2009 (OJ C 295, 4.12.2010, p. 1). [↑](#footnote-ref-42)
43. *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens* (2010/C 115/01) at paragraph 2.4, page 10. [↑](#footnote-ref-43)
44. COM (2011) 327 of 14.06.2011. [↑](#footnote-ref-44)
45. Ibid, at p. 3. [↑](#footnote-ref-45)
46. Ibid, at p. 4. [↑](#footnote-ref-46)
47. Ibid, at pp. 8-9. [↑](#footnote-ref-47)
48. The Charter was jointly signed and solemnly proclaimed by the Commission, Council and Parliament in 2000 and adapted at Strasbourg in 2007. It has the same legal value as the Treaties but does not extend the competences of the EU in any way (see Article 6, consolidated TEU). The Charter is addressed to EU institutions and Member States when they implement EU law, such as in the field of judicial cooperation in criminal matters in the EU. It covers civil, political, economic and social rights of EU citizens and asserts that respect for fundamental rights will be at the foundation of all EU law. Its six sections contain rights related to dignity, freedom, equality, solidarity, children and justice. [↑](#footnote-ref-48)
49. See COM (2011) 327 of 14.06.2011, at p. 9. [↑](#footnote-ref-49)
50. Ibid, at p. 10. [↑](#footnote-ref-50)
51. Ibid. [↑](#footnote-ref-51)
52. See Rec(2006)2, adopted by the Council of Europe Committee of Ministers on 11 January 2006. Rule 95.1 of the European Prison Rules states that “*The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future”*. Rule 98 provides that untried prisoners must be provided with all necessary facilities to assist with the preparation of their defence and to meet their lawyers. [↑](#footnote-ref-52)
53. See COM (2011) 327 of 14.06.2011, at page 12. [↑](#footnote-ref-53)
54. Irish Prison Service (2012) *Annual Report 2011,* p.24. [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. Irish Prison Service (2012) *Annual Report 2011*, p.45. According to the p. 21 of the Report stated that there were 4,313 people in custodyon 30 November 2011. Of this number 609 were “Remand/trial prisoners”. [↑](#footnote-ref-56)
57. See Parliamentary Question on ‘Prisoner Numbers’, 21 March 2013, available at

    <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>. [↑](#footnote-ref-57)
58. Ibid. [↑](#footnote-ref-58)
59. Ibid. [↑](#footnote-ref-59)
60. See *IPRT Position Paper 5 Penal Policy with Imprisonment as a Last Resort* (2009), p. 9. [↑](#footnote-ref-60)
61. *Justice Sector Capital Review 2012-2016* (2011) p.12 available at <http://per.gov.ie/wp-content/uploads/Justice-Group-CER.pdf> [↑](#footnote-ref-61)
62. *Justice Sector Capital Review 2012-2016* (2011) p.12 available at <http://per.gov.ie/wp-content/uploads/Justice-Group-CER.pdf>. [↑](#footnote-ref-62)
63. Irish Prison Service, *Unlocking Community Alternatives-A Cork Approach 2012* available at<http://www.irishprisons.ie/images/pdf/finalcorkplan.pdf>, p.7 [↑](#footnote-ref-63)
64. The Minister for Justice stated: “The new facility in Cork will be built on a site immediately adjacent to the existing prison and will house 275 prisoners and have a maximum capacity of 310 prisoners. Planning and design are at an advanced stage and it is expected that, subject to planning permission, the project will go to tender in February 2013 with construction works commencing in August 2013, it is expected that the new prison will be operational by September 2015.” See Parliamentary Question on ‘Prison Building Programme’, 11 December 2012, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/%28indexlookupdail%29/20121211~WRS?opendocument#WRS02500> [↑](#footnote-ref-64)
65. See Inspector of Prisons *Report on an Inspection of St. Patrick’s Institution for Young Offenders* <http://www.justice.ie/en/JELR/Appendix%20A%2005.10.pdf/Files/Appendix%20A%2005.10.pdf> [↑](#footnote-ref-65)
66. See, Freeman, S. (2007) *The Life and Times of Young People on Remand: Recommendations for Future Policy in Ireland* available at <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1003&context=aaschsslcon&sei-redir=1&referer=http%3A%2F%2Fwww.google.ie%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dremand%2520prisoners%2520rights%2520of%2520%26source%3Dweb%26cd%3D6%26ved%3D0CFAQFjAF%26url%3Dhttp%253A%252F%252Farrow.dit.ie%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1003%2526context%253Daaschsslcon%26ei%3D8M4sUNmvCInB0QX094HIDA%26usg%3DAFQjCNFYNbUQ8STOhhNBzga7VodpB73pkA#search=%22remand%20prisoners%20rights%22> [↑](#footnote-ref-66)
67. Ibid. [↑](#footnote-ref-67)
68. See, Freeman, S. (2007) *The Life and Times of Young People on Remand: Recommendations for Future Policy in Ireland*, p. 8 available at <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1003&context=aaschsslcon&sei-redir=1&referer=http%3A%2F%2Fwww.google.ie%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dremand%2520prisoners%2520rights%2520of%2520%26source%3Dweb%26cd%3D6%26ved%3D0CFAQFjAF%26url%3Dhttp%253A%252F%252Farrow.dit.ie%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1003%2526context%253Daaschsslcon%26ei%3D8M4sUNmvCInB0QX094HIDA%26usg%3DAFQjCNFYNbUQ8STOhhNBzga7VodpB73pkA#search=%22remand%20prisoners%20rights%22> [↑](#footnote-ref-68)
69. *Address by Alan Shatter, T.D., Minister for Justice, Equality and Defence at the launch of the Irish Prison Service Three-Year Strategic Plan - 30 April, 2012 Irish Prison Service Training & Development Centre, Beladd House, Portlaoise, Co. Laois*, available at <http://www.justice.ie/en/JELR/Pages/SP12000122>. [↑](#footnote-ref-69)
70. See Parliamentary Question on ‘Prisoner Numbers’, 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>. [↑](#footnote-ref-70)
71. Negative, miserly, punitive’, *Irish Examiner*, 31 July 2012 available at <http://www.irishexaminer.com/analysis/negative-miserly-punitive-202527.html>. See also *Address by Alan Shatter, T.D., Minister for Justice, Equality and Defence at the launch of the Irish Prison Service Three-Year Strategic Plan - 30 April, 2012 Irish Prison Service Training & Development Centre, Beladd House, Portlaoise, Co. Laois*, available at <http://www.justice.ie/en/JELR/Pages/SP12000122>. [↑](#footnote-ref-71)
72. *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 from 2 to 13 October 2006*, p. 30. [↑](#footnote-ref-72)
73. Inspector of Prisons, *Annual Report 2010*, para. 21.2 at p. 8. [↑](#footnote-ref-73)
74. On 28 February 2013, Cloverhill prison accommodated 443 prisoners, of whom 329 were on remand. See Parliamentary Question on ‘Prisoner Numbers’, 21 March 2013, available at

    <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>. [↑](#footnote-ref-74)
75. See Parliamentary Question on ‘Prisoner Numbers’, 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>. [↑](#footnote-ref-75)
76. HM Inspectorate of Prisons, *Remand Prisoners: A Thematic Review* (2012), p. 15. [↑](#footnote-ref-76)
77. Ibid. [↑](#footnote-ref-77)
78. [1966] IR 501. [↑](#footnote-ref-78)
79. The written statement must contain detailed information, including the accused’s sources of income within the preceding three years (Section 61A(1)(c)); his or her property, whether wholly or partially owned by, or under the control of, the applicant and whether within or outside the State (Section 61A(1)(d)). The accused must also reveal any previous convictions for a serious offences with which the applicant is charged (Section 61A(1)(e)); any offences committed by the accused while previously on bail (Section 61A(1)(f)); and any previous applications by the person for bail, indicating whether or not bail was granted and the conditions attached (Section 61A(1)(g));. A penalty ensues where an offence to knowingly provide false or misleading information or conceal any material fact has been committed (Section 6(11) [↑](#footnote-ref-79)
80. See IHRC, *Observations on the Criminal Justice Bill 2007*, pp. 16-20. [↑](#footnote-ref-80)
81. See IHRC, *Observations on the Criminal Justice Bill 2007*, p. 17. [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. Ibid. [↑](#footnote-ref-83)
84. Section 3(2) of the *Offences Against the State (Amendment) Act 1972* provides “Where an officer of the Garda Síochána, not below the rank of Chief Superintendent, in giving evidence in proceedings relating to an offence under the said Section 21, states that he believes that the accused was at a material time a member of an unlawful organisation, the statement shall be evidence that he was then such a member”. In consideration of Section 3(2), O’Higgins CJ has noted: “With regard to an expression of belief, obviously the weight to be attached to it depended on a variety of matters- the person who expressed the belief, the circumstances in which it was expressed and, in particular, whether the expression of belief was challenged or not. Obviously in the case if the accused had denied on oath the charge; had denied that he was a member of an illegal organisation, the value and cogency to be attached to the expression of the Chief Superintendent’s belief would obviously be very much diminished,” *The People (DPP) v Ferguson* Unreported, Court of Criminal Appeal, October 27, 1975. See also Report of the Committee to Review the Offences against the State Act 1939-1998 (Dublin, 2002). [↑](#footnote-ref-84)
85. See IHRC, *Observations on the Criminal Justice Bill 2007*, p. 18. [↑](#footnote-ref-85)
86. **[2011] IEHC 45.** [↑](#footnote-ref-86)
87. Under Section 6(b) of the *Bail Act 1997,* such conditions include: (i) that the accused person resides or remains in a particular district or place in the State, (ii) that the accused person reports to a specified Garda Síochána Station at specified intervals, (iii) that the accused person surrenders any passport or travel document in his or her possession or, if he or she is not in possession of a passport or travel document, that he or she refrains from applying for a passport or travel document, (iv) that the accused person refrains from attending at such premises or other place as the court may specify, (v) that the accused person refrains from having any contact with such person or persons as the court may specify. [↑](#footnote-ref-87)
88. With regard to giving reasons for sentencing decisions and the relevance of any sentencing guidelines to the case, see Section 64 of the *Legal Aid, Sentencing and Punishment of Offenders Act, 2012*, which amends Section 174 of the *Criminal Justice Act 2003,* obliging UK judges to explain to the offender in ordinary language— (a)the effect of the sentence, (b)the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence, (c)any power of the court to vary or review any order that forms part of the sentence, and (d)the effects of failure to pay a fine, if the sentence consists of or includes a fine. [↑](#footnote-ref-88)
89. See Prison Reform Trust, *Tackling the Overuse of Custodial Remand*, October 2011, p. 2. [↑](#footnote-ref-89)
90. Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 1. [↑](#footnote-ref-90)
91. Freeman, S. (2007) *The Life and Times of Young People on Remand: Recommendations for Future Policy in Ireland*, p. 4 available at <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1003&context=aaschsslcon&sei-redir=1&referer=http%3A%2F%2Fwww.google.ie%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dremand%2520prisoners%2520rights%2520of%2520%26source%3Dweb%26cd%3D6%26ved%3D0CFAQFjAF%26url%3Dhttp%253A%252F%252Farrow.dit.ie%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1003%2526context%253Daaschsslcon%26ei%3D8M4sUNmvCInB0QX094HIDA%26usg%3DAFQjCNFYNbUQ8STOhhNBzga7VodpB73pkA#search=%22remand%20prisoners%20rights%22> [↑](#footnote-ref-91)
92. Ibid, p. 5. [↑](#footnote-ref-92)
93. Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 2. [↑](#footnote-ref-93)
94. Ibid, p. 7 and p. 45. [↑](#footnote-ref-94)
95. Ibid, p. 44.” “The Judge put me on a curfew, put me on a 5 o’clock curfew … I went up to the chipper one night and I went in … and there were guards, like, in the chipper … so I got caught … Just, I didn’t know what it was. I was just on a curfew … No one ever explained it, just tell you what you have to do until you’re back in court. I mean no one ever explained what’s it about.

    (P11, Male, aged 17)” [↑](#footnote-ref-95)
96. Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, pp.6-7 and 46. [↑](#footnote-ref-96)
97. See ACJRD, *The Children Court A National Study,* March 2007, p. 51: ““The typical Irish young offender appeared before the Children Court for the first time more than six months after committing his offences. Subsequently he appeared before the Children Court again an average of 8 times for each of his six offences before his cases were concluded some six months after his first appearance. In the meantime, the young offender was on bail with conditions imposed by the Judge, which typically included a curfew, restrictions on where he could go and a requirement to sign on at a Garda station every day. It was necessary to keep these conditions because the typical consequence for the breach of a bail condition is that the accused young person is remanded in custody until the case reaches its determination. The typical young offender in 2004 was convicted of his offences and given a Probation Bond for one year by the Judge.” The research, nonetheless, revealed that many young people had to wait for a year to have their cases determined, while a smaller number were in limbo for two years. Moreover, while a Probation Bond (30%) was the most common result for a convicted young person, it was almost as common that such a person received a sentence of imprisonment (29%). “As the majority of the young people in this study were at least 16, this means that these young people, if male, would have been sentenced to St. Patrick’s Institution for Young Offenders, which when compared to being subject to a Probation Board is a much more grave outcome, with serious implications for the life and future of that person.” [↑](#footnote-ref-97)
98. Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 47. See also Kilkelly, U. (2005) *The Children Court: A Children’s Rights Audit.* Cork: Faculty of Law, University College Cork. [↑](#footnote-ref-98)
99. Department of Justice, Equality and Defence (2012) *Prison Committals* available at <http://www.kildarestreet.com/wrans/?id=2012-07-17.2542.0&s=remand#g2543.0.q> (accessed 16/08/12) [↑](#footnote-ref-99)
100. Prison Reform Trust (2011) Innocent Until Proven Guilty: Tackling the Overuse of Custodial Remand available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Remand%20Briefing%20FINAL.pdf> (accessed 15/08/12) [↑](#footnote-ref-100)
101. *A report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* 2007, p. 58. [↑](#footnote-ref-101)
102. Bail Support Policy and Dissemination Unit, *Guide to the National Standards for Bail Supervision and Support Schemes* (2001), at p.9. [↑](#footnote-ref-102)
103. Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 3. [↑](#footnote-ref-103)
104. Freeman, S. (2008) *The Experience of Young People Remanded in Custody: A Case for Bail Support and Supervision Schemes*, Irish Probation Journal, 5, pp. 91-102, at p. 98 and p. 100. [↑](#footnote-ref-104)
105. Freeman, “The Experience of Young People Remanded in Custody: A Case for Bail Support and Supervision Schemes” (2008) 5 *Irish Probation Journal* 91-102. [↑](#footnote-ref-105)
106. Scottish Government Social Research, *Supervised Bail in Scotland: Research on Use and Impact* (2012), at p.14. [↑](#footnote-ref-106)
107. Youth Justice Board for England and Wales, *National Evaluation of the Bail Supervision and Support Schemes Funded by the Youth Justice Board for England and Wales from April 1999 to March 2002* (2005). [↑](#footnote-ref-107)
108. Department of Justice, Canada, *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*. [↑](#footnote-ref-108)
109. Department of Justice, Victoria, Australia, *Bail Support Programme Evaluation* (2003, 2008). [↑](#footnote-ref-109)
110. Kirkwood and Dickie, “The Case for Bail Supervision” (2008) *Scottish Criminal Law* 264-267. [↑](#footnote-ref-110)
111. Department of Justice, Canada, *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*. See also Tanner, Wyatt and Yearwood, “Evaluating Pre-trial Service Programmes in North Carolina” (2008) 72(1) *Federal Probation* 18-27. [↑](#footnote-ref-111)
112. Scottish Government Social Research, *Supervised Bail in Scotland: Research on Use and Impact* (2012), at p.18. [↑](#footnote-ref-112)
113. ‘Bail support service for young offenders never rolled out’ *The Examiner*, 16 July 2010. [↑](#footnote-ref-113)
114. See Written Answers 205-207 on Proposed Legislation, 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013032100066?opendocument#WRU00900>. [↑](#footnote-ref-114)
115. Sarre, R. King, S. and Bamford, B, *Remand in custody: critical factors and key issues*, Trends & Issues in crime and criminal justice, No. 310, May 2006, p. 3. [↑](#footnote-ref-115)