



## **Towards an Innovative, Just, Humane and Effective Penal System – *an overview of penal reform priorities***

Progress and reforms achieved in Ireland since 2011 means that a foundation now exists on which to work towards a progressive penal system in Ireland – one that is led by innovation and not crisis management, and which does not compound social inequalities. To this end, IPRT strongly welcomes the opportunity to address the Oireachtas Joint Committee on Justice and Equality on 8<sup>th</sup> February 2017 on the topics of prison, penal reform and sentencing.

In advance of the meeting, IPRT wishes to submit a broader overview of our policy recommendations for a more just and humane penal system that will contribute to better outcomes for individuals, safer communities, and a more equal society. At its centre, IPRT believes that Ireland's penal system must aspire to not only meet minimum human rights standards but to *exceed* them, striving to be a model of international good practice in the medium- to long-term.

All of IPRT's recommendations are grounded in evidence and research, and we welcome requests for more information on the research and analysis that underpins our recommendations.

### **1. Coherent Penal Policy**

At centre, there is the need for a clear Government commitment to evidence-informed penal policy, grounded in data and evidence of what works to reduce crime and address inequalities. To enhance public scrutiny and confidence, the data and evidence on which policies are based must be made available to the public.

#### **IPRT Recommendations:**

- Government commitment to a coherent and evidence-informed penal policy, which considers the inextricable links between social exclusion and offending
- Develop and resource research capacity within the Department of Justice and relevant agencies to support innovative best practice and evidence-based initiatives
- Crime data and analysis on which criminal justice policy is based should be published on a regular basis, made accessible to the general public

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#### **Sources:**

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 39-42, inclusive.)
- [IPRT Position Paper 5: Penal Policy with Imprisonment as a Last Resort](#)
- [IPRT Position Paper 6: Planning the Future of Irish Prisons](#)

## 2. Sentencing Reform

Ireland systematically overuses imprisonment as punishment. Ireland's over-dependence on imprisonment as a response to less serious offending, in particular, must be addressed. Imprisonment itself causes a number of serious social harms, and therefore it should only be used sparingly at the point of sentencing, and judges should exhaust all other options before imposing a custodial sentence. At the same time, greater transparency around sentencing is needed to support public confidence in the justice system, and address perceptions of unduly lenient or inconsistent sentencing by the Courts.

### IPRT Recommendations:

- The Irish Sentencing Information Project should be properly resourced
- The potential introduction of a Sentencing Council should be explored
- Mandatory sentencing regimes should be repealed

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### Sources:

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 32-38, inclusive.)
- Law Reform Commission: [Report on Mandatory Sentencing](#)
- IPRT Position Paper 3: [Mandatory Sentencing](#)
- Irish Sentencing Project: [www.irishsentencing.ie](http://www.irishsentencing.ie)

## 3. Community-based Sanctions

Community-based non-custodial sanctions are a cheaper and more effective response to less serious offending, while the community benefits directly from the work carried out ("community payback"). Despite the *Criminal Justice (Community Service) Act 2011*, which obliges judges to consider community service in lieu of custodial sentences of 12 months or less, the number of community service orders made has fallen every year since 2012.

### IPRT Recommendations:

- Ensure consistency in the availability, use and operation of community sanctions and supported community sanction schemes nationwide
- Develop gender-specific community sanctions that take into account women's needs (such as their caring responsibilities) available nationwide
- Proposals for the establishment of community courts should be brought forward, and the drug court should be continued
- Investment in restorative justice strategies, which have been found to be of benefit to both victims and offenders, should be prioritised

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### Sources:

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 4-12, 14, 22, 24, 32)
- Oireachtas Committee on Justice, Defence and Equality: [Report on Community Courts](#)
- Irish Prison Service: [Unlocking community Alternatives: A Cork Approach](#)
- Joint Irish Prison Service Probation Service Strategy 2014-2016: [An Effective Response to Women who Offend](#)
- National Commission on Restorative Justice: [Interim Report](#)
- Probation Service: [Restorative Justice Strategy](#)
- IPRT Position Paper 8: [Community Sanctions](#)
- IPRT Position Paper 10: [Women in the Criminal Justice System](#)

## 4. Reduce Prison Numbers

Crowded prisons are dangerous for prisoners and staff alike, and do not reduce reoffending. Overcrowding in prisons leads to increased violence, prevalence of drugs, and poorer outcomes. Despite a reduction in crowding in some prisons (Mountjoy, Cork) crowding persists in a number of prisons, including Cloverhill Prison and the two women's prisons. The prison population in Ireland has been safely reduced by 10% since a peak in chronic overcrowding in 2011; this trend must be continued over the next five years.

### IPRT Recommendations:

- Reduce the rate of imprisonment in Ireland to 60 per 100,000
- Set and implement a safe custody maximum of 2,850
- Expand the successful Community Return Programme, and ensure no prisoner is deemed ineligible due to the category of their offence
- Increase standard remission from 25% to 33% and enhanced remission of up to 50%

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### Sources:

- Oireachtas Committee on Justice, Defence and Equality: [Report on Penal Reform](#)
- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 6, 8-13, 22, 24, 30, 32, 34)
- Report of the Committee of Inquiry into the Penal System (Whitaker Report, 1985)
- [IPRT Position Paper 5: Penal Policy with Imprisonment as a Last Resort](#)
- [IPRT Position Paper 4: Human Rights in Prison](#)
- [IPRT Position Paper 6: Planning the Future of Irish Prisons](#)

## 5. Prison Conditions

Inhumane prison conditions do not support rehabilitation or desistance from offending. Despite improvements since 2011, conditions and regimes in some prisons remain in violation of basic human rights standards, exposing Ireland to legal challenge at domestic and European level. In January 2017, 72 men were being held on 22- or 23-hour lock up; 2016 figures revealed that 24 men had been held in isolation for more than 6 months, including 9 men so held for more than 1 year. The majority of prisoners are locked up for 16 or 17 hours a day.

### IPRT Recommendations:

- Implement single-cell policy as the best-practice norm across the prison estate
- Ensure that all prisoners have 24-hour access to private toilet facilities
- Commit to a daily minimum of 12 hours of out-of-cell activity for all prisoners, with emphasis on education, training and work
- End the use of prolonged isolation of prisoners (solitary confinement) as a response to prisoner safety concerns

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### Sources:

- Oireachtas Committee on Justice, Defence and Equality: [Report on Penal Reform](#)
- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 15, 16, 17, 18)
- [IPRT Position Paper 4: Human Rights in Prison](#)
- [IPRT Briefing: Solitary Confinement, Isolation, Protection and Special Regimes](#)

## 6. Physical and Mental Healthcare

Imprisonment by its nature exacerbates mental and physical health issues, and prison populations are found to be of poorer health than the general population. In 2014 the European Committee for the Prevention of Torture found the health-care service in some prisons to be in “a state of crisis”, recommending that a review be undertaken by an independent body such as HIQA and that Government consider prison health-care services be brought under the responsibility of the Department of Health. An effective prison healthcare service, which is capable of meeting the wide range of physical and mental health needs in prison, is urgently required. Failure to deal appropriately with mental health and addictions makes prisons unsafe for staff and prisoners.

### IPRT Recommendations:

- A whole-system review of prison health services is urgently required, with the involvement of the Department of Health and/or HIQA
- Responsibility for prison health should be transferred to the Department of Health
- Prisoners with serious mental health issues must be diverted to more appropriate therapeutic services and facilities
- The number of forensic mental health spaces available to the prison service should be trebled
- All prisoners who wish to address their addictions must have access to drug treatment services, including detox beds, counselling, and drug free landings

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### Sources:

- [Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 16 to 26 September 2014](#) (paras. 15, 48, 60, 61, 62)
- [Report of the Commission of Investigation into the death of Gary Douch](#)
- [Inspector of Prisons: Guidance on Physical Healthcare in a Prison Context](#)
- [IPRT Submission to the Cross Sectoral Group on Mental Health and Criminal Justice](#)

## 7. Prison Accountability

Independent oversight is crucial to ensuring human rights abuses do not occur out of sight behind prison walls, and the safety of prisoners and staff is strengthened through trusted complaints mechanisms, which in turn reduces tension on prison landings. Currently prisoners have no access to an effective independent complaints mechanism, and no prison inspection report by the Office of the Inspector of Prisons has been published since September 2014.

### IPRT Recommendations:

- Implement the Inspector of Prisons’ recommendation to extend the remit of the general Ombudsman to receive complaints from prisoners
- Meet Ireland’s commitment to ratify the OP-CAT (Optional Protocol to the Convention against Torture), including the establishment of a National Preventative Mechanism (NPM)
- Introduce legislation to strengthen the powers of the Inspector of Prisons, and reform the Prison Visiting Committee mechanism

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**Sources:**

- Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014 (para. 83)
- IPRT Position Paper 7: Complaints, Monitoring and Inspection in Prisons
- Towards an Independent Prison Agency – Report of an Expert Group (McAuley Report, 1997)

## **8. Preparing for Release**

From the first day of a prisoner's sentence, he or she should be working with the prison service in preparation for release. Integrated Sentence Management (ISM) should be adequately resourced, with designated prison officers who cannot be delegated to security detail. Increased provision of open prison facilities and day programmes is required for prisoners serving longer sentences, including those serving life. More transparent and accountable structures of release decision-making will bolster prisoners' confidence in their engagement with prison services, treatments and regimes. In particular, there is a need for a fully independent Parole Board with relevant expertise, training and resources. Finally, facilitating positive family and prisoner relationships also plays a key role in reducing recidivism, and helps break inter-generational cycles of crime and imprisonment.

### **IPRT Recommendations:**

- Provide an open prison for female prisoners and increase open prison provision for male prisoners
- Establish a fully independent Parole Board on a statutory basis, removed from political control
- Remove exclusions from temporary release for all categories of prisoner
- Commit to a Government-led inter-departmental and inter-agency strategy for supporting children with a parent in prison
- Implement and resource the Irish Prison Service 'Families and Imprisonment' strategy

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**Sources:**

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 19, 27, 28, 29, 30, 31)
- IPRT Report: ["Picking Up the Pieces": The Rights and Needs of Children and Families Affected by Imprisonment](#)
- IPRT Report: ["It's like stepping on a landmine..." - Reintegration of Prisoners in Ireland](#)

## **9. Rehabilitation Services and Supports**

Rehabilitation services and supports must be prioritised and adequately resourced. Inter-agency co-operation between prisons, probation, health, mental health, housing and social welfare services is key to the safe and successful reintegration of people back into the community. Effective spent convictions legislation has a major role to play in the successful reintegration of prisoners. Barriers to accessing employment, housing, education and insurance should be addressed through a review of spent convictions legislation, which is currently so limited that it fails to fulfil its rehabilitative purpose.

### IPRT Recommendations:

- Impose a statutory obligation on relevant state agencies to co-operate around prisoner release
- Commit to adequate resourcing of reintegration services and post-release supports proven to be effective
- Ensure that the Probation Service is adequately resourced to meet its expanding remit of assessment and supervision in the community
- Extend expungement provisions in *Children Act 2001* to offences committed up to age 25
- Review the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*

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### Sources:

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Recs. 18, 19, 21, 23, 25, 26, 30, 34, 35)
- IPRT Report: [“It’s like stepping on a landmine...” - Reintegration of Prisoners in Ireland](#)
- [IPRT Position Paper 10: Women in the Criminal Justice System - Towards a non-custodial approach](#)

## 10. Youth Justice

The Irish youth justice strategies and approaches that have proven so successful with children and young people aged under-18 should be extended to young people aged up to 25. Young people in the transition to adulthood have the highest rates of offending and reoffending, but the highest capacity for change and desistance from offending behaviour with the right interventions. However, the wrong interventions risk condemning young adults to a lifetime of marginalisation and crime. Furthermore, IPRT remains seriously concerned that the Government commitment to end the detention of children at St. Patrick’s Institution has not yet been fully delivered, and the continuing detention of children in Wheatfield Place of Detention, an adult prison, is in direct violation of international human rights law.

### IPRT Recommendations:

- Address, with urgency, the high numbers of children detained on remand in Oberstown and take measures to ensure no child is detained for welfare reasons
- Department of Justice should develop a discrete strategy for young adults aged 18–24 years in conflict with the law
- Age-appropriate supervised bail programmes and effective bail supports for children and young adults aged up to 25 should be introduced
- Youth diversion programmes should be extended to young people aged up to 25

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### Sources:

- Department of Justice and Equality: [Strategic Review of Penal Policy](#) (Rec. 4)
- Irish Youth Justice Service: [‘Tackling Youth Crime’: Youth Justice Action Plan 2014-2018](#)
- Department of Children and Youth Affairs: [Better Outcomes, Brighter Futures – Report](#)
- IPRT Report: [Detention of Children: International Standards and Best Practice](#)
- IPRT/EPIC/Barnardos Paper: [Shifting Focus: From Criminal Justice to Social Justice](#)
- IPRT Report: [Turnaround Youth: Young Adults \(18-24\) in the Criminal Justice System](#)
- Jesuit Centre for Faith and Justice: [Developing Inside: Transforming Prison for Young Adults – a New Approach to the Unique Needs of Young Adults \(aged 18-24\) in Prison](#)