



IPRT
Irish Penal Reform Trust

Parole Reform and the *Parole Bill* 2016

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1. Introduction

For 25 years, the Irish Penal Reform Trust (IPRT) has been promoting policies that make communities safer, based on the evidence of what works to prevent and reduce offending and reoffending. Central to our work is promoting an effective penal system that respects the human rights of everyone, and uses prison sparingly.

1.2 The role of parole in community safety

The main purpose of parole is to increase community safety. Parole does this by providing structured, supported and supervised transition of prisoners serving long sentences back into the community. This generally includes periods of temporary release and transfer to an open prison, key measures that support rehabilitation and reintegration. Parole also provides an incentive for prisoners to engage with services and regimes in prison, including programmes aimed at tackling the offending behaviour.

1.3 Non-custodial part of a sentence

When someone is granted parole, although they are released from prison, their sentence is not over. Conditions imposed continue to apply for the remaining time of their court-imposed sentence, or for life in the case of life-sentenced offenders, who can be recalled to prison at any time.

Parole conditions can restrict where the person goes or lives, who they can contact or associate with, and most often requires the person to be of good behaviour, sober habits, and keep the peace. Parole also allows for supervision in the community by probation officers and An Garda Síochána.

1.4 The need for reform of parole in Ireland

The early prison release system in Ireland should be coherent, transparent and fair.¹ IPRT has long campaigned for the establishment of a statutory parole system, which is fully independent of political control.² This would provide both for the protection of the public and the rights of sentenced persons to a fair and balanced system of release.

1.5 Parole Bill 2016

IPRT welcomed the introduction by Deputy Jim O’Callaghan of the Private Member’s Bill, the *Parole Bill 2016* as an opportunity to achieve clarity in law and practice on parole. **However, IPRT recommends that a number of the provisions of the Bill are amended or strengthened.**³

¹ Griffin, D. (2015). The release and recall of life sentence prisoners: Policy, practice and politics. *Irish Jurist*, 53, 1-35.

² See, for example, [IPRT Position Paper 9: Reform of Remission, Temporary Release and Parole](#) (Oct 2012) and [IPRT Briefing: Parole and Temporary Release of prisoners serving long sentences](#) (Oct 2016).

³ See also *IPRT Submission on the Parole Bill 2016: Report stage* (Feb 2018), written in collaboration with Dr D. Griffin, available at: <http://www.iprt.ie/contents/3273>

2. Priority Recommendations

IPRT has published a number of papers and submissions outlining the principles that should underpin reform of the parole system in Ireland.⁴ Here IPRT assesses the *Parole Bill 2016* (as amended) against those key principles, and makes priority recommendations.

2.1 Independence and Statutory Basis

Principles:

- *The Parole Board should be granted full independence and placed on a statutory footing.*
- *The Parole Board must be given the power to making binding decisions on prisoner releases.*

The *Parole Bill 2016* seeks to place the parole board on a statutory basis. IPRT strongly welcomes this. However, IPRT believes that the approach to appointing members of the Parole Board contained in the *Bill* could be strengthened. Although the Minister is not involved directly in decision-making, the discretion in relation to appointing some members of the Parole Board is retained. This has the potential to undermine the independence of parole decision-making, one of the key aims of the *Bill*.

Recommendations:

- **The Bill should be reviewed, including s.8, to ensure the complete independence of the Parole Board.**

2.2 Membership of the Parole Board and Parole Panels

Principles:

- *The Parole Board should have an independent chairperson, such as a member of the judiciary.*
- *The Parole Board must be structured to ensure that it has the required expertise, including psychiatrists and psychologists, to make responsible release decisions.*
- *Parole Board appointments must be on merit and expertise.*

It is essential that the public have confidence in the independence and expertise of the Parole Board. IPRT agrees with the Law Society of Ireland that the method of appointment of all members, including the Chairperson, should be consistent and transparent.⁵ IPRT does not recommend that organisations have a role in appointing representatives to the Parole Board. Instead, IPRT recommends a skills-based approach, along the lines of the Canadian model of appointment.⁶ Provision should be made for ongoing training of Parole Board members, including in risk assessment and in decision-making techniques.

Recommendations:

- **Delete reference to the Irish Penal Reform Trust in s. 8(2)(h)**
- **Amend s. 8(3) so that all members are appointed through the Public Appointments Service**

⁴ See: IPRT Position Paper 9: Reform of Remission, Temporary Release and Parole (2012): <http://www.iprt.ie/contents/2443>; IPRT Briefing: Parole and Temporary Release of prisoners serving long sentences (2016): <http://www.iprt.ie/contents/2924>; IPRT Submission on the Parole Bill 2016: Report stage (2018): <http://www.iprt.ie/contents/3273>

⁵ Point 4.1 in Law Society of Ireland (2017) *Second Submission on the Parole Bill 2016*, available at: <https://www.lawsociety.ie/globalassets/documents/committees/criminal/submission-parolebill-nov-2017.pdf>

⁶ In Canada, Members of the Parole Board are appointed following a rigorous selection process. Eligibility is based on a number of factors including: passing a written exam on analytical thinking; demonstrable skills in written communication; a university degree in the field of human sciences; five years' experience in a decision-making environment; and knowledge of the criminal justice system. See Parole Board of Canada (2013) *Selection Criteria for PBC Board Members (Part-Time and Full-Time)*. Available at: <http://www.pbc-clcc.gc.ca/employ/gicqual-eng.shtml#3>

- **Amend 8(4) to include the ability to operate effectively with people who have specific needs, including intellectual or learning disabilities.**

2.3 Eligibility for Parole

Principles:

- *Restrictions on certain categories of long-term prisoners from consideration for parole should be removed.*

The *Bill* increases from 7 to 12 years the minimum period before a life-sentenced prisoner can become eligible for a parole review. IPRT is concerned at the impact that this increase will have on sentence management and rehabilitation. While it may offer important assurance to victims, **it risks further delaying engagement by prisoners with services and treatments that address the crime and the serious harm caused:** interventions are more effective closer to the time the crime was committed, and less effective after the passage of time.

IPRT notes that the current 7-year minimum is the beginning of a review process⁷ and not the point of release. In practice, life-sentenced prisoners undergo multiple reviews, and serve sentences far in excess of the minimum term – an average of 18 years for those recommended for release in 2017.⁸ There are currently life-sentenced prisoners in Ireland who have spent more than 20, 30 and 40 years in prison⁹.

The *Bill* assigns a sentence management function to the Parole Board, including decisions on transfer to an open prison¹⁰. Open prisons are “the best means of minimising the harmful effects of custody” and facilitate normalisation towards successful reintegration post-release.¹¹ If the Parole Board is to retain a role in sentence management, it is essential that such engagement begin early in the sentence and not after 12 years. IPRT strongly recommends that a robust assessment of impact on sentence management and prison resources be conducted before any change to minimum terms enters law.

Recommendations:

- **Clarify the role the Parole Board will have (if any) in sentence management, and amend s.7(2)(e) accordingly.**
- **Conduct an impact assessment of the legislation on sentence management, prisoner numbers and prison resources.**

2.4 Tariffs

The *Parole Bill 2016* proposes to introduce a tariff-based system whereby a judge at sentencing may impose a specified period during which a person shall not be eligible for parole.¹² Clarification of these provisions and the legal basis that underpins them is required.

⁷ Griffin, D (2014) The politics of parole: Discretion and the life sentence prisoner. PhD Thesis. University College Dublin. (p.148)

⁸ See p. 4 of *Parole Board Annual Report 2017*, at:

http://www.justice.ie/en/JELR/Parole_Board_Annual_Report_2017.pdf/Files/Parole_Board_Annual_Report_2017.pdf

⁹ In 2017, of those serving life sentence in prison in Ireland, a total of 34 had served 20+ years. Of these, 13 had served 20-25 years; 7 had served 25-30 years; 12 had served 30-40 years and 2 had served over 40 years. See p. 7 of Irish Prison Service (2017) *Examination of the Sentence Management of people serving Life Sentences*, at: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/Life-Sentenced-Prisoner-Report-Final-April-2017.pdf

¹⁰ Section 7(2)(e)

¹¹ Whitaker Report (1985)

¹² Section 20(5)

The introduction of tariffs was previously recommended by the Law Reform Commission in its *Report on Mandatory Sentencing* (2013)¹³. However, any such moves must be informed by clear sentencing principles¹⁴. In this regard, the Law Reform Commission project on 'Structured Sentencing' included in its *Fifth Programme of Law Reform* (2019) will provide an important forum for informed debate. IPRT submits that Sentencing Principles must precede any introduction of sentencing guidelines or tariffs.

IPRT is firmly opposed to the introduction of mandatory minimum custodial periods¹⁵, in line with recommendations of the Law Reform Commission in its *Report on Mandatory Sentencing* (2013) and with the *Strategic Review of Penal Policy* (2014).

Recommendations:

- **The development of Sentencing Principles should precede any introduction of a tariff-based system.**
- **No mandatory or presumptive minimum custodial periods should be introduced.**

2.5 Decision-making

Principles:

- *The criteria for decision-making on prisoner release should be enshrined in legislation.*
- *Parole Board decision-making criteria should be balanced and clear.*
- *Parole Board decisions must be provided in writing to the prisoner and include 'proper, adequate and intelligible' reasons for any decision made.*

The *Bill* states that the "paramount consideration" for the Parole Board when deciding on the release or further detention of a parole candidate is "the safety of the community".¹⁶ IPRT welcomes this focus on risk. However, the *Bill* would benefit from more detail on the procedure to be followed to ensure decision-making is focused on public protection and the risk of reoffending.¹⁷ IPRT is concerned that some of the criteria set out are more closely associated with principles of sentencing, and could potentially facilitate a retributive or punitive approach to parole decision-making, rather than a focus on a risk-based approach.

Recommendations:

- **IPRT recommends that s. 18(1) include greater detail on the role of risk and public protection in the decision-making process.**
- **A duty to disregard prejudicial or irrelevant information should be included within the Bill.**

¹³ See rec. 6.04, Law Reform Commission (2013) *Report on Mandatory Sentences* (p. 215), at: <https://www.lawreform.ie/fileupload/Reports/r108.pdf>

¹⁴ See Rec 38 of the *Strategic Review of Penal Policy* (2014) and '4. Structured Sentencing' in Law Reform Commission (2019) *Fifth Programme of Law Reform*, at: <https://www.lawreform.ie/fileupload/Programmes%20of%20Law%20Reform/LRC%20120%20-%202019%20Report%20Fifth%20Programme%20of%20Law%20Reform.pdf>

¹⁵ See IPRT Position Paper 3: Mandatory Sentencing, at: <http://www.iprt.ie/contents/1242>

¹⁶ Section 18(1)

¹⁷ Other jurisdictions that focus on risk in decision-making provide frameworks to ensure consistency in decision-making. See, for example: Serin, R. (2011) *Parole Board Canada: Pre-Reading Material (ATRA and Decision Framework)*. Available from: <https://portal.ct.gov/-/media/BOPP/Legacy-Files/SDMpdf.pdf>

2.6 Submissions to the Parole Board

Principles:

- *Clear protocols should be established around the presentation of views on a prisoner's suitability for release to the Parole Board, including those of An Garda Síochána.*

The Bill sets out the information that the Parole Board may consider, including submissions from victims. IPRT supports the provision of information to victims and victims' families but is concerned about the potential impact of victim input on parole outcomes^{18, 19}. Where submissions by victims are permitted,²⁰ the legislation should provide for what can be included. This is in line with practice in other jurisdictions²¹. To build confidence in the parole system, it must be consistent, transparent and fair.

IPRT strongly supports the need for victims to receive timely information on the parole process as provided for by the *Criminal Justice (Victims of Crime) Act 2017*.²² However, strict conditions on what happens to this information should apply.²³ For example, information about a person's temporary release for the purposes of rehabilitation should not be shared with media. This ultimately undermines public safety and the safety of individuals and their families, and may breach privacy and personal data protections.

Recommendations:

- **Section 18(2)(c) should be amended to make clear the appropriate parameters of victim input decisions on parole, temporary release, transfer or community return.**
- **Protections, including sanctions for any breaches, must be introduced to govern dissemination of information about a prisoner's engagement with the parole process and temporary release.**

¹⁸ Where input is permitted, data indicates that there is a correlation between victim participation and parole denials. See: Morgan, K.D. & Smith, B. (2005). Victims, punishment and parole: The effect of victim participation on parole hearings. *Criminology and Public Policy*, 4(2), 333-60.

¹⁹ IPRT notes that victim input in the parole process has presented problems in other jurisdictions. See: Roberts, J. V. (2009) Listening to the crime victim: Evaluating victim input at sentencing and parole, *Crime and Justice*, 38(1), 347-412; Ashworth, A. (2000) Victims' rights, defendants' rights and criminal procedure, in A. Crawford & J. Goodey (Eds.) *Integrating a victim perspective within criminal justice* (pp. 185-204), Aldershot: Ashgate; and Ruhland, E.L., Rhine, E.E., Robey, J.P. and Mitchell, K. (2017). *The continuing leverage of releasing authorities: Findings from a national survey*. Minnesota: Robina Institute of Criminal Law and Criminal Justice.

²⁰ At a European level, there is little by way of settled practice in terms of victim input in parole decision-making, although many civil law European jurisdictions only facilitate information provision and do not permit input at parole hearings or reviews. See: Snacken, S., Beyens, K. & Beernaert, M. A. (2010). Belgium. In N. Padfield, D., D. van Zyl Smit & Dünkel, F. (Eds.), *Release from prison: European policy and practice* (pp. 70-103). Devon: Willan.

²¹ See for example, England & Wales: <https://www.gov.uk/guidance/the-parole-boards-commitment-to-victims-of-crime> and Canada: <https://www.canada.ca/en/parole-board/corporate/publications-and-forms/victims-presenting-a-statement.html>

²² s.8(2)(m)(i). See also: European Parliament (2012) *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Directive)*. Brussels: European Parliament. (Article 6.5 and 6.6).

²³ See, for example, 140 (14) of the Corrections and Conditional Release Act (S.C. 1992, c. 20), Canada: "If an observer has been present during a hearing or a victim or a person has exercised their right under subsection (13), any information or documents discussed or referred to during the hearing shall not for that reason alone be considered to be publicly available for purposes of the [Access to Information Act](#) or the [Privacy Act](#)."

2.7 Reviews/Hearings

Principles:

- *Prisoners should be automatically scheduled by law for a parole review within six months of their eligibility date, and should be provided with adequate notice and information on their hearings.*
- *If a prisoner is not granted release at a parole review, follow-up reviews should be scheduled every year for sentences under ten years and every two years for sentences over ten years*
- *Prisoners should be entitled to legal representation in proceedings before the Parole Board, particularly those involving oral hearings.*

The *Bill* outlines when an eligible person may apply to the Board to be considered for parole. In light of the particular challenges of obtaining information within prisons, coupled with the high rates of literacy issues among prisoners, IPRT believes that the obligation should remain with the Parole Board to contact the prisoner when he or she becomes eligible for review.

It is necessary that prisoners are involved in the parole process and have an opportunity to be heard. Given the centrality of interviews/hearings in determining parole outcomes, legal representation should be provided at this stage of the process, as recommended by the Strategic Review of Penal Policy.²⁴ Eligibility to apply for legal aid should be included in the *Bill*.

Recommendations:

- **S.21 of the *Bill* should be amended so that the onus remains on the Parole Board to contact the prisoner when he or she becomes eligible for parole review.**
- **Amend 18(2)(b) to include a stronger duty to provide clear and accessible information, specific training and supports to the parole candidate.**
- **Amend s.27 to include an obligation on the Parole Board to provide clear and accessible information in relation to the review or hearing processes to the parole candidate.**
- **A right to legal representation in oral interviews and hearings should be provided for in the legislation, and eligibility to apply for legal aid should be included.**
- **The solicitor and/or counsel who represents victim²⁵ in parole hearings must be selected from a panel of lawyers specially trained; this aligns with best practice established in Mental Health Tribunals.**

2.8 Recall

Principles:

- *Conditions attached to release should be reasonable and proportionate.*
- *A violation of conditions should not mean a prisoner is returned to prison.*
- *A prisoner should be able to appeal any decision to revoke his or her conditional release.*

IPRT agrees with the Law Society of Ireland that a level of discretion should be retained when considering whether recall to prison is proportionate to the breach of conditions, up to and including arrest for a minor offence (for example, a public order offence)²⁶. Such recall should consider whether the breach is sufficiently

²⁴ "Where parole will be a statutory basis for release, the availability of legal representation is a necessary element of ensuring fair procedures are met." See *Strategic Review of Penal Policy* (2014), p. 89.

²⁵ Section 14(13)(b)

²⁶ See Points 11.3-11.5 in Law Society of Ireland (2017) *Second Submission on the Parole Bill 2016*, at:

<https://www.lawsociety.ie/globalassets/documents/committees/criminal/submission-parolebill-nov-2017.pdf>

serious to justify disruption of accommodation, employment or other important rehabilitative supports. IPRT notes that in 2016, 4 life-sentenced prisoners were recalled to prison, all for medical and accommodation issues²⁷. IPRT further agrees with the Law Society of Ireland that a waiting period of 2 years after revocation before parole will be considered again will have a significant disincentive impact on rehabilitation efforts.

Recommendation:

- **Review s.25 to ensure any revocation of parole orders is proportionate to the level of breach in conditions.**

2.9 Resourcing

Principles:

- *The Parole Board must be adequately resourced in terms of funding and staffing, including the provision of appropriate and necessary initial and refresher training, such as interview techniques.*

The various provisions included in the *Bill* will have significant resource implications for the Parole Board. Additionally, any changes to the sentence-management or length of custodial periods served by life-sentenced prisoners will have resource implications for the prison system. It is therefore essential that an impact assessment of the legislation is undertaken, with particular attention to prison resources and prison capacity, including open prison provision.

Recommendations:

- **The Department of Justice and Equality should conduct a broad impact assessment of the legislation.**
- **Such an assessment should consider the workload of the Parole Board in line with new powers and provisions, and the impact on prison resources of any changes to sentence management and the scheduling of reviews.**

2.10 Legal and Constitutional Implications

IPRT recommends that careful scrutiny is undertaken to ensure the *Bill* is in full compliance with the provisions of the Constitution and the ECHR, and ensures compliance with international human rights standards and guidance²⁸.

Recommendation:

- **The legislation must be scrutinised to ensure full compliance with provisions of the Constitution and the ECHR.**

²⁷ Parliamentary Question 205, 2 May 2017, at: <https://www.oireachtas.ie/en/debates/question/2017-05-02/205>

²⁸ See for example, Council of Europe (2003) *Recommendation 23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners*; Council of Europe (2003) *Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole)*, available at: <https://rm.coe.int/16800ccb5d>; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2016) *Situation of life-sentenced prisoners*, at: <https://rm.coe.int/16806cc447>

3. Summary

3.1 Parole reform is necessary

Parole plays an important role in community safety in Ireland. Reform of the parole system is long overdue, and IPRT welcomes current moves to place the parole system on a statutory basis. A clear, transparent and fair system of parole is in the interests of all society, including victims and offenders.

IPRT welcomes *Parole Bill 2016* as an opportunity to address the current lack of procedural justice due to the informal, discretionary and political nature of the process. **However, IPRT believes that to achieve its goals of clarity, transparency and fairness, the Bill must be strengthened in line with our recommendations above.**

3.2 Further engagement

This submission responds to the *Parole Bill 2016 As amended in Committee/Select Committee [Dáil Éireann]* dated 24 May 2017²⁹. IPRT would welcome the opportunity to engage further with the proposed legislation when the *Bill* returns at Report Stage.

IPRT is available to meet with all stakeholders and/or provide more detailed information or clarification on any of the points or principles raised within this submission.

3.3 Contact details

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²⁹ Available at: https://data.oireachtas.ie/ie/oireachtas/bill/2016/29/eng/ver_a/b29a16d.pdf