**IPRT Submission to Oireachtas Justice Committee on Community Courts**

**January 2014**

**Introduction**

The Irish Penal Reform Trust (IPRT) believes that Community Courts have a potential role in building a criminal justice system oriented around the principle of imprisonment as a last resort and the concept of ‘penal moderation’. In particular, initiatives such as Community Courts can help to address the current overuse of imprisonment for minor offences (with associated benefits for the prison system), while also shifting the response to minor offending towards the underlying social causes of that behaviour.

**Overuse of imprisonment for less serious crime**

Ireland has a particularly high rate of short sentences and imprisonment for fine default. The most recent statistics from the Irish Prison Service, for the year 2012, show that the total number of committals under sentence in 2012 was 13,526, with sentences of less than three months numbering 8,837 or 65% of sentence committals. There is strong evidence that the economic and social cost associated with short sentences of this type greatly outweigh any public benefit. For the offender, even a short-term sentence can have a lasting effect on social and economic capacity, including creating permanent barriers to employment. For the taxpayer, the cost of keeping someone in prison is estimated at €65,404 per prison space, and even for very short prison stays there are associated police and administrative costs. Most troubling, perhaps, is evidence that shows that imprisonment leads to higher recidivism than community-based sanctions. Over**85% of people imprisoned for fine default return to prison within 4 years**. We recall here that in its recent report on Penal Reform the Joint Oireachtas Justice Committee recommended that all sentences of six months or less in relation to non-violent offences should be commuted to community service.

**Social context of crime and offending**

In IPRT’s 2010 Position Paper *Shifting the Focus: from Criminal Justice to Social Justice*, we describe the social and economic context for a large proportion of offending behaviour, citing evidence that poverty, unemployment, poor mental health, educational disadvantage, addiction, inadequate family support and experience of residential care and homelessness are all more prevalent among those in the criminal justice system and these factors frequently relate, directly or indirectly, to offending. As we set out in that paper, responses to the underlying causes of offending behaviour have been shown internationally to be more effective and cheaper.

In a subsequent 2012 IPRT Position Paper, *The Vicious Circle of Social Exclusion and Crime*, we looked more specifically at how those drawn into the criminal justice system are most often from our most marginalised communities. For example, we highlighted the over-representation of mentally ill prisoners in the remand prison population.

Both Paper point to overwhelming strong body of evidence pointing to the need to address crime in its social context by coordinating criminal justice services with non-criminal justice services. In particular, there is clear evidence that non-violent offending in the community is inextricably linked to the social problems of addiction, homelessness and mental ill-health. An effective response to such offending must involve services in these areas working with the criminal justice system.

**The Community Court Model**

Community Courts work by providing those who plead guilty to minor offences with immediate access to services that they need to move away from criminal behaviour, such as drug treatment or education programmes, and the exclusive use of non-custodial sentences with offenders who choose to engage with the Community Court process rather than conventional courts. Such an approach has many potential positive effects for each actor in the process: for the offender, for the victim, for the local community and for the state.

The genesis for the Community Court comes from the Drug Courts of the 1980s set up throughout US cities, and in particular models developed in New York City. Some general features of the model are:

* Participation by the defendant in a community court is optional. In order to be dealt with by Community Court, the defendant must plead guilty;
* If the defendant complies with the orders of the Community Court, s/he avoids a conviction. This is sometimes referred to as the ‘deferred prosecution model’ i.e. treatment/conditions, first, then, as a last resort a standard/orthodox prosecution where there is no compliance;
* A single judge presides over the court and hears all the cases;
* There is a pre-trial assessment in every case to identify any underlying problems;
* The court adopts a problem solving focus – the provision of a well-planned and immediate response and a team-based approach to each defendant;
* There is usually on-site provision of services, with speedy access to key social services and community work;
* Rigorous monitoring of compliance with court orders;
* An element of restitution to the community through community work and formalised involvement of the local community;
* Often community courts allow access to the community services which they are linked with to offenders and non-offenders;
* Community courts can be used for a wide range of minor offences, or for specific offences or categories of offenders; for example a court in Santa Monica, California, only deals with first-time offenders.

**Potential Benefits of Community Court Model**

IPRT believes that, for the offender, the Community Court provides a route away from the damaging effects of imprisonment while still completing a community based sentence or programme to aid rehabilitation out of criminality. Community courts also, however, improve the community where the crime is committed by reducing recidivism and through community work undertaken by the offender. Community Courts have been used as part of a strategy to reduce overreliance on expensive, ineffective, short-term sentences. And finally, Community Courts can be used to improve the outcomes for victims through restorative justice approaches, such as ‘conferences’ between victims and offenders.

**Links to Other Diversionary Structures**

The philosophy of the Community Court model is consistent with other existing structures within the Irish system, in particular restorative justice models and adult caution schemes. The principles of Community Courts also have much in common with the Garda Youth Diversion Programme. The aim of the programme is to divert child offenders away from the courts system and place them in community-based activities instead. It consists of projects, developed through co-operation between An Garda Síochána and community-based organisations. Often, a project would involve an element of education or development of the young person’s skills. This programme demonstrates the potential in Ireland for a Community Court, whereby *adult* offenders would be diverted away from the conventional courts system and imprisonment through programmes involving one or many of the following: repayment through community work, taking responsibility through supervised contact with the victim, and/or engagement in education and health-improvement initiatives.

**Need for Investment in Social Services**

While IPRT is fully supportive of establishing a pilot Community Court model, it is essential that any such initiative is matched by adequate investment in the necessary social services, including treatment services, for the diversion of offenders. We are particularly concerned with the current pressure on homeless and addiction services in the Dublin area. In our recent Position Paper, *Women in the Criminal Justice System: Towards a Non-Custodial Approach*, we identified the acute need for coordinated homeless and addiction services for women coming before the courts, especially in Dublin. Availability of suitable community work placements is also essential, requiring coordination with the Probation Service.

**Conclusions:**

* **Within the Irish penal system we have a particular issue with the overuse of short prison sentences; Community Courts have a potential role in a broader response to this problem.**
* **Offending behaviour generally, and less serious offending in particular, is closely associated with a number of types of social exclusion, including homelessness, addiction and mental ill-health. An effective response to crime and offending must incorporate coordination with services in these areas.**
* **The Community Court model is based on recognising the complex nature of the social problems associated with crime and is consistent with existing initiatives in the Irish criminal justice system such as the Garda Youth Diversion Scheme, Restorative Justice and the Adult Caution Scheme.**
* **Any pilot of a Community Court model must be accompanied by appropriate investment in community social services in key areas such as addiction and homelessness.**
* **Any pilot must also ensure the availability of adequate community work placements, to be coordinated with the Probation Service.**