



## **Irish Penal Reform Trust Submission on the National Disability Strategy**

**(Department of Children, Equality, Disability, Integration and Youth  
via the National Disability Authority)**

***1 February 2024***

### **Irish Penal Reform Trust**

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. We advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through conducting research, campaigning, and changing attitudes.

**Please note that, given IPRT's area of expertise, this submission focuses specifically on people with disabilities in the penal system.**

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## About you

Please respond to one of the options below.

I am responding as:

- A representative of a Disabled Persons Organisation  
If yes, please specify your name and the name of the organisation:
- A representative of another disability organisation  
If yes, please specify your name and the name of the organisation:
- An individual with a disability  
If yes, please provide your name (your name will not be included in the consultation summary):
- An individual who is a carer  
If yes, please provide your name (your name will not be included in the consultation summary):
- **Other**  
Please specify: **A representative of a civil society organisation campaigning for rights for a marginalised population (prisoners) within which people with disabilities are over-represented.**

Name: **Irish Penal Reform Trust**

## Questions

The vision of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which Ireland has ratified, is that disabled people can exercise their human rights like everyone else in society and have an equal opportunity to live their lives with dignity, respect, and equality.

- **Question 1: What changes do you see as important to ensure that disabled people in Ireland are fully included in society in line with the vision of the UNCRPD? (Maximum 500 words)**

Prisoners' rights are guaranteed by numerous international and European treaties, as well as Irish legislation. Despite this, research demonstrates that prisoners with disabilities are often discriminated against and encounter inaccessible spaces and a lack of support within prison.

IPRT commissioned research in 2018 (published in early 2020) to create a sound evidence base and raise awareness of intersectional discrimination and human rights breaches against people with disabilities in prison.<sup>1</sup> The research – comprised of an international literature review, legislative analysis, stakeholder interviews, and interviews with prisoners and prison staff – found that **disabled people face challenges in all areas of prison life, from navigating the prison environment to engaging with prison services, and from complying with prison rules and discipline to reintegrating in their communities after prison.**<sup>2</sup> The majority of the prisoners who participated struggled to conceptualise themselves as holders of rights, and were often unaware of any obligations that the Irish Prison Service (IPS) have to reasonably accommodate them due to their disability.<sup>3</sup>

**One broad way to ensure that all people with disabilities in prison are fully included in line with the UNCRPD is to ensure non-discrimination and equal access to services in prison.**

The IPS should ensure that people with disabilities in prison have access to the entire physical prison environment on an equal basis with other prisoners; this includes accessible cells, bathrooms, gyms and recreation facilities, the school, workshops, medical and rehabilitative facilities, offices, etc. This also includes broader environmental access (e.g., avoiding certain kinds of lighting). Additionally, to make prison services such as schools accessible to prisoners with disabilities, individual adaptations and supports may be needed, including the provision of sign language interpretation, one-to-one assistance for prisoners

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<sup>1</sup> Eilíonóir Flynn et al., *Making Rights Real for People with Disabilities in Prison* (IPRT 2020)

<[www.iprt.ie/site/assets/files/6565/people\\_with\\_disabilities\\_in\\_detention\\_-\\_single-pages.pdf](http://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf)> accessed 10 January 2024.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 57.

with learning disabilities, access to assistive technology, appropriate aids etc. Prisoners with disabilities must also have equal access to programmes such as Incentivised Regimes, structured early release programmes, and access to open prisons. Ensuring this level of non-discrimination cannot be achieved through one specific action and will require a programme of targeted activities designed to better meet the rights and needs of disabled people in prison.

**In order to ensure that the vision of the UNCRPD is reflected, IPRT would also welcome the explicit inclusion of psychosocial disabilities in the upcoming National Disability Strategy.**

People who have mental health difficulties that have a long-term functional impact or barriers, described by the UN as “psychosocial disabilities”, have rights under the UNCRPD.<sup>4</sup> **With Ireland’s ratification of the UNCRPD, there should now be a greater level of attention to, and protection for, the rights of people with ongoing mental health difficulties, which should be reflected in the National Disability Strategy.**

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<sup>4</sup> UN DESA, ‘Mental Health and Development’ (UN.org, 2024) <[www.un.org/development/desa/disabilities/issues/mental-health-and-development.html](https://www.un.org/development/desa/disabilities/issues/mental-health-and-development.html)> accessed 18 January 2024.

- **Question 2: What needs to happen for these changes to be achieved? (Maximum 500 words)**

**The Public Sector Equality and Human Rights Duty needs to be fully implemented across the penal system.** To fully meet its obligations under the Public Sector Equality and Human Rights Duty, all criminal justice agencies should undertake accessibility audits of their services and settings and engage in a disability equality analysis.

**Accessible information on rights and service information should be provided.** Criminal justice agencies should develop and consistently provide information on rights and services in different formats, including: large print, easy-to-read, electronic formats, audio files, sign language videos, and braille. These should be co-produced or proofed by people who use these formats to determine their accessibility.

**The prison complaints system should be fully accessible.** Specific steps should be taken to ensure that prisoners with disabilities are fully supported and have opportunities to make complaints in accessible ways. Information on complaints procedures must also be available in accessible formats.

**Prison staff should receive continuous training on the rights and needs of persons with disabilities.** Training of prison staff is detailed in numerous international standards<sup>5</sup> and efforts are currently made to provide prison officers with training on disability awareness.<sup>6</sup> This is particularly important for prison officers given the estimated over-representation of people with disabilities in prison. This training must continue to be enhanced, delivered on a continuous basis, and should be developed and/or delivered by people with disabilities.

**It is vital that the implementation of medium- and longer-term actions contained in the Final Report of the High Level Taskforce on the mental health and addiction challenges of persons interacting with the criminal justice system (HLTF) is embedded into the forthcoming National Disability Strategy.** This includes an action to consider the requirement for legislation to further support diversion so that a more robust and “comprehensive suite” of mental health interventions is available where appropriate.<sup>7</sup>

There are **no data regularly published on the number of people with disabilities in prison.** This frustrates the development of inclusive policy. However, we know from international

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<sup>5</sup> OHCHR, ‘Convention on the Rights of Persons with Disabilities’ (UN 2006), Article 13.2 <[www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities)> and UNDOC, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2015), Rule 76 <[www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)> both accessed 18 January 2024.

<sup>6</sup> Irish Prison Service, *Annual Report 2021* (IPS 2022), 19 <[www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-21\\_Final.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-21_Final.pdf)> accessed 18 January 2024.

<sup>7</sup> Department of Justice and Department of Health, *High Level Task Force to consider the mental health and addiction challenges of those who come into contact with the criminal justice sector: Final Report* (DoJ and DoH 2022), 49 <[www.gov.ie/pdf/?file=https://assets.gov.ie/236035/0de04b4d-817a-41cf-9779-771ab57703ac.pdf](https://assets.gov.ie/236035/0de04b4d-817a-41cf-9779-771ab57703ac.pdf)> accessed 18 January 2024

studies and reports that people with disabilities tend to be over-represented in the prison population.<sup>8</sup> While we have some data on the prevalence of disabilities in the Irish prison system, it is outdated. Research commissioned by the Department of Justice, Equality and Law Reform in 2000 remains the most comprehensive study, even though it was limited by its primary assessment tool.<sup>9</sup> The results showed that over 28 per cent of the sample population had scores suggestive of a significant degree of intellectual disability.<sup>10</sup> The Council of Europe has published a Recommendation<sup>11</sup> and a Resolution<sup>12</sup> in which it expressed its concern for the situation of prisoners with disabilities. The Recommendation emphasises the need to collect statistical data in order to consider intersectional discrimination.

**Further research on this cohort is needed**, especially to understand the pre-prison experiences and post-release experiences of prisoners with disabilities. More information is also needed about young disabled people in Oberstown Children Detention Campus, as well as on the experiences of people detained in forensic psychiatric settings.

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<sup>8</sup> Afia Ali et al., 'Prisoners with intellectual disabilities and detention status. Findings from a UK cross sectional study of prisons' (2016) 53-54 *Research in Developmental Disabilities* 189

<[www.sciencedirect.com/science/article/abs/pii/S0891422216300245](http://www.sciencedirect.com/science/article/abs/pii/S0891422216300245)> accessed 18 January 2024.

<sup>9</sup> Gautam Gulati et al., 'Intellectual disability in Irish prisoners: systematic review of prevalence' 14(3) *International Journal of Prisoner Health* 188 <<https://pubmed.ncbi.nlm.nih.gov/30274556/>> accessed 25 January 2024.

<sup>10</sup> Michael Murphy et al., *A Survey of the Level of Learning Disability among the Prison Population in Ireland* (DJELR 2000) <[www.iprt.ie/site/assets/files/5983/learning\\_disability\\_report.pdf](http://www.iprt.ie/site/assets/files/5983/learning_disability_report.pdf)> accessed 18 January 2024.

<sup>11</sup> Council of Europe, *CDDH comments on the Parliamentary Assembly Recommendation 2132(2018) "Detainees with disabilities in Europe"* (Coe 2018) <<https://rm.coe.int/recommandation-2132-2018-detainees-with-disabilities-in-europe/16808d29ce>> accessed 18 January 2024.

<sup>12</sup> Council of Europe, 'Detainees with disabilities in Europe' (Coe 2018) <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24813&lang=en>> accessed 18 January 2024.

- **Question 3: What would a successfully implemented strategy look like? For example, how do you think life should have improved for disabled people in Ireland at the end of a five-year strategy?\*** (Maximum 500 words)

\* Please note that the length of the strategy has not yet been confirmed.

This would be marked by several key elements in the penal system, including:

- **The introduction of a dedicated disability strategy for the prison system.**

This strategy should guide a wider series of work targeted at better meeting the rights and needs of people with disabilities in prison. Many of the activities outlined in this submission could be captured in the strategy, and it could be the vehicle through which the National Disability Strategy and UNCRPD requirements are delivered in prisons.

- **The systematic collection and collation of data on people with disabilities in the penal system.**

This includes data on the number of people with disabilities and types of disabilities, as well as data on people with disabilities' engagement with prison education, out-of-cell time, and access to enhanced regimes. This data should be used to ensure people with disabilities are not discriminated against in their access to regimes and services. (While a disability assessment, if appropriate, is currently carried out on committal to prison, the system on which this is completed does not generate an analysis of data. However, it's expected that reporting on this will be enhanced in the future.<sup>13</sup>)

- **The amendment of the *Prison Rules 2007* to reflect, at a minimum, the requirements of the UNCRPD.**

The revised Rules should reflect the UNCRPD, which states that if persons with disabilities are deprived of their liberty for a legitimate reason, they are entitled to guarantees in accordance with international human rights law, and shall be treated in compliance with the principles of the UNCRPD.<sup>14</sup>

The revised Rules should also include a provision requiring the Governor, before imposing a disciplinary sanction, to consider whether and how a prisoner's mental illness or disability may have contributed to the commission of the act, and that the

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<sup>13</sup> Information provided directly to IPRT by the Irish Prison Service on 30 March 2023.

<sup>14</sup> OHCHR, 'Convention on the Rights of Persons with Disabilities' (UN 2006), Article 14 <[www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities)> accessed 25 January 2024.

Governor shall not sanction any conduct that is the result of disability. This would bring the revised Rules in line with the Mandela Rules.<sup>15</sup>

Collection of data on disabilities should be explicit in the revised Rules. This could be inserted, for example, into Rule 4, which outlines the details that should be recorded on admission to a prison (e.g., nationality, physical measurements, religion etc). This information on the prevalence of disability can then be used to inform policy and practice, both at prison-specific and estate-wide levels.

- **The introduction of legislation and other initiatives that support the effective diversion of people with severe mental illnesses from the penal system.**

The imprisonment of people with severe and enduring mental health illnesses has been subject to repeated criticism by international human rights bodies.<sup>16</sup> The recommendations of the HLTF will be relevant here. However, diversion from the prison system must include a range of options, and forensic psychiatric settings must not be the *de facto* option. People with severe mental illness in prison should be transferred to a therapeutic environment that can provide the appropriate levels of care needed. Where transfer to a secure psychiatric setting occurs, there must be robust consent processes and procedural safeguards.

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<sup>15</sup> UNDOC, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2015), 39.3 <[www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)> accessed 10 January 2024.  
<sup>16</sup> UN Human Rights Committee, 'Concluding observations on the fifth periodic report of Ireland\*' (UN OHCHR 2023) <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsieXFSudRZs%2FX1ZaMqUUOS%2BBcAGuuCi6l4l7uiVhbuLp%2F2lGSD7bncJtZrRhGdU%2Buuibeg7sXz%2F5gGDvOE3%2BT1lgNlx3fUqWN8gmOpFITqn>> and CPT, *Report to the Government of Ireland on the Visit to Ireland Carried out by the CPT from 23 September to 4 October 2019* (CoE 2020), 37 <<https://rm.coe.int/1680a078cf>> both accessed 18 January 2024.



- **Question 4: If you have any other views that are relevant to the new National Disability Strategy please tell us? (Maximum 300 words)**

IPRT would like to acknowledge the many challenges faced by prison management and staff in the provision of care, and appreciates the undeniable efforts made to support all people in prison – including people with disabilities – in a very challenging environment. However, IPRT believes that the introduction of a dedicated strategy relating to people with disabilities in prison would provide focus and cohesiveness to ongoing streams of work.

Additionally, accessible environments and practices don't just benefit those in prison custody, but can also provide potential benefits to staff who work in the prison environment, those with and without disabilities alike, as well as those who visit prisons.

In relation to visiting infrastructure, prisoners who took part in IPRT-commissioned research noted that visits proved difficult for them, with fixed benches/chairs, noise, and privacy all noted as challenges.<sup>17</sup> In particular, **disability-friendly visiting facilities can have significant impacts on the children and families of people in prison.** While children's rights to contact with their parents are afforded under various frameworks, including the UN Convention on the Rights of the Child, children with disabilities can face additional challenges to interacting with a parent in prison. Initiatives such as the sensory garden launched in Wheatfield Prison are welcome examples of attempts to better meet the needs of these children.<sup>18</sup> This garden is the first part of a project to enhance visits for children with neurodiversity, with the support of AsIAM.

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<sup>17</sup> Eilionóir Flynn et al., *Making Rights Real for People with Disabilities in Prison* (IPRT 2020), 32  
<[www.iprt.ie/site/assets/files/6565/people\\_with\\_disabilities\\_in\\_detention\\_-\\_single-pages.pdf](http://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf)> accessed 10 January 2024.

<sup>18</sup> Fiachra Ó Cionnaith, 'Sensory garden for children of prisoners opens in Wheatfield Prison' *RTÉ* (8 May 2023)  
<[www.rte.ie/news/dublin/2023/0508/1382495-sensory-garden/](http://www.rte.ie/news/dublin/2023/0508/1382495-sensory-garden/)> accessed 18 January 2024.