

Business in
the

Community

Ireland

ALTERNATIVES TO CUSTODY

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Foreword

One of the little known facts about our "great little nation" is that we greatly overuse imprisonment as a means of punishment. And we are growing increasingly more punitive.

Viewing Irish rates of imprisonment in an international context, many commentators rely on the average daily prison population which would place us mid-way in the European league (known as the "stock" of prisoners). However, considering the (equally valid) measure of committal rates or "flow" of prisoners through the system brings us much closer to the top of the European table. Ireland has one of the highest rates of prison entry in the Council of Europe. The disparity between these two indices can be explained by our excessive reliance on short terms of imprisonment. The Irish Prison Service Report for 2005 notes that about three-fifths of all committals under sentence in 2004 were for periods of less than six months - a sign that something is badly awry in our criminal justice system. Most of these people have defaulted on fine payments or committed road traffic offences or other non-violent, minor offences. Even a short term of imprisonment can have harmful, criminogenic effects, disrupting family ties and severely diminishing a person's prospects

of gainful employment in later life. And this is not to mention the fiscal repercussions of such sentences with taxpayers paying over €1,600 per week to keep a person in custody.

Two other points should be noted about Ireland's rate of imprisonment. First, we appear even more punitive when prison population rates are correlated with our crime rates (which are low by international standards). When the prison population is expressed per 1,000 crimes, our use of custody is three times higher than that of England and Wales and five times as high as Finland. Secondly, since the mid-1990s our prison population has increased significantly (over 30% between 1997 and 2002), at a pace which is well ahead of many other European countries. It is time to pause, take stock and reflect on where we are going as a society. Winston Churchill once said that the way in which a society treats its criminals is one of the unfailing tests of the civilisation of any country. Are we really ready to proceed mindlessly down the route already well trodden by the United Kingdom and the United States of America? In the USA, (when adjustments are made for those under 16 and those over 70) one in eighty Americans wakes every day inside a prison and this bears particularly heavily on ethnic

minorities: one in eight young black males is in prison. I would suspect that few in Irish society would willingly embrace such a dystopia without examining alternatives to custody for defendants who do not present a danger to society. Given the millions of euro that could be saved and reinvested in crime prevention or in the areas which produce so many of our young offenders, this option must surely be worth exploration.

It is with these thoughts in mind that I strongly welcome this report.

Claire Hamilton
Chairperson, IPRT

Introduction

The remit of this report is to examine the use and effectiveness of community sentencing as an alternative to imprisonment in the Republic of Ireland. The specific objectives of the report are:

- To examine the existing alternatives to custody in Ireland and the potential for their use;
- To highlight the issues and difficulties with the operation of the existing range of alternatives to custody;
- To provide a comparative analysis of what alternatives have been effective in other jurisdictions and those that have been less successful;
- To analyse the comparative material on alternatives to custody;
- To provide recommendations based on national and international research and current Irish sentencing conditions.

Chapter 1 begins by discussing the use of and expenditure on custody and alternatives to custody in Ireland. After outlining the current range of such alternatives, the second part of the chapter provides an analysis of the factors that impact on the operation of the alternatives to custody in Ireland.

Chapter 2 draws on the international experience of penal reform to identify the successful and less successful approaches adopted to reduce the prison population. The nature of penal reform and the more specific community sanctions associated with changed are examined in this context. Any discussion on the development of alternatives to custody must be contextualised within the structural, social, administrative and judicial boundaries that exist in the jurisdiction. To this end, the latter part of the chapter examines such factors including the political climate, the role of the media, the influence of the judiciary and the provision of sentencing guidelines.

Chapter 3 applies the lessons from comparative international experience of penal reform to Ireland. It discusses the core messages to emerge from the analysis and evaluates their applicability to the Irish context. Based on the analysis from each of the preceding chapters.

Chapter 4 draws on the lessons emerging to provide a comprehensive set of recommendations.

Alternatives to Custody in Ireland

Chapter 1

Ireland has seen a sharp increase in its prison population over the last decade despite a reduction in the levels of recorded crime. Analysis of the literature on the expansion of punitive intervention suggests that the politicisation of the crime issue since the mid-nineties (Cotter, 1999; O'Donnell, 2004) fuelled by extensive media coverage of high profile crime cases¹ and the ensuing moral panic were key factors in the development. Furthermore, the prosperous economic conditions arising from the era of the Celtic Tiger enabled a prison expansionist policy to become a reality (Kilcommins et al., 2004). An ambitious prison expansion programme has seen the creation of a number of new prisons across the state since 1997. Other factors contributing to a rising prison population include the reduction in the use of early release as a mechanism to manage overcrowding and an increase in the numbers remanded in custody². This chapter discusses the use of and expenditure upon custody and community sanctions in Ireland. It outlines the existing types of community sanctions available and highlights the issues that impact on the operation of the current system of alternatives to custody.

I. The Use of Custodial and Community Sanctions

O'Donnell (2004:257) documents that there is 'a strong orientation towards custody among Irish judges' and imprisonment has been the dominant sanction in Ireland. Almost as many individuals are imprisoned each year as are supervised in the community - in 2002 approximately 4,100 individuals were under supervision in the community compared to 3,200 individuals in custody, representing a ratio of 1.3:1 (Comptroller & Auditor General, 2004). Furthermore, the prison population rate in the Republic of Ireland is 85 per 100,000 of national population, growing from 57 in 1995 to 71 in 1998 and 78 in 2001 (www.prisonstudies.org, Sept 2005).

In an international context the prison population rate in Ireland is mid-range. It is higher than Finland (66 per 100,000 of national population) but lower than Germany (97 per 100,000 of national population) or Canada (116 per 100,000 of national population) (www.prisonstudies.org, Sept 2005).). However, Ireland has one of the highest rates of prison entry in the Council of Europe (299 per 100,000 inhabitants). It is significantly higher than Finland (143) which is a comparable country to Ireland in terms of population and notably higher than the average prison entry rate for Council of

Europe member states (248 per 100,000 of population) (Council of Europe, 2003:12). The disparity between these two figures can be explained by Ireland's excessive reliance on short terms of imprisonment. The average prison sentence in Ireland of just over three months is short.

Of those prisoners committed under sentence in 2003, over one third (38%) were sentenced to periods of less than three months; just over one-fifth (21%) were committed under sentence for three to six months and over one-quarter (27%) were committed for a period of six months up to one year (Annual Report of the Irish Prison Service, 2003). The high turnover of prisoners, due to a heavy reliance on short prison sentences amongst other factors, may impact particularly harshly upon certain types of offenders. A recent report on homeless offenders in Dublin highlighted that 78% of prisoners, homeless on committal, had spent more than two years in prison in their lives. Almost two-thirds of such prisoners had been in prison more than twice in the five years prior to the current committal and almost one-quarter had been in six or more times over the same period thus suggesting a pattern of ongoing short term committals to prison (Seymour and Costello, 2005).

Prison statistics indicate that significant proportions of individuals are sentenced to custody for relatively minor offences. The Annual Report of the Irish Prison Service (2003) also states that of the total committals under sentence (males and females) 28% were for road traffic offences. Furthermore, court service statistics for 2004 suggest that immediate imprisonment was more likely than probation and community service combined in both Limerick and Dublin³ for all road traffic offences and larceny. Given that the majority of road traffic offences are of a relatively minor nature it brings into question whether prison really is an appropriate sanction for such offences. Further, the report on homeless offenders discussed above notes that the most common charges made against identified homeless persons in the District Courts were minor in nature, namely, intoxication in a public place (30%), threatening/abusive/insulting behaviour (24%), theft (21%), failing to appear (bail) 15% and failure to comply with a Garda directive (13%).

It is well acknowledged that fine defaulters do not generally pose a risk to society and do not require imprisonment or rehabilitation (Expert Group on the Probation & Welfare Service, 1999). This is evident from the very fact that the judge has decided the matter is minor enough to attract such a penalty in the first instance. Despite this, almost one quarter of committals to prison in 2001 related to fine default (O'Donnell, 2004). In almost half of cases imprisoned for fine default an amount less than £300 (€381) was owed and the majority were committed for non-payment of fine in relation to a single offence⁴ (Redmond, 2002).

II. Expenditure on Custodial and Community Sanctions

According to the Annual Report of the Irish Prison Service (2003) prison expenditure reached €301.9 million in 2003 (Irish Prison Service, 2003). In contrast, the total level of resource provision for the Probation & Welfare Service in 2003 was just €40.7 million. The high numbers of individuals serving short sentences in Irish prisons combined with the knowledge that 'most offenders committed to prison for periods of under twelve months do not represent a threat to the community' (Roberts, 2003:244) raises serious questions about the cost efficacy of the Irish criminal justice system. This is obvious when one considers the relative costs of the sanctions. The average cost of keeping an individual in custody for one year is €87,950 - this ranges from €70,100 in the Curragh Prison to €97,900 in Mountjoy Prison (including Dochas Centre) and €232,100 in Portlaoise Prison (Irish Prison Service, 2003). In comparison, (based on spending in 2001) it is estimated that it costs €1,500 for a community service order⁵, €4,100 for supervision during deferment of penalty⁶ and €6,100 for an offender on a probation order⁷ (Comptroller & Auditor General, 2004).

III. Existing Community Alternatives

The following section outlines the main community sanctions available in Ireland:

(i) Dismissal and Conditional Discharge

An offender may be dismissed under the amended Probation of Offenders Act 1907 where s/he is charged and the court thinks the charge is proved, but either the trivial nature of the offence or personal or extenuating circumstances deem a dismissal to be the most appropriate response [Section 1(1)]. A number of conditions may be attached to a conditional discharge including

supervision, payment of compensation to the victim, residency and/or treatment requirements. Under the Act a dismissal or discharge can be granted in the District Court without conviction however, in the higher courts the option of dismissing the charge does not exist.

(ii) Probation Order

An offender may be made the subject of a Probation Order under the Probation of Offenders Act 1907 for a period of up to three years. The purpose of the order is to rehabilitate the offender, protect the public and prevent re-offending. A number of requirements⁸ may be added to the recognisance however in reality the use of many of the requirements is restricted due to the limited availability of services (Expert Group on the Probation & Welfare Service, 1999). The Probation of Offenders Act 1907 is not confined to first time offenders (O'Malley, 2000:304). However, it is not applicable to drink driving, revenue related crimes or particular offences under the Road Traffic Act 1994.

¹ These included the murder of a crime investigation journalist Veronica Guerin in June 1996.

² O'Donnell (2005:102) describes how in the past the grounds for sanctioning bail were based only on a concern around witness interference or non-attendance at the subsequent trial; however a constitutional amendment now allows courts 'to deny bail to prevent the commission of offences'.

³ Computer technology systems were introduced in Dublin and Limerick courts in 2002.

⁴ Redmond (2002) notes that there were some differences between the prisons included in the study (Limerick Prison, Cork Prison, Mountjoy Complex and Loughan House).

⁵ The lower cost of the community service order relative to other orders is largely due to the infrequent use of treatment or training programmes as part of this order.

⁶ Based on the typical length of three months - the 'higher' cost relative to the community service order is due to the concentration of intervention during the deferment.

⁷ The estimate assumes that the average length of such sentence is 15 months.

⁸ Conditions may include residence requirements (at a specified address or approved hostel, psychiatric unit or other institution), treatment conditions (to attend for residential or non-residential addictions or psychiatric treatment) reporting requirements (to a particular person at a particular place) and/or other activity requirements.

Deferment of Sentence/Adjourned Supervision: Despite not being a true sentencing option, deferred sentencing/adjourned supervision is a common judicial practice despite having no statutory basis in Irish law. During the deferment the offender may be required to remain under the supervision of the Probation and Welfare Service who are obliged to furnish progress reports to the court regarding the offender's progress. A court may decide to defer sentencing for a period of time usually not exceeding one year to allow the offender address offending related issues, to make reparation (O'Malley, 2000) or to assess the offender's capacity to engage in a community based programme (Expert Group on the Probation & Welfare Service, 1999).

(iii) Compensation Order

A compensation order requires the offender to pay recompense to the victim in acknowledgement of the harm caused by the offence. The compensation order may be used in a number of guises including being imposed of itself, in combination with a fine, as part of a conditional discharge, as a condition of a suspended sentence or as part of a sentence adjournment. O'Malley (2000) points out that there is an assumption that if the offender complies with the compensation order and does not re-offend during the adjournment period that s/he will be dealt with leniently by the court in subsequent proceedings.

⁹ The offender must consent, the court must be satisfied that having considered the person's circumstances the offender is fit to perform community service work and there must be arrangements in place for the execution of the order. The court must also explain the obligations of the order, the consequences of non-compliance and that the court may review the order on the application of the offender or a probation and welfare officer.

¹⁰ An evaluation of community service orders in Ireland identified the average sentence length as 141 hours (Walsh and Sexton, 1999).

¹¹ According to court statistics there were a total of 90 cases in 2004, 30 cases are progressing, a total of 11 cases have graduated and 49 cases were terminated (Court Service, 2004).

(iv) Order of Recognisance

This order requires an offender to undergo treatment for an addiction in a residential or non-residential centre. This order is used very infrequently because the necessary rules have not been made (Expert Group on the Probation & Welfare Service, 1999).

(v) Fines

A majority of offences are punishable by a fine unless 'fixed by law or unless there is a provision to the contrary' (O'Malley, 2000:313). Consideration of the offender's means and proportionality regarding the gravity of the offence are factors in deciding the amount of the fine. Fines are generally payable within 14 days of the order being made. If an offender does not pay within the stipulated period a warrant is issued automatically by the court and executed by the Gardaí for committal to prison for a period up to 90 days.

(vi) Community Service Order

The Community Service Order (CSO) was introduced under the Criminal Justice (Community Service) Act 1983. The aim of the order is 'to reintegrate the offender into the community through positive and demanding unpaid work' (Expert Group on the Probation & Welfare Service, 1999). It is intended as an alternative to custody for offenders aged 16 years and over, where in the opinion of the court the offence merits a custodial sentence. A number of pre-requisites must be met before an order is made⁹, most notably from the point of view of the present inquiry, the court must find that the offender would otherwise have received a term of imprisonment. An offender is required to perform unpaid work for a specified number of hours - the minimum is 40 hours and the maximum 240 hours¹⁰. It is applicable to the

majority of offences other than those with sentences fixed by law e.g. murder.

(vii) Suspended Sentence

There is no statutory basis for the suspended sentence in Irish law. The sentence involves the imposition of a custodial sentence with suspension on condition that the offender does not re-offend within a specified period. A number of requirements including treatment, exclusion or curfew may be attached to the sentence.

(viii) Drug Treatment Court

The Drug Treatment Court is a pilot programme set up in Dublin to provide 'a workable alternative to custodial sentences' (Court Service, 2004). This recent innovation provides a multi-agency programme of rehabilitation, education and training for offenders under the control of the court to address their offending behaviour and drug dependency. The level of attrition is high, but it is to be expected given the experience of engaging drug dependent offenders in other jurisdictions. Indeed, research from the UK found completion rates of only 28% for offenders sentenced to Drug Treatment and Testing Orders (Worrall & Hoy, 2005). The impact of the Drug Treatment Court is also limited at present because it is restricted only to defendants living in Dublin 1 and Dublin 7¹¹.

IV. Issues Relating to the Operation of Existing Alternatives to Custody

The data presented to date highlights the fact that reform of the system of sentencing could significantly impact on the prison population given that such high proportions of committals to prison are for short periods of time and for relatively minor offences. The experience in other jurisdictions (see Chapter 2) strongly suggests that community sanctions provide an effective

alternative to short term imprisonment. There have been numerous calls for a re-orientation of the system towards using custody as a last resort (National Crime Forum, 1998; NESF, 2002), however, with the exception of legislation such as the Children Act 2001 no change has occurred. The following section provides an analysis of the existing issues that hinder the effective use of community sanctions in Ireland.

(i) Limited Legislative Development

With the exception of a small number of legislative developments (e.g. Criminal Justice (Community Service) Act 1983) there have been no major legislative change governing alternatives to custody in Ireland since the Probation of Offenders Act (1907). Legislation to provide a statutory framework for the Probation and Welfare Service is necessary for the implementation of an effective system of alternatives to custody in Ireland. In comparison to other jurisdictions the range of community sanctions is limited. The Final Report of the Expert Group on the Probation & Welfare Service (1999) recommends that new legislation could also introduce a range of more diverse community sanctions including treatment orders; mediation orders; reparation orders; counselling orders; and combination orders. As a result of the limited range of alternatives to custody, much of what currently takes place in sentencing offenders to community sanctions operates on a non-statutory basis with no limitations on the use or intensity of interventions e.g. suspended sentence, adjourned supervision or the court poor box¹². There are no limits to the range of conditions attached to the suspended sentence or on the time for which a sentence is suspended¹³. This is particularly concerning given the high-tariff nature of the sentence.

Indeed, it has been suggested that the practice may be contrary to international practice particularly in relation to the European Rules on Community Sanctions and Measures¹⁴ (Kilcommins et al., 2004).

(ii) Limited Resources for Alternatives to Custody

Figures highlighting the significant disparity between spending on the prison system and the Probation and Welfare Service outlined earlier in the chapter support O'Donnell's (2005:121) view that 'the bias towards custody that has traditionally characterized the Irish system has become more ingrained and the peripheral status of probation has been reinforced'. Indeed, it appears that the current level of resources provided to the Probation and Welfare Service is not sufficient to deliver and develop an effective system of alternatives to custody. The Comptroller & Auditor General's report (2004) outlines how requests from the courts for pre-sanction reports and offender referrals for supervision are sometimes left unallocated by the Senior Probation and Welfare Officer on a team because the caseloads of staff are full¹⁵. In June 2002, it was shown that 14 of 31 community based teams (approximately 45%) experienced this difficulty (ibid, 2004). In light of such difficulties in fulfilling their basic obligations to the courts, it would appear highly unlikely that the Probation and Welfare Service is in a position to deliver a credible range of community sanctions to satisfy judicial and public confidence without substantial government investment. In contrast, while there have been some recent attempts to stabilise the prison budget, it is difficult to dispute that expenditure on prisons 'seems to be an area of public policy that is insulated from considerations of cost-effectiveness' (O'Donnell, 2005:126).

(iii) Absence of Sentencing Guidance and Principles

Bacik (2002) argues that it is impossible to establish patterns of sentencing practice in Ireland given the dearth of sentencing data. However, the limited available data suggest that there are significant discrepancies in the use of sentences for similar offences. This is reflected in the different sentencing outcomes for broadly similar offences in Dublin and Limerick (Court Service, 2003, 2004). Even within the same area, differences exist in sentencing practice - findings from a study of sentencing in the Bridewell District Courts raised concerns 'about the perceived inconsistencies in sentences handed down by different District Court judges' (IPRT, 2004/5:2). There are a number of possible explanations for such variation including differences in attitudes amongst members of the judiciary and the availability of appropriate community based resources, however it would seem that the absence of sentencing principles or any type of sentencing guidance is a significant contributory factor.

¹² An Irish Penal Reform Trust (IPRT, 2004/5) study on sentencing in the District Courts in 2003 found that of 356 cases 20% were dealt with by a requirement to contribute to the court poor box. Referring to the non-statutory sentencing options used in Ireland, Kilcommins et al. (2004:261-2) suggest that 'judicial creativity may have emerged due to the lack of expressed concern by politicians. Or perhaps it is a response to the lack of action taken by them, especially in terms of legislative reform and the provision of adequate funding for the PWS'.

¹³ O'Malley (2000) points out that occasionally suspended sentences of nine or ten years have been handed down. He argues that this lead to two queries; firstly why was the sentence suspended if such a lengthy sentence was imposed in the first place and secondly what are the implications for an offender breaching a sentence towards the latter part of the suspension - he asks 'would it be just to activate the full sentence (as a court is entitled to do) so long after it was originally imposed?' (ibid, 2000:291).

¹⁴ Recommendation No. R (92) 16 of the Council of Europe Committee of Ministers

¹⁵ A caseload agreement on the number limit of cases to be held by each Probation and Welfare Officer was established between management and staff of the Probation and Welfare Service in 2000. The Comptroller & Auditor General's Report (2004) outlines how the caseload agreement was considered necessary because the Service was unable to adequately supervise the numbers of individuals referred to it by the courts.

The lack of sentencing principles and guidance is likely to increase the risk that an offender receives a sentence which is disproportionate to the circumstances of the offence (up-tariffing). Limited evidence exists on the extent of up-tariffing in Ireland, however a study by Geiran et al. (1999) found that over one-fifth of offenders (21.3%) aged 16-21 years serving sentences in St. Patrick's Institution or Shanganagh Castle had not had any contact with the Probation and Welfare Service prior to their first sentence. Another clear example of up-tariffing is found in Walsh and Sexton's (1999) study of Community Service Orders.

Despite the legal requirement in the 1983 Act which ensures they are used only where a sentence of imprisonment would have been imposed, almost half of the recipients in the study had no previous convictions. Given that the most common offences inviting a CSO were mainly property offences (41%) and road traffic and vehicle offences (24%) it would appear that offenders were not at risk of custody in the first incidence.

(iv) Lack of Research

Currently, the dearth of available, reliable and consistent data 'makes it difficult to establish clearly the extent to which community-based sanctions are available to, and being chosen by judges in their sentencing decisions (Comptroller & Auditor General, 2004:21). With some notable exceptions (e.g. Walsh & Sexton, 1999) there is very limited information on community sanctions in Ireland. The call for independent, critical and evaluative research as well as the availability of statistics on crime, sentencing and procedure has been echoed by numerous individuals and groups in the criminal justice field (Expert Group on the Probation & Welfare Service, 1999; IPRT, 2004-5; O'Mahony in the Report of the Joint Committee,

2004). In the absence of such data there is a high risk that inappropriate interventions may be incorporated into Irish criminal justice policy, particularly from England and Wales, without adequate consideration being given to their relevance and/or potential effectiveness in this jurisdiction as well as differences in our culture. Unlike England and Wales, Ireland is a constitutional democracy with a small population and a very different education system and demographic mix to Britain, as well as a weaker welfare state. These influences make our crime problem idiosyncratic and less acute than that in Britain.

VI. Conclusion

From the analysis presented above it is clear that imprisonment is still the dominant sanction in many cases in Ireland and the potential for using community sanctions is under-developed. Moreover, it is impossible to have an in-depth understanding of the operation of community sanctions in Ireland or their potential to reduce recidivism or the prison population largely because they have been under-researched.

It is clear, however, that significant reform of the penal system is required to promote the use of community sanctions and reduce the prison population. Legislative change to provide a statutory framework for the expansion and development of a system of community sanctions is necessary, accompanied by an appropriate level of resources to implement such change. There is evidence of sentencing disparity, thus highlighting the need for sentencing guidance and ongoing training. There have also been calls for greater accountability from the judiciary by way of introducing a legal requirement that District Court judges provide written reasons when imposing a custodial sentence (IPRT, 2004/05; Law Reform Commission, 2002). It could also be

argued that this is a requirement of Article 6 of the European Convention on Human Rights.

The picture regarding the use, development and expansion of community sanctions in Ireland is pessimistic. While there have been some more innovative developments such as the drugs court and significant legislative change regarding community sanctions for children less than 18 years (Children Act 2001), the slow implementation of the Children Act 2001 shows legislative development without the resources to execute it is effectively useless. However, the Children Act provides an model of innovative change and gives examples of how the present system could move further in the direction of alternatives to custody. Notable features include the sentencing principles included in s.96 such as the principle of last resort, a statutory mandate for a pre-sanction report prior to sentence and a wide range of diverse community responses.

To date, we have been largely protected from the punitive and control interventions associated with community sanctions in other jurisdictions particularly England and Wales because of a general inaction at a policy level to develop community sanctions. Indeed, Kilcommins et al. (2004:290) points out that 'there is no evidence that the punitive 'bite' of community sanctions in Ireland is being ratcheted up to keep pace with imprisonment'. The challenge in developing the system of community sanctions in Ireland is to avoid the mistakes of other jurisdictions by drawing instead on evidence based policy and practice approaches. It is within this context that the following chapter focuses on the international experience of alternatives to custody.

Alternatives to Custody: International Experiences of Reform

Chapter 2

This chapter draws on the literature from a range of countries to identify both the positive and negative approaches that have been adopted in attempting to reduce the prison population internationally. The first part of the chapter focuses on penal reform and some of the specific community sanctions associated with such change. The main sanctions include conditional and suspended sentencing, community service, probation and conditional dismissal. The discussion also briefly addresses some of the less successful alternatives to custody including electronically monitored curfew orders and punitive community orders.

Numerous commentators argue that the issue of alternatives to custody must be examined in a holistic framework incorporating factors such as penal reform, sentencing policy, the role of politicians, policy-makers, the judiciary and the media as well as the range and delivery of community based alternatives to custody (Lappi-Seppälä, 1998; Mair, 2004; Roberts, 2003). To this end, the second part of the chapter addresses the role of these broader factors in bringing about successful penal reform.

I. Penal Reform in Canada, Finland and Germany

The need to reduce the prison

population has been a focus of criminal justice policy in many jurisdictions at various points over the last fifty years. The following analysis focuses on some of the reforms that have occurred in a range of countries including Canada, Finland and Germany, and to a lesser extent Spain¹⁶ and the United Kingdom. Reform in the majority of the jurisdictions occurred in the context of an acknowledgement that the level of custody needed to be reduced. Finland is almost unique in the western world in the extent to which it has pursued 'a conscious, long term and systematic criminal policy' to decrease the prison population through 'changes in penal theory and thinking relating to criminal policy ... [and] changes in penal legislation, in sentencing and prison enforcement practices' (Lappi-Seppälä, 1998:2). The system of statutory sentencing principles providing general and specific sentencing guidance was introduced in Finland in 1975, at a time when the prison population was almost twice the size of other Nordic countries. Since this period, Finland has reduced its prison population to one of the lowest in Europe (66 per 100,000 of the general population). Finland provides a useful comparison for Ireland as a country on the fringes of Europe with a similar population size. It has four times the crime rate of Ireland, yet it has a

much lower use of custody (O'Donnell, 2001).

In a similar manner to Finland, Canada addressed the issue of reform at a time when it had one of the highest imprisonment rates in the western world. It is a common law country which has made a deliberate choice not to incarcerate as many individuals as its neighbour in North America¹⁷, therefore highlighting that neighbouring punitive influences may be resisted in favour of more reformative approaches and evidenced based community sanctions. Reform of the law in Germany in 1969 sought to limit the use of custody to the most serious cases. Examples from the jurisdiction usefully demonstrate how penal reforms including alternatives to custody have stabilised the number of individuals sent to prison over a 30 year period.

¹⁶ The Spanish experience is confined to some discussion in relation to the suspended sentence.

¹⁷ United States has a prison population rate of 702 per 100,000 of general population.

Finally, it appears that Ireland has often been influenced by criminal justice and associated policies that exist in England and Wales (for example, recent proposals to introduce Anti-Social Behaviour Orders). The evidence from all areas of the United Kingdom suggests that despite numerous legislative and policy changes particularly over the last 15 years beginning with the Criminal Justice Act 1991 the prison population continues to grow. Indeed in many respects the experience of the United Kingdom highlights what not to do in terms of planning prison reform especially in light of a prison population rate rising from 90 per 100,000 of national population in 1992 to 145 in 2005 (www.prisonstudies.org, Sept 2005).

II. Reducing the Prison Population: International Experiences

All three jurisdictions (Canada, Finland and Germany) have in common a strong emphasis in the law on reducing the number of individuals in prison particularly those serving sentences of up to two years. Canada has a wider range of sanctions at its disposal than either Finland or Germany who rely on a narrow range of community sanctions. Overall, however the main sentencing options in these three countries are unconditional imprisonment, conditional imprisonment (with probation or other conditions attached) and fines.

In Germany, measures implemented to achieve the goal of reducing the prison population included the abolition of prison sentences of less than one month in lieu of fines and the decriminalisation of many traffic and public order offences. Furthermore, the Penal Code in Germany also discourages the use of short sentences requiring written justification and further explanation for not suspending a sentence of less than a year. The result of penal

reform in Germany is that despite a significant increase in the number of adults convicted in criminal courts since 1969 the capacity of the prison estate has not been expanded as the numbers sent to prison remain relatively static in the long-term. Adult convictions increased from 526,813 in 1968 to 656,895 in 1996 and yet the numbers sent to custody remained stable with 42,122 convicted adults in prison in 1968, 43,476 in 1996 (Statistisches Bundesamt Reihe 9 in Weigend, 2001:191) and 39,468 in 2003 (Jehle, 2005). Cynics may argue that the system has a static proportion of individuals in custody, however, this is largely explained by the increasing numbers of offenders serving longer sentences for more serious offences particularly drug offences (reflecting international trends) which increased from 12,754 in 1986 to 28,361 in 1996 (Statistisches Bundesamt Reihe 3 (1988) in Weigend, 2001:194). Another positive effect of penal reform in Germany is the impact it is likely to have had on decreasing public demands for punishment. Despite substantial increases in crime from the 1960s, Weigend (2001) suggests that it has not resulted in demands by the public for a more draconian policy on punishment. He argues that such demands may have been allayed because 'the system was able to adjust to the substantial rise in convictions without need of more prison space' and thereby create the impression that rising crime levels were under control (ibid, 2001:193). This reinforces the argument that 'even if crime rates are not rising, increased punitiveness can result from the perception that crime, or serious crime, is increasing' (Fraser, 2001:27).

Penal reform in Finland including the introduction of community service and conditional sentencing as well as a plethora of measures including sentencing guidance has

dramatically reduced the prison population rate to one of the lowest in Europe (66 per 100,000 of national population in 2004). Changes in sentencing practice regarding theft resulted in 11% of offenders who committed larceny being sentenced to imprisonment in 1991 compared to 38% in 1971 (Lappi-Seppälä, 1998:11). Prior to the 1970s when the reform process began, drink drivers in the country were largely dealt with by unconditional prison sentences. Changes to the law relating to drink-driving and theft were central issues in reducing the prison population in Finland by resorting to community sanctions (Törnudd, 1993). Lappi-Seppälä (1998) highlights the dramatic change in the statistics amongst drink drivers with 70% of drink drivers receiving an unconditional sentence of imprisonment in 1971 compared to just 12% in 1981.

Following the introduction of penal reform measures in the mid-nineties in Canada, the prison population rate has declined from 131 per 100,000 of national population to 116 per 100,000 of national population in 2001 (www.prisonstudies.org, Sept 2005). The number of incarcerated federal offenders has declined by 12.5% between 1996/7 and 2003/4 (Public Safety & Emergency Preparedness Canada, 2004). Furthermore, since the introduction of conditional sentencing (see below) in 1996/7 sentenced custody admissions have declined on an annual basis to reach 18% in 2000/01. Other reform measures which have been associated with the reduction in custodial admissions include the decision to no longer place offenders guilty of fine default in custody in Ontario (Canadian Centre for Justice Statistics, 2002:20).

The following section outlines in more detail types of sanctions used to reduce the prison population.

III. Alternatives to Custody: Suspended and Conditional Sentences

A number of countries have relied on suspended sentences (e.g. Germany and Spain) and conditional sentences (Canada and Finland) to reduce admissions to custody. This section focuses on the use and impact of the suspended and conditional sentence in reducing the prison population in a number of jurisdictions, examines the differences in how the sentence operates in practice and analyses the extent to which varying approaches may impact on its effectiveness.

(i) Suspended Sentence

Weigend (2001) attributes the stabilisation of numbers in custody in Germany between 1968 and 1996 to the use of the suspended sentence. He argues that 'the expansion of suspended sentences has the beneficial effect of absorbing the increase in convictions for offences of medium seriousness without overburdening the corrections system' (ibid, 2001:196). As noted earlier in the chapter despite the number of adults convicted in the criminal courts rising steadily since 1968, the capacity of the prison system has not been expanded as 42,122 convicted adults were in prison in 1968 (Statistisches Bundesamt Reihe 9 in Weigend, 2001:191) and 39,468 in 2003 (Jehle, 2005). Jehle (2005) notes that suspended prison sentences accounted for a remarkable two-thirds of all prison sentences in Germany in 2003. In Spain also, a dramatic increase in the use of suspended sentences has been noted, rising from 10.2% in 1996 to 44.1% in 2003 as well as a corresponding decrease in unsuspended prison sentences from 89.8% to 55.9% over the same period (Cid, 2005). This increased use of the suspended sentence in Spain has been described as 'a powerful device for reducing admissions into prison in the period 1996-2003' (ibid, 2005:177).

Following on from the recommendations of the Home Office Sentencing Review (2001), the Criminal Justice Act 2003 introduced a suspended period of imprisonment described as 'a form of conditional sentence for England and Wales'¹⁸ (Roberts and Gabor, 2004:92). The sentence of imprisonment is suspended (between 28 and 51 weeks) on condition that the offender engages in a demanding programme of activity¹⁹ (ibid, 2004). The impact of the 'new' suspended sentence on prison admissions in England and Wales remains to be seen, however, evidence from other jurisdictions suggests it can have a positive effect on reducing the level of imprisonment.

(ii) Conditional Sentence

Describing the key difference between the suspended sentence (in England and Wales) and the conditional sentence (in Canada) Roberts (2003:233) points out that under a conditional sentence 'the custodial period is actually discharged in the community, and not suspended for possible activation at a later date'. Research in both Canada and Finland has linked the use of conditional sentences with reducing the prison population. Lappi-Seppälä (1998:6) describes the conditional sentence as 'a powerful means in restricting the use of liberty' and the most effective alternative to imprisonment in Finland. The conditional sentence in Canada was introduced in 1996 as part of a range of statutory reforms to sentencing (Roberts and Cole, 1999). It was specifically created to reduce the use of imprisonment as a sanction. Research from Canada suggests that the conditional sentence has succeeded in creating a significant reduction in the numbers admitted to custody with only minor net-widening²⁰ effects because a number of statutory criteria are required to be fulfilled. The court must decide that no alternative sanction will

fulfil the purpose and principles of sentencing:

absent this condition, judges would be free to impose a conditional sentence on cases which might otherwise have received a term of probation ... this outcome would defeat the parliamentary intention of reducing admissions to custody (Roberts and Gabor, 2004:96).

(iii) Operation of the Suspended and Conditional Sentence

A number of differences in practice in the execution of suspended and conditional sentences are noteworthy and may impact on the effectiveness or otherwise of the sanction across jurisdictions. The three main factors include:

- a) Eligibility criteria
- b) Conditions attached
- c) Response to Breach

(a) Eligibility - Suspended and Conditional Sentences

In Finland, Canada, Spain and to a more limited extent Germany,

¹⁸ The Criminal Justice Act (2003) also contains other forms of custody for sentences of up to one year. These include 'Custody Plus' which provides for a supervisory period after custody and the intermittent sentence of imprisonment where the sentence is served at weekends and on overnights (for more detail see Robert, 2003).

¹⁹ The sanction is made up of a number of elements: the first is a custodial element which is suspended; the second is a period of supervision (between 6 and 24 months) during which the offender is required to comply with a number of conditions including community work, treatment or a curfew. The third element is a period of time (the operational period) during which the custodial element may be activated if the offender fails to comply with the order or commits another offence (Roberts, 2003). The extent to which the order will be demanding varies from case to case and is largely dependent on the extent to which the court adds requirements to it.

²⁰ Net-widening is a term used to describe the impact of measures which draw more offenders into the criminal justice system or which result in the greater involvement of those already in the system (www.justice.govt.nz/pubs/reports/1996/restorative/index.html, Nov 2005).

offenders with sentences of less than two years may be eligible for a suspended and/or conditional sentence (depending on the country). In Canada, because the conditional sentence is applicable to all sentences less than two years, it covers 95% of sentences²¹ (Roberts, 2003). In contrast, the upper limit of eligibility for a suspended sentence in England and Wales is under one year.

It is in the countries where the limit of consideration stands at two years that the suspended and conditional sentence have had the most significant impact on admissions to custody. Cid (2005:174) argues that the limit of consideration for a suspended sentence from one to two years imprisonment in the Spanish Penal Code 1995 is 'the main reason for the reduction in prison admissions'. Similarly, in Germany the use of suspended sentences in lieu of custodial sentences of up to two years is seen as a significant

factor in reducing the prison population²² (Weigend, 2001). Since the introduction of conditional sentencing in Canada in 1996 the incarceration rate has decreased in contrast to most European prison population rates which have remained stable or increased over the same period (Public Safety & Emergency Preparedness Canada, 2004). Furthermore, according to the Canadian Centre for Justice Statistics (2002:18), sentenced custody admissions dropped consistently on an annual basis following the introduction of conditional sentences and continued to decline. Despite this, there was public discontent at the notion that 95% of offenders could potentially receive a conditional sentence due to the two year eligibility rule. Based on this experience, Roberts and Gabor (2004) argue that in jurisdictions where the issue of crime is highly politicised, the two year ceiling of eligibility for a conditional/suspended sentence is likely to create much adverse publicity for being too lenient. This point will be expanded further in terms of examining the Irish situation in the context of the international literature in Chapter 3.

(b) Requirements Attached to Suspended and Conditional Sentences

There is wide disparity in the extent to which requirements may be attached to suspended and conditional sentencing ranging from unsupervised probation in Finland for one to three years to a comprehensive range of reporting, treatment, restorative, rehabilitative and/or control interventions in Germany, England/Wales and Canada. A common theme in latter two jurisdictions is the need to tailor the sentence to the offender's needs. This is achieved by attaching conditions such as treatment, control or reparative requirements to the sentence. It

could be argued that the extent to which requirements are added may be reflective of the 'considerable populist and media pressure to make sentences harsher' (Roberts, 2003:230). A more optimistic observation is that provision to add requirements to suspended or conditional sentences enables the sentence to be tailored appropriately to the needs of the offender.

(c) Response to Breach of Suspended and Conditional Sentences

In the UK, breach of the requirements of the suspended sentence can, in theory, result in the offender being imprisoned for the entire suspended period even if s/he had complied with supervision for a lengthy period in the community²³. Even if the offender is not sent to custody for breach, the alternatives are punitive and include 'more onerous community requirements; ... extending the period of supervision ... [or] the operational period' (Criminal Justice Bill, 2002 in Roberts, 2003). In contrast in Canada, there is wider scope to deal with a breach aside from imprisonment including amendment of the order or a warning (Roberts, 2003). Roberts (2003:240) argues that the need to respond to a breach in an appropriate way is 'a question of balance' - he argues that too punitive a response from the courts will undermine the goal of keeping individuals out of prison. One queries the benefit of 'tough' penalties for breach of conditional and suspended sentences given that the evidence suggests that it is not the severity of the punishment but rather the perception of apprehension that impacts on re-offending (Doob & Webster, 2003).

IV. Alternatives to Custody: Conditional Dismissal/Prosecutor's Fine

A four year reconviction study of cases from the Central Federal Register in Germany found that

²¹ Because it can be used with offenders serving sentences of two years less a day, it means it can be used with all offenders minus those serving on charges of first and second degree murder.

²² While the Penal Code states that a court must suspend a prison sentence of less than one year (if there is an expectation that the offender will not re-offend) there is provision to suspend sentences of one to two years if there are special circumstances. In reality, it seems that the courts have adopted a generous approach to the special circumstances provision because two of three prison sentences between one and two years were suspended in 1996 (Weigend, 2001:196).

²³ Roberts (2003:239) argues that the Criminal Justice Bill 2002 (now the Criminal Justice Act 2003) does not have the flexibility to remove a requirement of the suspended sentence 'which has placed unforeseen and unfair impediments to compliance'. The only flexibilities provided for by the suspended sentence in England and Wales is the system of executing a formally recorded warning to an offender prior to breach.

only one third of persons sanctioned by the criminal law or released from prison re-offends within the 4 year reconviction period (Jehle, 2005:53). This clearly demonstrates that a significant proportion of offenders do not come to the attention of the criminal justice system and perhaps may even have been diverted at an earlier stage before appearing before the courts. Research into the effectiveness of such measures has been limited however to date the existing research suggest that 'the reconviction rates associated with them do not suggest ineffectiveness' (Mair, 2004:157).

The conditional dismissal in Germany is described as the 'sanction of choice' for a plethora of minor offences and a measure 'to expand the area of depenalization' (Weiberg, 2001:197). It is a procedural rather than a criminal tool and does not require a trial or a court judgment. According to Weiberg (2001) if the offender is willing to make the appropriate payment the prosecutor dismisses the case. The disposal appears to be used regularly because in 1996 it accounted for 17% of cases where a sanction was given to a suspect. It can also be used with more serious offences (particularly white collar crime), however, court approval is required.

The prosecutor's fine in Scotland is similar to the conditional dismissal in Germany. An offer is made to the offender whereby if s/he agrees to pay an agreed sum of money²⁴ within a specified time period, no criminal proceedings are brought against them. According to Duff (1993) this conditional offer has succeeded in diverting thousands of offenders from prosecution; furthermore it has not led to net-widening in the sense of increased state intervention. In line with most sanctions, however, there are some concerns²⁵ particularly regarding

the degree to which the suspect's co-operation is voluntary:

Prosecutors may offer attractive deals in cases where the evidence is weak and conviction unlikely, and even an innocent suspect may be tempted (or persuaded by counsel) to make a payment rather than take even the small risk of a conviction at trial (Weigend, 2001:199).

The overall benefit of a prosecutor's fine/conditional dismissal is that if it is executed by the prosecutor's office it effectively removes thousands of cases from the court system and leaves court hearings and disposals for more high risk offenders (Mair, 2004). Weiberg (2001) argues that from the suspect's perspective the advantages are that trial and judgment is avoided. Furthermore, because receiving a conditional dismissal/prosecutor's fine is not contingent on an admission of guilt, the suspect can, to some extent, maintain their innocence.

V. Alternatives to Custody: Community Service

One of the most cited sources on community service is McIvor's (1992) research on community service in Scotland. This study found that 85% of offenders satisfactorily completed their order and while 57% were reconvicted after two years, reconviction rates tended to be slower and for less serious offences. According to McIvor (2004:167) despite attempts in the legislation to keep community service as a high-tariff option only imposed on an offender who would otherwise go to custody it appears that 'the legislation had not been successful in ensuring that all community service orders replaced prison sentences (McIvor and Tulle-Winton, 1993)'. In other words, evidence of net-widening was detected.

In contrast to the Scottish experience, there does not appear to be a net-widening effect regarding the use of community service in Finland. Lappi-Seppälä (1998) outlines that the majority (90%) of persons sentenced to community service would have received a custodial sentence. Trends also show that as the number of community service orders increased there was a corresponding decrease in the number of unconditional prison sentences. The two step procedure introduced in Finland to ensure that community service is used only to replace a period in custody (unconditional prison sentence) is likely to be one of the contributing factors to this success. The court is firstly expected to make a sentencing decision using the regular sentencing criteria and principles without taking the possibility of community service into consideration. If the decision is a sentence of unconditional imprisonment only then may a court translate the sentence into community service (one day in prison is equated to one hour of community service). In effect, this system strongly intends that community service is used only in the case where an offender would have received a custodial sentence. Furthermore, there are a number of prerequisites for sentencing an offender to community service including that the offender consents, the sentence is not longer than eight months and that the offender is deemed capable of carrying out a community service order (Lappi-Seppälä, 1998)

²⁴ Some flexibility exists whereby a one-off payment may be made or by instalment on a fortnightly basis. Any non-payment is followed up through civil debt procedure rather than the criminal courts. A failure to pay cannot result in imprisonment and most crucially acceptance of the prosecutor fine does not result in a criminal conviction.

²⁵ See further *Deweever v. Belgium* (1980) 2 ECHR 439 where the European Court of Human Rights held that in certain circumstances the use of a conditional dismissal can constitute 'constraint' in choice in breach to the rights to fair trial.

In conclusion, the evidence from Scotland suggests that community service produces lower reconviction rates amongst offenders than those given short prison sentences (Killias et al., 2000). Reporting on findings from the Scottish Executive (2001), McIvor (2004:176) concludes that 'at the very least, community-based disposals are no less effective than imprisonment'. Based on the Finnish experience it would seem that if sufficient safeguards are put in place, the community service order has the potential to be an effective alternative to custody.

VI. Fines

The fine is the most commonly used sentence in most jurisdictions for example in Germany it represented 79.9% of all court sentences (Jehle, 2005). As a result it has played a significant role in the movement towards reducing the prison population. There have been numerous calls (Flood-Page and Mackie, 1998; Goldblatt and Lewis, 1998) for the increased use of the fine on the basis that it appears to be no less effective than more expensive community penalties. Mair (2004:157) argues that 'fines, conditional discharges and cautions have been marginalised for too long; they need to be reconceptualised as relevant disposals and not as low-level or shallow-end - such terminology does them no favours'. The difficulty particularly in a punitive environment is that fines are one of the only sanctions that are not directly targeted at the offender (in the sense that another person may pay) and therefore there is an on-going dilemma regarding the extent to which such a sanction holds the offender accountable.

VII. Probation

With regard to probation supervision, commentators (Bottoms, 2004; Lewis, 2005) have argued that using a rehabilitative approach has the potential to reduce recidivism amongst offenders. The expansive literature on effective probation practice is beyond the remit of this report however there are a number of key principles that are noteworthy in using probation appropriately with offenders. Firstly, the intensity of probation supervision should be commensurate to the offender's risk of re-offending. Inappropriate targeting of offenders for interventions, sanctions and treatment programmes is likely to have an adverse effect in terms of re-offending (Hollin, 1994; McIvor, 1992a).

The content of supervision should address the offender's needs and be meaningful to the offender. Outcome evaluations and meta-analyses (Antonowicz and Ross, 1994; Vennard et al., 1997) link the targeting of 'criminogenic needs' with successful treatment programmes. Evidence suggests that offenders are more likely to comply with the terms of supervision if they perceive that they will gain from such engagement. McIvor (2004) and Rex and Gelsthorpe (2002) identified the offender's perception of the value of their community service placement to themselves and their recipients as the most important factor in changing the offender's attitude. Finally, Killias et al. (2000) discovered a relationship between the perceived legitimacy of the sentence and reconviction.

The issue of enforcing probation and other community based penalties is an on-going problem for criminal justice personnel. Vass (1996) argues if one enforces too readily and too strictly one risks broadening the net of social control - in contrast if the

offender does not perceive that there are consequences for non-compliance it is likely to undermine the legitimacy of the order and reduce public and judicial confidence in alternatives to custody (Roberts and Gabor, 2004). Travis and Petersilia (2001:307) recommend a graduated response system for violations. High-risk offenders are likely to relapse (Sontheimer and Goodstein 1993) and therefore relapse prevention and management is an important part of successful community supervision (Chapman and Hough, 1998; Vennard and Heddermann, 1998). Hedderman and Hough (2004) suggest that individuals are supported in completing interventions by not breaching them too easily, rewarding compliance and using a variety of techniques to promote compliance. Finally, the effective management of enforcement in community orders is highlighted by the evidence that appropriate enforcement action creates lower than predicted re-offending rates for offenders²⁶ (May and Wadwell, 2001).

VIII. Alternatives to Custody: Less Promising Approaches?

(i) Community Order

The focus to date has been on interventions and sanctions associated with reducing the numbers in custody. The following paragraphs provide a brief discussion on some practices that research suggests may be less successful in achieving a reduction in the custodial population.

The trend in England and Wales seems largely towards punitiveness in community sentencing and away from rehabilitation (Lewis, 2005). Under the Criminal Justice Act (2003) in England and Wales a single community sentence known as a community order replaces all other community orders.

Community sentences have become tougher and more

²⁶ The reconviction rate for high risk offenders against whom all appropriate enforcement action was taken was considerably lower (64%) than the rate for high risk offenders against whom not all enforcement action was taken (87%) (May and Wadwell, 2001:2).

challenging but appear to be tailored to the offender's needs through a selection of requirements including unpaid work, accredited programmes, curfew, exclusion, activities, supervision, drug, alcohol and/or mental health treatment. While acknowledging the aspects which appear to address the needs of the offender, critics of the order caution against the extent of intervention in an offender's life. Worrall and Hoy (2005:68-69) explain how under the new Act:

The role of the community has been enhanced ... but this has not made the community an inclusive place for offenders. It is a place where they are singled out to report, be tested, attend courses and programmes, do unpaid work, be assessed for risk, register with the police and be excluded from having the freedom to go where they choose.

The effectiveness of such an approach remains to be seen, however, it appears from research to date that the punitive and demanding nature of these sentences may be counter-productive in terms of reducing offending and keeping offenders out of prison. Underdown (1995:7) reporting on intensive supervision programmes found evidence of 'nil effectiveness on reconviction, except for the minority of programmes which were primarily rehabilitative in intent' (ibid, 1995:7). Most recently in an evaluation of two intensive regimes for young offenders, Farrington et al. (2002) concluded that these regimes did not deter offending by applying tough 'boot camp' regimes. Furthermore, research on Community Service Pathfinder projects in England and Wales reported that projects which focused on pro-social modelling and skills accreditation were promising 'while projects focussed on using community punishment work to tackle other offending-

related needs did not appear to produce positive outcomes overall' (Rex et al., 2004:1).

(ii) Electronic Monitoring

With approximately 100,000 and 10,338 people respectively in the US and England and Wales daily experiencing electronic monitoring, it is not surprising that Nellis (2004:240) suggests that 'a new modality of community supervision has emerged'.

Electronically monitored curfew orders were legislated for in England and Wales in the Criminal Justice Act 1991 but were not put into operation nationally until 1999 (Worrall and Hoy, 2005). Electronically monitored curfew orders as they operate in England and Wales require the offender to remain at a specified address for a stipulated number of hours over a given time period (the maximum order is for six months and for 12 hours per day). Nellis (2004:239) argues that in order to gain credibility 'community penalties had to become more tangibly enforceable' and in many respects this may be achieved through the use of electronic monitoring. Should the offender not comply with the conditions of the order, the electronic tag on their ankle is activated thereby informing the monitoring operator who in turn alerts the police about the breach.

Home Office research shows little difference in the reconviction rate between offenders under curfew with electronic monitoring (73%) and a comparison group sentenced to community penalties other than curfew orders (74%) within two years of sentencing (Sugg et al., 2001). This suggests that curfew orders with electronic monitoring have no more of an impact on reconviction than existing community penalties.

Furthermore, Renzema and Mayo-Wilson (2005:227) considered all available recidivism studies of

electronic monitoring that included a comparison group between 1986 and 2002 for moderate to high-risk offender populations²⁷. They concluded that the use of electronic monitoring as a tool for crime reduction is not supported by existing data, arguing that 'there are virtually no data supporting the use of EM'. An examination of the effect of electronic monitoring on crime during the period of monitoring and the follow up period after discontinuation of monitoring among moderate to high-risk offenders found that it:

has not demonstrated superiority to options such as penal code reform, intensive probation, or psychotherapy in reducing the burden of imprisonment or in reducing recidivism among moderate to high-risk offenders (Renzema and Mayo-Wilson, 2005:216).

IX. Penal Reform: The Role of Politics, the Media, the Judiciary and Sentencing Guidelines

It was outlined at the beginning of the chapter that sentencing and penal reform measures are only one part of the equation for change. The international experience suggests that key players including politicians, the judiciary and the media have a central role to play in driving reform forward in a positive and holistic manner.

²⁷ 381 articles or abstracts on electronic monitoring were reviewed. While 154 of the 381 pieces of literature claimed to include evaluation, only 119 were accurately classified as evaluations according to Renzema and Mayo-Wilson (2005). Of the 119 evaluations, 100 were excluded because they lacked an essential component (comparison group included etc.). Of the remaining 19, only three were included in the review (7 were excluded because they included low-risk offenders, 9 were excluded for a range of other methodological reasons, see Renzema and Mayo-Wilson, 2005). This highlights the absence of thorough research in the area of effectiveness with electronic monitoring.

The following section identifies the influence of political populism, the role of the media and judiciary as key factors in the successful design, implementation and practice of any penal reform.

(i) The Politicisation of Crime and Imprisonment

Lappi-Seppälä (1998:18) argues that the most decisive factor in the process of reform in Finland was probably 'the political will and consensus to bring down the prison rate'. Finnish reforms were designed by a small group of professional experts supported and reinforced by a range of contacts with senior politicians and academic researchers. Furthermore, a number of Ministers of Justice had been involved with research work and as a consequence 'crime control has never been a central political issue in election campaigns in Finland' (ibid, 1998). There appeared to have been a strong conviction amongst those who planned the reforms that it would be possible to reduce the numbers sent to prison and the length of sentences without having a detrimental effect on the level of criminality in the country. In addition, this belief appeared also to be held by the prison authorities, civil servants and the judiciary at least to the level that they did not oppose the reform proposals.

In reference to the Scottish experience, Coyle (2003:3) argues that 'the inexorable rise of the prison population ... will only stop if society as a whole and politicians in particular choose not to go down that road'. Without such commitment the effort is likely to be doomed - a clear example of this is the Criminal Justice Act 1991 in England and Wales which was designed 'to reduce the prison population by decentering the prison from penal discourse' (Worrall and Hoy, 2005:43). In the immediate aftermath of the legislation the prison population

declined, however, by 1993 the political tide had quickly turned towards increased punitiveness. This was echoed most clearly by the then Home Secretary's claim that 'Prison Works' and supported by the media calls to 'get tough on crime' in the aftermath of the murder of a young toddler James Bulger by two young boys (Conservative Party Conference Speech, 1993).

(ii) The Influence of the Media

The influence of the media, particularly in countries where crime and punishment features prominently as an electoral issue, cannot be under-estimated. Evidence from Canada suggests that the media can fuel the 'soft and lenient' debate on a regular basis. Concern about crime and public attitude to crime is based, not on actual crime rates, but on the extent to which politicians and the media highlight issues of crime (Roberts, 1992). In contrast to many other western jurisdictions, the media in Finland has maintained a reasonable attitude to crime and criminal justice policy issues. This has been linked to the maintenance of a rational attitude to crime and punishment amongst the general public.

The above evidence reinforces Tonry and Frase's (2001:7) argument that 'there are stark differences in the political salience of crime and punishment issues in various countries and those differences fundamentally shape sentencing policies and punishment practices'. Furthermore, it supports Frase's (2001:276) conclusion from comparative criminal justice research that:

Nations where criminal justice is not politicised should endeavour to maintain and preserve such arrangements. Such countries are not as affected by media sensationalism of crime and political pressure and expediency.

(iii) The Role of the Judiciary

Coyle (2003:5) argues that the involvement of the judiciary is central to the process of designing sentences as alternatives to custody:

sentencing is carried out by the judiciary and if the judges and other sentencers have no confidence in the alternative penalties they will not be minded to use them.

He suggests a number of ways for sentencers to be involved including devising a structure of alternative sentencing or through membership of committees that exert a supervisory role relating to the implementation of penalties.

Lappi-Seppälä (1998:19) describes "attitudinal readiness" among the judiciary in Finland as one of the factors for change arguing that 'collaboration with and assistance from the judiciary was clearly a necessary prerequisite for the change to happen'. A common problem throughout all jurisdictions is the extent to which members of the judiciary are informed about community penalties. There is also the added difficulty of providing guidance to judges - Lappi-Seppälä (1998:9) describes how in the mid-1970s judicial training on the new sentencing provisions was undertaken successfully by judges themselves and 'turned out to provide an excellent means of reaching informal agreement on new sentencing practices'. More recently, regular training courses and seminars organised for judges and prosecutors by the judicial authorities have been attributed as having an impact on sentencing and prosecutorial practice.

(iv) Sentencing Guidelines for Community Sanctions

There has been much discussion in the literature regarding the necessity of introducing very specific numerical type sentencing guidelines versus more general guidance for sentencers. Tonry

and Frase (2001:7) argue that the nature of the environment should determine the approach. For example, they suggest numerical type guidelines may be 'the best among several undesirable choices' in the United States given the punitive nature of the society. In contrast, in the context of northern Europe where the severity of punishment is already restrained, they argue that such standards are likely to do 'more harm than good'.

Reitz (2001) describes how guidelines are useful in identifying who should be detained and who should not but argues that 'a far more subtle undertaking, however, [is] to prescribe the type and intensity of nonprison sanctions' (ibid, 2001:249). This is a particularly important question given concerns about proportionality, legitimacy and effectiveness and the concern that inappropriately targeted community penalties place offenders at greater risk of custody. A system of structured sentencing designed by the North Carolina Sentencing Commission in 1994 ranks intermediate sanctions²⁸ according to their level of intrusiveness (Reitz, 2001). Since its inception, the confinement rate following felony conviction has decreased from almost one half (48%) in 1993 to just over one-third (37%) in 1997 (Wright, 1998 in Reitz, 2001). The prison population of North Carolina actually grew by 15% between 1994-1997 (due largely to increased penalties for violent offences) however the system did succeed in diverting low to moderate risk offenders to intermediate punishment than was previously the case and real-locating prison space to more serious long term offenders (Reitz, 2001).

Having discussed the underlying features and impact of penal reform in Canada, Germany and Finland, the following chapter draws together the national and

international literature in a discussion of the potential for change in the Irish criminal justice system.

²⁸ Reitz (2001:249) defines such punishments as 'sanctions in-between the harshness of prison and the laxity of regular probation'.

Applying International Experience to the Irish Context

Chapter 3

Tonry and Frase's (2001) analysis on sentencing and sanctions in western countries provides compelling evidence that differences in imprisonment rates and patterns occur as a result of differences in policy as well as differences in crime rates. On the basis of the comparative data presented in this report, it is clear that reductions in sentenced committals to prison are achievable through appropriate reform of the system. Since 1975, Finland has reduced its prison population rate to one of the lowest in Europe (66 per 100,000 of general population). Similarly, although Canada continues to have a high prisoner population rate vis-à-vis some European jurisdictions, the rate has consistently declined since reform in the mid-nineties. Germany too has succeeded in stabilising its prison population since 1969 despite significant increases in the crime rate. Based on the experiences of the three main countries included in the study there are important lessons which should be considered in developing any process of penal reform in Ireland.

²⁹ According to the Expert Group on the Probation & Welfare Service (1999) the decline in use may be due to the perception that community service is not a suitable option for offenders with addictions. Similarly, while numbers are small and therefore caution must be exercised a recent report on homeless individuals before the courts in Dublin analysed Probation and Welfare Service records and found that no homeless individuals were recommended for community service (Seymour and Costello, 2005).

I. Alternatives to Custody for Offenders at Risk of Custody: Community Service, Suspended and Conditional Sentences

Community service orders appear to provide a promising alternative to custody. Completion rates are high and outcome evaluation results suggest reductions in both seriousness and/or frequency of offending amongst participants (McIvor, 1992). Furthermore, in Finland the increased use of community service orders has corresponded with a reduction in the number of custodial sentences. In light of such findings it is of concern to note a decline in the use of community service orders in Ireland from one in three orders made to just over one in five²⁹ (Comptroller & Auditor General, 2004). Another concern noted in the national (Walsh & Sexton, 1999) and international literature (McIvor, 1992) is that community service is sometimes used, not as an alternative to custody, but as an alternative to lower tariff community sanctions. Finland is one of the few countries that have largely avoided the net-widening effect possibly due to adopting strict legislative procedures for its use. As described previously, a sentence of community service is only considered after the decision to impose a custodial sentence has been made. The procedures are therefore designed to ensure community service is used only in the case where an offender would have

received a custodial sentence. In Ireland, a legal requirement of the Criminal Justice (Community Service) Act 1983 is that judges decide that imprisonment is the appropriate sentence before imposing a community service order. Given the evidence of net-widening in the use of community service orders (Walsh & Sexton, 1999) it would appear necessary for measures to be taken by the Chief Justice and Presidents of the High Court, Circuit Court and District Court to ensure adherence to this legal requirement.

To ensure consistency and proportionality in its use, community service orders are calculated in Finland by guidelines that equate one day in prison to one hour of community service. In contrast, the absence of guidelines in the Irish context has produced variances in practice ranging from a ratio of 63 hours of community service to one month of imprisonment in Donegal compared to 11 hours of community service to one month of imprisonment in Portlaoise (Walsh & Sexton, 1999).

The requirement that the court suspend a prison sentence of up to two years if the offender is not deemed a threat to public safety has had a significant impact on reducing and/or stabilising the prison population in Germany, Canada and Finland (Weigend,

2001). Suspended sentences have risen dramatically over the period 1970-2003, while non-suspended prison sentences have remained stable in Germany³⁰. The introduction of the conditional sentence in Canada saw an immediate decline in sentenced custody admissions and a drop of up to 18% in admissions in 2000/01 alone (Canadian Centre for Justice Statistics, 2002). The clear message from the international literature is that statutory provision to suspend or discharge prison sentences of up to two years in the community under supervision (and/or with other requirements e.g. rehabilitation, reparation etc.) results in a significant decline in the number of prison admissions. Similar to the Finnish experience with community service, it is the statutory requirements and sentencing guidelines and principles which have ensured that suspended or conditional sentences are used as intended. For example, courts in Canada are required to make a decision that custody is an appropriate sanction before imposing a conditional sentence. In Germany, a written explanation must be provided outlining reasons why a suspended sentence is not ordered for a sentence of 12 months or less. Such conditions place an onus on the judiciary to provide evidence of rationale for sentence choice. The German reform finds a particular resonance in light of recommendation by the Law Reform Commission (2003) and the Irish Penal Reform Trust (2004-5) to introduce a legal requirement of written reasons where a defendant is sentenced to custody.

The experiences from Finland, Germany and Canada strongly suggest that short term sentences of imprisonment (up to two years) can be successfully replaced with community sanctions. Even if a lower limit were adopted, the adaptation of similar diversionary practice in Ireland would have a very significant impact on

committals to custody given that 86% of committals to Irish prisons in 2003 were for one year or less. Indeed, even if legislation only applied to those offenders sentenced to 6 months or less in prison it would mean that 58% of prison committals would potentially be eligible for a community sanction.

II. The Judiciary, Legislative Change and Resources

In theory, the logic of reform seems unquestionable given the prospect of reducing the number of committals to prison and resultant cost savings. However, the changes required in implementing a system similar to the jurisdictions discussed above would be substantive, and likely to include the development of new statutory guidelines and the establishment of clear sentencing principles. Any statutory requirements are likely to meet with fierce resistance from the judiciary given their unique position in constitutional terms. The discretion of judges in sentencing has been staunchly defended in the decision in *People (DPP) v. Tiernan* [1989] ILRM 149. Resistance is also likely against the suggestion that written reasons be given by judges for not adopting the least punitive approach. The written reasons requirement has already been rejected by the judges at various levels in the Report of the Working Group on the Jurisdiction of the Courts (2003). The involvement of the judiciary would therefore be at the core of any proposals to develop what would be a major departure from standard judicial practice to date. Without statutory requirements, sentencing practice is likely to vary widely and yet without judicial commitment statutory requirement will be less meaningful. Indeed, the experience of the suspended sentence in England and Wales throughout the 1980s and 1990s suggests that despite a statutory proviso to retain suspended sentencing for those at

risk of custody, the sentence was used for lower tariff offenders (Bottoms 1981, 2004). Sentencing guidelines may indeed be beneficial. The Finnish experience informs us that one of the key factors in the success of penal reform in the country was an attitudinal readiness to change by the judiciary and policy makers (Lappi-Seppälä, 1998). This provides further evidence of the absolute necessity of involving the judiciary from the earliest stages in the development of reform.

Sentencing principles and guidelines are essential factors associated with the appropriate use of community sanctions in the majority of jurisdictions included in this study. Furthermore, Roberts (2003:230) argues that a range of approaches are required to reduce the prison population including the provision of 'statutory directions to courts to sentence offenders to custody only when certain conditions are met: the creation of formal sentencing guidelines, and the creation of new alternative sanctions to replace some custodial sentences'. It would appear that the provision of a new statutory framework setting out principles and guidelines is necessary given that one of the main pieces of legislation (Probation of Offenders Act 1907) governing community sanctions is over 100 years old. Furthermore, many existing alternatives to custody do not exist on a statutory basis and as a result there are few limitations on the nature, frequency or intensity of their use. That said, O'Malley (2000:447) makes a very valid point urging caution in relation to adopting strict guidelines in the absence of research evidence indicating the suitability of measures:

³⁰ As noted in the previous chapter 42,122 convicted adults were in prison in 1968 (Statistisches Bundesamt Reihe 9 in Weigend, 2001:191) compared to 39,468 in 2003 (Jehle, 2005).

the introduction of guidelines would be singularly inappropriate ... partly because of the absence of data on existing practices and partly because of the injustices which rigid guideline systems are prone to produce.

Given that Ireland has lived without updated legislation up to now, it may be more appropriate to concentrate on gathering data over the coming years while developing draft legislation and adapting provisions appropriately as the data analysis emerges. In the interim, in the absence of a major overhaul of the system, it may be possible to adopt O'Malley's (2000:461) proposals for change. Such proposals include guidance which is 'descriptive' rather than 'prescriptive' and would include 'a sentencing information system for the benefit of sentencing judges, and a more robust approach on the part of the Court of Criminal Appeal and the Supreme Court towards the provision of sentencing guidance'. Other commentators have recommended the use of a Sentencing Board that would gather and analyse information on sentencing (see O'Mahony, 2002). The provision of training is another useful initiative and could serve the dual purpose of informing the judiciary in the short-term as well as involving them in the longer term process of reform.

Most jurisdictions included in the current study require offenders to complete additional conditions or remain under probation supervision as part of the suspended/conditional sentence. If Ireland were to consider incorporating such a model, consideration would need to be given to how such

requirements would be supervised. In all likelihood, it would require input and supervision for offenders from the Probation and Welfare Service. Clearly, given the limited resourcing of the service to date, any legislative change would necessitate corresponding financial input. Numerous reports (NESF, 2002; Final Report of the Expert Group on the Probation & Welfare Service (1999:9) recommend that additional resources are put in place to support the development and implementation of community sanctions.

III. Alternatives to Custody for Low-Risk Offenders: Conditional Dismissal

The analysis has focused largely on suspended/conditional sentences and community service as the main alternatives to custody. However, in developing a system of community sanctions equal consideration needs to be given to offenders at the lower end of the tariff scale. Currently, an offender may be dismissed or conditionally discharged under the Probation of Offenders Act 1907. However, the process still requires an offender to be processed by the court service. The introduction of a conditional dismissal similar to that which exists in Germany or Scotland would effectively remove a significant proportion of low-risk offenders from the court system.

IV. Alternatives to Custody for Low to Medium Risk Offenders: Probation Order

The nature of probation supervision and the manner in which the intensity of supervision may be targeted towards the needs of an individual offender makes it an appropriate intervention for a range of offenders. Reconviction studies suggest positive results in reducing the seriousness and frequency of offending³¹ (Farrall, 2002). Furthermore, research evidence (Underdown, 1995) shows that while an average of a 10% reduction in re-offending can be expected, this can increase to between 20-40% when

programmes incorporate certain factors in their programme design and delivery. These factors include targeting high-risk offenders, matching programmes to offenders' needs, a directive style, clear structure and using methods to develop offender cognitive skills and behavioural patterns (McGuire, 1992).

One of the main dangers with alternatives to custody is that if they do 'not' work offenders may be at a greater risk of a custodial sentence. In addition, unless community based penalties are seen to operate effectively both public and judicial confidence is lost and ultimately replaced, particularly in populist societies, with harsher penalties. The risk with all community sanctions including probation is that failure to comply may place the offender at risk of custody. Vass (1996:164) argues that criminal justice professionals have a role to play in determining the outcome of a community sanction as a 'success' or a 'failure'. He argues that 'supervising officers are capable of determining 'outcomes' by either shielding offenders from further penal sanctions (thus increasing the arithmetical outcomes of 'success') or uncovering and reporting their infractions (thus increasing the arithmetical outcomes of 'failure')'. Recognition of the problem in other jurisdictions e.g. UK led to the introduction of national standards for community sanctions. There are obvious concerns that such standards will succeed in providing greater structure to community sanctions and at the same time place offenders at greater risk of custody by their failure to comply with them.

V. Increasing the Use and Effectiveness of Fines as a Sanction

As noted earlier in the report, non-payment of fines results in a significant number of individuals being committed to prison each year in Ireland. Drawing on inter-

³¹ Farrall (2002) argues that we must measure success regarding reconviction not in absolute terms i.e. has an individual persisted or desisted with offending? Rather he suggests that success is measured by degrees i.e. has offending reduced in frequency and/or seriousness?

national literature, the Report of the Sub-Committee on Crime and Punishment on Alternatives to Fines and the Uses of Prison (2000) recommends that a package of measures are introduced to increase the use of fines and reduce the numbers going to prison for fine default.

It suggests that a range of enforcement options are put in place including payment by instalments, an attachment of earnings (for those employed), a deduction from state benefits (for those unemployed) and supervised payments. Research on the experience of managing fine default in England and Wales highlights the importance of considering all enforcement options before imposing a penalty for non-payment (Moxon & Whitaker, 1996 in Report of the Sub-Committee on Crime and Punishment on Alternatives to Fines and the Uses of Prison, 2000). Committal to prison for fine default dropped from 24,000 to 8,500 individuals in England and Wales between 1994-1996. The significant decrease was attributed to a High Court ruling which reinforced the statutory requirement for courts to state, before sending a defaulter to jail, why each enforcement measure had failed or not been used.

While recommending that all of the enforcement options are considered before a sanction is given, the Report suggests that courts should not be limited to imposing a term of imprisonment for fine default and suggest alternatives including community service, be considered. Other jurisdictions have adopted such approaches including Germany where individuals who are unable or unwilling to pay a fine can attend community service (Weiberg, 2001) and Scotland where the Supervised Attendance Orders (SAOs) was introduced to provide an alternative to custody for fine default (Scottish Executive, 2005).

The introduction of a day fine or unit fine system is also recommended in the Report. There has been mixed views about the introduction of unit fines in Ireland with some commentators suggesting the approach is unworkable (Law Reform Commission, 2002) while others highlight the potential merits of the system in terms of equity and deterrence (O'Malley, 2000). On the basis of experience from England and Wales where unit fines were introduced with the Criminal Justice Act (1991) and abolished with the Criminal Justice Act (2003) Mair (2004:141) argues that 'unit fines would probably have led to better assessment, reduced inconsistencies, and lower levels of default'.

VI. Alternatives to Custody: Less Successful Approaches

In many respects Ireland is stumbling in the dark when it comes to community sanctions, largely because there is a dearth of research on sentencing, community sanctions and crime and justice related issues. It is critical that policy direction does not unquestioningly follow practices in other jurisdictions without fully assessing the documented success or otherwise of such measures and exploring their suitability in an Irish context. In particular, the evidence suggests that community sanctions with no rehabilitative element are unlikely to be effective. The trend in England and Wales is towards 'strengthening' community service by making it more demanding for the offender and thereby inducing public confidence (Worrall and Hoy, 2005:122). However, despite a continuing 'toughening up' of community punishments in England and Wales the prison population remains at an all time high. Indeed, the adult prison population of England and Wales has grown from 36,000 in 1991 to 62,000 in 2003 - an increase of 71% (Hough et al., 2003). Similarly, despite being more expensive than other sentencing alternatives, there is

extremely limited data to suggest that punitive measures including electronic monitoring is effective in reducing recidivism. It is therefore concerning that proposals for its use are included in the Irish Criminal Justice Bill 2004. Finally, Ashworth (2003:298) argues that in addition to an increasing tendency towards punitive measures an on-going feature of policy in England and Wales over the last 30 years is 'the continued pursuit of the policy of proliferation'. He warns against such a policy arguing that:

English courts have probably the widest choice of alternative sentences in any European nation, but it is not easy to suggest what benefits this has. It certainly does not lead courts to use custody less frequently. The courts themselves continue to ask for more alternatives and for wider discretion (ibid, 2003:298)

Conclusion

The evidence suggests that a large number of factors make up the equation associated with the development of community sanctions to reduce recidivism and the prison population. At a national level it is acknowledged that community sanctions are unlikely to meet the objectives of reducing recidivism and the prison population 'if such sanctions are not introduced in an integrated manner and accompanied by a coherent sentencing strategy on a national and local level' (Expert Group on the Probation & Welfare Service, 1999:29). Any countries where positive outcomes have resulted from penal reform have identified that no one factor or sanction of itself can be attributed to the success. To this end, legislative change, sentencing guidelines and an expansion in the range of community sanctions coupled with the commitment of policymakers and the judiciary are all essential components to create an effective system of community sanctions and reduce the prison population.

Conclusions and Recommendations

Chapter 4

This report seeks to provide an overview of the existing alternatives to custody in Ireland including an analysis of their potential use and an account of the issues and difficulties related to their operation. Secondly, it examines approaches and interventions with regard to the provision of alternatives to custody in a variety of other jurisdictions with a view to identifying 'effective' as well as less successful interventions. Thirdly, the national and international literature is discussed with the purpose of identifying key lessons that may be incorporated into any system of penal reform in the future. The final section brings together the national and international literature presented in this report to form conclusions and recommendations on the most effective direction for developing the system of alternatives to custody in Ireland.

The cost of imprisonment in Ireland is a massive drain on public resources given that the average cost of keeping an offender in prison is €87,950 per annum and the total expenditure on the Irish Prison Service exceeded €300m in 2003. Despite the costs, custody remains the dominant sanction in many cases and trends suggest a parallel rise in the use of custodial and community sanctions. It would appear on the basis of evidence presented in this

report that the ability to use and develop alternatives to custody is restricted by the limited resources available to the Probation and Welfare Service to provide pre-sanction reports and supervision for offenders. Expenditure for the Probation and Welfare Service was €40.7m in 2003. Existing data suggest that requests for pre-sanction reports and offender supervision are sometimes delayed due to the pressure on allocated staff resources in the Probation and Welfare Service. The unbalanced nature of the system is highlighted therefore by the very fact that the preparation of a pre-sanction report (which costs €800-900) and the supervision of an offender in the community (costing from €1,500 for a Community Service Order to €6,100 for a Probation Order) may be restricted by resource implications. In contrast, aside from attempts to reduce the cost of prison overtime, the cost of sentencing an offender to custody does not appear to be a consideration.

It would appear that there is wide scope for reducing expenditure on prisons especially in light of the experience from other jurisdictions where the majority of individuals sentenced to two years or less in prison are considered eligible for a sanction in the community. Even if a lower limit of

one year were adopted in Ireland, it would have a very significant impact on committals to custody given that 86% of committals in 2003 were for one year or less. Indeed, even if legislation only applied to those offenders sentenced to 6 months or less in prison it would mean that 58% of prison committals would potentially be eligible for a community sanction.

Further evidence of the need to question the efficacy of investing heavily in punitive sanctions is provided in Bottoms' (2004) analysis of the relationship between the severity of penalties and its impact on deterrence. Bottoms draws on a number of research studies (Doob and Webster, 2003; von Hirsch et al., 1999) and concludes that although the research evidence is limited, there is no basis for a causal relationship between harsher sentences and sanctions and reduced crime rates. As Doob and Webster (2003:143 in Bottoms, 2004:64) outline 'a reasonable assessment of the research to date ... is that sentence severity has no effect on the level of crime in society'.

It is widely acknowledged in the literature (e.g. Home Office, 2001) that even to achieve a small reduction in crime would require a substantial increase in the

numbers imprisoned. According to the Halliday Report (Home Office, 2001) the prison population would need to expand by 15% in order to achieve a reduction in crime of 1%. Furthermore, as Bottoms (2004:68) outlines when describing the situation of increasing the prison population to reduce crime: the early increases [in the numbers imprisoned] ... can be expected to 'catch' a reasonable proportion of prolific offenders. However, when further increases in imprisonment are pursued, it is almost certain that more lower-frequency offenders will be caught in the incapacitative net, with diminishing returns for the policy.

This report concludes that there are five key factors relevant to the development of an effective system of alternatives to custody. These include sentencing reform, sentencing guidance, resources, research and commitment to evidence based practice. Conclusions and recommendations relating to these themes are integrated throughout the following sections.

I. Legislative Framework

It is clear that legislative reform is required to re-orientate the system towards promoting the use of custody as a last resort. While some of the current alternatives to custody are provided for under the Probation of Offenders Act 1907 many others exist on a non-statutory basis. **It is recommended that consideration be given to the development of a new legislative structure to provide a statutory framework for community sanctions. The particular sanctions which should be included in this framework are discussed below.**

II. Resources

Adequate resources are required by the Probation and Welfare System to create an effective

system of community sanctions. Delays by the Service in allocating requests for pre-sanction reports and supervision from the Courts due to resource constraints have adverse effects across the system including increasing the time to sentence. **It is recommended that enhanced resources are directed to the Probation and Welfare Service to execute its role in relation to the preparation of pre-sanction reports and the supervision of offenders in the community.**

It would appear that the Probation and Welfare Service needs to expand and develop to support the effective delivery of the current system and any further development that may arise. The slow pace at which the Children Act 2001 is being implemented highlights the futility of legislative development without the resources to support it. **It is recommended that any planned change with regard to the expansion in the delivery of community sanctions is accompanied by the appropriate level of resources to fund it.**

III. Judiciary

Lappi-Seppälä (1998) describes the 'attitudinal readiness', co-operation and assistance of the judiciary as being central to making change happen in reducing the prison population in Finland. This is a key challenge for any system attempting to move towards a system of using custody as a last resort. On the one hand in Ireland there is evidence that judges are orientated towards custody, but there are conflicting accounts to suggest that mechanisms such as the court poor box are judicial innovations in response to the limited custodial options available (Kilcommins et al., 2004). The importance of ensuring the co-operation and contribution of the judiciary in structural reform is well acknowledged in the research (Frase, 2001). **It is recommended**

that consideration be given to developing mechanisms for judicial participation in any subsequent structural development.

In the short-term in the absence of data on existing practice in Ireland it would appear that sentencing guidance to judges may be more appropriate than specific guidelines. **It is recommended that consideration is given to developing an appropriate mechanism for gathering and analysing sentencing data and cases as a training and guidance resource for members of the judiciary. Judicial training on sentencing and awareness-raising among professional groups, lawyers and judges about the availability and features of various community sanctions is recommended. The Judicial Studies Institute of the Courts Service are both ideally placed to train judges and to develop a sentencing database and ultimately guidance.**

IV. National and International Comparative Research

The lack of research and accessible data in the criminological and criminal justice area is echoed by almost every commentator of such matters (Bacik, 2002; O'Malley, 2000; O'Donnell, 2005; O'Mahony, 2002). The following recommendations therefore echo many of the previous calls for research and statistical information:

Accurate, comprehensive and timely statistical information to monitor the use of alternative sentences is essential in developing an understanding of sentencing practice in the country. **It is recommended that such information is released in a timely fashion on an annual basis by appropriate bodies including the Court Service and the Probation and Welfare Service.**

Criticism of the dearth of criminological research and the demand for further research in the field is reiterated in this report. **It is recommended that further research is commissioned into the operation of the criminal justice system particularly with regard to sentencing practice, evaluations of community sanctions and programmes and, follow-up outcome studies.**

Frase (2001:259) argues that 'comparative research is ... valuable for what it tells us not to do about crime and sentencing'. Important lessons may be learnt from empirically grounded research on effectiveness from other jurisdictions in the development of alternatives to custody in Ireland. However, it is equally important that the system is bench-marked against developments in other countries. To date, Ireland has had limited participation in international comparative research studies. **It is recommended that the participation of the Republic of Ireland in international studies continues to be supported by government funding thus enabling the jurisdiction to develop and monitor policy and practice using an evidence-based approach on an ongoing basis.**

V. Community Alternatives to Custody

(i) Suspended Sentences

Suspended or conditional sentences as they operate in Germany, Spain, Canada and Finland have been linked to a reduction in the custodial population. While slight variation exists in most of the jurisdictions mentioned (with the exception of Germany) a suspended or conditional sentence may be imposed (subject to a number of conditions) on an offender sentenced to less than two years in prison. Generally a custodial sentence is first imposed and then consideration is given to the eligibility of a suspended or conditional

sentence. In some of the jurisdictions conditions to attend treatment, pay restitution or undertake reparation are added. The suspended sentence is already a popular sentence in Ireland, however, there are major concerns about the absence of guidance provided regarding its use. **It is recommended that the suspended sentence is placed on a statutory footing and consideration be given to creating more specific guidelines regarding its use. In particular, consideration should be given to introducing a requirement in the legislation that, save for exceptional circumstances, it be used for offenders sentenced to custody for a period of one year or less.**

(ii) Community Service Orders

Community service orders have shown potential to reduce the prison population in Finland, although net-widening effects are more common in other jurisdictions including Scotland and the Republic of Ireland. In Finland, a strict procedure protects the order from the effects of net-widening - judges are first required to make a sentencing decision based on sentencing principles and criteria, if the decision is immediate custody, only then (subject to a number of pre-requisites) may the sentence be translated into a community service order. **It is recommended that community service orders do not replace other 'lower tariff' sanctions, but are retained as alternatives to custody. Further, it is recommended that measures be taken by the Chief Justice and Presidents of the High Court, Circuit Court and District Court to ensure adherence to the legal requirement for judges to decide that imprisonment is the appropriate sentence before imposing a community service order.**

The evidence suggests wide variation in the use of community service orders in Ireland in terms

of the way in which they are implemented. There is also variation in the number of hours of community service that equate to a term of imprisonment across areas. **In the interest of equity, it is recommended that consideration be given to drawing up guidelines around the use of community service orders and an equivalency scale of hours of community service relative to time in custody (the Finnish system equates one hour of custody with one day in prison).**

(iii) Electronic Monitoring

International evidence strongly warns against the use of electronic monitoring on the basis of limited evidence of effectiveness (Renzema and Mayo-Wilson, 2005). It is acknowledged that electronic monitoring is an attractive intervention for government because it is a cheap alternative, relative to the costs of custody and serves to allay concerns about the protection of the public. **Given the absence of sufficient data to confirm the effectiveness of electronic monitoring as a mechanism to reduce recidivism or its superiority to other options to reduce the prison population, it is recommended that electronic monitoring is not introduced to Ireland.**

(iv) Fines

It is recommended that further consideration is given to not using imprisonment as a default sanction for fines. This has an up-tariffing effect and also results in scarce prison resources being wasted on a high flow of short term fine defaulters. Overall, it is recommended that the recommendations of the Joint Oireachtas Committee Report on increasing the use of fines and decreasing the numbers imprisoned for fine default are adopted.

(v) Adjourned Supervision

The practice of adjourned

supervision whereby sentencing is deferred to assess the offender's ability to engage in community supervision is a common practice. The deferment period is intended to provide an opportunity to the offender to engage in supervision with the Probation and Welfare Service. However, the effective practice literature suggests that clear boundaries and expectations within defined limits provide the best environment in which to meaningfully engage with offenders. **It is recommended that deferred supervision is therefore replaced with a statutory community based order.**

VI. Expanding the Range of Community Sanctions?

The Expert Group on the Probation and Welfare Service amongst others have called for an expansion in the range of community options available. Given the dearth of information on the operation of existing alternatives it is difficult to identify what particular sanctions are required and for whom. **It is therefore recommended that further research is carried out before any additional community sanctions are adopted to avoid the English experience of a proliferation of alternatives to custody without a subsequent decrease in the prison population.**

VII. Community Sanctions

A concern with the development of community options is that they may turn out to be more punitive than custody especially if additional requirements are attached such as attendance at a treatment programme, curfew, reparation etc. **It is recommended that consideration is given to appropriately targeting the level of intervention of a community sanction according to the assessed risk level of the offender.**

(i) Poor Box, Conditional Dismissal and Prosecutorial Dismissal

Mair (2004) highlights the importance of effective low-tariff sanctions to divert offenders out of the criminal justice system and from a practical perspective to free up resources for the more intensive interventions required by more high risk offenders. Despite being a common practice in Irish courts, there is no specific law governing the use of the court poor boxes. A recent Law Reform Commission Report on the Court Poor Box: Probation of Offenders (2005) recommended it be placed on a statutory basis. This report endorses this recommendation. **Further, it is recommended that mechanisms for dismissal and discharge are retained in any replacement of the Probation of Offenders Act 1907 as a useful means of diverting individuals away from the formal justice system. A prosecutorial dismissal similar to the prosecutor's fine in Scotland is recommended as a means of diverting individuals from the court system. It is suggested, however, that the incentive to plead guilty should not be too great as to undermine choice and the right of access to the courts.**

(ii) Probation Orders

The research evidence suggests that the most effective probation supervision consists of targeted levels of appropriate supervision, provide positive and meaningful engagement to the offender and holds the offender accountable. **In order to avoid expanding the net of social control it is recommended that offenders are appropriately assessed by trained personnel prior to any recommendation for an intensive and/or demanding community sanction. It is recommended that in designing community sanctions (primarily probation programmes) attention is given to the extent to which it will**

provide positive and meaningful engagement to the offender.

VIII. Final Comment

Törnudd (1993:13) argues that in Finland it was 'attitudinal and ideological readiness to bring down the number of prisoners' on behalf of the government, judiciary and others, rather than the specific technique used that was the most influential factor. As outlined earlier political rhetoric and sentencing practice in Ireland appears to be strongly orientated towards custody, ignoring the evidence that community service produces lower reconviction rates amongst offenders than those given short prison sentences. Furthermore, they are no less effective than imprisonment but have the potential to be an effective alternative to custody, thereby offering potentially huge financial savings to the Irish Exchequer.

Timetable of Proposed Changes

Short Term Action

- Hold round table discussion on alternatives to custody including members of the Judiciary, Courts Service, Probation and Welfare Service, Garda Síochána, National Crime Council, Law Reform Commission, Department of Justice, Equality and Law Reform, non-governmental organisations to gain support for the development of reform.
- Seek the adoption of the Law Reform Commission recommendation that District Judges give written reasons before sentencing someone to a custodial sentence.
- Approach the government for the release of crime statistical information in a timely fashion, increased judicial training and the development of a sentencing database as a resource for the judiciary.
- Seek the adoption of legislation which provides alternatives to imprisonment for fine defaulters.

Medium Term Action

- Draft a schedule for a programme of research identifying the main areas where research is required e.g. the use and outcomes of suspended sentencing and submit to the Department of Justice, Equality and Law Reform and other bodies such as the Law Reform Commission and the National Crime Council.
- Draft outline of proposed legislation (this would be updated and altered as research findings and evaluation studies produce evidence based results that will inform legislative development).
- Seek increased resources to execute any proposed system of community sanctions.

Long Term Action

- Drafting legislation to include:
- All offenders sentenced to a community sanction for sentences one year or less.
 - Suspended sentence placed on a statutory footing.
 - Community service retained as an alternative to custody and used as a genuine alternative to custody.
 - Imprisonment to be removed as the automatic default sanction for fines and community service orders or other appropriate alternatives to be available as alternatives.
 - Expansion of probation order options to meet the needs and risk level of offenders include Probation Order, Probation Order (Intensive Supervision), Probation Order (Mentoring) etc.
 - Retention of provision similar to the Conditional Discharge under the Probation of Offenders Act 1907.
 - Introduction of a prosecutorial dismissal to divert adult offenders pre-court.

References

- Antonowicz, D. H. & Ross, R. R. (1994) Essential Components of Successful Rehabilitation Programs for Offenders, *International Journal of Offender Therapy and Comparative Criminology*, 38, pp. 97-104.
- Ashworth, A. (2003) *Sentencing and Criminal Justice* 3rd Edition. London: Butterworths Lexis Nexis.
- Bacik, I. (2002) The Practice of Sentencing in Irish Courts in P. O'Mahony, (ed.), *Criminal Justice in Ireland*. Dublin: Institute of Public Administration.
- Bottoms, A.E. (1981) The Suspended Sentence in England 1967-1978, *British Journal of Criminology*, Vol.21, pp.1-26.
- Bottoms, A.E. (2004) Empirical Research Relevant to Sentencing Frameworks in A. Bottoms, S. Rex & G. Robinson (eds.), *Alternatives to Prison Options for an Insecure Society*. Cullompton: Willan Publishing.
- Canadian Centre for Justice Statistics (2002) *Conditional Sentencing in Canada: A Statistical Profile 1997-2001*. Canada: Centre for Justice Statistics
- Chapman, T & Hough, M. (1998) *Evidence Based Practice: A Guide to Effective Practice*, London: Home Office HM Inspectorate of Probation.
- Cid, J. (2005) Suspended Sentences in Spain: Decarceration and Recidivism, *Journal of Community and Criminal Justice*, Vol. 52, No.2, pp.169-179.
- Comptroller & Auditor General (2004) *The Probation and Welfare Service: Report on Value for Money Examination*. Dublin: Government of Ireland.
- Cotter, A. (1999) The Criminal Justice System in Ireland in S. Quin, S., P. Kennedy, P., A. O'Donnell, A. & G. Kiely, (eds.), *Contemporary Irish Social Policy*. Dublin: University College Dublin Press.
- Court Service (2003) *Annual Report of the Court Service*. Dublin: Court Service
- Court Service (2004) *Annual Report of the Court Service*. Dublin: Court Service
- Coyle, A. (2003) *Joining up Criminal Justice Services: Scotland in an International Context*. International Centre for Prison Studies, University of London: ADSW Criminal Justice Conference 20 November 2003.
- Doob, A.N. and Webster, C. M. (2003) Sentence Severity and Crime: Accepting the Null Hypothesis, *Crime and Justice A Review of Research*, Vol 30, pp.143-195.
- Duff, P. (1993) The Prosecutor Fine and Social Control: The Introduction of the Fiscal Fine to Scotland. *British Journal of Criminology*, Vol. 33, No. 4, pp.481-503.
- Expert Group on the Probation and Welfare Service (1999) *Final Report of the Expert Group on the Probation and Welfare Service*. Dublin: Stationery Office.
- Farrall, S. (2002) *Rethinking What Works with Offenders Probation, Social Context and Desistance from Crime*. Cullompton: Willan Publishing.
- Farrington, D. P., Ditchfield, J., Hancock, G., Howard, P., Jolliffe, D., Livingston, M. S. & Painter, K. A. (2002) *Evaluation Of Two Intensive Regimes For Young Offenders* (Home Office Research Study No. 239). London: HMSO.
- Flood-Page, C. and Mackie, A. (1998) *Sentencing Practice: An Examination of Decisions in Magistrates' Courts and the Crown Courts in the mid-1990's*. Home Office Research Study No. 180. London: Home Office.

- Frase, R.S. (2001) Comparative Perspectives on Sentencing Policy and Research in M. Tonry and R.S. Frase (eds.), *Sentencing and Sanctions in Western Countries*. New York: Oxford University Press.
- Geiran, V., McCarthy, M., Morahan, M. & O'Connell, V. (1999) *Young Offenders in Penal Custody*. Dublin: Research and Statistics Unit, Probation and Welfare Service.
- Goldblatt, P. & Lewis, C. (1998) Reducing Offending: *An Assessment of Research Evidence on Ways of Dealing with Offending Behaviour*, Home Office Research Study No. 187. London: Home Office.
- Hedderman, C. & Hough, M. (2004) Getting Tough or being Effective: What Matters? in G.Mair (ed) *What Matters in Probation*. Cullompton: Willan.
- Hollin, C. R. (1994) Designing Effective Rehabilitation Programmes for Young Offenders, *Psychology, Crime & Law*, 1, pp. 193-199.
- Home Office (2001) *Making Punishments Work: Report of a review of the sentencing framework for England and Wales (Halliday Report)*. London: Home Office.
- Hough, M., Jacobson, J. & Millie, A. (2003) *The Decision to Imprison*. Key Findings. London: Prison Reform Trust.
- Irish Penal Reform Trust (Winter 2004/5) Research Brief: Sentencing in the District Courts, 2003 in Penal Reform News No.22 pp.1-4 www.iprt.ie
- Irish Prison Service (2003) *Annual Report of the Irish Prison Service*. Dublin: Irish Prison Service.
- Jehle, J-M (2005) *Criminal Justice in Germany 4th Edition*. Berlin: Federal Ministry of Justice.
- Joint Committee on Justice, Equality, Defence and Women's Rights (2000) *Report of the Sub-Committee on Crime and Punishment of the Joint Committee on Justice, Equality, Defence and Women's Rights on Alternatives to Fines and the Uses of Prison*. Dublin: Houses of the Oireachtas.
- Joint Committee on Justice, Equality, Defence and Women's Rights (2004) *Report on a Review of the Criminal Justice System*. Dublin: Houses of the Oireachtas.
- Kilcommins, S., O'Donnell, I., O'Sullivan, E. & Vaughan, B. (2004) *Crime, Punishment and the Search for Order in Ireland*. Dublin: Institute of Public Administration.
- Kiliyas, M. Aebi, M. & Ribeaud, D. (2000) Does Community Service Rehabilitate Better Than Short-Term Imprisonment? Results of a Controlled Experiment, *Howard Journal*, 39(1), pp.40-57.
- Lappi-Seppälä, T. (1998) Regulating the Prison Population: *Experiences from a Long-Term Policy in Finland*. Helsinki: National Research Institute of Legal Policy.
- Law Reform Commission (2002) *Penalties for Minor Offences: Consultation Paper*. Dublin: Law Reform Commission.
- Law Reform Commission (2005) *The Court Poor Box: Probation of Offenders*. Dublin: Law Reform Commission.
- Lewis, S. (2005) Rehabilitation: Headline or Footnote in the New Penal Policy?, *Probation Journal: The Journal of Community and Criminal Justice*. Vol. 52(2) pp119-135.
- Mair, G. (2004) Diversionary and Non-Supervisory Approaches to Dealing with Offenders in A.Bottoms, S.Rex and G.Robinson (eds.), *Alternatives to Prison Options for an Insecure Society*. Cullompton: Willan Publishing.
- May, C. & Wadwell, J. (2001) *Enforcing Community Penalties: The Relationship between Enforcement and Reconviction* (Home Office Research Findings No. 155). London: HMSO
- Mclvor, G. (1992) *Sentenced to Serve: The Operation and Impact of Community Service by Offenders*. Aldershot: Avebury.
- Mclvor, G. (1992a) Intensive Probation Supervision: Does More Mean Better?, *Probation Journal*, 39(1), pp. 2-6.
- Mclvor, G. (2004) Reparative and Restorative Approaches in A.Bottoms, S.Rex and G.Robinson (eds.), *Alternatives to Prison Options for an Insecure Society*. Cullompton: Willan Publishing.
- National Crime Forum (1998) *National Crime Forum Report*. Dublin: Institute of Public Administration.
- National Economic and Social Forum (2002) *Re-integration of Prisoners Forum Report No. 22*. Dublin: National Economic and Social Forum.
- Nellis, M. (2004) Electronic Monitoring and the Community Supervision of Offenders in A.Bottoms, S.Rex and G.Robinson (eds.), *Alternatives to Prison Options for an Insecure Society*. Cullompton: Willan Publishing.
- O'Donnell, I (2001) Prison Matters. *Irish Jurist*. Vol 36, IRJUR 153, pp162-63.

- O'Donnell, I. (2004) Imprisonment and Penal Policy in Ireland. *Howard Journal*, Vol. 43, No.3, pp253-266.
- O'Donnell, I. (2005) Crime and Justice in the Republic of Ireland. *European Journal of Criminology*, Vol. 2(1), pp.99-131.
- O'Mahony, P. (ed.)(2002) *Criminal Justice in Ireland*. Dublin: Institute of Public Administration.
- O'Malley, T. (2000) *Sentencing Law and Practice*. Dublin: Round Hall Ltd.
- Public Safety and Emergency Preparedness Portfolio Corrections Statistics Committee (2004) *Corrections and Conditional Release Statistical Overview*. Canada: Public Works and Government Services.
- Redmond, D. (2002) *Imprisonment for Fine Default and Civil Debt: Report to the Department of Justice, Equality and Law Reform*. Dublin: Stationery Office.
- Reitz, K.R. (2001) The Disassembly and Reassembly of U.S. Sentencing Practice in M. Tonry and R.S. Frase (eds.), *Sentencing and Sanctions in Western Countries*. New York: Oxford University Press.
- Renzema, M. & Mayo-Wilson, E. (2005) Can Electronic Monitoring Reduce Crime for Moderate to High-Risk Offenders? *Journal of Experimental Criminology*, Vol. 1, No. 2, pp.215-237.
- Rex, S., Gelsthorpe, L., Roberts, C. & Jordan, P. (2004) *What's Promising in Community Service: Implementation of Seven Pathfinder Projects*. Findings 231. London: Home Office.
- Rex, S. & Gelsthorpe, L. (2002) The Role of Community Service in Reducing Offending: Evaluating Pathfinder Projects in the UK, *Howard Journal*, 41(4), pp.311-325.
- Roberts, J. (1992) Public Opinion, Crime and Criminal Justice in M.Tonry (ed.), *Crime and Justice: A Review of Research*, Vol. 16. Chicago: University of Chicago Press.
- Roberts, J.V. (2003) Evaluating the Pluses and Minuses of Custody: Sentencing Reform in England and Wales. *The Howard Journal*, Vol. 42, No. 3, pp.229-247.
- Roberts, J.V. & Cole D. (eds.) (1999) *Making Sense of Sentencing*. Toronto: University of Toronto Press.
- Roberts, J.V. & Gabor, T. (2004) Living in the Shadow of Prison: Lessons from the Canadian Experience of Decarceration, *British Journal of Criminology*, Vol. 44 (1) pp. 92-112.
- Scottish Executive (2001) *Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences in 1995*. Edinburgh: Scottish Executive Statistical Services.
- Scottish Executive (2005) *Criminal Justice Social Work Statistics Statistical Bulletin Criminal Justice Series*. Edinburgh: Scottish Executive Statistical Services.
- Seymour, M. & Costello, L. (2005) *A Study of the Number, Profile and Progression Routes of Homeless Persons before the Court and in Custody*. Dublin: Probation and Welfare Service.
- Sontheimer, H. & Goodstein, L. (1993) An Evaluation of Juvenile Intensive Aftercare Probation: Aftercare Versus System Response Effects, *Justice Quarterly*, 10(2), pp. 197-227.
- Sugg, D., Moore, L. & Howard, D. (2001) *Electronic Monitoring and Offending Behaviour Recidivism Results for Second Year of Trials of Curfew Orders*. London: Home Office RDSD.
- Tonry, M. & Frase, R.S. (eds.) (2001) *Sentencing and Sanctions in Western Countries*. New York: Oxford University Press.
- Törnudd, P. (1993) Fifteen Years of Decreasing Prisoner Rates in Finland. Helsinki: National Research Institute of Legal Policy.
- Travis, J. & Petersilia, J. (2001) Reentry Reconsidered: A New Look at an Old Question, *Crime & Delinquency*, 47(3), pp. 291-313.
- Underdown, A. (1995) *Effectiveness of Community Supervision: Performance and Potential*. Manchester: Greater Manchester Probation Service.
- Vass, A.A. (1996) Community Penalties: The Politics of Punishment in T. May & A.A. Vass (eds.), *Working with Offenders Issues, Contexts and Outcomes*. London: Sage Publications.
- Vennard, J., Sugg, D. & Hedderman, C. (1997) The Use Of Cognitive-Behavioural Approaches With Offenders: Messages From Research. In Home Office, *Changing Offenders' Attitudes and Behaviour: What Works?* (Home Office Research Study No. 171). London: HMSO.
- Vennard, J. & Heddermann, C. (1998) Effective Interventions with Offenders. In Home Office, *Reducing Offending: An Assessment of Research Evidence on ways of Dealing with Offending Behaviour* (Home Office Research Study No. 187). London: HMSO.

■ von Hirsch, A. Bottoms, A.E., Burney, E. & Wikstrom, P.-O. (1999) *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*. Oxford: Hart Publishing.

■ Walsh, D. & Sexton, P. (1999) *An Empirical Study of Community Service Orders in Ireland*. Dublin: Stationery Office.

■ Weigend, T. (2001) Sentencing and Punishment in Germany in M. Tonry and R.S. Frase (eds.), *Sentencing and Sanctions in Western Countries*. New York: Oxford University Press.

■ Working Group on the Jurisdiction of the Courts (2003) *Working Group on the Jurisdiction of the Courts The Criminal Jurisdiction of the Courts*. Dublin: Stationery Office.

■ Worrall, A. and Hoy, C. (2005) *Punishment in the Community, Managing Offenders, Making Choices* (2nd Edition). Cullompton, Devon: Willan Publishing.

Websites

www.prisonstudies.org

www.iprt.ie

www.justice.govt.nz