Research Brief:
Sentencing in the District Courts, 2003

1. Introduction

In June 2003, the Irish Penal Reform Trust (IPRT) undertook a research study on patterns of sentencing in the Dublin District Court.

The purpose of this research was twofold.

First, the IPRT wished to identify how judges used the sentencing options open to them and what patterns, if any, were identifiable in their choices.

Second, the IPRT sought to determine how often reasons were given by judges for the sentences they imposed, particularly when these sentences were for periods of detention.

The impetus for this second objective emerged following the *Report of the Working Group on the Jurisdiction of the Criminal Courts* (the "Fennelly Report", 2003) which rejected an earlier recommendation of the Law Reform Commission that concise, written reasons be given for the imposition of a custodial sentence (*Report on Penalties for Minor Offences*, 2003).

IPRT wishes to thank the President of the District Court, court staff, Gardaí and solicitors for their cooperation and assistance.

2. Methodology

The study was carried out over an eight week period between 9 June 2003 and 31 July 2003, during which time two IPRT researchers observed proceedings in the Dublin Metropolitan District Court. The majority of this observation took place in Courts 44 and 46 at the Bridewell Courts, the main "charge sheet courts" for the central Dublin area, although the researchers also observed a week of specially fixed District Court hearings in Courts 7 and 8, across the road from the Bridewell at the Four Courts.

During this period, the IPRT researchers recorded details and outcomes for 356 individual defendants. This small sample size naturally urges caution in relation to the results but, given the dearth of Irish information available on sentencing at this level, the IPRT offers this study as a useful snapshot rather than a complete picture of sentencing practice.

The following information was recorded: defendant characteristics such as age; sex; nationality; plea; previous convictions; the offence category; and the sentence. The individual defendant was taken as the unit of study, not the offence. Where a defendant was sentenced in respect of many offences, they were coded for the offence related to their most serious sentence. IPRT also took note of any verbal reasons given by judges at the time of sentencing. The term "verbal reasons" was given a very broad definition - anything from a few casual remarks to elaborate speeches from the bench were recorded - so long as the judge was in some way offering an explanation for imposing a particular sentence.

In addition to gathering this primary information by observing individual cases, it was decided that the research would be significantly enhanced by utilising qualitative research techniques. Therefore a series of interviews and questionnaires was undertaken with criminal solicitors and court staff.

3. Summary of Results of the Primary Research

The IPRT found that the most common outcome among the 356 cases recorded was a dismissal under section 1(1) of the *Probation of Offenders Act 1907* that allows an offender to be left without a conviction (38%), 20% of whom were required to make a contribution to the Poor Box. Heavy use was also made of fines, which were the second most frequent outcome (21%). The third most common outcome was a "strike out", which is in effect a dismissal without prejudice to the reentry of the matter at a later date. A custodial sentence was imposed in respect of 12% of the study group.

Significantly, custodial sentences imposed were typically for very short periods of 6 months or less (63%; n=27 of 43 individuals). Again, while it is important to view these figures in the light of the small sample size, this figure accords with previous research on Ireland's over reliance on short sentences of imprisonment. Probation bonds (1%) and community service orders (1%) were under-used sanctions.

On the question of consistency in sentencing, the researchers found that outcomes varied considerably in respect of cases with very similar facts. One researcher noted,

"*A common scenario: a young man in his 20s is convicted of a s.4 public order offence [breach of the peace] in connection with late-night roaring on O'Connell Street. Hegives no trouble to the Gardai and has no previous convictions....IPRT observed that [this] typical defendant may, depending on the judge, solicitor, and the atmosphere of the court, receive any of the following: a straightforward application of s.1(1) [of the Probation Act], resulting in no recorded conviction; an application of s.1(1) with a charitable donation of 50, 100 or 200 euro; or a fine with a conviction recorded, ranging from 50 to 400 euro."*

The significant point in respect of the above observation is of course the effect on the defendant. For a very similar minor offence, the penalty ranged from a simple reprimand to a recorded conviction that restricts employment opportunities and may expose an impecunious offender to the risk of imprisonment.

Disappointingly, reasons were only given by judges for the sentence imposed in a mere 32% of cases. This number climbed to only 42% for custodial sentences. This left the majority of offenders going from the courtroom to prison without an understanding of the factors motivating the judge's decision.

An examination of the reasons given by the sentencing judges revealed that judges rarely made explicit connections between custodial sentences and rationales for imprisonment. When judges did speak of rationales, however, they demonstrated no coherent policy.

Researchers observed judges in the Bridewell committing offenders to prison for the purposes of incapacitation ("I can't let you roam the streets"); deterrence ("You need to be taught a lesson"); rehabilitation and retribution. This leads the IPRT to conclude that there is no shared understanding among District Court judges as to what prison can accomplish, if indeed anything at all.

4. Summary of Results of Interviews/Questionnaires

When questioned by IPRT researchers, solicitors voiced concerns about the lack of accountability of District Court judges. It was felt that complaints made to the President of the District Court were largely ineffective. Serious concerns were also raised about perceived inconsistencies in sentences handed down by different District Court judges. Indeed, the disparity in sentencing was such that solicitors regularly engaged in "judge-shopping" on behalf of their clients who were contemplating pleas of guilty.

The questionnaires and interviews also reflected a feeling that peace bonds, probation bonds and community service orders were underused by judges. In relation to fines, some solicitors felt that if proper consideration was not given to an offender's financial means, a fine could in effect be a custodial sentence "by the back door". Most of the interviewees also observed that judges rarely offered explicit reasons for sentencing decisions, even decisions to impose custodial sentences, and that this situation should be remedied. There was a strong consensus that this would result in greater clarity, transparency and consistency in sentencing.

5. Analysis and Discussion

Prison terms

The IPRT researchers recorded the imposition of custodial sentences in 12% of the cases observed. Previous studies conducted by O'Mahony (1996) and Bacik (1998) into District Court sentencing have recorded higher rates of imprisonment of approximately 26% and 20% respectively. The IPRT is particularly concerned by the frequent use of short sentences of imprisonment highlighted by the study (63% of custodial sentences were for periods of 6 months of less). These findings are consistent with the broader picture as confirmed the Irish Prison Service in its Annual Report 2002, which showed that just under 40% of offenders sentenced to prison in 2002 were committed for terms of 3 months or less.

Short prison terms are a particularly pointless form of imprisonment placing a huge strain on penal resources with minimal deterrent or rehabilitative effect. This apparent over-use of short sentences would suggest that Ireland is a jurisdiction with great potential for the use of non-custodial sanctions as a means of reducing the prison population.

Alternatives to Imprisonment

Both the quantitative and qualitative data reveals an under-use of noncustodial alternatives to imprisonment such as community service. While this has led to calls for the abolition of the requirement that judges, prior to imposing a community sentence order, must be satisfied that the offence is one which would warrant a custodial sentence (see the *Final Report of the Expert Group on the Probation & Welfare Service*, 1999), the IPRT warns of the risk of "up-tariffing" in this regard. As noted by the IPRT in its recent submission to the National Crime Council (www.iprt.ie/iprt/997), experience in England has shown that such initiatives may have the effect of pushing offenders up one step of the sentencing ladder. Therefore rather than replacing a custodial sentence, new non-custodial sanctions simply replace another (often lesser) noncustodial sanction. Clearly, this is an area that would greatly benefit from further research.

While the significant use of fines by judges as an alternative to imprisonment is laudable, this sentence currently carries with it the risk of several days imprisonment in default. If the fine imposed is not adjusted according to an individual's financial means, this risk of fine default and subsequent incarceration is considerably increased - a concern that came to the fore during the questionnaires and interviews with criminal solicitors. This is particularly disconcerting given the

fact that there is an existing statutory obligation (under the *Criminal Justice Administration Act 1914*) on District Court judges to consider an individual's financial means prior to imposing a fine.

Inconsistency in Sentencing

Incosistencies in sentencing were observed by IPRT researchers who witnessed very different outcomes for cases with very similar factual matrices, such as the public order offence described above. Concern about inconsistencies also dominated discussions with solicitors in the Bridewell courts. A related point was the observation by the researchers that judges in the District Court do not share a common rationale in relation to the purpose of imprisonment and do not appear to align their approaches to sentencing as a body. Significant divergences between sentences imposed by judges are clearly unsatisfactory and lend support to calls for the creation of a set of non-statutory guidelines to assist judges with sentencing and the creation of a sentencing database.

Absence of Reasons

Less than half of those sentenced to imprisonment were given a reason for their detention. In this regard it should be remembered that the IPRT coded any remark made by a judge in relation to his or her sentencing decision as a "reason". Fifty-eight per cent of judges, however, failed to meet even this low standard. The IPRT considers this to be a highly unsatisfactory state of affairs, and one that offends basic principles of natural justice, particularly when the effect of the decision in question is the deprivation of an person's liberty for a period of up to 12 months.

The IPRT therefore calls for the creation of a statutory obligation on District Court judges to give reasons for a decision to sentence an offender to a term of imprisonment, as recommended by the Law Reform Commission. The IPRT makes this call despite the criticism by the *Working*

Group on the Jurisdiction of the Courts (2003) that the reasons for a particular sentence will often be apparent and that the imposition of such a duty would be impracticable. The IPRT considers that reasons in many cases will only be obvious to someone who understands the unspoken language of the

court, and a solicitor or barrister who is managing a busy list, or indeed simply indifferent, cannot be relied upon to communicate the reasons for a sentence to his or her client. Further, the IPRT considers that the imposition of a duty to give brief reasons in approximately one in five cases should prove administratively feasible.

6. Conclusions and Recommendations

In light of the above, the IPRT makes the following conclusions and recommendations:

- Given the evidence of the over-use of incarceration for short sentences, Ireland is a jurisdiction with great potential for the use of non-custodial sanctions as a means of reducing the prison population. Unfortunately this potential is currently under-valued, underdeveloped, under-resourced and under-utilised.
- The practice of imprisoning fine defaulters should be abolished and consideration should be given to the attachment of earnings/social welfare receipts or the imposition of a community service order as a response to default on payment of a fine. The IPRT notes that there is an existing statutory obligation on judges to adjust fines downwards according to an offender's means.
- Further research into sentencing in the District Court should be commissioned, particularly research into the use of non-custodial alternatives such as fines, community service and probation bonds.
- A set of non-statutory guidelines to assist judges with sentencing should be created in addition to a sentencing database. These initiatives could be developed under the auspices of the Courts Service, as recommended by the Denham Committee (1996-8).
- The creation of a statutory obligation on District Court judges to give reasons for a decision to sentence an offender to a term of imprisonment, as recommended by the Law Reform Commission in their Report on Penalties for Minor Offences (2003).

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