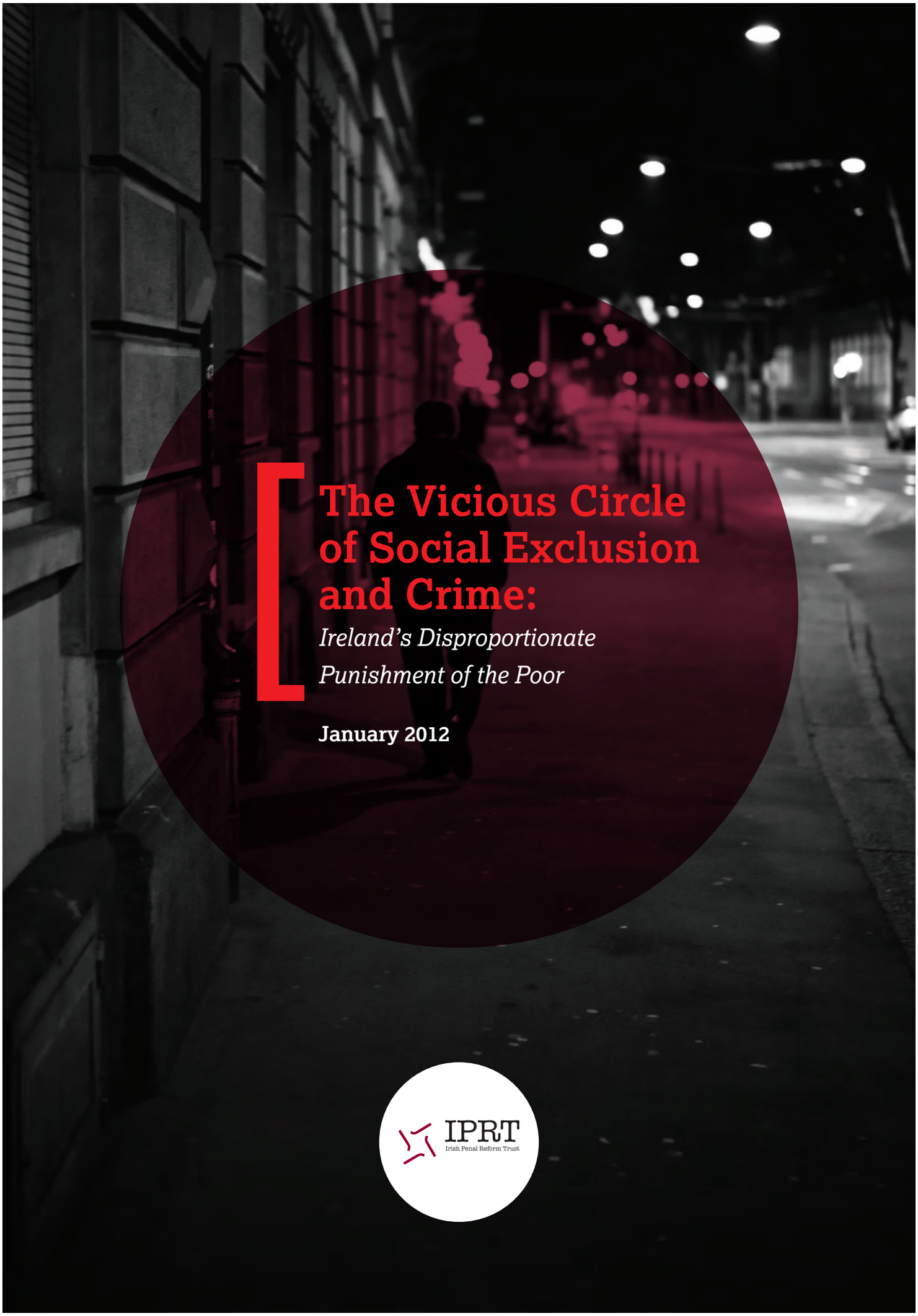
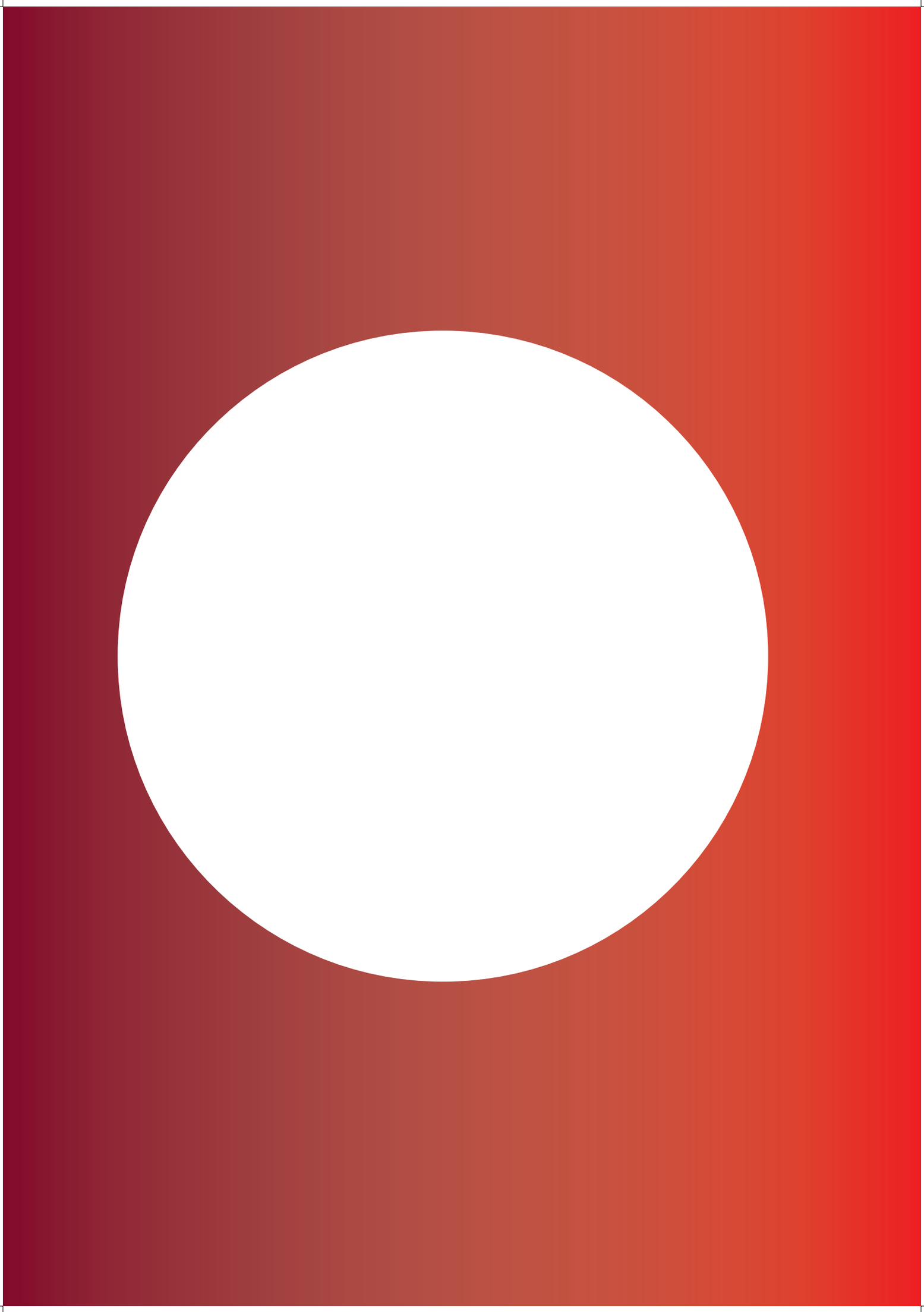


The Vicious Circle of Social Exclusion and Crime:

Ireland's Disproportionate Punishment of the Poor

January 2012

IPRT
Irish Penal Reform Trust



WHO WE ARE

Irish Penal Reform Trust

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

Through its work, IPRT seeks to stimulate public debate on issues relating to the use of imprisonment, including sentencing law and practice in Ireland. This is one in a series of Position Papers, which underpin the work of the IPRT.

Shifting Focus

This Position paper also forms part of our *Shifting Focus* project, which uses solid evidence and research to make the case for a shift in focus and resources from criminal justice to social justice. IPRT strongly believes that traditional approaches in Ireland have failed to address the systemic nature of social exclusion, and that investing in communities and preventing the marginalisation associated with offending behaviour would have greater positive effects in reducing offending, as well as producing wider social benefits, than imprisonment.

For more information on Shifting Focus, including presentations and research reports, please visit: www.iprt.ie/shifting-focus

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INTRODUCTION

The purpose of this Position Paper is to emphasise the complex matrix between social exclusion and crime, in order to impress on policy makers that an effective response to crime must, at the front end, involve investment in early intervention to combat social and educational disadvantage to prevent vulnerable young people embarking on criminality in the first instance. At the back end – i.e. post imprisonment – appropriate measures should be put in place to reintegrate ex-prisoners back into society, including comprehensive assistance with housing and work or training, for the benefit of the individuals themselves, as well as the communities to which they are returning.

Crime is a social phenomenon – both in its causes and its effects – and penal policy must be seen in the context of wider social and economic marginalisation and exclusion. IPRT believes that more effective means of responding to and preventing crime are available, many of which lie outside the criminal justice system itself – for example in the realm of education, health and the empowerment of deprived communities. IPRT believes that there must be a wider shift in Irish economic and social policy away from reactive responses to the symptoms of failing social policies and towards addressing the causes of those problems. In particular, we believe in the benefits of early intervention to the personal and social problems most closely linked to crime such as substance misuse and mental health.

The relationship between social exclusion and crime is indisputable, but the connection must be examined in a nuanced manner. This Position Paper delves into the realities of crime, social exclusion and poverty by exploring the social profile of prisoners; the way in which the criminal law targets marginalised groups; the uneven application of the law to different socio-economic groups; the causes of crime; as well as issues of reintegration and poverty following imprisonment and the desirability of shifting the focus from punitive and ultimately ineffective criminal justice policies to crime prevention and early intervention.[1] By addressing these issues, a clear picture emerges of the link between crime and social exclusion, leading to recommendations as to how this link may be broken and the cycle arrested.

1 See Murphy, Candy, *From Justice to Welfare: The Case for Investment in Prevention and Early Intervention* (2010) for IPRT, Barnardos and the Irish Association for Young People in Care.

1. Social Profile of Prisoners

1.1 SOCIAL PROFILE AND SOCIAL EXCLUSION

Despite the dearth of indigenous Irish studies on the social profile of prisoners at regular intervals, it is widely known that most prisoners have a history of social exclusion, including high levels of family, educational and health disadvantage, and poor prospects in the labour market.[2] This can be seen very clearly in O'Mahony's 1997 study of the social background of prisoners in Mountjoy Prison which found that 56% of prisoners came from just 6 districts in Dublin characterised by high levels of economic deprivation.[3] Almost 80% of those in the study had left school before the age of 16 and overall there were high levels of exposure to adversity including low parental employment and personal employment, and high levels of personal heroin use.[4] Further to this, the numbers of people appearing before the District Court who receive custodial sentences is very highly linked with areas of deprivation. Bacik *et al*'s study of the association between community deprivation, District Court appearance and sentence severity revealed that the more deprived areas in the Dublin area were the most represented in the Courts and received the harshest sentences.[5]

There is strong evidence that social exclusion renders individuals vulnerable to offending behaviour. Membership of a disadvantaged community, consistent poverty[6] and parental conflict also contribute to offending. Some young offenders have expressed how their social disadvantage directly led them into criminality as many came from poverty stricken areas characterised by high levels of drug use and crime.[7] The social profile of prisoners, therefore, illustrates very strong links between crime, deprivation and social exclusion, the development of which can be seen in the examination of the pathways to, and causes of, crime (Section 4).

IPRT calls on the government to commit funds to conducting studies at regular intervals into the profile of offenders, which IPRT believes will show a demonstrable link between social exclusion and crime.

2 IPRT, Barnardos and Irish Association of Young People in Care, *Shifting Focus: From Criminal Justice to Social Justice*, (2010).

3 O'Mahony, Paul, 'Punishing Poverty and Personal Adversity' in Bacik I. and O'Connell M. eds. *Crime and Poverty in Ireland* (1998) (Dublin: Round Hall Sweet and Maxwell), pp. 49–67, at p. 55. See also O'Donnell, I., Baumer, E.P. and Hughes, N. 'Recidivism in the Republic of Ireland', *Criminology and Criminal Justice* 8(2), (2008), pp. 123–146.

4 O'Mahony, P., 'Punishing Poverty and Personal Adversity' in Bacik I. and O'Connell M. eds. *Crime and Poverty in Ireland* (1998) (Dublin: Round Hall Sweet and Maxwell), pp. 49–67, at p. 59.

5 Bacik I., Kelly, A., O'Connell M. and Sinclair, H., 'Crime and Poverty in Dublin: an analysis of the association between community deprivation, District Court appearance and sentence severity' in Bacik I. and O'Connell M. eds. *Crime and Poverty in Ireland* (1998) (Dublin: Round Hall Sweet and Maxwell), pp. 1–30, (especially at p. 19 and 21).

6 *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona*, A/HRC/17/34/Add.2 (2011).

7 Patton, J., Crouch, W. and Camic, C. (2009) 'Young Offenders' Experiences of Traumatic Life Events: A Qualitative Investigation' *Clinical Child Psychology and Psychiatry* 14(1): 43.

2. Criminalisation / Targeting Marginalisation

There are a number of specific ways in which the criminal law is unduly focused on marginalised groups, including imprisonment for non-payment of debt and non-payment of fines, as well as vagrancy and begging laws.

2.1 IMPRISONMENT FOR NON-PAYMENT OF DEBT

The practice of imprisoning individuals for non-payment of debt is one way in which the penal law targets marginalised groups and those living in poverty. The 2009 case of *McCann v Judges of Monahan District Court & Ors* highlighted the issue starkly as the applicant challenged an order for her imprisonment due to failure to pay instalments on a credit union loan. In judicial review proceedings the Court found that there had been a breach of her right to liberty under Article 40.[8] Laffoy J also commented on the futile nature of imprisoning people for non-payment of debt, noting that it does not result in the debt being paid but results in very significant costs between legal proceedings and imprisonment. Under the *Enforcement of Court Orders (Amendment) Act 2009* there is an entitlement to free legal aid in these cases and the possibility of mediation or postponement of imprisonment is also provided for.[9] Since the *McCann* case the number of people imprisoned for failure to pay debts has reduced significantly[10] and it would seem that the practice may cease altogether in due course as there have been political commitments to this effect.[11]

IPRT calls for the cessation of the practice of imprisonment for non-payment of debt.

8 *Mc Cann v Judges of Monahan District Court & Ors* [2009] IEHC 276.

9 See sections 6 and 6A of the *Enforcement of Court Orders (Amendment) Act 2009*.

10 The number of people imprisoned for non payment of debt has reduced from 162 in 2009 to 9 in 2011. See table of debtors imprisoned between 2006 and 2011, available at http://debates.oireachtas.ie/dail/2011/05/18/00142.asp (last accessed 12 December 2011).

11 There is a firm commitment to the abolition of the practice of imprisonment for debt in the Programme for Government 2011.

2.2 IMPRISONMENT FOR NON-PAYMENT OF FINES

Currently, non-payment of fines often results in imprisonment. Fines are generally imposed for minor offences, often where a judge does not deem imprisonment as just or necessary. However, where a person fails to pay a fine they may be imprisoned. This is particularly worrying as there is a very high rate of recidivism and re-imprisonment for those who have been imprisoned for non-payment of fines. A 2008 study found that fine defaulters had an 85% likelihood of returning to prison after release.[12]

Imprisonment for non-payment of fines has huge social and economic costs. The financial implications of short sentences for non-payment of fines are significant, as imprisonment is substantially more expensive than community based alternatives. Nevertheless, the numbers of people in prison for non-payment of fines has continued to rise, contributing significantly to the rocketing number of committals to Irish prisons.

Imprisonment for fines has soared in recent years, from 1,335 in 2007 to 4,806 in 2009, to 6,683 in 2010. In the context of chronic overcrowding, most fine defaulters are released after only a short time in prison and do not make up more than 30 of around 4,270 prisoners in custody on any given day. In many cases, they are not counted in temporary release figures as their fines are mitigated shortly after arrival in prison. This all amounts to a redundant exercise that is extremely costly to the taxpayer, and wasteful in terms of Courts, Gardaí and prison administration – all at a time of increasingly scarce resources.[13]

There have been some legislative moves to tackle the high levels of imprisonment for non-payment of fines. The *Fines Act 2010*, which is not fully commenced as of January 2012,[14] provides that a Community Service Order (CSO) will

12 O'Donnell, I., Baumer, E.P. and Hughes, N. 'Recidivism in the Republic of Ireland', *Criminology and Criminal Justice* 8(2), (2008), pp. 123–146.

13 See IPRT, 'Prison should only ever be the last resort', Law Society Gazette, March 2011, pp. 18–19.

14 Only Parts 1 and 2 and Sections 12 and 14 of the *Fines Act 2010* have been commenced under the Fines Act 2010 (Commencement) Order 2010, S.I. No. 662 of 2010.

be the Court's first recourse for failure to pay a fine, and that prison will be a sanction of last resort. Section 14 of the Act which requires the Court to take into account the person's financial circumstances before determining the amount of the fine, if any, to be imposed was commenced with effect from 4 January 2011. This provision means that no person should be sent to prison for default solely because he or she cannot afford to pay a fine. However, imprisonment for fine default continues to spiral, largely because section 15, which allows for the payment by instalment of a fine over a 12-month period (and, exceptionally, over a 2 year period) has not yet been commenced due to failures to upgrade the Courts IT system.

In order to allow for a fine to be paid by instalments, it is necessary for the Courts' criminal case tracking system to be substantially modified to allow for the payment of instalments and to ensure that such instalments are accurately recorded and tracked. In September 2011 the Minister for Justice, Equality and Defence, Alan Shatter revealed that the Courts Service had informed him that assuming the necessary funding is available, it will take approximately 12 months to complete the administrative and technical modifications required, at an estimated cost of €400,000.[15]

The Minister continued on to state:

> *A considerable number of outstanding fines precede the coming into force of the Act. In those circumstances fines would have been imposed, with the alternative of imprisonment if they were not paid. That creates a particular difficulty because it is important to ensure people pay the fines handed down by the courts and that the integrity of the justice system is not undermined. In the context of current circumstances where court orders have been made without fines having been paid and there is no other means of recovery, unfortunately, prison remains an option for the time being. Of course, it is an option none of us wants to see used in unnecessary circumstances. I am very anxious, therefore, that this new system be put in place.*[16]

IPRT submits that the current system of imprisoning people for non-payment of fines undermines the integrity of the justice system, whether the fines were imposed before or after the introduction of the new Act. Imprisonment for fine default not only causes great distress to the defaulter, but also costs the State considerable resources not only in terms of arresting, transporting and imprisoning the defaulter, as well as the lost revenue of the fine itself where it is mitigated or "purged" by a term of imprisonment, however brief. IPRT calls on the Minister for Justice, Equality and Defence to end imprisonment for fine default as promised in the Programme for Government, and to consider any means, including the introduction of a legislative amendment providing that no person will be imprisoned for fine default (whether or not their fine dates from before or after the introduction of the *Fines Act 2010*), until the necessary modifications have been made to the Courts IT system so that fines can be paid by instalment.

While the Minister cannot direct judges to fine or not to fine, judges have discretion to set a prison alternative or not. If they can oversee the execution of the fine with more discretion, imprisonment need not become automatic. The benefits would mean that:

(1) impoverished people would not be subjected to the trauma of arrest and imprisonment where they are unable to pay a fine outright;
(2) the State would be spared the costs associated with arresting, processing and imprisoning fine defaulters;
(3) the State would not lose the value of the unpaid fines through the fact of imprisonment, which frequently is only for a matter of hours due to overcrowding;
(4) the removal of fine defaulters from the prison system would free up much-needed resources to provide adequate regimes for sentenced prisoners.

IPRT calls on the Government to make the necessary funding available to ensure that the Courts IT system is upgraded within 12 months to ensure that the *Fines Act 2010* is fully commenced without any further delay.

In the meantime, IPRT calls on the Minister for Justice, Equality and Defence to end imprisonment for fine default, as promised in the Programme for Government, and to consider any means, including the introduction of a legislative amendment, to ensure that no person will be imprisoned for fine default until the necessary modifications have been made to the Courts IT to allow the payment of fines by instalment.

15 Minister Alan Shatter's response to a Parliamentary Question on fines and the courts services, 20 September 2011, available at http://www.kildarestreet.com/debates/?id=2011-09-20.39.0&s=payment+of+fines+by+installment#g41.7 (last accessed 12 December 2011).

16 Minister Alan Shatter's response to a Parliamentary Question on fines and the courts services, 20 September 2011, available at http://www.kildarestreet.com/debates/?id=2011-09-20.39.0&s=payment+of+fines+by+installment#g41.7 (last accessed 12 December 2011).

2.3 VAGRANCY / BEGGING LAWS

The criminal law also targets marginalised groups through the criminalisation of activities which are linked to poverty. Laws prohibiting vagrancy and begging are perhaps the clearest examples of the way the law targets those living in poverty. In 2007 the *Vagrancy (Ireland) Act 1947*, which prohibited begging in a public place, was deemed to be unconstitutional in the case of *Dillon v DPP*.[17] The Act provided for a maximum sentence of 1 month in prison for begging in a public place and was deemed by de Valera J to be vague, lacking in certainty and in breach of the applicant's rights to freedom expression and communication.

This Act was subsequently replaced by the *Criminal Justice (Public Order) Act 2011*, which does not criminalise all forms of begging but only those forms which are accompanied by obstruction, harassment or intimidation.[18] The Act specifies that a person who obstructs a person or premises while begging may have a fine up to €500 imposed or a 1 month prison sentence. Further to this, the Act provides powers to Gardaí to arrest people for the above offences[19] and also permits them to move people on if begging near an ATM, a night safe, an entrance to a dwelling or business premises or a vending machine.[20] A person arrested for the offence may also be fined up to €500 for failure to provide their name and address. In the first two months of its enactment 177 people were arrested under the *Criminal Justice (Public Order) Act 2011*.[21]

The Irish Human Rights Commission (IHRC) was highly critical of the Bill, which resulted in the 2011 Act (with some amendments, including a reduction in the applicable fine from €700 to €500), stating that it might lead to a "disproportionate interference with the right to freedom of expression and the right to communicate" and was a "draconian measure which could result in criminalisation of extremely vulnerable people". The IHRC considered the Bill to be neither "a measured response to the issue of begging" nor "helpful in addressing the root causes of begging."[22]

> *The government should not criminalise vulnerable people who beg. Many vulnerable people are often left with no option but to beg as a result of mental health or addiction problems which they must endure without the supports they need. Indeed, placing the onus on the criminal justice system to address begging when health, social and homeless services should be at the forefront in tackling these problems represents an abdication of responsibility by the Irish state, and a denial of its responsibility to protect the rights of our most vulnerable citizens.*[23]

IPRT shares the concerns of the IHRC in respect of the criminalisation of begging and believes that the *Criminal Justice (Public Order) Act 2011* is a regressive legislative measure, which unduly penalises the most vulnerable members of society.

IPRT calls for the repeal of the Criminal Justice (Public Order) Act 2011 on the basis that it unduly penalises the most vulnerable members of society.

17 [2007] IEHC 480.
18 *Criminal Justice (Public Order) Act 2011.*
19 Ibid, section 4(1).
20 Ibid, section 3.
21 Details provided by Minister for Justice Alan Shatter on the 30th of March 2011 in a parliamentary question on public order offences, available at http://www.kildarestreet.com/wrans/?id=2011-03-30.888.0&s=beg+arrest#g889.0.q (last accessed 12 December 2011).
22 See IHRC *Criminal Justice (Public Order) (Amendment) Bill 2008 Seriously Flawed*, 22 December 2008, available at http://www.ihrc.ie/newsevents/press/2008/12/22/criminal-justice-public-order-amendment-bill-2008/ (last accessed 12 December 2011).
23 Ibid, quotation from IHRC Commissioner Alice Leahy, who is co-founder and Director of Trust which offers services to homeless people.

3. Uneven Application of the Criminal Law

There is a well known gap between the number of people who break the law and the proportion of those who are detected and punished. Self-report studies of crime and the lack of prosecution for white collar crime illustrate that there are higher levels of crime, among different groups of individuals, than those who are prosecuted, convicted or serve custodial sentences.[24] The social profile of prisoners (see section 1.1 above) reveals the high numbers of prisoners who come from disadvantaged, socially excluded backgrounds. Studies of particularly vulnerable or disadvantaged groups or individuals also provide evidence of uneven policing which in turn can result in higher levels of crime detection in certain areas or among certain groups of people.

The uneven application of the criminal law is evident from the examination of uneven imprisonment, policing and the responses to white collar crime below. This uneven application compounds the link between social exclusion and crime as marginalised people are targeted, criminalised and treated differently to others by the law and its institutions.

24 See for example O'Donnell, I. 'Crime, Punishment and Poverty' *Irish Criminal Law Journal* 7(2), (1997), p. 134.

3.1 UNEVEN IMPRISONMENT

A study of sentencing in District Courts published in 1998 found that there were noteworthy differences in sentencing practices depending on the defendants' backgrounds. It found that 29% of those from the most deprived areas received custodial sentences, compared to 19% of those from the least deprived area.[25] This demonstrates that a person's economic background may have a significant impact on whether they will receive a custodial sentence. The lack of consistent sentencing in the Irish criminal justice system can mean that people are unfairly, and unevenly, punished and imprisoned.[26] Moreover, data on sentencing and the profile of offenders is frequently difficult to obtain and based on one-off studies, which means that researchers face enormous challenges in accessing relevant, accurate, up-to-date information and statistics.

IPRT agrees with the statement in the *White Paper on Crime Discussion Document 4: The Community and the Criminal Justice System* that:

> *A development of some significance is the Irish Sentencing Information System (ISIS) website which contains information about the range of sentences and other penalties that have been imposed for particular types of offences across court jurisdictions. This publicly accessible resource includes statistics on sentencing, synopses of relevant court judgments and a database on sentences imposed in various crimes and cases. The website has the potential to be a valuable tool not only for legal practitioners and researchers but also for those concerned with the needs of victims and their families.*[27]

While IPRT welcomed the enactment of the *Criminal Justice (Community Service) (Amendment) Act 2011* – which requires the courts to consider imposing a community service order for those offences where it would otherwise be appropriate to sentence the offender to imprisonment for a period of up to twelve months – we had recommended that the presumption against imprisonment in section 3(1)(a) should be strengthened by requiring the sentencing judge not only to *consider* imposing a CSO in lieu of imprisonment for a qualifying sentence but *by obliging him or her to give written reasons* behind a decision to imprison the convicted person.[28] IPRT is disappointed that the Minister for Justice, Equality and Defence rejected the amendment put forward by a number of TDs and Senators along the lines we suggested, since a public record – published on the ISIS system – of all decisions to imprison would have enhanced accountability regarding sentencing at District Court level, and would have been a very useful tool in monitoring the success of the legislation.

There is a need to link statistical information across State administrative data holdings (e.g. Central Statistics Office, Irish Prison Service, the Courts, the Gardaí, Department of Health etc.) and to improve the quality of and access to data for researchers. All criminal justice agency websites should be updated regularly, have fully functioning links and contain all key statistics, policy documents and strategies.

3.2 UNEVEN POLICING

In other jurisdictions, there is evidence of over-policing of disadvantaged areas, which results in greater crime detection than in more privileged communities and, therefore, greater rates of conviction and imprisonment. Certain areas and certain communities are often subjected to 'over-policing' and 'under-protection'.[29] There is some evidence to indicate that this may be the case in Ireland too.[30]

The causes of uneven policing are complex. First, it is well documented that people in lower socio-economic groups tend to live more of their lives in public and, therefore, are more likely to come to the attention of police than those in higher socio-economic groups who have greater access to privacy.[31] Additionally, there is a perceived bias in policing regarding some marginal communities. For example, Travellers and other marginalised groups have reported that they are exposed to a very different type of policing than other less socially disadvantaged people.[32] They reported harsh and aggressive treatment at the hands of law

25 Bacik, I. *et al.*, 'Crime and Poverty in Dublin: an analysis of the association between community deprivation, District Court appearance and sentence severity' in Ivana Bacik and Michael O'Connell eds. (1998) *Crime and Poverty in Ireland* (Dublin: Round Hall Sweet and Maxwell), pp. 1–30, at p. 21.

26 Bacik, I. 'The Courts: Consistent Sentencing?' *Studies* 88, (1999) pp. 164–174.

27 See *White Paper on Crime IPRT Response to Discussion Document 4: The Community and the Criminal Justice System* (2011), p. 13.

28 Examples of legislation where judges are required to give reasons for the decision to imprison include section 143 of *the Children Act 2001* and section 17(3B) of the *Criminal Justice and Licensing (Scotland) Act 2010*.

29 Reiner, R., 'Police and Policing' in *Oxford handbook of Criminology* Maguire M, Morgan R and Reiner R eds. (1997) (second edn., Oxford: Clarendon Press), p. 1011.

30 Mulcahy A. and O'Mahony E. *Policing and Social Marginalisation.* (2005) (Combat Poverty).

31 Reiner, R., 'Police and Policing' in *Oxford handbook of Criminology* Maguire M, Morgan R and Reiner R eds. (1997) (second edn., Oxford: Clarendon Press), p. 1011.

32 Mulcahy A. and O'Mahony E. *Policing and Social Marginalisation.* (2005) (Combat Poverty).

enforcers. Travellers, in particular, noted that police tend not to serve or protect them, but rather respond to disturbances that Travellers may cause to the settled community.[33] This indicates that there is some evidence of uneven policing in Ireland, thus leading to higher rates of crime detection in the areas subject to greater Garda attention, and is an example of the uneven application of the criminal law.

Recent public consultation on the *White Paper 4: The Community and the Criminal Justice System* revealed that community policing 'promotes confidence in the community and removes fear. The community are more likely to engage with and report criminal activity to a police officer they are familiar with and whom they trust.'[34] Concerns were, however, raised by some contributors about the transient nature of community policing, whereby members of the community are obliged to build trust all over again, whenever a community police officer is replaced by a new officer.[35]

While deprived communities experiencing higher than average crime rates may necessarily be subject to greater Garda surveillance and patrols than other communities, IPRT recommends that community policing should focus on building and maintaining trust, by being as demonstrably committed to serving and protecting the relevant community as it is to cracking down on any crime and anti-social behaviour detected.

3.3 WHITE COLLAR CRIME

White collar crimes – traditionally committed by the more privileged members of society – are much less likely to result in custodial sentences than the crimes (theft, criminal damage, drug-related offences) typically committed by the poor. Even when they do lead to imprisonment, the experience may be significantly less unpleasant for the wealthy than for their poorer counterparts.[36] Those convicted of white collar crime are less likely to be seen as security or control problems and are likely to be sent to open detention facilities (or at a minimum less crowded medium-security prisons such as Wheatfield) saving them exposure to the overcrowded, unsanitary, and drug-infested conditions in Mountjoy and other prisons.[37] Those with greater financial resources at their disposal can also maintain better contact with community and family through visits etc., which for others may be cost prohibitive due to travel and other costs. O'Donnell has noted that in spite of the lack of empirical research in Ireland, it is clear that "the justice system does not respond with equal vigour to all crimes. Indeed, there is little evidence that the white collar and corporate criminals feel its wrath".[38]

In its submission on the *White Paper on Crime: Discussion Document 3 Organised and White Collar Crime* IPRT pointed out that the criminal justice system is focused on less serious crime and fails to address larger scale, so-called 'victimless' social harm that may arise through white collar, regulatory and other crimes of the wealthy.

> *There is broad agreement that the criminal justice system needs to protect people from the threat of injury or harm posed by assaults, rapes, robberies, burglaries, etc. Regulatory offences, on the other hand have not been traditionally perceived as threatening our security in the same way as street crime; yet there is no doubt that contaminated food, environmental hazards, health and safety breaches and improper commercial practices all have very negative effects on a wide spectrum of people.* [39]

33 Ibid.
34 IPA, *White Paper on Crime Report of Proceedings of Regional Consultation Meetings on The Community and the Criminal Justice System May/June 2011*, p. 3.
35 Ibid, p.18.
36 O'Donnell, I. 'Crime, Punishment and Poverty' *Irish Criminal Law Journal* 7(2), (1997), at p. 142.
37 Ibid.
38 Ibid.
39 IPRT *Submission to White Paper on Crime: 3 – Organised and White Collar Crime* (2011).

It is fundamentally incorrect to perceive white collar crime as victimless. White collar crime is a preserve of wealthy and powerful groups in society, and in this regard the uneven nature of the criminal law is most clearly illustrated; although white collar crimes can have a massively detrimental impact on society they are not treated as seriously, nor are those who commit such crimes punished as severely as the crimes of less wealthy and less powerful groups in society.

The criminal law should treat *all* transgressors in an equitable manner, whether they are white collar or street criminals. If the gains from certain types of crime – for example insider trading – are disproportionately greater than the penalty likely to be paid, the rule of law breaks down.[40] The opposite is also true; many low level street criminals are committed to prison instead of being given community service whereby the harm of imprisonment is grossly disproportionate to any profit or benefit they might have made or from any benefit the sentence might serve.[41]

The categorisation of 'white collar crime' is problematic in many respects. It is not merely the economic (as opposed to violent) nature of the crime that distinguishes white collar wrongdoing from street offences. It may also relate to the type of perpetrator. White collar criminals tend to be more educated, privileged and therefore empowered than street criminals. The decision to penalise white collar criminals, therefore, impacts on the powerful much more than the punishment of street criminals. The *White Paper on Crime: Discussion Document 3 Organised and White Collar Crime* articulates the argument that where crimes are economic in nature, the punishment should be as well.[42] However, such a suggestion may not adequately recognise that many types of traditional 'street crime', such as theft, criminal damage and drug possession may also be seen to be primarily economic in nature. Moreover, the question of a person's moral culpability should be of crucial importance in determining their criminal responsibility, whether their wrongdoing is economic in nature or otherwise.

The White Paper asserts that restitution by white collar offenders to victims might be considered to be more 'constructive and that the naming and shaming attached may amount to a substantial penalty in any event, especially if coupled with loss of position or professional status and privileges'. The idea of naming and shaming is very much linked to restorative justice, which is not, and should not be confined to the area of white collar crime. This general narrative is quite progressive and to be welcomed, especially as IPRT believes there is plenty of room for expansion. The problem here is the implication that someone will get a more lenient sentence as a result of having assets, precipitating a two-tier system of justice based on personal wealth.

IPRT is committed to the principle of imprisonment as a last resort for all types of crime. The most persuasive arguments put forward about the futility of imprisonment as a punishment for white collar criminals, namely its questionable effectiveness as a deterrent and detrimental impact on the incarcerated individual, apply equally to other kinds of offenders. The threat of prison does not *generally* deter people from criminal conduct, while the reality of imprisonment is damaging to *all* people – not just those who are educated and empowered.

IPRT is of the view that the criminal justice system should endeavour to treat all transgressors in an equitable manner. This means that the crimes of the rich as well as the poor be investigated, prosecuted and punished with equal vigour. Imprisonment should be the last resort for all categories of offender and not just those who come from the more privileged sections of society.

40 See 'Unremarkable couple who amassed a fortune from insider trading', *The Guardian* 5 February 2011.

41 IPRT *Submission to White Paper on Crime: 3 – Organised and White Collar Crime* (2011), pp.11–12.

42 White Paper on Crime, Discussion Document No. 3 (October 2010), *Organised and White Collar Crime,* p.40.

4. Causes of Crime

4.1 RISK FACTORS LEADING TO CRIME

Although individual choice is the primary factor in criminality, socio-economic factors also contribute directly to a person engaging in criminal behaviour, as discussed above. There are a number of risk factors which have been identified as increasing the likelihood of children and young people engaging in crime in later life. These include community disorganisation, socio-economic deprivation, family problems, academic and school issues and personal factors.[43] This is further supported by a 2009 study of young people engaged with youth detention services in the UK;[44] the young people in this study felt that external factors, in particular family and community issues and poverty propelled them into crime.

In Ireland, there is a particular problem of over-representation of mentally ill prisoners in the remand prison population. Studies have shown that 27% of sentenced men and 60% of sentenced women have at least one diagnosed mental illness.[45] A 2005 study commissioned by the National Forensic Mental Health Service found that 5.4% of female prisoners in Ireland should be diverted to hospital psychiatric services, whilst as many as 32% of female committals presented with mental health issues requiring psychiatric care.[46] Of these, 16% suffered from a major depressive disorder. Furthermore, women in prison are also more likely to self-harm than male prisoners.[47] The 2005 study also showed that problematic drug and alcohol use were the most common problems, present in between 61% and 79% of prisoners. Typically, prisoners used several intoxicants, including alcohol, benzodiazepines, opiates, cannabis and stimulants.

To address this cycle not only must adequate care be afforded to prisoners suffering mental health difficulties but work should also be focused on diverting those with psychiatric problems away from the criminal justice settings and towards mental health services. This problem is currently being addressed in the Dublin area by a Prison In-reach and Court Liaison Service (PICLS) run by the Central Mental Hospital, which is succeeding in diverting patients away from prison and from the Central Mental Hospital to appropriate community care settings, with significant cost savings. An extension of these services to provision on a national level could potentially bring even greater savings and would certainly be beneficial to the wider prison population. A recent positive development regarding mental health services in Budget 2012 involves the commitment of €35 million for the development of community mental health teams and services as outlined in 'A Vision for Change'.[48]

IPRT believes that the overarching goal of any criminal justice system is to reduce crime and to create and maintain a safe society for all.[49] What is necessary to build safer communities is a coordinated criminal justice policy which makes the most effective and efficient use of the various elements in the criminal justice system (police, courts, probation, prison etc.). Within the context of clearly defined policy objectives regarding crime reduction, Government and State agencies can make informed decisions to employ the resources and functions of the various criminal justice agencies in the most effective way possible and while minimising the associated harms and costs of those measures.[50] There is also a need for greater co-ordination between the Department of Justice and related government departments such as Health, Children, Education and Social Protection in order to tackle the underlying causes of deprivation, social exclusion and crime.

IPRT welcome the Minister for Justice's recent commitment to establish a Penal Reform Group and calls on the Government to develop a new, principled Criminal Justice Policy, which articulates a coherent vision of the balance to be drawn between crime prevention, diversion, punishment and rehabilitation measures. Greater inter-departmental co-operation is also necessary to effectively combat the underlying causes of deprivation, poverty and crime.

43 National Crime Council *Tackling the Underlying Causes of Crime: A Partnership Approach. A Consultation Paper* (2002) (Dublin: Stationary Office).

44 Patton, J., Crouch, W. and Camic, C., 'Young Offenders' Experiences of Traumatic Life Events: A Qualitative Investigation' *Clinical Child Psychology and Psychiatry* (2009) 14(1), p. 43.

45 Kennedy, H.G., Monks, S., Curtin, K.,Wright, B., Linehan, S., Duffy, D., Teljeur, C. and Kelly, A. (2004), *Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners, (2004)*, Dublin: National Forensic Mental Health Service.

46 Ibid. See also Seymour, M. and Costello, L.. *A study of the number, profiles and progression routes of homeless persons appearing before the courts and in custody* (Centre for Social and Education Research, Dublin: 2005).

47 Palmer, J., 'Special health requirements for female prisoners', in *Health and prisons: a WHO guide to the essentials in prison health*, p. 157.

48 Statement of the Minister for Public Expenditure and Reform Brendan Howlin, T.D. Address to Dáil Éireann on Expenditure Estimates 2012, 5 December 2011, available at http://budget.gov.ie/budgets/2012/EstimateStatement.aspx (last accessed 12 December 2011).

49 See *IPRT Submission to the Review Group on Thornton Hall*, July 2011, p. 3.

50 IPRT's position on the need for greater coordination between the various criminal justice agencies and for a more coherent crime policy is set out in our Position Paper *Planning the Future of Irish Prisons* (2009).

4.2 PUBLIC POLICY AND ITS IMPACT ON OFFENDING

At a time of economic crisis, it is striking that spending is still weighted towards incarcerating more and more people (many of whose crimes are linked to poverty), while opportunities to save resources and reduce the impact of crime on communities are being ignored. IPRT has previously highlighted a number of areas of public spending that are especially sensitive to risks of offending, noting that failures in one area of public policy have consequences in other related areas, so that that punitive cuts in health, education and social welfare are likely to cost enormous amounts in exacerbated criminal justice costs in the future.[51]

While it is positive that basic adult social welfare rates remain unchanged in Budget 2012, other damaging austerity measures include cuts in the Department of Social Protection to the One-Parent Family Payment,[52] Child Benefit for third and subsequent children, Basic Supplementary Welfare Allowance Payments and the Back-to-School Clothing and Footwear Scheme.[53] In the Department of Children and Youth Affairs the allocated budget for the policy and legislation programme has been reduced by 20%.[54] On the criminal justice front, criminal legal aid has been reduced by 17% and funding for crime prevention measures cut by 28%.[55] Barnardos have described Budget 2012 as a 'mean' budget,[56] particularly detrimental to lone parent families due to the "cumulative effect of Social Protection and Education cuts and the increased rates of VAT and carbon tax".[57] These families, already at high risk of "poverty and consistent poverty rates, are increasingly vulnerable as a result of this Budget."[58]

In many areas, community and local organisations play an essential role in filling the gaps left by poor public services through offering crucial support to vulnerable individuals and families. However, recent budget cuts have severely affected community and voluntary organisations, resulting in much bigger gaps in services for vulnerable children, adults, families and communities. Local community organisations that offer supports to those who need it most, are finding it more difficult to carry out their roles. For example, the RAPID programme, the Irish Youth Justice Service, and the budget for educational disadvantage were all severely affected in Budget 2011. Funding for sports in disadvantaged areas was also axed.[59] Budget 2012 introduced further cuts to the RAPID programme, funding for projects in Drugs Taskforce areas (down 24%) and the Community Employment Programmes, which have been a very valuable source of education and vocational training in disadvantaged areas[60] (with training and material grants reduced from €1,500 to €500 per participant per annum).

While the State is bound to implement certain austerity measures to stabilise the Irish economy in the longer term, IPRT nonetheless calls on the Government to safeguard future investment in certain targeted areas of spending in order to reduce deprivation, crime and imprisonment. Strategic delivery of key services such as health and education would ensure that vulnerable children enjoy access to essential supports and services. This is the most effective long-term strategy for addressing the marginalisation and inequality associated with higher rates of offending.

51 IPRT *Spending Cuts and Crime Implications* (2010).

52 Barnardos, *Analysis of Budget 2012 from a Children and Families Perspective December 2011*. Barnardos state at p. 3: 'The upper age limit of the youngest child for new claimants of the OPFP will be reduced to 7 years on a phased basis. It will be reduced to 12 years with effect from 2012. This move is unacceptable given the absence of affordable, quality afterschool care and the lack of availability of jobs. The reliance of lone parents on part time work as a result of their caring responsibilities leaves them particularly vulnerable to poverty if they do not have access to adequate supports.'

53 Vote 37, *Estimates for Public Services 2012*, available at http://budget.gov.ie/Budgets/2012/Documents/CER%20-%20Estimates%20Final%20Part%204.pdf (last accessed 09 December 2011).

54 Ibid, Vote 40.

55 Ibid, Vote 24.

56 'Mean Spirit of Budget 2012 will Haunt Low Income Families' 5 December 2011, available at http://www.barnardos.ie/media-centre/news/latest-news/mean-spirit-of-budget-2012-will-haunt-low-income-families.html (last accessed 12 December 2011).

57 Barnardos, *Analysis of Budget 2012 from a Children and Families Perspective December 2011*, p. 4.

58 Ibid.

59 The Wheel (2010) Budget 2011 Response.

60 See 'Calls to reverse support scheme cuts', 09 December 2011, available at http://www.irishexaminer.com/breakingnews/ireland/call-to-reverse-support-scheme-cuts-531691.html#ixzz1g3KQQ4mE (last accessed 09 December 2011). See also "Tánaiste criticises Opposition 'commentary'" 09 December 2011, available at http://www.rte.ie/news/2011/1209/budget.html and 'Budget Cuts Will Shut Community Employment Schemes, Close Local Resource Centres' available at http://www.ictu.ie/press/2011/12/07/budget-cuts-will-shut-community-employment-schemes-close-local-resource-centres/ (last accessed 12 December 2011).

5. Reintegration and Poverty Following Imprisonment

The focus thus far has been on how social exclusion and disadvantage in their many forms can lead to crime and imprisonment. The following section outlines the importance of reintegration, pre-release and post-release services, not only for the wellbeing of the individual prisoner but also for the community as a whole.[61]

5.1 REINTEGRATION

Re-integrating ex-offenders into the community is an important step in breaking the cycle between crime, poverty, homelessness and imprisonment.

The lack of pre-release and post-release services in relation to housing, employment and general everyday living directly contributes to recidivism. In Ireland just under 30% of former prisoners re-offend within one year and 49.2% will re-offend within 4 years.[62] This rate is high by global standards: in a 2008 study O'Donnell noted that Irish prisoners were among the most likely to re-offend in the world.[63]

IPRT has recommended that temporary release should be used as a structured tool to facilitate successful reintegration.[64] However, prisoners are often given very little notice before they are released, leaving them insufficient time to find somewhere to stay. Information about social welfare and entitlements is a key factor in the reintegration of offenders.[65]

Prisoners who are not adequately prepared for release or provided with rehabilitative services and supports may not be able to reintegrate back into society, and McCann (2003) suggests that high recidivism rates (see Section 4.3) indicate that the IPS is struggling in its mission to support offenders to lead crime-free lives.[66] Prisoners who are unable to adjust to life outside prison may then face recidivism and further imprisonment, pushing the cycle onward.

Re-integrating ex-offenders into the community is an important step in breaking the cycle between crime, poverty, homelessness and imprisonment. IPRT calls for an improvement in the provision of advice and rehabilitative supports in prison so that prisoners are better equipped to reintegrate into society upon release.

In particular, IPRT calls on the Irish Prison Service to adequately resource Integrated Sentence Management (ISM) for *all* categories of prisoners in all prisons during 2012. ISM should not be simply a "paper" exercise. As part of ISM, prisoners should be adequately prepared for their release, receiving assistance with accommodation, mental health and/or addiction supports, training and work in the community where necessary.

61 See IPRT *'It's Like Stepping on a Landmine…' Reintegration of Prisoners in Ireland* (2010) p. 12.

62 O'Donnell, I., Baumer, E., Hughes, N. 'Recidivism in the Republic of Ireland' *Criminology and Criminal Justice*, (2008) 8, p. 123.

63 Ibid.

64 IPRT *'It's Like Stepping on a Landmine…' Reintegration of Prisoners in Ireland* (2010), p. 12.

65 Ibid. See also National Economic and Social Forum *Reintegration of Prisoners, Forum Report No. 22.* (2002), (Dublin: Government Publications Office).

66 McCann, L. *Prison and Homelessness: From a cell to the street* (2003), Council for Research and Development: A Commission of the Irish Bishops' Conference November 2003.

5.2 HOMELESSNESS AND CRIME

The relationship between homelessness and crime is multifaceted. For some individuals being homeless leads to crime which in turn leads to imprisonment, whereas for others, being released from prison leads directly to homelessness.[67] Many of those imprisoned after a period of homelessness are imprisoned for crimes associated with their poverty and lack of stable accommodation such as vagrancy, theft and drug offences.[68]

Homelessness is a significant risk on release from prison and makes reintegration impossible. 39% of participants in a Focus Ireland study identified homelessness as a direct factor that led them to re-offending.[69] Lack of housing results in a lack of stability and this makes it extremely difficult to engage in education, work or training, or to re-integrate into society in any meaningful sense.[70] Many programmes for former prisoners require secure accommodation because it is viewed as necessary for being able to engage with services.[71]

Others may face homelessness after release from prison as they may have lost local authority housing or had family or other relationships break down while they were incarcerated.[72] It is very difficult to obtain exact figures on the number of people facing homelessness when leaving prison, however. This is because of the chronic underreporting due to fears of stigmatisation, as well as the characteristically chaotic lives of those without stable accommodation who may drift in and out of homelessness.[73] A Focus Ireland and PACE study provides some insight as 61% of prisoners identified housing to be the main difficulty they faced when leaving prison. This is acknowledged in the Government Homeless Prevention Strategy (2002):

> *Time in prison at any point in a person's life can increase his or her chances of homelessness, while being discharged from prison can be one of the triggers that lead directly to homelessness. People who are homeless or insecurely housed before prison, people who lack personal and family support and people with substance misuse problems are at the greatest risk.*[74]

Homelessness is another strand in the wider matrix of social exclusion and crime and requires a fundamental change in housing policy and reintegration strategy to break both the pathway from homelessness to prison and from prison to homelessness.

Funding, including by means of Social Impact Bonds, should be made available for regional residential supported housing projects for people who were imprisoned for long periods and have no family supports. Supported housing and a positive environment would help such vulnerable ex-prisoners to make choices for the future and aid their transition to positively reintegrate into the wider community.

67 Hickey, C. *Crime and Homelessness* (2002) (Dublin: Focus Ireland and PACE).

68 *Ibid.* 62% of those in the study claimed that they committed crime in order to survive on the streets.

69 Hickey, C. *Crime and Homelessness* (2002) (Dublin: Focus Ireland and PACE), p. 23.

70 McCann, L. *Prison and Homelessness: From a cell to the street* (2003), Council for Research and Development: A Commission of the Irish Bishops' Conference November 2003.

71 The Bridge Project for example specifies that participants must have stable accommodation to engage with the programme. The Project is an intensive probation programme based in Dublin. It aims to prevent re-offending through a demanding community based programme aimed at reducing criminal behaviour and enabling re-integration of offenders. It is funded by Probation and Welfare Service, the city of Dublin VEC and the Irish Youth Foundation.

72 McCann, L. *Prison and Homelessness: From a cell to the street* (2003), Council for Research and Development: A Commission of the Irish Bishops' Conference November 2003.

73 Seymour, M. 'Homeless Offenders in the Community: The Issues and Challenges for Probation Supervision', *Irish Probation Journal*, 1, (2004), pp. 3–13.

74 Department of Environment and Local Government, *Homeless Preventative Strategy* (2002).

5.3 THE NEED FOR SPENT CONVICTIONS LEGISLATION

Ireland is one of the few jurisdictions in Europe that still do not have legislation providing for the expungement of criminal convictions. IPRT has repeatedly emphasised that individuals convicted of a criminal offence continue to face barriers to employment, training, education and insurance in the absence of such legislation.[75] Although the proposed legislation is unlikely to apply for up to 4 years post-release, and then only for people with sentences of less than 12 months imprisonment, the introduction of spent convictions legislation even in this restricted form is vital to support less serious offenders in their successful reintegration into the community.

The Government had committed in its Programme of Legislation to publishing a new Spent Convictions Bill by July 2011, but drafting difficulties surrounding the fixing of the maximum applicable sentence length and excluded categories of employment have delayed publication of the Government Bill.

IPRT calls on the Government and members of the Oireachtas to take the opportunity presented by the proposed Spent Convictions Bill to ensure that an effective legal framework is put in place, and to ensure that the Bill progresses through the necessary stages of the legislative process by early 2012.

In particular, a presumption should apply that all convicted persons should be able to avail of the spent convictions scheme, save for the most serious offences. IPRT calls for the new Bill to cover sentences of up to 30 months, as is the case in the UK. Also, categories of employment and training where candidates would be required to disclose spent convictions should be drawn narrowly and apply only where a direct link can be shown between the offence committed and category of employment or training sought (relevance of criminal conviction), or where there is a need to protect children or vulnerable adults.

75 *IPRT Briefing on Spent Convictions* (2011).

6. Shifting the Focus

6.1 PREVENTION AND EARLY INTERVENTION

In 2008 the Department of Justice, Equality and Law Reform called for an increased emphasis to be placed on preventative measures and early interventions "*which should form a key component of any youth justice system.*" Prevention and early intervention through the provision of supports and services to children, families and communities are well recognised as important steps to preventing crime and breaking the cycle of poverty, crime and imprisonment.[76] The National Crime Strategy 2002 recognised that:

> *Early intervention should be a fundamental principle and a key target of all crime prevention strategies.*[77]

For it to be effective, intervention must begin at an early stage in childhood rather that at the stage where a child or adult comes into conflict with the law. Investment must be targeted at the social and economic factors that prompt vulnerable people to engage in criminal behaviour.

Criminal law and criminal justice agencies *must* function – and be widely regarded as functioning – to protect the interests of *all* members of society, not just its middle class citizens.[78] To reduce traditional street crime such as theft, criminal damage or the possession and sale of drugs, policy-makers and criminal justice agencies should invest more energy and resources into tackling the intergenerational deprivation and disadvantage that plague communities most affected by crime. An increased effort must be made to break the cycle of disadvantage so as to steer young people from lives of crime in the first place.

Early intervention and prevention schemes should be prioritised and receive greater investment.[79] Unlike prison, early intervention and prevention innovations have been proven to yield positive results in reducing offending.[80]

It is now well accepted in the United States that investment in quality preschool education produces multiple returns on investment, particularly in reducing crime outcomes.[81] The Washington State Institute for Public Policy found that investing just $600 in providing early childhood education to the most disadvantaged communities saves society on average $15,000 per child in lower future crime rates.[82] The same study found that spending $2,400 in supports and interventions for the families of young offenders can save the taxpayer almost $50,000 in the longer term by reducing reoffending among that group.[83]

In relation to those children at risk of school exclusion and being drawn into crime, recent cost-benefit analysis in the UK demonstrates that while the average cost to the taxpayer of having a young person in the criminal justice system is £200,000 by the age of 16, less than £50,000 is needed to support a young person to stay out of the system.[84]

During the Seanad debate on the *Criminal Justice (Community Service) No. 2 Bill, 2011* in June 2011, Senator Rónán Mullen stated that one of the main features of deprived communities:

> *is the lack of buy-in by the population into the society in which they live. In large measure, people who do not feel part of the mainstream of Irish society believe they are always at a disadvantage and even though the State often invests an enormous amount of resources in those areas, the reality is often that everything is decided for the population, and the people have very little input into decisions such as the design of houses and estates and the provision of community facilities and services.*[85]

76 Murphy, C., *From Justice to Welfare – The Case for Investment in Prevention and Early Intervention* (2010).

77 National Crime Council *Tackling the Underlying Causes of Crime: A Partnership Approach. A Consultation Paper* (2002) (Dublin: Stationary Office).

78 See *White Paper on Crime IPRT Response to Discussion Document 4 The Community and the Criminal Justice System* 2011, pp.7–10.

79 Murphy, C., *From Justice to Welfare – The Case for Investment in Prevention and Early Intervention* (2010).

80 IPRT, *Budget 2011, Spending Cuts and Crime Implications*, 2010.

81 Schweinhart, L. 'Investment in Quality Early Years Provision: Antipoverty and Economic Perspectives', p. 3. This marks a higher return per dollar invested than previously indicated by the High/Scope Perry Pre-school Study, which found that the estimated return to society of investment in preschool education per child (economic return by the age of 40) was $12.90 per dollar invested. Schweinhart, L.J., Montie, J., Xiang, Z., Barnett, W.s., Belfield, C.R. & Nores, M. (2005) *Lifetime Effects: The High/Scope Perry Preschool Study Through Age 40* (Ypsilanti, MI: High/Scope Press), cited by Irish Penal Reform Trust in 'Shifting Focus: From Criminal Justice to Social Justice'.

82 Elizabeth K. Drake, Steve Aos, and Marna G. Miller, *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, April 2009.

83 Ibid.

84 *Home Affairs Committee – Tenth Report: The Government's Approach to Crime Prevention*, March 2010.

85 *Criminal Justice (Community Service) No. 2 Bill, 2011*, Seanad Éireann Debate, 26 July 2011, *Vol. 209 No. 13*, p. 13 at http://debates.oireachtas.ie/seanad/2011/07/26/00013.asp (last accessed 12 December 2011).

If large groups of people do not 'buy in' to mainstream Irish society owing to deeply-entrenched feelings of detachment or exclusion from it, then they cannot be expected to have the same respect for the laws of that society as people with more of a vested interest in society and its laws. If significant numbers of people in any given community do not believe that the criminal law is there to protect them and their interests as much as the privileged and powerful people in society, the group will not be as likely to view the law's violation with the same seriousness. Unless and until the State takes meaningful steps to combat marginalisation, poverty and educational disadvantage in certain communities – enabling inhabitants to 'buy in' to the goals and aspirations of society at large – street crime rates are unlikely to decline in any significant way.

If the State makes inroads in generating this 'buy in' and loyalty to society, this all-important sense of inclusion, of self-respect and respect for others, of hope for a better future – particularly in the very young – would do more to decrease crime than stiffer sentences and building more prison places could ever hope to achieve. At a preventative level potentially effective measures include education,[86] community services and programmes,[87] drug treatment[88] and mental health services. Further to this, investment in alternatives to custody,[89] community based policing[90], community sanctions and open prisons[91] would also help to break the cycle of poverty, crime and imprisonment. A policy which shifts its focus from punitive imprisonment, at massive social and economic cost, to a more evidence based prevention and early intervention model is therefore required.

IPRT calls for a strategy to tackle social exclusion through prevention and early intervention and a move away from the expensive, punitive emphasis on the punishment and imprisonment of socially excluded members of society that has characterised Ireland's penal policy and reality up to now.

86 Educational disadvantage is very often associated with offending and imprisonment (poor literacy levels, early school leavers. Investment must begin at pre-school and continue throughout education. See IPRT *Budget 2011, Spending Cuts and Crime Implications* (2010).

87 Building communities has been highlighted by IPRT as a way to support crime prevention. It involves the investment in services and community organisations which provide services and supports to individuals, families and communities. In places such as Glasgow investment in community initiatives has had almost immediate success in reducing gang and knife crime for example. See *Community Initiative for Reducing Violence Second Annual Report* 2011.

88 Most offending is drug and alcohol related, yet there is only one, relatively small, Drug Court in operation in Dublin and little infrastructural support for those with addiction problems who come into the criminal justice system. IPRT will be conducting in-depth research into drug-related issues in 2012.

89 Community Service and Youth Diversion programmes are effective ways of reducing imprisonment and preventing further offending. The costs of community service are significantly less than imprisonment also. See the Probation Service, *Value for Money and Policy Review of the Community Service Scheme* (2009) for more detail.

90 Where properly resourced community policing can be quite successful in reducing crime rates and improving quality of life for communities where crime rates are high. See Mulcahy and O'Mahony *Policing and Social Marginalisation in Ireland* (2005), Combat Poverty Agency. See also Garda Inspectorate *Policing in Ireland: Looking forward* (2007).

91 Open prisons help to prevent the institutionalisation of people in prison. They help to maintain community and family links and also aid reintegration into the community at the end of a long prison sentence. Open prisons are also generally significantly cheaper than closed facilities. According to the Irish Prison Service Annual Report 2009, the cost of an open prison space in 2009 was stated by the IPS as €50,521, while the cost of a space in closed prison amounted to €79,307 for the same period.

7. Summary and Recommendations

This Position Paper has endeavoured to paint a clear picture of the interwoven nature of social exclusion and crime by drawing attention to the social profile of prisoners; the criminal law's targeting of marginalised groups; the uneven application of the law to different socio-economic groups; the causes of crime; issues of reintegration and poverty following imprisonment and the urgent need to shift the focus of public policy to investment in crime prevention and early intervention instead of wasting its energy and resources on punitive criminal justice policies.

1. **IPRT calls on the government to commit funds to conducting studies at regular intervals into the profile of offenders, which IPRT believes will show a demonstrable link between crime and poverty.**

2. **IPRT welcomes the recent decline in imprisonment for non-payment of debt, and calls for the cessation of the practice.**

3. **IPRT calls on the Government to make the necessary funding available to ensure that the Courts IT system is upgraded within 12 months to ensure that the *Fines Act 2010* is fully commenced without any further delay.**

4. **In the meantime, IPRT calls on the Minister for Justice, Equality and Defence to end imprisonment for fine default, as promised in the Programme for Government, and to consider any means, including the introduction of a legislative amendment, to ensure that no person will be imprisoned for fine default until the necessary modifications have been made to the Courts IT to allow the payment of fines by instalment.**

5. **IPRT calls for the repeal of the Criminal Justice (Public Order) Act 2011 on the basis that it unduly penalises the most vulnerable members of society.**

6. **There is a need to link statistical information across State administrative data holdings (e.g. Central Statistics Office, Irish Prison Service, the Courts, the Gardaí, Department of Health etc.) and to improve the quality of and access to data for researchers. All criminal justice agency websites should be updated regularly, have fully functioning links and contain all key statistics, policy documents and strategies.**

7. **While deprived communities experiencing higher than average crime rates may necessarily be subject to greater Garda surveillance and patrols than other communities, IPRT recommends that community policing should focus on building and maintaining trust, by being as demonstrably committed to serving and protecting the relevant community as it is to cracking down on any crime and anti-social behaviour detected.**

8. **IPRT is of the view that the criminal justice system should endeavour to treat all transgressors in an equitable manner. This means that the crimes of the rich as well as the poor be investigated, prosecuted and punished with equal vigour. Imprisonment should be the last resort for all categories of offender and not just those who come from the more privileged sections of society.**

9. **While the State is bound to implement certain austerity measures to stabilise the Irish economy in the longer term, IPRT nonetheless calls on the Government to safeguard future investment in certain targeted areas of spending in order to reduce deprivation, crime and imprisonment. Effective delivery of key services such as health and education would ensure that all children enjoy access to essential supports and services. This is the most effective long-term strategy for addressing the marginalisation and inequality associated with higher rates of offending.**

10. **Re-integrating ex-offenders into the community is an important step in breaking the cycle between crime, poverty, homelessness and imprisonment. IPRT calls for an improvement in the provision of advice and rehabilitative supports in prison so that prisoners are better equipped to reintegrate into society upon release.**

11. **In particular, IPRT calls on the Irish Prison Service to adequately resource Integrated Sentence Management (ISM) for *all* categories of prisoners in all prisons during 2012. ISM should not be simply a "paper" exercise. As part of ISM, prisoners should be adequately prepared for their release, receiving assistance with accommodation, mental health and/or addiction supports, training and work in the community where necessary.**

12. **Funding, including by means of Social Impact Bonds, should be made available for regional residential supported housing projects for people who were imprisoned for long periods and have no family supports. Supported housing and a positive environment would help such vulnerable ex-prisoners to make choices for the future and aid their transition to positively reintegrate into the wider community.**

13. **IPRT calls on the Government and members of the Oireachtas to take the opportunity presented by the proposed Spent Convictions Bill to ensure that an effective legal framework is put in place, and to ensure that the Bill progresses through the necessary stages of the legislative process by early 2012.**

14. **In particular, a presumption should apply that all convicted persons should be able to avail of the spent convictions scheme, save for the most serious offences. IPRT calls for the new Bill to cover sentences of up to 30 months, as is the case in the UK. Also, categories of employment and training where candidates would be required to disclose spent convictions should be drawn narrowly and apply only where a direct link can be shown between the offence committed and category of employment or training sought (relevance of criminal conviction), or where there is a need to protect children or vulnerable adults.**

15. **IPRT calls for a strategy to tackle social exclusion through prevention and early intervention and a move away from the expensive, punitive emphasis on the punishment and imprisonment of socially excluded members of society that has characterised Ireland's penal policy and reality up to now.**

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