



IPRT
Irish Penal Reform Trust

IPRT Position Paper 11
Bail and Remand

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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 on sentencing law and practice in Ireland. This is one in a series of Position Papers, which underpin the work of the IPRT.

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This Position Paper examines both the adult and juvenile schemes relating to bail and remand in Ireland,¹ and examines the special rights which apply to people detained on remand in prison.

IPRT believes any reform of domestic bail law² requires careful consideration of applicable due process principles, constitutional implications and international human rights obligations, both universal and regional. The paper should be read alongside the IPRT Submission on General Scheme of the Bail Bill 2015 (Sept 2015).

Introduction

The percentage of adult pre-trial detainees in Ireland has fluctuated between 13-15% of the daily prison population over the last 15 years.³ While pre-trial detention has an important part to play in some criminal proceedings in ensuring that certain defendants will be brought to trial, unjustified and excessive pre-trial detention impacts on the right to liberty and the presumption of innocence.⁴ An accused person who is remanded in custody may find it more difficult to adequately prepare his or her defence.⁵ Additionally, where it is used excessively this results in considerable social and economic cost to the State. The loss of liberty brings with it loss of contact with family and community. It also takes the accused person out of the workplace with the consequent impact on earnings. Exposure to prison itself is damaging to offenders and makes people more likely to re-offend, not less likely. Overuse of pre-trial detention is a symptom of a dysfunctional criminal justice system, which places increasing strain on prisons while at the same time reducing institutional capacity to focus on rehabilitation. For all of these reasons, international human rights standards including the European Convention on Human Rights (ECHR) require that pre-trial detention is used as an exceptional measure of last resort.⁶

This Position Paper is based on the principle that remanding people in custody before trial constitutes a deprivation of liberty which should be only used as a last resort. The document summarises the relevant domestic and international law relating to pre-trial detention, and identifies issues associated with the overuse of bail conditions as an alternative to pre-trial detention. The paper strongly advocates the development of much-needed bail supports and services, including community-based bail hostels, to improve compliance with bail conditions. Such schemes can be particularly effective for women and children accused of minor offences, for whom detention on remand is currently overused.

For those accused persons for whom pre-trial detention is deemed necessary by the Courts, certain rights apply in addition to those of sentenced prisoners relating to accommodation, access to private health care, and more frequent visits. The paper identifies current issues around accessing these rights, and advocates for the development and implementation by the Irish Prison Service of a specific strategy for remand prisoners.

1. The terms 'remand' and 'remand in custody' refer to prisoners who are untried and un-convicted. See Prison Rules 2007, Rule 35(3), Rule 73 and Rule 74; Irish Prison Service Annual Report 2011, p. 21 available at <http://www.irishprisons.ie/images/pdf/annualreport11.pdf>.

2. See The General Scheme of the Bail Bill 2015 published on 23 July 2015, available at http://www.justice.ie/en/JELR/GS_BailBill072015.pdf/Files/GS_BailBill072015.pdf

3. See: <http://www.prisonstudies.org/country/ireland-republic>

4. Human Rights Committee, Concluding Observations: Argentina, CCPR/CO/70/ARG 2000, para 10

5. Criminal Law, 3rd Ed, Roundhall, Cecilia Ní Choileáin, 2013, p. 20

6. United Nations Minimum Rules of Non-Custodial measures, Principle 6.1

2. Overview of the right to liberty

Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which protects the right to liberty provides that “*anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power*” and that person shall be entitled to trial within a reasonable time or to release. Significantly, in relation to pre-trial detention, the ICCPR expressly provides that “*it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement*”. General Comment No.35 of the UN Human Rights Committee notes that Article 9 ICCPR protects against arbitrary detention and unlawful detention with the concept of “arbitrariness” to be interpreted as including “*elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality*”.⁷

Similarly, Article 5 of the European Convention on Human Rights provides that no one shall be deprived of his liberty save in specified cases and in accordance with a procedure prescribed by law, including where the accused is brought before a court where there is a “*reasonable suspicion*” he committed an offence or “*when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so*”. Anyone deprived of liberty under the exceptions set out in Article 5 “*shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful*”.⁸

The European Court of Human Rights (ECtHR) has developed general principles on the implementation of Article 5:

i. Pre-trial detention should only be imposed **only as an exceptional measure**. There is a **presumption in favour of release**.⁹ The Court has stated that -

*“detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it also must be necessary in the circumstances.”*¹⁰

ii. The state bears the burden of proof to demonstrate that a less intrusive alternative to detention would not serve the respective purpose.¹¹ The **authorities must consider measures to counteract any risks**, such as requiring a financial security to be lodged or court supervision.¹²

iii. To justify the detention of a person who is presumed innocent, there must be “*a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty*”.¹³ **Mandatory detention on remand is incompatible with Article 5(3)** of the Convention.¹⁴

7. ICCPR Human Rights Committee, General Comment No. 35, Article 9 (Liberty and Security of Person) para 12, December 2014

8. Article 5(4) ECHR.

9. *Michalko v. Slovakia*, App 35377/05, 21 December 2010, para 145.

10. *Ambruszkiewicz v Poland*

11. *Ilijkov v Bulgaria*, App 33977/96, 26 July 2001, para 85.

12. *Tomasi v France* (1992) 15 EHRR 1. See also *Neumeister* 1 EHRR 91.

13. *Ilijkov v Bulgaria* (2001).

14. *Caballero v UK* (2000) 30 EHRR 693.

iv. ECHR case law recognises that there are lawful grounds for ordering pre-trial detention, namely:

- (1) the risk that the suspect will fail to appear for trial;¹⁵
- (2) the risk the suspect will spoil evidence or intimidate witnesses;¹⁶
- (3) the risk that the suspect will commit further offences;¹⁷
- (4) the risk that the release will cause public disorder;¹⁸ or
- (5) the need to protect the safety of a person under investigation in exceptional cases.¹⁹

However, the individual should only be detained if one of these grounds applies *and a condition of bail could not mitigate the risk in question*.

v. The detention decision must be sufficiently reasoned and should not use “stereotyped”²⁰ forms of words. The arguments for and against pre-trial detention must not be “general and abstract”.²¹ The court must engage with the reasons for pre-trial detention and for dismissing the application for release.²²

vi. The authorities must exercise “**special diligence**” throughout detention on remand. It is not enough for them to have demonstrated that one of the risks set out above exists and cannot be reduced by any bail condition. They must then act expeditiously from the day the accused is placed in custody until the day the charge is determined.²³

vii. The **mere fact of having committed an offence is not a sufficient reason for ordering pre-trial detention**, no matter how serious the offence and the strength of the evidence against the suspect.²⁴

viii. The risk of reoffending can only justify pre-trial detention if there is actual evidence of the definite risk of reoffending available.²⁵

ix. In reviewing pre-trial detention the authorities are obliged to consider whether the “*accused’s continued detention is indispensable*”.²⁶

15 *Smirnova v Russia*, App 46133/99, 48183/99, 24 July 2003, para 59.

16 *Ibid.*

17 *Muller v. France*, App 21802/93, 17 March 1997, para 44.

18 *I.A. v. France*, App 28213/95, 23 September 1988, para 104.

19 *Ibid.*, para 108.

20 *Yagci and Sargin v Turkey*, App 16419/90, 16426/90, 8 June 1995, para 52.

21 *Smirnova v Russia*, App 46133/99, 48183/99, 24 July 2003, para 63.

22 *Buzadj v. Moldova*, App 23755/07, 16 December 2014, para 3.

23 *Kalashnikov v Russia* 36 EHRR 587.

24 *Tomasi v France*, App 12850/87, 27 August 1992, para 102.

25 *Matznetter v Austria*, App 2178/64, 10 November 1969, para 1.

26 *Ibid.*, para 79.

3. Legal framework governing bail in Ireland

There is no express presumption in favour of granting pre-trial bail to an adult in Ireland, however the decided leading case law²⁷ suggests that it is only in cases of necessity that people should be denied bail. Bail in Ireland is governed by common law, the Constitution, and by statute law, most notably the *Criminal Procedure Act 1967* and the *Bail Act 1997*, as amended.²⁸ Although the presumption of innocence is not explicitly stated in the Irish Constitution, it is an un-enumerated personal right under Article 40 of the Constitution²⁹ and is also implicit in the requirement of Article 38.1 that “no person shall be tried on any criminal charge save in due course of law”.³⁰

Article 6(2) of the European Convention of Human Rights (ECHR) provides that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”. Since the incorporation of the ECHR into Irish law by the *European Convention on Human Rights Act 2003*, the Irish Courts must interpret the law in a way that gives effect to Ireland’s obligations under the Convention.

In *People (Attorney General) v O’Callaghan*³¹ the Supreme Court found that the sole purpose of bail was to secure the attendance of the accused at trial. Up until the mid-1990s bail could be refused under the *O’Callaghan Rules* only where there was a belief or fear that the accused would evade justice, by absconding to avoid trial or interfering with evidence or witnesses. However, in response to concerns over a perceived increase in offending by people while on bail, Article 40.4.6, the Sixteenth Amendment of the Constitution, was inserted in 1996.³² Section 2(1) of the *Bail Act 1997* gave effect to this amendment, providing that:

“Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.”

The factors considered when deciding whether to refuse bail under section 2 of the 1997 Act include the seriousness of the charge and likely sentence, the strength of the evidence, any previous convictions including convictions committed while on bail, and any other pending charges.³³ The court may also take into account the fact that the accused person is addicted to a controlled substance under the *Misuse of Drugs Act 1977*.

In Ireland there is no statutory maximum duration of remand detention, which risks people “being detained on bail for longer than the maximum sentence, and remand being used in lieu of short sentences.”³⁴ The only stipulation is that individuals may not be detained for longer than 30 days between court appearances.³⁵ Section 3 of the *Bail Act 1997* provides that where a person has been

27 *People (Attorney General) v O’Callaghan* [1966] 1 IR 501: “From time to time necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases “necessity” is the operative test”

28 The *Bail Act 1997* has been amended by the *Children Act 2001*, the *Courts and Court Officers Act 2002*, the *Criminal Justice Act 2007*; and by the *Criminal Justice Miscellaneous Provisions Act 2009*.

29 *People (Attorney General) v O’Callaghan* [1966] 1 IR 501.

30 See Bunreacht na hEireann available at http://www.constitution.org/cons/ireland/constitution_ireland-en.htm

31 [1966] IR 501

32 Article 40.4.6 states that “Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.

33 See section 2(2) of the *Bail Act 1997*.

34 See *IPRT Discussion Document on the Rights and Needs of Remand Detainees* July 2013, pp. 4-5.

35 See section 24 of the *Criminal Procedure Act, 1967* detention on remand may only be ordered for 8 days at the first pre-trial detention hearing. Thereafter, it may be extended for 15 days, or up to 30 days with the consent of the defendant and prosecutor. At each of these

refused bail under section 2 and the trial for the offence has not commenced within 4 months from the date of refusal, the person can apply to the court for bail on the basis of delay by the prosecutor, such as delay in serving the Book of Evidence. Under section 3 the Court can release the person on bail if satisfied that the interests of justice so require.

Later legal changes to the bail framework include section 6 of the *Criminal Justice Act, 2007*, which obliges the accused person to supply a personal statement as a precondition to bail for serious offences.³⁶ Section 7 of the same Act permits so-called “*belief*” evidence, for example about a person’s membership of a criminal gang, from specified high-ranking members of An Garda Síochána to bolster a section 2 objection regarding the likelihood of future offending if granted bail.³⁷ In their *Observations on the Criminal Justice Bill 2007* the Irish Human Rights Commission found that this approach “modifies the general rule on the admissibility of opinion evidence and gives evidential status to an expression of opinion.”³⁸

Plans announced in 2015 to introduce new bail legislation are a largely welcome development, constituting a comprehensive restatement and consolidation of existing Irish law on Bail.³⁹ Among the recommendations made by IPRT in a formal submission on the legislation⁴⁰ is that all bail and remand decisions where imprisonment is imposed should be recorded in writing,⁴¹ creating an official record of the reasons behind the decision. In terms of improving accountability and transparency around judicial decision-making in the bail context, IPRT recommends that all decisions should be recorded in writing *as a matter of course*, and not only on request from the defence or the prosecution.

Recommendations:

- **The general principle of imprisonment as a last resort (both pre- and post-trial) should be enshrined in legislation.**
- **Where a judge believes an accused may commit further offences, he or she should strongly consider granting bail with tailored conditions that effectively address or mitigate any identified risks, before taking a decision to remand a person in custody.**
- **A provision should be introduced into law requiring bail decisions to be recorded in writing at all times. If this proposal is considered unworkable within the current capacity and resources available to the courts, a compromise position might be the use of digital audio recording (DAR) within the minimum of formality and at no additional cost to the applicant.**

court appearances, a defendant may raise the issue of bail afresh, so the issue of ongoing pre-trial detention may be reviewed on a regular basis.

36 See *IPRT Preliminary Submission on General Scheme of the Bail Bill August 2015* at p. 5, where IPRT recommended “that the Committee critically examine the relevance and purpose of the obligation to provide a personal statement and the implications of such a requirement on continuing detention for the defendant.”

37 This provision is restated in Head 29 (Evidence in applications for bail under Head 27) of the *General Scheme of the Bail Bill, 2015*. See also *IPRT Preliminary Submission on General Scheme of the Bail Bill August 2015*, at pp. 9 and 10.

38 See IHRC, *Observations on the Criminal Justice Bill 2007*, pp. 16-20.

39 On the 23rd July 2015, the Minister for Justice and Equality, Deputy Frances Fitzgerald unveiled the *General Scheme of the Bail Bill 2015*.

40 See *IPRT Submission on General Scheme of the Bail Bill 2015*, 1 Sept 2015, available at: <http://www.iprt.ie/contents/2778>

41 See for example, *IPRT Briefing Paper on Criminal Justice (Community Service) (No. 2) Bill 2011*, available at http://www.iprt.ie/files/IPRT_Briefing_on_CS0_Bill_2011_%28Second_Stage%29_22_March_20112.pdf At para. 3 IPRT argued 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.”

4. Bail conditions

In terms of the ‘proportionality’ in decision-making, the ECtHR has ruled that less severe alternatives should be considered before remanding an accused in custody.⁴² Being released on bail is *the* alternative to pre-trial detention in Ireland. However, release on court bail is usually subject to a substantial number of conditions as a matter of course.⁴³ Empirical research by IPRT has found that while Irish judges consider alternatives to detention, and indeed opt to impose bail with conditions where they believe conditions can meet the risk posed (e.g. relating to failure to appear, witness intimidation, the possibility of future offending etc.) *unconditional bail was not granted in any case observed or reviewed during the research which IPRT conducted in 2015.*⁴⁴

IPRT recommends that greater consideration should be given to granting unconditional bail where there is no objection to bail, or where the objections raised are weak. Even where there are strong objections well made by the Prosecution, a judge should not adopt a ‘pro forma’ approach to bail conditions, imposing a long list of conditions on everyone they release on bail. Onerous conditions should be reserved for those who are flight risks or who pose a significant threat to society.

Much like the individualised approach that judges take to sentencing, an individualised approach should always be adopted towards bail, tailoring the conditions to the circumstances of the accused, the offences with which they are charged and the objections that were raised. The Monitoring Committee of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has also urged State Parties to ensure that “*the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner appropriate to the situation of persons in vulnerable groups, who are often in straitened economic circumstances, so as to prevent the requirement from leading to discrimination against such persons*”.⁴⁵

Recommendations:

- **Where conditions are attached to bail, judges should adopt an individualised approach, taking into account the circumstances of the accused, the offence(s) charged and the objections raised, and only attach such conditions as are strictly necessary and proportionate to meet said objection(s). Accused persons should be informed by the Court why each condition is necessary and proportionate, as well as the consequences of any breach.**
- **In bail applications where the accused has alcohol or drug addiction issues, any bail conditions requiring the accused to abstain from drink or drugs are highly likely to be breached and, therefore, IPRT cautions against imposing what may amount to impossible conditions.**

⁴² *Ladent v Poland*, App 11036/03, 18 March 2008, para 55.

⁴³ Section 6 of the *Bail Act 1997* provides for conditions that may be attached to release on bail, including a residence condition, reporting requirement to a Garda Station, and stay away orders from certain locations or people.

⁴⁴ Research undertaken by IPRT for Fair Trials International as part of an EU-Commission funded project. However it should be noted that that research did not examine station bail decisions where unconditional bail may be more common. See: www.iprt.ie

⁴⁵ Committee on the Elimination of Racial Discrimination, General Recommendation XXXI, para 26

5. The case for bail supports

The most effective way to improve compliance with bail conditions, particularly where the accused person has a chaotic life and complex personal challenges, lies in the provision of bail supports and services that allow the accused to remain within his or her community, and address offending-related behaviour in a familiar environment.⁴⁶ Examples of bail supports include bail information schemes, bail support/supervision schemes, remand fostering, bail hostels, and bail reviews on custodial remand.⁴⁷

In the absence of such bail supports, there is increased risk that bail law may be misapplied to grant respite to communities, or in an effort to offer interventions such as drug treatment or mental health support, or because the accused may find it difficult, without support, to adhere to bail conditions that may be imposed.⁴⁸ Bail supports aim to prevent offending on bail, ensure appearance at court⁴⁹ and reduce remands to custody to the essential minimum.⁵⁰ They are particularly effective in reducing use of remand of young people,⁵¹ women,⁵² and those with addictions or mental illness, personal difficulties or unstable lifestyle.

Scottish research on supervised bail has found that assistance with offending-related difficulties is of benefit even after the remand period,⁵³ including positive change in behaviour over time, a desire to avoid trouble or jail, learning to avoid conflict situations, and refraining from drinking or taking drugs.⁵⁴ Bail supports and services also have been demonstrated to be successful in **ensuring that young people in particular attend court**. An evaluation of schemes in England and Wales found that young people attended all court hearings in 94% of programmes,⁵⁵ while in Ontario, Canada, 81% of bail supervision programme clients attended all of their court appearances.⁵⁶

Bail supports have also been shown to be effective in reducing the number of remands to custody, with a direct correlation between an increase in the use of bail supports and services and **a decrease in the number of young people being remanded in custody**.⁵⁷ In Victoria, Australia, a bail support programme contributed to reducing the number of defendants remanded: all interviewed magistrates said that they would have had recourse to remand were it not for the programme.⁵⁸ Data for bail

46 See Buist, M. and Asquith, S. (2002). 'Juvenile crime and justice in Scotland' in N. Bala et al eds. *Juvenile Justice Systems: An International Comparison of Problems and Solutions* (Toronto: Thompson Educational Publishing), pp. 107-133.

47 Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 3.

48 See Section 6(b) of the *Bail Act 1997*, where examples of bail conditions are listed.

49 See Indigenous Justice Clearinghouse, *Bail Support in Australia*, (2008) which gives an account of a useful technical innovation at Moree Local Court, namely a text messaging service provided by the Aboriginal Client Service Specialist, aimed at improving court attendance.

50 Bail Support Policy and Dissemination Unit, *Guide to the National Standards for Bail Supervision and Support Schemes* (2001), at p. 9.

51 See IPRT Report *Turnaround Youth*, 2015 <http://www.iprt.ie/files/IPRT-Turnaround-web-optimised.pdf>

52 See IPRT Position Paper: *Women in the Criminal Justice System*, 2013 http://www.iprt.ie/files/IPRT_Position_Paper_on_Women_in_the_Criminal_Justice_System.pdf

53 Freeman, 'The Experience of Young People Remanded in Custody: A Case for Bail Support and Supervision Schemes' (2008) 5 *Irish Probation Journal*, pp. 91-102.

54 Scottish Government Social Research, *Supervised Bail in Scotland: Research on Use and Impact* (2012), at p. 14.

55 Youth Justice Board for England and Wales, *National Evaluation of the Bail Supervision and Support Schemes Funded by the Youth Justice Board for England and Wales from April 1999 to March 2002* (2005).

56 Department of Justice, Canada, *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*.

57 Youth Justice Board for England and Wales, *National Evaluation of the Bail Supervision and Support Schemes Funded by the Youth Justice Board for England and Wales from April 1999 to March 2002* (2005).

58 Department of Justice, Victoria, Australia, *Bail Support Programme Evaluation* (2003, 2008).

supervision services in Scotland also shows that 80% of those completing their bail supervision period did not receive a custodial sentence, strongly suggesting that the service fulfilled its aim of restricting the use of custody.⁵⁹

Canadian research has shown that **bail supports are more cost effective than custodial remands**. In Ontario, bail supervision and verification programmes cost approximately \$3 a day per client in comparison to custody costs of \$135 a day per inmate.⁶⁰ Similarly in Scotland, off-setting the cost of supervised bail against the reduction in prison costs relating to remand over a three-year period resulted in a net benefit of between £2 million and £13 million.⁶¹

In 2014 the average cost of an “available, staffed prison space” in an Irish prison was €68,959 or an average of €189 per prisoner per day. On an average day⁶² there are upwards from 520 remand prisoners held; it therefore currently costs the State approximately €100,000 per day, simply to house remand prisoners.

The most effective way to improve compliance with bail conditions, particularly where the accused person has a chaotic life and complex personal challenges, lies in the provision of bail supports and services which allow the accused to remain within their community, address offending-related behaviour where that is relevant, encourage attendance at court thus increasing court efficiency, decrease the number of remands and result in cost savings.

Recommendation:

- **IPRT strongly recommends an evidence-based approach to provision of bail services and supports aimed at the prevention of offending on bail, ensuring appearance at court and reducing remands to custody to the essential minimum.**

Innovations in Practice

The Staffordshire Bail Support Scheme is an “individual plan tailored to meet the needs” of 10-17 year olds at risk of being remanded into custody or to Local Authority accommodation. The programme typically offers:

- Regular contact and supervision;
- Support, information and guidance through the Court process;
- Constructive use of leisure time; assistance with education/employment;
- Support with accessing accommodation;
- Support to sustain positive family relationships;
- Assistance with accessing health services including drug/alcohol related issues;
- Support or transport for appearance at Court;
- Re-establishing the young person into mainstream services.

For more information, visit: <https://www.staffordshire.gov.uk/education/youth/helpadvice/YouthOffending/UsefulLinks/Publications/Bail-Support-Package.pdf>

59 Kirkwood and Dickie, “The Case for Bail Supervision” (2008) *Scottish Criminal Law*, pp. 264-267.

60 Department of Justice, Canada, *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*. See also Tanner, Wyatt and Yearwood, “Evaluating Pre-trial Service Programmes in North Carolina” (2008) 72(1) *Federal Probation*, pp. 18-27.

61 Scottish Government Social Research, *Supervised Bail in Scotland: Research on Use and Impact* (2012), at p.18.

62 See 16 October 2015: http://www.irishprisons.ie/images/dailynumbers/16_october_2015.pdf

6. Remand statistics

Publication of accurate, disaggregated statistics relating to crime and punishment in Ireland has traditionally been poor. There are few reliable officially published statistics on bail, custodial remand and adherence to conditions. For instance, there is no data on the average duration of pre-trial detention, the ratio of annual arrests to remand orders, the number of people granted station bail in comparison with court bail, or the number of people remanded in custody following breach of bail conditions.

On 16th October 2015, 15.3% (568 out of 3,696) of the total prison population were being held on remand pending trial.⁶³ While there has been a reduction in the numbers of people being remanded in pre-trial detention since 2010, it has occurred alongside a reduction in the numbers sentenced to imprisonment (when those imprisoned for failing to pay court-ordered fines are excluded).

Year	Total committals under sentence during year	No. of persons on remand at start of year	No. of new committals under sentence	Committals under sentence for fines default	New committals under sentence, excl. fines	New committals on remand during year	Remand committals as % of annual committals (excl. fines and immigration detention)
2014	12,853	517	12,336	8,979	3,357	3,358	50%
2013	12,489	478	12,011	8,121	3,890	3,234	45%
2012	13,526	535	12,991	8,304	4,687	3,632	43.6%
2011	12,990	648	12,342	7,514	4,828	4,546	48.4%
2010	12,487	626	11,861	6,688	5,173	4,836	48.3%
2009	10,865	639	10,226	4,806	5,420	4,519	45.4%
2008	8,043	582	7,461	2,520	4,961	5,052	50.4%
2007	6,455	740	5,715	1,335	4,380	4,967	53%

Prison committals 2007-2014

Source: Irish Prison Service Annual Reports 2007-2014

IPRT has previously called on Government, the Courts Service and the Irish Prison Service to conduct an analysis of how many people remanded in custody go on to receive a custodial sentence in order to assess the necessity of using this measure to the extent it is currently used.⁶⁴ Such an investigation should be undertaken in order to inform current and future policy formation in this complex area of law and practice.

Recommendations:

- **The Department of Justice and Equality in conjunction with An Garda Síochána, the Courts Service, the Director of Public Prosecutions, the Irish Prison Service and the Central Statistics Office should compile and publish comprehensive statistics relating to bail, with a view to enhancing knowledge and understanding of statistical trends in this complex area of law and practice.**

⁶³ See: http://www.irishprisons.ie/images/dailynumbers/16_october_2015.pdf

⁶⁴ See IPRT Position Paper 5 Penal Policy with Imprisonment as a Last Resort (2009), p. 9.

- **The Government, the Courts Service and the Irish Prison Service should conduct an analysis of how many people remanded in custody go on to receive a custodial sentence to assess the necessity of using this measure to the extent it is currently used.**

While there is a dearth of regularly published, reliable data on the issue, concerns have been expressed as to the level and frequency of offences committed while on bail, particularly in the case of serious offences. There will inevitably be limited cases where the only appropriate response, in line with legislation, will be to order pre-trial detention to prevent future commission of crime. However increased investment in close monitoring of compliance and the imposition of tailored conditions that address offending-related behaviour should go some way towards tackling this serious issue.

7. Pre-trial detention of women

Women are more likely than men to be remanded to prison for offences that would not lead to a custodial sentence.⁶⁵ This often results in serious consequences for children of imprisoned mothers. Remanding women in custody creates costs for local authorities in looking after children, as well as the woman's employment prospects. It may also result in the loss of local authority housing.

The high rates of remand into custody of women are linked to chaotic lifestyles, inability to adhere to bail conditions without supports in the community, inability to pay the bail bond, etc. rather than potential risk of committing serious offences if released on bail. Provision of bail services and supports in the community to women who might otherwise be remanded into custody due to the risk factors identified would reduce the need for high rates of custodial remand for women.

In 2007, a comprehensive UK report by Baroness Jean Corston, *A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, recommended that women unlikely to receive a custodial sentence should not be remanded in custody; and that they must never be sent to prison for their own good, to 'teach them a lesson', for their own safety, or to access services such as detoxification. She also recommended that more supported bail placements for women suitable to their needs must be provided, and that defendants who are primary carers of young children should be remanded in custody only after consideration of a probation report on the probable impact on the children.⁶⁶

Recommendations:

- **Provision of gender-specific bail services and supports and accommodation in the community would address the current over-reliance of remand into custody for women accused of non-violent crimes.**
- **Defendants who are primary carers of young children should be remanded in custody only after consideration of a probation report on the probable impact on and best interests of the children.**

⁶⁵ Prison Reform Trust (2011) *Innocent Until Proven Guilty: Tackling the Overuse of Custodial Remand* available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Remand%20Briefing%20FINAL.pdf>

⁶⁶ A report by Baroness Jean Corston of a *Review of Women with Particular Vulnerabilities in the Criminal Justice System* 2007, p. 58.

8. Pre-trial detention of children

The UN Convention on the Rights of the Child was ratified by Ireland in 1992. Article 40(4) of this Convention provides that a variety of alternatives to detention should be available to ensure that children in conflict with the law are treated in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.⁶⁷ In Ireland, the *Children Act 2001* as amended states that the detention of children must be a sanction of last resort.⁶⁸ However, the evidence suggests an overreliance of detention on remand for children in Ireland. The Children's Rights Alliance has reported that 96 children were remanded in custody to the Children Detention Schools in 2013, of whom 26 subsequently received a detention order.⁶⁹ This strongly suggests that the bail practice of the Children Court does not accord with Section 96 of the *Children Act 2001* whereby detention - including detention on remand - should only be used as a measure of last resort.⁷⁰

The Ombudsman for Children⁷¹, the Children's Rights Alliance⁷² and IPRT⁷³ have all expressed concern about the use of custodial remand of children on welfare grounds, contrary to Section 88 of the *Children Act 2001* (as amended) which stipulates that the Court shall not remand a child in custody solely on the basis of care or protection concerns. The Children's Rights Alliance has further noted that children detained on remand are not always held separately from children who have been convicted and are serving a sentence.⁷⁴

Furthermore, Ireland lacks an outer time limit for the application of remand.⁷⁵ This is contrary to Recommendation Rec (2003)20 of the Council of Europe, which recommends that juveniles should be remanded in custody for no longer than six months before their commencement of trial.⁷⁶ The absence of a maximum statutory period of remand for children means that in practice they can be exposed to lengthy periods of pre-trial detention. Irish research has found that young people spent between two and 360 days remanded in prison custody, of whom one-fifth had been on remand for

67 Such alternatives include care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, among others.

68 Section 96(2) of the provides that: "any penalty imposed on a child for an offence should cause as little interference as possible with the child's legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances; in particular, a period of detention should be imposed only as a measure of last resort."

69 Children's Rights Alliance, *Report Card 2015*, p. 105, available at http://childrensrights.ie/sites/default/files/submissions_reports/files/ReportCard2015Web.pdf. See Minister for Children and Youth Affairs James Reilly TD, Parliamentary Questions: Written Answers 20 January 2015 [2192/15].

70 Children's Rights Alliance, *Report Card 2015*, p. 105, available at http://childrensrights.ie/sites/default/files/submissions_reports/files/ReportCard2015Web.pdf.

71 Ombudsman for children (2013) *A Meta-analysis of Repetitive Root Cause Issues Regarding the Provision of Services for Children in Care*, available at: <http://www.oco.ie/wp-content/uploads/2014/03/OCOMeta-analysisofservicesforchildrenincare.pdf>

72 Children's Rights Alliance, *Report Card 2015*, p. 105. See also Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 1. The authors note that a judge's decision not to grant bail may be influenced by "the need for time to undertake an assessment of the young person's needs or to find a suitable care placement for them".

73 Irish Penal Reform Trust (2014) *IPRT Briefing on Detention of Children in Ireland* (preliminary), available at: http://www.iprt.ie/files/Briefing_on_Detention_of_Children_December_2014.pdf

74 Children's Rights Alliance, *Report Card 2015*, p. 106

75 Ibid.

76 *Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 16 provides: "When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances."

between seven and 12 months.⁷⁷ Again, this is contrary to the *Children Act 2001*, and is also in breach of Article 37(b) of the UN CRC. Moreover, such periods are longer than the average detention order in Ireland, suggesting that many young people are ‘not even being detained due to the nature of the alleged offence but rather other alternative reasons’.⁷⁸

IPRT strongly urges that the over-use of remand for children be reduced through the provision of supports including bail hostels to address the lack of safe, stable accommodation as a factor in non-compliance with bail conditions.⁷⁹ Under Section 90(1) of the *Children Act 2001*, many conditions may attach to a child’s bail including that they reside with their parents or guardian, receive education or training, and that they report to a Garda Síochána station at specified intervals. Notwithstanding these conditions, no support or supervision is provided to children while on bail. Unsurprisingly many fail to comply with bail conditions imposed.

While Section 88(4) of the *Children Act 2001* obliges judges to explain to a young person their reasons for remanding him or her in custody, there is no requirement to explain the decision to grant bail, or the consequences of failing to adhere to bail conditions. Lengthy delays between the start and conclusion of cases in the Children Court⁸⁰ have a two-fold impact on young people, giving them an ‘unclear message about the consequences of their behaviour’ and placing them ‘at increased risk of re-offending and of breaching their conditions of bail, and, as a result, it increases their risk of detention on remand.’⁸¹

Clearer courtroom communications, speeding up the disposal of cases, and bail support schemes may enhance young people’s compliance with bail conditions.⁸² In this regard, one of the objectives of the *National Youth Justice Action Plan 2014-2018* is to provide ongoing assistance to the Courts Service to ensure the use of detention as a last resort and a deliverable outcome relevant in this context is a commitment to explore new alternatives for the Courts resulting ‘in a reduction in the need for remands to detention and delivery of better outcomes for an extremely vulnerable group of young people.’⁸³

Recommendations:

- **The Department of Children and Youth Affairs should ensure the nationwide availability of supervised bail programmes and effective bail supports which identify and address bail compliance issues to minimise the necessity for young offenders to be remanded pre-trial.**
- **Judges should be vigilant to impose detention on remand as a last resort and should impose the least onerous conditions required to effectively mitigate any identified risk(s) in order to maximize the prospect of compliance.**

77 Freeman, S. (2007) *The Life and Times of Young People on Remand: Recommendations for Future Policy in Ireland*, p. 4.

78 Ibid, p. 5.

79 See IPRT *Turnaround Youth: Young Adults (18–24) in the Criminal Justice System – the case for a distinct approach* (May 2015), available at <http://www.iprt.ie/files/IPRT-Turnaround-web-optimised.pdf> See also IPRT, *Discussion Document on the rights and needs of remand detainees* (2013), pp. 20-23; IPRT *Position Paper 10: Women in the Criminal Justice System - Towards a non-custodial approach* (December 2013), available at: http://www.iprt.ie/files/IPRT_Position_Paper_on_Women_in_the_Criminal_Justice_System.pdf

80 See ACJRD, *The Children Court A National Study*, March 2007, p. 51.

81 Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 47. See also Kilkelly, U. (2005) *The Children Court: A Children’s Rights Audit*. Cork: Faculty of Law, University College Cork.

82 Seymour, M., Butler, M.: *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 2.

83 Irish Youth Justice Service (2013) *Youth Justice Action Plan 2014–2018*, Objective 4, p. 23.

- **Judges should explain in child appropriate language the decision to grant bail, the conditions that are imposed under Section 90 of the Act, why they are necessary and proportionate in all the circumstances, and the consequences of non-compliance with such conditions.**

9. Rights of prisoners detained on remand

Prison management must ensure that the individual's un-convicted status is manifested in their treatment.⁸⁴ This requires the development of a specific strategy for remand prisoners that reflects their particular status through (i) special treatment and (ii) enhanced regimes.

Various international human rights instruments provide that untried prisoners:

1. should be detained separately from convicted prisoners,⁸⁵
2. should sleep in single rooms,⁸⁶
3. may wear their own clothes; if clothes are provided by the prison, they must be different from those worn by convicted prisoners,⁸⁷
4. should not be forced to work but should be offered the opportunity to do so,⁸⁸
5. may, if they choose, access food at their own expense from outside the prison, subject to maintaining good order,⁸⁹
6. may, at their own expense, be visited and treated by their own doctor or dentist,⁹⁰
7. should be able to inform their family immediately of their detention and should be given all reasonable facilities to communication with and receive visits from family and friends,⁹¹
8. may, at their own expense, obtain books, newspapers, writing materials and other items for hobbies,⁹²
9. should be informed of their right to legal advice⁹³ and should be able to communicate with and receive visits from their lawyer without restriction and in confidence,⁹⁴
10. should benefit from a special regime⁹⁵ or, at their request, have access to the regime for sentenced prisoners.⁹⁶

84 Coyle, A. (2002) 'Pre-Trial Prisoners and all others under Detention Without Sentence', p.117 in *A Human Rights Approach to Prison Management*, International Centre for Prison Studies: London.

85 Article 10(2)(a), ICCPR; Rules 8(b) and 85, Standard Minimum Rules; Rules 18.8 and 18.9, European Prison Rules (Recommendation (2006)2 of the Committee of Ministers to member states on the European Prison Rules adopted by the Committee of Ministers on 11 January 2006) (EPR). The Standard Minimum Rules permit no exception to the need for separation while the European Prison Rules only permit exceptions with the consent of prisoners.

86 Rule 86, Standard Minimum Rules; Rule 96, European Prison Rules.

87 Rule 88, Standard Minimum Rules; Rule 97, European Prison Rules.

88 Rule 89, Standard Minimum Rules; Rule 100, European Prison Rules.

89 Rule 87, Standard Minimum Rules.

90 Rule 91, Standard Minimum Rules.

91 Rule 92, Standard Minimum Rules; Rules 99a and 99b, European Prison Rules.

92 Rule 90 Standard Minimum Rules; Rule 99c, European Prison Rules.

93 Rule 98, European Prison Rules.

94 Rule 93 Standard Minimum Rules; Rule 98.2, European Prison Rules; supported by general provisions stating that everyone charged with a criminal offence shall be able to prepare a defence and communicate with counsel, such as Article 6(3), European Convention on Human Rights or Article 14, ICCPR.

95 Rule 84(3), Standard Minimum Rules.

96 Rule 101, European Prison Rules. See also *Recommendation (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Committee of Ministers on*

Under the *Prison Rules 2007*, conditions of detention for remand prisoners should be of an enhanced nature. Unconvicted prisoners have enhanced rights to visits (Rule 35(3)); phone calls, including to conduct business affairs (Rule 46(4)); and to receive private medical care, at their own expense (Rules 72 and 73). They should also be accommodated separately from convicted prisoners ‘in so far as is practicable and subject to the maintenance of good order and safe and secure custody’ (Rule 71).⁹⁷

10. Barriers to accessing rights

Prisoners on remand should always be detained in separate facilities to convicted prisoners.⁹⁸ However, in practice the issue of prison overcrowding has impacted negatively on single-cell occupancy, and militates against attaining the particular status appropriate for remand. In prisons such as Cork and Limerick, which take in remand prisoners in the Munster region, remand prisoners may be held with convicted prisoners in cells originally designed for single occupancy; in Cork Prison they will also have to ‘slop out’ in what are cramped and degrading conditions.

The *Prison Rules 2007* state that an unconvicted person may engage in authorised structured activity with the consent of the governor (Rule 72(1)). He/she may also participate with convicted prisoners if the governor consents to this (Rule 72(2)). Furthermore, the governor may ‘arrange for the provision of such facilities as he or she considers appropriate to an unconvicted prisoner to enable him or her to engage with his or her regular employment’ (Rule 72(3)). In practice, it is likely that few (if any) remand prisoners are facilitated in engaging with their regular employment while detained pending trial. The fact that remand prisoners are not entitled to temporary release is a further barrier to the continuance of their employment.

Irish research on the experience of young people aged 16-21 detained on remand has found that young people reported that the few hours they were able to spend out of their cells were characterised by boredom as few facilities were provided⁹⁹; that prison officers had limited or no knowledge of the entitlements of remand prisoners; and that, despite not being in prison for punishment, all remand prisoners were locked in their cells for a similar amount of time to sentenced prisoners: 13 hours for females and 18 hours for males.¹⁰⁰

Rights to enhanced visits can be rendered meaningless for children who come from counties other than Dublin who are remanded in custody to St Patrick’s Institution or the Oberstown complex. The same applies to women not from Dublin who are detained in the Dóchas Centre, or those not from Limerick who are remanded at the female prison there: exercising their right to daily¹⁰¹ visits is difficult if family members, including small children, must undertake long journeys to the prison for a 15-minute visit.

The continued detention on remand of young people aged under 18 in St. Patrick’s Institution, a prison that has consistently been condemned by the Inspector of Prisons and by international monitoring is

27 September 2006 which contains detailed standards on the detention of remand prisoners.

⁹⁷ *Prison Rules 2007*, Rule 71 provides: “Unconvicted prisoners shall, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be accommodated in areas that are separate from those in which convicted prisoners are accommodated or to which convicted prisoners have access, and convicted prisoners shall, as far as is practicable, not be permitted access to areas to which unconvicted prisoners have access at those times when unconvicted prisoners have such access.”

⁹⁸ See Irish Human Rights Commission, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011, paragraph 21.

⁹⁹ See, Freeman, S. (2007) *The Life and Times of Young People on Remand: Recommendations for Future Policy in Ireland*.

¹⁰⁰ *Ibid.*

¹⁰¹ Six days per week.

of particularly serious concern. In 2014, the Inspector stated that the continued detention of a small number of boys in St Patrick's Institution is "at times, tantamount to holding them in isolation and it is certainly inhumane."¹⁰²

Recommendations:

- **A specific strategy for remand prisoners should be developed and implemented by the Irish Prison Service to ensure that their un-convicted status is manifest in their treatment and conditions of detention.**
- **The Irish Prison Service should accommodate untried prisoners separately from those who have been convicted.**
- **The Irish Prison Service should aim to provide within a defined timeline single-cell occupancy for all remand prisoners.**
- **The detention of children on remand aged 16 and 17 in St Patrick's Institution must end immediately.**

11. Access to structured activities

In 2002 and 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) criticised Cloverhill prison, Ireland's only dedicated remand prison for having an inadequate regime, which 'remained very underdeveloped' with very low rates of participation in activities. The CPT recommended that 'efforts to develop the programmes of purposeful activities of a varied nature be intensified.'¹⁰³ This was echoed four years later by the Inspector of Prisons in his 2010 *Annual Report*, in which he described Cloverhill as overcrowded and said that there 'are not adequate services and regimes in this prison.'¹⁰⁴

In March 2013, the lack of regimes and services available to remand prisoners at Cloverhill were ascribed by the then Minister for Justice to the 'transitory nature of the prisoners' which meant 'it is not practical to provide the full range of long-term programmes that is available to sentenced prisoners in other prisons.'¹⁰⁵ Since a quarter of all prisoners held at Cloverhill Prison are sentenced prisoners (114 prisoners out of 443 on 28th February 2013),¹⁰⁶ it is likely they would be given priority over remand prisoners in accessing the low numbers of work/training and education placements available.

While the uncertainty surrounding the length of time that a remand prisoner will stay in the prison presents challenges to the prison administration, particularly where overcrowding exists, this does not absolve prison management from providing remand prisoners with an adequate regime, preferably with remand specific programmes including bail information schemes, assistance with welfare benefits and housing, etc. A study by HM Inspectorate of Prisons, *Remand Prisoners: A*

¹⁰² Inspector of Prisons' (2014) *Overview of Mountjoy Prison Campus with particular emphasis on the Separation Unit*, p. 6.

¹⁰³ *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 2 to 13 October 2006*, p. 30.

¹⁰⁴ Inspector of Prisons, *Annual Report 2010*, para. 21.2 at p. 8.

¹⁰⁵ On 28 February 2013, Cloverhill prison accommodated 443 prisoners, of whom 329 were on remand. See Parliamentary Question on 'Prisoner Numbers', 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>

¹⁰⁶ See Parliamentary Question on 'Prisoner Numbers', 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>

Thematic Review,¹⁰⁷ notes that the difficulties inherent in charting remand prisoners' period in custody, due to the unpredictability of outcomes of court appearances and the prisoners' release date, in fact 'emphasises the need for oversight from a case manager to make best use of the defendant's time in custody.'¹⁰⁸

Recommendations:

- **Adequate regimes, including sufficient work/training and education placements, must be provided in all prisons, including remand prisons, across the Irish prison system.**
- **Notwithstanding the uncertainty regarding their duration of pre-trial imprisonment, remand prisoners are likely to benefit from a prisoner-centred, multidisciplinary approach to case management with provision for initial assessment, goal setting and periodic review to measure progress.**

12. Incentivised Regimes: penalising remand prisoners?

The Incentivised Regimes Policy, introduced in 2012, provides 'for a differentiation of privileges between prisoners according to their level of engagement with services and quality of behaviour.'¹⁰⁹ It is linked to three levels of gratuity payment, and applies equally to remand prisoners.¹¹⁰ Prisoners attain enhanced status if they engage with education services or work, or can be demoted to basic level if they opt not to participate.

However, the scheme may act to penalise remand prisoners who can choose to exercise their right to not engage with authorised structured activities under Rule 72(1) of the *Prison Rules 2007*. Remand prisoners might opt out of authorised structured activities in order to apply for bail or to focus on preparing their defence, because they are too anxious about the uncertain duration of their imprisonment to engage meaningfully with rehabilitative services. Making remand prisoners' access to an enhanced regime or incentives dependent on active engagement with work and education therefore violates their right not to engage under Rule 72(1) of the *Prison Rules 2007*.

Recommendation:

- **Given the special untried and un-convicted status of remand prisoners, IPRT recommends that remand prisoners be paid at the highest gratuity level, irrespective of their engagement with work and education services.**

¹⁰⁷ HM Inspectorate of Prisons, *Remand Prisoners: A Thematic Review* (2012), p. 15.

¹⁰⁸ Ibid.

¹⁰⁹ Address by Alan Shatter, T.D., Minister for Justice, Equality and Defence at the launch of the Irish Prison Service Three-Year Strategic Plan - 30 April, 2012 Irish Prison Service Training & Development Centre, Beladd House, Portlaoise, Co. Laois, available at <http://www.justice.ie/en/JELR/Pages/SP12000122>

¹¹⁰ See Parliamentary Question on 'Prisoner Numbers', 21 March 2013, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2013032100065?opendocument>.

Summary of Recommendations

Legal Framework

- The general principle of imprisonment as a last resort, both pre- and post-trial, should be enshrined in legislation.
- Where a judge believes an accused may commit further offences, he or she should strongly consider granting bail with tailored conditions that effectively address or mitigate any identified risks, before taking a decision to remand a person in custody.
- A provision should be introduced into law requiring bail and remand decisions to be recorded in writing at all times. If this proposal is considered unworkable within the current capacity and resources available to the courts, a compromise position might be the use of digital audio recording (DAR) within the minimum of formality and at no additional cost to the applicant.
- Where conditions are attached to bail, judges should adopt an individualised approach, taking into account the circumstances of the accused, the offence(s) charged and the objections raised, and only attach such conditions as are strictly necessary and proportionate to meet said objection(s). Accused persons should be informed by the Court why each condition is necessary and proportionate, as well as the consequences of any breach.
- In bail applications where the accused has alcohol or drug addiction issues, any bail conditions requiring the accused to abstain from drink or drugs are highly likely to be breached and, therefore, IPRT cautions against imposing what may amount to impossible conditions.

Bail Supports

- IPRT strongly recommends an evidence-based approach to provision of bail services and supports aimed at the prevention of offending on bail, ensuring appearance at court and reducing remands to custody to the essential minimum. Statutory provision of such bail supports should be included in the proposed bail legislation.
- Provision of gender-specific bail services and supports and accommodation in the community would address the current over-reliance of remand into custody for women accused of non-violent crimes.
- Defendants who are primary carers of young children should be remanded in custody only after consideration of a probation report on the probable impact on the children.
- Clearer information from judges to young people regarding reasons for granting bail and consequences of failure to comply could lead to a reduction in the number of young people remanded in custody due to breaking bail conditions.

Data & Evidence

- The Department of Justice and Equality in conjunction with An Garda Síochána, the Courts Service, the Director of Public Prosecutions, the Irish Prison Service and the Central Statistics Office should compile and publish comprehensive statistics relating to bail, with a view to enhancing knowledge and understanding of statistical trends in this complex area of law and practice.
- The Government, the Courts Service and the Irish Prison Service should conduct an analysis of how many people remanded in custody go on to receive a custodial sentence to assess the necessity of using this measure to the extent it is currently used.

Remand Prisoners

- A specific strategy for remand prisoners should be developed and implemented by the Irish Prison Service to ensure that their un-convicted status is manifest in their treatment and conditions of detention.
- The Irish Prison Service should meet its international human rights obligations and accommodate untried prisoners separately from those who have been convicted.
- The Irish Prison Service should aim to provide within a defined timeline single-cell occupancy for all remand prisoners.
- The detention of children on remand aged 16 and 17 in St Patrick’s Institution must end immediately.
- Adequate regimes, including sufficient work/training and education placements, must be provided in all prisons, including remand prisons, across the Irish prison system.
- Notwithstanding the uncertainty regarding their duration of pre-trial imprisonment, remand prisoners should be provided with a prisoner-centred, multidisciplinary approach to case management with provision for initial assessment, goal setting and periodic review to measure progress.
- Given the special untried and un-convicted status of remand prisoners, IPRT recommends that remand prisoners be paid at the highest gratuity level, irrespective of their engagement with work and education services.



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