



IPRT Submission to the Law Reform Commission on its consideration of its 5th Programme of Law Reform

Proposal #2: Review of Sentencing/Potential of Sentencing Guidelines

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About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and to reducing imprisonment. We are working towards progressive reform of the penal system based on evidence-led policies and on a commitment to combating social injustice.

IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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1. What do you suggest as a suitable project for law reform?

IPRT believes the Law Reform Commission should consider undertaking a comprehensive review of sentencing practice in Ireland in its *Fifth Programme of Law Reform*. The purpose of this project would be to (1) examine current sentencing practice in Ireland and (2) explore the merits of establishing sentencing guidelines.

2. What issues have arisen in relation to this area that have caused you concern?

The sentencing system in Ireland has been described as '*uniquely discretionary*' (O'Hara, 2016). A number of issues of concern have already been identified by a number of bodies including the Law Reform Commission, IPRT and a number of academics on sentencing practice. These include but are not limited to:

- a lack of clear consensus on the purpose of sentencing
- a lack of coherent sentencing policy
- potential accommodation of abuse within the system
- disparity and inconsistency
- absence of discretion (e.g. mandatory sentences)
- public mistrust in the sentencing process
- absence of sentencing guidelines
- limited public information on sentencing law and practice

The Law Reform Commission has undertaken projects on discrete aspects of sentencing over the last number of years including *Suspended Sentences* (2017/18) in its fourth programme of Law Reform, *Report on Mandatory Sentences* (2013) and its report on *Penalties for Minor Offences* (2003). In those reviews previously completed by the Law Reform Commission, recommendations were made on the need for a coherent sentencing policy, as well as the establishment of sentencing guidelines.

While all of the above analysis on specific areas of sentencing has been welcome, it has been over twenty-two years since *Sentencing in Ireland* (1996), the last comprehensive review of sentencing conducted by the Law Reform Commission itself. IPRT believes that a comprehensive review on how Ireland approaches sentencing and how that process might be appropriately reformed would be of both great public value and interest.

In 2014, the *Strategic Review of Penal Policy* was established. The group made some key recommendations on sentencing in its final report including that sentencing policy should generally reflect the principle that imprisonment should be reserved for those committing the most serious offences. It also recommended the need to address consistency in sentencing (e.g. access to sentencing information and the need for sentencing guidelines). There appears to be major inconsistencies in sentencing practice across court jurisdictions in Ireland. Findings from a recently published three-year PhD research study, *Examining the comparative use, experience and outcomes of community service orders as alternatives to short prison sentences in Ireland* (2016) by Dr. Kate O'Hara¹ demonstrates these discrepancies in sentencing practice across district court jurisdictions.

IPRT believes that as part of the *5th Programme of Law Reform*, it is an opportune time to comprehensively review and identify issues in sentencing practice. We believe that the Law Reform Commission is the most appropriate body to undertake this significant piece of work.

¹ <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1067&context=appadoc>

4. What would be the potential benefits of reform of this area?

Currently, public and political debate on sentencing practice and policy tends to be reactive, disjointed and not evidence based. The LRC process of public consultation on the issue of sentencing would itself provide a structure for systematic analysis of the issue and an opportunity for all stakeholders to contribute to the knowledge base.

It is hoped that reform in the area may potentially result in:

- Improved understanding of sentencing practice by all stakeholders in the criminal justice system
- Identification of the impact and efficacy of different sentencing practices (e.g. whether and to what extent different types of sentencing impact re-offending rates)
- Coherent statement on the purpose of sentencing in Ireland
- Alignment of law and policy e.g. Strategic Review Group of Penal Policy, *Final Report* (July 2014)
- Greater fairness, consistency and transparency in sentencing decisions
- Reduction in the use of imprisonment
- Better information for victims
- Provide public benefit by helping to inform, educate and provide greater transparency to the general public in how sentencing decisions are made, thus building trust in the justice system

5. Any other general comments.

Following a number of high profile events in Ireland, we have witnessed shifts towards mandatory and presumptive sentences despite its ineffectiveness as a deterrent, and its impact on rates and costs of imprisonment. Sentencing is currently a matter of significant public interest. A comprehensive review of sentencing would contribute to the domestic knowledge base on how current sentencing practice works and how we can move towards effective sentencing policy based on evidence. IPRT believes that the Law Reform Commission is the body with the professional expertise and knowledge to undertake this comprehensive review that would meet a real public need.

References

Law Reform Commission (2013) *Report on Mandatory Sentences*, available at <http://www.lawreform.ie/news/report-on-mandatory-sentences.405.html>

Law Reform Commission (2003) *Report on Penalties for Minor Offences*, available at <http://www.lawreform.ie/news/report-on-penalties-for-minor-offences.670.html>

O'Hara, K. (2016) *Examining the comparative use, experience and outcomes of community service orders as alternatives to short prison sentences in Ireland*, Dublin Institute of Technology.

The Law Reform Commission (1996) *A Consultation Paper on Sentencing* available at <http://www.lawreform.ie/fileupload/consultation%20papers/cpSentencing.htm>

Strategic Review of Penal Policy (2014) *Final Report, July 2014* available at <http://www.justice.ie/en/JELR/Pages/PB14000244>