



IPRT Opening Statement to Oireachtas Joint Committee on Justice and Equality

Spent Convictions

10th July 2019

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and for the progressive reform of Irish penal policy. We are delighted to meet with the Joint Committee today to speak on spent convictions, and we will do our best to respond to any questions that you may have following our opening remarks.

For 25 years, IPRT has been promoting policies that make communities safer, based on the evidence of what works to prevent and reduce offending and reoffending. **One of our long-standing campaigns is for an effective spent convictions scheme in Ireland – one that allows people who are law-abiding and who have stopped offending move on with their lives.** This is rooted in the recognition that having a criminal record presents barriers to those very protective factors that we know promote desistance from offending, including: employment, education and training, accommodation, and volunteering, among other areas.¹ Currently, having a criminal record in Ireland can amount to lifelong punishment that is disproportionate to the gravity of the offending behavior and that may have the unintended effect of undermining public safety.

There are two existing schemes for expungement in Ireland:

- **Under s.258 of the *Children Act 2001***, convictions received for offences committed by children aged under 18 may become spent after 3 years have passed since conviction. Convictions for sexual offences and for offences tried at the Central Criminal Court are excluded.
- **Under the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016***, all convictions received in the District Court for most motoring offences and minor public order offences can

¹ Other obstacles include accessing car or home insurance, with implications for obtaining mortgages; and travel to foreign countries, with implications for promotions at work or emigration.

become spent after 7 years. (Dangerous driving is limited to a single conviction.) In addition, where a person has one, **and only one**, conviction (other than a motoring or public order offence), which resulted in a term of imprisonment of less than 12 months, it may become spent after 7 years. This provision applies to either a District Court or Circuit Court conviction. If you have two or more such convictions, neither can become spent. Sexual offences or convictions in the central Criminal Court are not eligible to become spent.

IPRT's position is that the relevant provision included in the *Children Act 2001* generally meets its rehabilitative aims, but that the *2016 Act* is so limited that it fails to fulfill its rehabilitative purpose, that it does little to address the social inequalities that underlie most crime, and that it compounds the multiple disadvantages experienced by marginalized communities.² Furthermore, the *2016 Act* is exceptionally blunt in its failure to apply the principle of proportionality to rehabilitative periods.

In this regard, IPRT strongly welcomed the clear recommendation by the Committee on Justice and Equality in its 2018 Report on *Penal Reform and Sentencing* that the *2016 Act* is extremely limited in its application and fails to support rehabilitation of more serious offenders. Limitations of the *2016 Act* have also been identified by the Steering Committee of the National Drugs Strategy³; in the Mulvey Report⁴; and, by application, analysis of the Irish Human Rights Commission on previous versions of the legislation.⁵

IPRT also welcomes *Criminal Justice (Rehabilitative Periods) Bill 2018* as another step towards a fairer system, and IPRT welcomes in particular the introduction of a new approach to offending aged 18 to 23. However, our position is that this Bill could go much further to facilitate reintegration and rehabilitation.⁶ Our recommendations are as follows:

² "Research into the causal factors of crime conclusively demonstrate that offenders...generally come from the most disadvantaged backgrounds in society and, typically, that they are unemployed, unqualified, addicted, and likely to reoffend. The label of having been in prison becomes a further layer of disadvantage in the community. Offenders... experience multiple disadvantages which accumulates leading to economic and social exclusion and to an extreme form of marginalisation from the labour market." See: *National Development Plan, 2000-2006* at p. 194.

³ *Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025*, July 2017.

⁴ Mulvey, K (2017) *Dublin North East Inner City: Creating a Brighter Future*.

⁵ *IHRC Observations on the Criminal Justice (Spent Convictions) Bill 2012*, available at: https://www.ihrec.ie/app/uploads/download/pdf/ihrc_observations_on_spent_conviction_bill_2012_june_2012.pdf

⁶ See *IPRT Briefing on Criminal Justice (Rehabilitative Periods) Bill 2018 [PMB]* (Feb 2018) [http://www.iprt.ie/files/IPRT_Briefing_on_CJ_\(Rehabilitative_Periods\)_Bill_2018_%5BPMB%5D.pdf](http://www.iprt.ie/files/IPRT_Briefing_on_CJ_(Rehabilitative_Periods)_Bill_2018_%5BPMB%5D.pdf)

1. Remove the limit to the number of convictions that can become spent

There should be no limit to the number of eligible convictions that can become spent, as previously recommended by the IHRC.⁷ It is draconian that where a person has two convictions (other than minor motoring or public order offences), neither can ever become spent. Ireland's extremely conservative approach to allowing just one conviction to become spent is an outlier in Europe. Under the *Rehabilitation of Offenders Act 1974*, there is no limit to the number of eligible convictions that can become spent.⁸

Two or more convictions for separate offences does not indicate a pattern or propensity for offending but rather a set of circumstances or factors that contribute to the offending – which might be immaturity and impulsivity, or it could be poverty, mental health, homelessness, addictions, experience of violence or domestic abuse.⁹ Expanded spent convictions legislation is an opportunity to support people who have recovered from such circumstances and moved on from offending to lead law-abiding lives.

2. Expand the eligibility of convictions that can become spent

The upper limit of sentences that can become spent should be increased at minimum to 48 months, as in England & Wales and (shortly) Scotland. It should be noted that, based on more than 35 years of experience of the *Rehabilitation of Offenders Act 1974* in England & Wales, in 2012 the upper limit was increased from 30 to 48 months' imprisonment and rehabilitative periods were adjusted to be more proportionate and generally shorter overall.¹⁰ Scotland is due to follow suit this year by way of the *Management of Offenders (Scotland) Bill*, which is currently at third stage.

Any concerns about specific categories of offence that would be included can be addressed separately through vetting for regulated areas of work.

⁷ Commenting on the 2012 Bill, the IHREC stated "There should be no limitation on the number of convictions per person where they come within the other criteria of the legislation". See IHREC (2012) 'IHRC says proposed Spent Convictions legislation too restrictive to be effective': <https://www.ihrec.ie/ihrc-says-proposed-spent-convictions-legislation-too-restrictive-to-be-effective/>

⁸ Limits apply within the Disclosure and Barring Service (DBS) filtering system for standard and enhanced checks, which apply to certain 'regulated activity' or areas of work. This has been recently challenged in the Court of Appeal and the Supreme Court.

⁹ See, for example, IPRT (2012) *The Vicious Circle of Social Exclusion and Crime: Ireland's Disproportionate Punishment of the Poor*: http://www.iprt.ie/files/Position_Paper_FINAL.pdf

¹⁰ See Unlock (2019) *Is it spent now? A brief guide to changes to the ROA*: <https://hub.unlock.org.uk/knowledgebase/spent-now-brief-guide-changes-roa/>

3. Incentivise rehabilitation by setting proportionate and reasonable rehabilitative periods

Rehabilitative periods must be long enough to demonstrate meaningful desistance from offending, but not so long as to act as a disincentive from desistance.¹¹ Additionally, rehabilitative periods must be set so that they are proportionate to the gravity of the offence and the punishment received. Seven years for a conviction attracting a fine to become spent is completely disproportionate.

4. Enhance public safety through legislation and policy

Employment has been found to reduce the risk of re-offending by between a third and a half,¹² while people with convictions make up a sizeable proportion of the unemployed population.¹³ As the Lammy Review found: *The [criminal records] system is there to protect the public, but is having the opposite effect if it sees ex-offenders languishing without jobs and drawn back into criminality.*¹⁴

Along with improvements to spent convictions legislation, Employment Equality Acts should be amended to ensure prospective employees aren't discriminated against on the basis of a conviction that has become spent. Discrimination can and should also be addressed through policy interventions, such as 'Ban the Box' campaigns in the US and the UK, where questions about convictions are removed from application forms and delayed until later in the recruitment process.

5. Recognise that rehabilitation is at the heart of a victim-centred criminal justice system

Assumptions are often made in media about victims demanding sterner punishments, but there is little by way of public polling or research in Ireland to support these claims. In fact, international research finds that crime survivors want the criminal justice system to focus more on rehabilitating people than punishing them by a margin of 2 to 1, and that crime survivors across all demographic

¹¹ "A period of 5 or 7 years represents an unnecessarily long time for an offender convicted of a minor property offence and the detrimental effect of conviction in excluding that person from employment may be long-lasting." See *IPRT Position Paper 2: Spent Convictions Bill 2007*: http://www.iprt.ie/files/IPRT_Position_Paper_2_-_Spent_Convictions.pdf

¹² Social Exclusion Unit (2002), *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister

¹³ 33% of Job Seekers Allowance claimants in England and Wales received a criminal record in the last ten years. Ministry of Justice and Department for Work and Pensions (2011) *Offending, employment and benefits – emerging findings from the data linkage project*, London: MOJ/DWP

¹⁴ "[I]t must be recognised that a job is the foundation for a law-abiding life for ex-offenders, but that our criminal records regime is making work harder to find for those who need it the most. The system is there to protect the public, but is having the opposite effect if it sees ex-offenders languishing without jobs and drawn back into criminality. A more flexible system is required, which is capable of recognising when people have changed and no longer pose a significant risk to others." See: UK Ministry of Justice (2017) *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, p.66: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

groups support a range of non-custodial alternative approaches in order “to stop the cycle of crime and protect future generations from falling through the cracks”.¹⁵

Crime survivors want the offender to be held accountable, but most of all they want the offender to desist from offending. Therefore, measures to promote rehabilitation and reduce reoffending do not undermine the rights of victims – they do the opposite.

In conclusion:

- Broadening access to the spent convictions scheme will support the rehabilitation and reintegration process.
- This in turn reduces the likelihood of re-offending, reduces crime and reduces the number of victims.
- IPRT therefore asks the Committee to consider amending the *Criminal Justice (Rehabilitative Periods) Bill 2018* in line with our recommendations, and to progress the legislation as a matter of priority.

I’d like to conclude by thanking the Committee for its invitation and its attention to this issue, and emphasise that this represents an opportunity for the Committee to support safer communities and a more equal society. My colleague Michelle Martyn and I are ready to respond to the Committee’s questions as best we can.

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¹⁵ Alliance for Safety and Justice (2016) ‘*Crime Survivors Speak*’: *National Survey of Victims Views on Safety and Justice*, available at: <http://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>