Irish Penal Reform Trust

MAKING RIGHTS REAL

FOR PEOPLE WITH DISABILITIES IN PRISON

Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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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.

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A note on language

IPRT is cognisant of the language and terminology we use in our publications. IPRT is committed to using 'person first' language as much as possible. However, for purposes of clarity, the term 'prisoner' is used often throughout this report; this is to distinguish between staff and people detained.

The authors have explained the interchangeable terminology used (see Section 1.1 of the report) in relation to people with disabilities in detention, using the most common language including 'prisoners with disabilities' and 'disabled prisoners' or with reference to preferred terminology by a particular group.

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Contents

Acknowledgements 2
Executive Summary 3
1. Introduction 8
1.1 Disability Terminology and Scope of this Research 10
1.2 Prevalence of Disabilities among People in Prison 10
2. The Rights of People With Disabilities in Prison 14
2.1 International legal framework 15
2.2 Council of Europe and European Union 18
2.3 Irish Law 20
3. Methodology 24
4. Findings 27
4.1 Prison (In)Accessibility 27
4.1.1 Environmental Accessibility 27
4.1.2 Information Accessibility 30
4.1.3 Communication Accessibility 31
4.2 Prisoners' Rights 33
4.2.1 Rights Literacy and Awareness 33
4.2.2 Right to Reasonable Accommodation 34
4.2.3 Complaints 35
4.3 Non-Discrimination in Prison Services 36
4.3.1 Employment 36
4.3.2 Education 37
4.3.3 Health 38
4.3.4 Mental Health 40
4.4 Identification of Disability, Privacy and Support 45
4.4.1 Diagnosis 45
4.4.2 Privacy 46
4.4.3 Staff Support 46
4.4.4 Prisoners supporting Prisoners 47
4.5 Prison Rules, Discipline and Regime 51
4.5.1 Prison Rules 51
4.5.2 Incentivised Regime and Disciplinary Procedures 51
4.5.3 Isolation, Solitary Confinement and Other Forms of Prisoner Separation 52
4.5.4 Transition from Prison to the Community 53
5. Conclusion 57
6. Recommendations 58
Bibliography 61

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Executive Summary

This report examines the rights and experiences of people with disabilities in Irish prisons. Through an international literature review, legislative analysis, stakeholder interviews, and interviews with prisoners and prison staff, it aims to shed light on a previously under-explored area. This report is rooted in a human rights framework, and uses the conceptualisation of disability as found in the UN Convention on the Rights of Persons with Disabilities (CRPD). By that, we mean we use a broad definition of disability for the project including people who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Indeed, it is these barriers which we will be examining, and how they manifest in prison conditions.

As part of this research, 31 semi-structured interviews were conducted with different stakeholders to obtain in-depth views on the current situation in Ireland. The stakeholder groups included 16 prisoners with disabilities from different settings, representative organisations of persons with disabilities, prison officers, civil servants and public officials working in justice and the prison system, and advocates for prison reform. The interviews with prisoners included: people with physical and/or mobility impairments, people with psychosocial (mental health) disabilities, people with intellectual and/or learning disabilities (including neurodivergent or autistic prisoners), people with acquired brain injuries, deaf people, hard of hearing people, and visually impaired people. The age profile of prisoners interviewed spanned from those in their early 20s to those in their early 60s. Many prisoners identified multiple disabilities, and several had experiences of other chronic or long-term health conditions in addition to their disability, including experiences of addiction. The research team interviewed both male and female prisoners. Given the small sample of prisoners interviewed, no conclusive findings about prevalence of prisoners with disabilities in general, nor of prisoners with specific impairments, can be made from this research. However, some general trends did emerge from the interviews undertaken for this research regarding the barriers and human rights issues experienced by prisoners with disabilities in Ireland. These are summarised here and more detail on each of these findings can be found in section four of the report.

Accessibility of the Prison Environment, Information and Communication

The research showed that prisoners with disabilities face significant difficulties navigating prison and prison services. The cell environment proved challenging in terms of physical and sensory access, with many prisoners struggling with overcrowding. Access to the wider prison environment was particularly challenging. There were reports that prisoners were effectively confined to their cells due to the inaccessibility of the prison environment, and had services brought to them. This was seen to increase isolation experienced by prisoners with disabilities, many of whom had spent time in isolation or in safety observation cells.

Prisoners who took part in the research reported being denied specific accessibility aids, including a white cane, a navigation device used by a visually impaired person. Access to sign language interpretation for Deaf prisoners was extremely limited, making communication with prison staff and other prisoners almost impossible. There were significant issues around access to information within the prison. For instance, people struggled with a lack of easy to read (simple language and pictures), plain language, audio, large print or braille formats. There were also issues around the provision of Irish Sign Language. One example provided indicated that a deaf prisoner had less than an hour a week of communication. The lack of information in these formats and the lack of communication had a knock on effect in terms of rights, navigating the regime and accessing prison services including health and education services.

Knowledge of Prisoners' Rights

There was limited understanding of disability rights within the prison population. Indeed, there was little knowledge among the prisoners that they had rights related to their disability—for instance, the right to reasonable accommodation under equality legislation. Most prisoners who participated in the research were not able to participate in employment or education programmes offered within the prison due to their inaccessibility, and there appeared to be little understanding of how such programmes should be adapted to enable prisoners with disabilities to participate, and even less resources to implement the needed changes. Prisoners interviewed for this research reported barriers to the complaints process with several prisoners feeling that they were unable to make complaints due to the perceived risk of adverse consequences from staff or other prisoners. This included complaints on the basis of disability discrimination.

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Non Discrimination in Prison Services

Several stakeholders and prisoners interviewed for this research expressed concern regarding the right to health for people with disabilities in prison. The issues raised included the removal of medication and management of medication upon entry to prison, during prison stay and in the transition out of prison. There were several calls for greater provision of ancillary medical treatment (including physiotherapy), and it was felt that a lack of access to speech therapy and physical therapy had a significant impact on the long-term health of prisoners. The mental health of prisoners also raised specific concerns, and several prisoners and other stakeholders called for increased alternatives to psychiatry to be made available. Forced treatment and transfer of prisoners to forensic psychiatric settings were reported by both prisoners and other stakeholders in this small-scale study. Prisoners were often unable to access employment or education within the prison.

Identification of disability, privacy and support

Informal peer support from other prisoners was arguably the main form of support received by people with disabilities in prison. However, participants also reported instances where prisoners bullied disabled prisoners. Several prisoners reported positively on relationships with prison staff. However, there were also reports of instances where prison staff behaved inappropriately to prisoners with disabilities. This impacted whether or not people revealed a disability, due to fears of being preyed upon or being seen as vulnerable. Many prisoners spoke of a difficulty communicating within prison as a result of a lack of understanding of cognitive impairment and deafness by prison services and staff. This caused issues between prisoners and prison staff, and among prisoners.

Concerns about the privacy of prisoners with disabilities were raised during the research. Prisoners gave examples where their disability was disclosed to certain prison staff without their consent. Prisoners also reported having to rely on other prisoners for support related to their disability, due to a lack of professional or independent support available, which further compromised their privacy. Gender-sensitive approaches to support women with disabilities in prison, including the need for trauma informed approaches, were also called for by participants in this research.

Prison Rules, Discipline and Regime

One of the core issues raised over the course of the research was the inaccessibility and inflexibility of the incentivised regime[1] which operates within Irish prisons. Some prisoners reported being punished for disability-related behaviour (often perceived as challenging behaviour, without exploring how the behaviour resulted from the inaccessibility of the prison environment) or losing out on the rewards for not taking part in programmes that were not accessible to them, including education programmes. Prisoners with disabilities also reported that they never received accessible information on the prison rules and regime, which meant that they were more likely to be found in breach of prison discipline.

Participants in this research reported significant issues in the transition out of prison for disabled people. Often open prisons are not open to prisoners with disabilities due to the lack of requisite medical and social supports required by this group. Similarly, early release or other community programmes are often based on the prisoner's ability to take part in certain forms of manual labour and are not adapted for disabled prisoners. Additionally, once out of prison people face barriers to accessible housing or finding support and managing health care. These difficulties are magnified in the case of a person with disabilities who is transitioning out of prison.

Recommendations for addressing the barriers facing prisoners with disabilities in Ireland identified through this research are outlined below. While this research and its recommendations represent an important starting point for understanding the experiences of disabled prisoners in Ireland, there is clearly a need for further research to explore in more depth how these challenges can be fully addressed in order to realise the human rights of prisoners with disabilities.

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1 The Incentivised Regimes is a programme that provides for three levels of regimes in prisons: basic, standard and enhanced based on a prisoner's level of engagement with services and behaviour.

Recommendations

RECOMMENDATION 1

Embed the principle of imprisonment as a sanction of last resort in legislation

Imprisonment should be a sanction of last resort for everyone. The Department of Justice and Equality should progress the Penal Policy Review Group [2] recommendation to enshrine the principle of imprisonment as a sanction of last resort in law.

RECOMMENDATION 2

Implement the Public Sector Equality and Human Rights Duty across the prison system

In order to fully meet its obligations under the Public Sector Equality and Human Rights Duty, all criminal justice agencies in particular, the Irish Prison Service should undertake accessibility audits of all prison settings and engage in a disability equality analysis of its service.

RECOMMENDATION 3

Provide accessible information on rights, regimes and complaint systems in prison

The Irish Prison Service should develop information on the rights of prisoners, the prison regime, and complaints processes in different formats including: large print, easy to read, electronic formats, audio files, sign language videos, plain language and braille. These should be proofed by those who use these formats to determine their accessibility. These materials should be available for an individual to access throughout the prison sentence. In addition to general resources, prisons must make adaptations for prisoners whose specific disabilities mean that those formats are not accessible for them.

RECOMMENDATION 4

Introduce human rights based disability assessments

A full assessment of the support, accessibility and reasonable accommodation needs of a person with disabilities should be conducted and led by the Irish Prison Service and Prison Healthcare upon admission to prison and/or when a disability is first disclosed or diagnosed. A holistic approach should be taken in collaboration with the prisoner who is best placed to articulate their needs for support.

RECOMMENDATION 5

Deliver peer-led training in disabilities to all people working in prisons

The Irish Prison Service Training College should ensure that all those working in the prison environment, from governors to prison officers to medical, educational and rehabilitative staff, should receive specific training on responding to the needs of prisoners with disabilities. This includes the basics of terminology used to describe different experiences of disability and the communication and accessibility needs of different groups. Training must be designed and delivered by people with disabilities. Training should address the human rights of prisoners from a disability perspective, and include trauma-informed and gender-sensitive approaches.

RECOMMENDATION 6

Ensure non-discrimination and equal access to services

The Irish Prison Service must ensure that people with disabilities in prison have access to the entire physical prison environment on an equal basis with other prisoners – this includes accessible cells, bathrooms, gyms and recreation facilities, the school, workshops, medical and rehabilitative facilities, offices, etc. This includes physical access (e.g. barrier-free routes without steps) as well as broader environmental access (e.g. avoiding certain kinds of lighting for prisoners who experience seizures).

Additionally, in order to make prison services such as the schools accessible to prisoners with disabilities, individual adaptations and special provision of supports may be needed, including the provision of sign language interpretation, one-to-one assistance for prisoners with learning disabilities, etc. There should also be special provision of supports for prisoners with disabilities, for example access to assistive technology, appropriate aids and the use of video conference facilities to maintain contact with families.

Prisoners with disabilities must have equal access to programmes such as Incentivised Regimes, structured early release programmes, as well as access to open prisons.

2 Strategic Review of Penal Policy, *Final Report (2014)*

RECOMMENDATION 7

Undertake a review of the use of disciplinary sanctions and restricted regimes

A review of the use of disciplinary sanctions in prisons should be undertaken to ensure that no one is punished for behaviours that relate to their disabilities. The Irish Prison Service should further examine the use of restricted regimes to identify whether people with disabilities are disproportionately represented.

RECOMMENDATION 8

Ensure access to single-cell accommodation

In particular, the Irish Prison Service should accommodate people with sensory issues with access to a less noisy cell location. This can only be met through a variety of stakeholders working together in order to reduce prison numbers and ensure that imprisonment is used as a last resort (See Recommendation One).

RECOMMENDATION 9

Prohibit solitary confinement

The placement of people with disabilities in solitary confinement should be prohibited, in line with international human rights standards.

RECOMMENDATION 10

Provide access to non-medical supports

Non-medical supports are key to facilitating equal access and participation for prisoners with disabilities, and these must be provided as part of reasonable accommodation obligations. For example, resources should be provided by the State to the Irish Prison Service to ensure personal care assistants are available to people with disabilities and older people in prison, along with access to speech therapy and occupational therapy.

RECOMMENDATION 11

Ensure continuity and equivalence of care between community and prison

The Irish Prison Service and Prison Healthcare should ensure that prisoners with disabilities have full access to the medical and rehabilitative supports which they had prior to entering the prison setting. Otherwise, the prison environment is directly contributing to a diminished standard of health among prisoners with disabilities and further exacerbating existing impairments.

RECOMMENDATION 12

Facilitate access to non-psychiatric responses

All prisoners experiencing mental health difficulties should be offered appropriate non-psychiatric responses (including access to psychology, counselling, and survivor-led peer support).[3] Where people are assessed as in need of transfer to forensic mental health facilities, there must be robust safeguards and protections in place regarding procedural rights, consent and treatment.

RECOMMENDATION 13

Plan for the implementation of the *Assisted Decision-Making (Capacity) Act 2015* in prisons

The Irish Prison Service should consider how to facilitate the application of the *Assisted Decision-Making (Capacity) Act 2015* and equal access to supported decision-making within prisons when the legislation is commenced.

RECOMMENDATION 14

Make the complaints system fully accessible

Specific steps should be taken to ensure that prisoners with disabilities are fully supported and have opportunities to make complaints in a number of accessible ways. Information on complaints procedures must be available in accessible formats.

3 This has the potential to greatly reduce the escalation of distress and crisis in the prison population.

RECOMMENDATION 15

Ensure the right to confidentiality and privacy

Prisoners with disabilities have equal rights to confidentiality and privacy, including regarding disclosure of a disability or diagnosis. It is not necessary for prison staff to be made aware of a prisoner's diagnosis or disability for them to be made aware of supports and accommodations required. Since many disabilities are hidden or invisible, it is important that prison staff accept when a prisoner discloses a disability or diagnosis and do not question the legitimacy of the person's identity.

Where prison staff are informed of a prisoner's disability in order to provide support, this should be done sensitively and with the consent of the prisoner. Prisoners should not be forced to rely on other prisoners for support where they request the assistance of a trained professional (e.g. for sign language interpretation) as this can violate their privacy. While prison staff should receive training in forms of communication which are accessible to prisoners with disabilities, this should not be considered a replacement for professional services when required to protect the privacy and confidentiality of the prisoner.

RECOMMENDATION 16

Undertake further research

Further research on this cohort is needed, especially to understand the pre-prison experiences and post-release experiences of prisoners with disabilities. This may be one specific area that the Department of Justice and Equality might examine as part of its Data and Research planning. This research focused specifically on experiences in prison of adults with disabilities, but more information is needed about young disabled people in the children detention campus, as well as on the experiences of people detained in forensic psychiatric settings.

1. Introduction

This report examines the rights, needs and experiences of people with disabilities in prison. While international research has shown that people with disabilities are over-represented in the prison population, very little research has been done on the experiences of people with disabilities in prison. This report highlights those experiences alongside an analysis of the legal and policy frameworks which underpin them.

This study looks at the rights, needs and experiences of persons with disabilities in prison in Ireland and globally, to provide an up-to-date analysis of current issues. To this end, the research includes a literature review on the Irish situation and the international research as well as a qualitative piece to include the perspective of different stakeholders. Over the course of this project we have interviewed 16 prisoners, 4 prison staff, Deaf people, disabled activists, and people with psychosocial disabilities, as well as key stakeholders in the criminal justice system and penal reform. While we are grateful for the access we were given, this should be the start of a growing body of research.

Global research demonstrates that people with disabilities face significant barriers when imprisoned [4]. Disabled people may arrive to prisons without having had their support needs identified or addressed, or a person may acquire a disability during her time in prison [5]. People with disabilities also face barriers within prison to access services such as education and employment opportunities, and are exposed to a higher risk of abuse and violence [6]. Prisoners with a mental health diagnosis are also at risk of transfer to forensic psychiatric settings, where deprivation of liberty may continue beyond the timeframe of the original prison sentence. In some cases, prisoners with disabilities may have to rely on support from their fellow prisoners instead of receiving independent support to navigate the prison environment.

Prisoners with disabilities may experience more difficulties to follow prison rules or prison staff instructions if these are not accessible, or if the environment makes it impossible to obey. Prisoners may be asked to sleep on a bunk bed or climb stairs[7], or may find it difficult to understand the rules and navigate the environment. Prison design and functioning may be inflexible to human behaviour, which may affect prisoners with disabilities particularly, e.g. rules may punish self-harm, which can be used by prisoners as a strategy to regulate emotions. Reports from NGOs such as Human Rights Watch have revealed abuses and inhuman conditions of detention for prisoners with disabilities [8]. In the United Kingdom, the Prison Reform Trust has highlighted the barriers experienced by prisoners with learning disabilities.[9] These reports have raised awareness and mobilised policy-makers to act upon these human rights violations.

Despite the growing awareness of rights violations of prisoners with disabilities, improving their experience remains a challenge in all jurisdictions around the world. In Ireland, there is a lack of research on the experience of prisoners with disabilities. The ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by Ireland in 2018 provides further impetus to examine the experience of prisoners with disabilities. This study begins with a short summary of the available literature on prisoners with disabilities. It then presents the findings from a qualitative study on the barriers prisoners with disabilities face in Ireland currently. The study concludes with recommendations to improve the situation of prisoners with disabilities, including action needed to be taken by the prison service to ensure full adherence to the CPRD.

4 United Nations Office on Drugs and Crime, 'Handbook on Prisoners with Special Needs' (2009), p. 43.

5 Alison Liebling et al, 'Suicide, distress and the quality of prison life' in Y. Jewkes, B. Crewe and J. Bennett (eds.), *Handbook on Prisons* (2nd edn, Routledge, 2016).

6 CRPD Committee, 'Observations on the Standard Minimum Rules for the Treatment of Prisoners' (2013), CRPD/SMR, para. 6; Human Rights Watch, Ill-Equipped: U.S. Prisons and Offenders with Mental Illness (2003).

7 Human Rights Watch, 'Old Behind Bars' (2012).

8 Human Rights Watch, "I Needed Help, Instead I Was Punished". Abuse and Neglect of Prisoners with Disabilities in Australia' (2018); Human Rights Watch, 'Double Punishment: Inadequate Conditions for Prisoners with Psychosocial Disabilities in France' (2016).

9 See Prison Reform Trust, *No One Knows Publications*, http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/LearningdisabilitiesanddifficultiesNoOneKnowspublications .

1.1 Disability terminology and scope of this research

It is important to note who is considered within the scope of this research. This research follows the approach of Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD):

> "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[10]

This definition must not be understood to be an exhaustive definition. It includes a wide variety of conditions and impairments, and not everyone who meets this definition will identify as having a disability. Certain groups prefer to identify in more specific ways, including Deaf people whose first language is sign language, users and survivors of psychiatry, autistic or neurodiverse people, and individuals who identify in these ways may, or may not, see themselves as part of the broader disability community, but they all deserve the protection of equality legislation and are all covered by international human rights standards including the UN Convention. In Ireland, the terms 'people with disabilities' and 'disabled people' are most commonly used by people themselves and therefore we have chosen to use these terms interchangeably throughout the report. The only exception to this is where we refer to the experiences or perspectives of a specific individual or group, when we use that person or group's preferred terminology, or when we refer to specific literature, which uses a different term.

The terminology of 'disabled people' stems from those who identify with the social model of disability,[11] [12] who distinguish between their biological difference, which is referred to as 'impairment', and the barriers they face in society, which they call the 'disability'. For example, impairment might mean that a person uses a wheelchair, but the disability they face is the inaccessible environment (steps instead of ramps to access buildings).

Others prefer the term 'people/persons with disabilities', sometimes described as 'person first' language, because it puts the person before the disability. Respectful and commonly used terms to refer to people with disabilities include: persons with disabilities, disabled person, Deaf people, people with learning disabilities, people with intellectual disabilities, and people with psychosocial disabilities (used to refer to people who may have had experience of mental health services).

People are entitled to the protection of their human rights regardless of whether or not they identify as having a disability. Even those who might never identify themselves as having a disability may be subject to discrimination from those who believe them to have a disability. All individuals have a right not to be discriminated against on the basis of disability, even if they do not actually have, or identify as having a disability.

1.2 The prevalence of disabilities among the prison population

Much of the existing international literature on disability in prison is devoted to establishing the prevalence of disabilities among prisoners, often concluding in a need for more research or improved support services. Frequently, these studies focus on persons with intellectual disabilities and persons with psychosocial (mental health) disabilities. The World Health Organisation estimates that up to 40% of the global prison population are persons with mental health problems[13]. A study reviewing research and surveys from the USA, UK, New Zealand, England and Wales (with individual assessments of prisoners, not solely based on IQ tests) of the prison population produced an estimate that 0.5-1.5% of prisoners were diagnosed with intellectual disabilities.[14] A US study found that 14.5% of the male prisoners and 31% of the female prisoners had a psychosocial disability.[15] A recent review from England and Wales found that 36% of the prisoners participating in the study had a disability (including persons with a mental health diagnosis but not including those with learning disabilities in their sample).[16] Studies focusing on pris-

10 Convention on the Rights of Persons with Disabilities

11 See: https://www.scope.org.uk/about-us/social-model-of-disability/

12 Mike Oliver, "The Social Model of Disability: Thirty Years On", (2013) 28(7) Disability & Society, 1024-1026.

13 World Health Organization Europe Health in Prison Factsheet (WHO Regional Office for Europe), p. 1.

14 Seena Fazel et al, "The prevalence of intellectual disabilities among 12,000 prisoners — A systematic review" (2008) 31 International Journal of Law and Psychiatry 369.

15 Henry J. Steadman et al, "Prevalence of Serious Mental Illness Among Jail Inmates" (2009) 60 Psychiatric Services 761.

16 Charles Cunniffe et al, "Estimating the prevalence of disability amongst prisoners: results from the Surveying Prisoner Crime Reduction (SPCR) survey" (2012) Ministry of Justice.

oners with intellectual disabilities from the UK came to an estimate of 11% of remand and 5-7% of sentenced prisoners with disabilities.[17]

In particular, prisoners with psychosocial[18] and intellectual[19] disabilities are disproportionately overrepresented in the global prison population. One study estimates that around 7.1% to 23% of prisoners in England and Wales have an intellectual disability.[20] Prisoners with acquired brain damage have also been found to be over-represented in Australia for example and receive less support than other prisoners with disabilities[21]. Persons with a diagnosis of attention deficit hyperactivity disorder (ADHD) are estimated to constitute around 25% of the prison population in the UK.[22] A study from the USA and Canada found that 48.5% of the prison population suffered from some form of hearing loss.[23]

In Ireland, a 2018 study highlighted the lack of existing data on the prevalence of intellectual disabilities among the prison population in Ireland, the need to improve screening tools and develop care pathways for prisoners with intellectual disabilities.[24] This research noted the limitations of a previous study that developed a nationwide estimate of 28% of prisoners with intellectual disabilities in Ireland. DeafHear has informed the Irish Human Rights and Equality Commission of the low number of Deaf people with custodial sentences. However, it does warn that these prisoners are in an inaccessible environment because prisons do not provide sufficient sign language interpretation.[25]

The variations in data on prevalence of disability in prisons have been explained through limited availability of data, screening tools that do not consider certain aspects of disability,[26] improved screening tools, disability-awareness of the assessor, cultural background[27] or as a consequence of deinstitutionalization policies.[28] However, this last point remains disputed.[29] Some studies find that there is an increasing criminalization of persons with disabilities,[30] while others point to increasing rates at which people acquire disabilities or receive a diagnosis within prison settings.[31]

17 Eddie Chaplin et al, "Characteristics of prisoners with intellectual disabilities" (2017) 61(12) Journal of Intellectual Disability Research 1185.

18 Steven Raphael et al, "Assessing the Contribution of the Deinstitutionalization of the Mentally Ill to Growth in the U.S. Incarceration Rate" (2013) 42(1) The Journal of Legal Studies 187.

19 Afia Ali et al, "Prisoners with intellectual disabilities and detention status. Findings from a UK cross sectional study of prisons" (2016) 53-54 Research in Developmental Disabilities 189.

20 *Ibid.*

21 Gaye Lansdell et al, "'I am not drunk, I have an ABI': findings from a qualitative study into systematic challenges in responding to people with acquired brain injuries in the justice system" (2018) 25(5) Psychiatry, Psychology and Law 737.

22 Susan Young et al, "Identification and treatment of offenders with attention-deficit/hyperactivity disorder in the prison population: a practical approach based upon expert consensus" (2018) 18(1) BMC Psychiatry 281.

23 T Belenchia et al, "Prevalence of Speech and Hearing Disorders in a State Penitentiary Population" (1983) 16(4) Journal of Communication Disorders 279.

24 Gautam Gulati et al, "Intellectual disability in Irish prisoners: systematic review of prevalence" (2018) 14(3) International Journal of Prisoner Health 188.

25 DeafHear submission on the development of the IHREC Strategy Statement 2016-2018.

26 Gautam Gulati et al, "Intellectual disability in Irish prisoners: systematic review of prevalence" (2018) 14(3) International Journal of Prisoner Health 188.

27 Jennifer C. Sarrett, "Revealing the training on intellectual and developmental disabilities among forensic mental health professionals: a survey report" (2017) 8(4) Journal of Intellectual Disabilities and Offending Behaviour 176.

28 The Sentencing Project, "Mental illness offenders in the criminal justice system: An analysis and prescription" (2002) Washington, DC: The Sentencing Project.

29 Liat Ben-Moshe, "Why Prisons Are Not 'The New Asylums'" (2017) 19(3) Punishment and Society; Laura I Appleman, "Deviancy, Dependency, And Disability: The Forgotten History of Eugenics and Mass Incarceration" (2018) 68(3) The Duke Law Journal 417.

30 The Sentencing Project, "Mental illness offenders in the criminal justice system: An analysis and prescription" (2002) Washington, DC: The Sentencing Project.

31 United Nations Office on Drugs and Crime, 'Handbook on Prisoners with Special Needs' (2009).

Most studies conclude that the prison environment is not an appropriate setting for prisoners with disabilities[32], and some studies suggest forensic psychiatric facilities as an alternative. However, there is a growing awareness that diversion of prisoners – especially prisoners with psychosocial disabilities – into forensic psychiatric settings, is problematic from a human rights perspective.[33] This is, in part, because the detention in these settings may last longer than prison without the same due process protections available to prisoners, and may increase the risk of other potential human rights violations including forced treatment.[34]

IPRT's position is that people with severe mental illness should not be detained in prison and should be transferred to a therapeutic environment which can provide the appropriate levels of care needed. Where transfer to a secure psychiatric setting occurs, there should be robust consent processes and procedural safeguards in place. The commencement of the *Assisted Decision-Making (Capacity) Act 2015*[35] will be an important development in this regard.

'Invisible' or hidden disabilities

One of the barriers often identified in the global literature on disability in prison is the fact that the prisoners' needs for support go unnoticed, or that prisoners with disabilities are not identified or do not wish to disclose their disability. Training on prisoners with disabilities and their support needs in the US for example has been described as brief and 'inadequate'.[36] Where prisoners' disabilities are less visible – as is often the case for prisoners with intellectual or psychosocial disabilities for example – these often go unnoticed, with one previous Irish study finding that prisoners with intellectual disabilities do not receive the support they need.[37]

Further, in the case of persons with intellectual disabilities, the literature points out that some prisoners identified with disabilities may not be aware of having a disability or not qualify for disability-specific services, yet experience barriers in navigating the prison environment, or that, while not formally having a diagnosis of disability, they have significant difficulties adapting to prison life.[38] It is no longer contested that people with disabilities make up a significant proportion of the prison population. The question remains however as to how their rights are met and needs accommodated within the prison setting.

32 E.g. Henry J. Steadman et al, "Prevalence of Serious Mental Illness Among Jail Inmates" (2009) 60 Psychiatric Services 761.

33 Tina Minkowitz, "Rethinking Criminal Responsibility from a Critical Disability Perspective: The Abolition of Insanity/Incapacity Acquittals and Unfitness to Plead, and Beyond" (2014) 23(3) Griffith Law Review.

34 Eilionóir Flynn et al, "Report on Disability-specific Deprivation of liberty" (2019) Centre for Disability Law and Policy.

35 Department of Justice and Equality, Assisted Decision-Making (Capacity) Act 2015, http://www.justice.ie/en/JELR/Pages/Assisted_Decision-Making_(Capacity)_Act_2015

36 Jennifer C. Sarrett, "Revealing the training on intellectual and developmental disabilities among forensic mental health professionals: a survey report" (2017) 8(4) Journal of Intellectual Disabilities and Offending Behaviour 176.

37 Gautam Gulati et al, "Intellectual disability in Irish prisoners: systematic review of prevalence" (2018) 14(3) International Journal of Prisoner Health 188.

38 J. Talbot & C. Riley, 'No one Knows: Prisoners with learning disabilities and learning difficulties', Prison Reform Trust (2007)

2 The Rights of People With Disabilities in Prison

This section covers the norms and legislation that is applied to prisoners with disabilities. It covers the UN Standard Minimum Rules for the Treatment of Prisoners, which is a source of standards (not an international treaty). It also looks at how the Convention on the Rights of Persons with Disabilities applies to these rules and to the prison context. Prisoners' rights are protected at an international and regional level, as well as in Irish legislation. Prisoners with disabilities often have specific provisions in human rights law, calling for accessibility and non-discrimination. Training of prison staff on the rights of persons with disabilities is also included in human rights standards (e.g. article 13 CRPD and rule 76 UN Standard Minimum Rules for the Treatment of Prisoners), as well as the right to health for prisoners with disabilities.

2.1 International legal framework

The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) forbid the use of torture and other cruel, inhuman or degrading treatment or punishment on prisoners (Rule 1). These Rules also include a prohibition on discrimination (Rule 2.2), including a specific provision for prisoners with disabilities:

> *"prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory."*

Rule 13 provides for the adequate conditions of prison environments, including meeting all health requirements, while Rule 15 and Rule 16 require that all sanitary installations (showers and toilets) must be accessible to all prisoners. Adequate health standards and access to health services must be guaranteed by States to all prisoners (Rule 24), especially to persons with disabilities The patient's autonomy must be respected and informed consent must govern the doctor-patient relationship.[39]

The Mandela Rules also reflect an awareness of existing barriers for prisoners with disabilities in terms of compliance with prison rules and regime. Rule 39.3 requires prison authorities to explore in what way a possible disability

> *"may have contributed to [the prisoner's] conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability."*

To avoid disabled prisoners becoming distressed, involuntary separation of prisoners from the general prison population must be subject to the review of a health care professional (Rule 46.3).[40]

The Mandela Rules specifically include the right to be provided with information on the prison's rules and functioning, rights, duties and any further issues. This information must be accessible to prisoners with disabilities and summaries of this information must be displayed in common areas (Rule 55). Rule 76 foresees training on mental health identification and provision of psychosocial support. The Mandela Rules allow for the use of restraint mechanisms if necessary. There is a specific section dedicated to prisoners with mental disabilities (Rules 109 – 110). Under this section, diversion from the criminal justice or penal system is allowed if the person is deemed not criminally responsible or if s/he develops a disability that makes him/her unfit to stay in prison, and States are encouraged to continue mental health treatment after imprisonment. Special settings or transfer to mental health facilities is recommended; however, the Committee on the Rights of Persons with Disabilities has commented that this rule is in conflict with article 14 CRPD on the right to liberty as will be explained below.[41]

The CRPD includes the right to equality and non-discrimination (Article 5), as well as a specific right to liberty and security (article 14), which prohibits unlawful or arbitrary detention, and guarantees the right to equal treatment in case of detention, including the provision of reasonable accommodation. This treaty was ratified by Ireland in March 2018 and is thus applicable to the Irish context. However, the Irish state made a declaration to article 14 as follows: "Ireland recognises that all persons with disabilities enjoy the right to liberty and security of person, and a right to respect for physical and mental integrity on an equal basis with others. Furthermore, Ireland declares its understanding that the Convention allows for compulsory care or treatment of persons, including measures to treat mental disorders, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards."[42] This

39 The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)

40 According to Rule 37(d) this includes "Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation."

41 Committee on the Rights of Persons with Disabilities, 'Observations on the Standard Minimum Rules for the Treatment of Prisoners' (2013).

42 Ireland's Declarations & Reservations to the CRPD, OHCHR, (2018) Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec

means that the Irish State considers that persons can be subject to involuntary treatment and diverted from the criminal justice system if it is deemed necessary to care for a person, even if this is contrary to the interpretation offered by the Committee on the Rights of Persons with Disabilities.[43] This declaration conflicts with the interpretation of Article 14 by the Committee on the Rights of Persons with Disabilities in its Guidelines.[44]

The Committee on the Rights of Persons with Disabilities (CRPD Committee) reviewed the Mandela Rules and highlighted the importance of bearing in mind the general principles of the convention[45] in the application of these rules, including the principles of equality, respect for diversity, and non-discrimination on the basis of disability. Further, it underlines that the denial of reasonable accommodation constitutes discrimination, and recommends that the Mandela Rules interpret denial of reasonable accommodation in detention facilities as discrimination or, in some instances, a form of torture and ill treatment.[46] Similar to Rule 39.3 of the Mandela Rules, the CRPD Committee recommends prohibiting any disciplinary action against a prisoner based on a disability, including physical restraint on the basis of a perceived or actual '*mental disability*'. It further stresses the need

> *"to prohibit the forced use of neuroleptics to contain persons with psychosocial or perceived disabilities and, in general, the use of medicine and chemical containment as a way of social control. The use of medicine as social control may amount to torture or ill treatment."*[47]

According to this approach, solitary confinement should not be used on prisoners with disabilities.[48]

Therefore, the lack of accessibility does not only refer to physical barriers, but also to all forms of communication and technology, and may be considered instance of inhuman and degrading treatment or punishment. This is because the lack of accessibility may impede communication with prison staff and services provided by the prison on an equal basis with others.

The CRPD Committee also has the power to adjudicate on individual cases where States have ratified the Optional Protocol to the Convention. To date, only one case has been heard by the Committee regarding the treatment of a prisoner with disabilities. In *Mr. X v Argentina,*[49] the CRPD Committee found that the State had failed to provide reasonable accommodation to Mr. X, a prisoner with disabilities, exposing him to substandard conditions that may cause irreparable harm to his physical and mental health. The case concerned a prisoner with disabilities who was receiving medical treatment on a daily basis as an outpatient. Mr. X complained of the conditions of detention, including lack of accessibility, and of the transfer between the prison and the hospital which he alleged put his life and health at risk. Based on his right to health and rehabilitation, he repeatedly requested to be held on home arrest, all of which were denied. The Committee found violations of Articles 9(1), (2) and 14(2) of the Convention, due to the lack of accessibility and of accommodations to guarantee his mobility within the prison, as well as a violation of Article 17 for the precarious conditions of detention to which he was subjected as a consequence of the first violation.[50]

The right to health is a common concern for all prisoners, including prisoners with disabilities,[51] who are often found to have poorer health than the general prison

43 Committee on the Rights of Persons with Disabilities, 'Guidelines on Article 14' (2015).

44 Other countries for example Norway and the Netherlands have made similar declarations to Ireland on Article 14 of the CRPD, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.

45 Ibid

46 *Ibid* para 10.

47 Committee on the Rights of Persons with Disabilities (2013) Observations on the Standard Minimum Rules for the Treatment of Prisoners. CRPD/SMR

48 *Ibid*, para 12.

49 *X v. Argentina*, CRPD/C/11/D/8/2012,

50 Committee on the Rights of Persons with Disabilities, Communication No. 8/2012, CRPD/C/11/D/8/2012.

51 Rick Lines, "The right to health of prisoners in international human rights law" (2008) 4(1) International Journal of Prisoner Health 3.

population.[52] The right to health is recognised as an economic, social and cultural right,[53] is universal[54] and non-discriminatory in application, and may also be invoked under the right to life[55] and humane treatment[56]. The CRPD Committee has also highlighted the right to health for prisoners with disabilities on an equal basis to others, and the need to adopt preventive measures to avoid the progression or the creation of new disabilities.[57] In this respect, it also warns against interpreting rehabilitation from a solely medical point of view, and urges prison administrations

> *"to implement appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of prison life, on an equal basis with others."*[58]

The Convention further requires States to eliminate all barriers within prisons, which means that communication and information must be accessible for all prisoners. States must also provide procedural accommodation in all type of legal proceedings, which also covers proceedings within prison.[59] Non-discrimination is an essential pillar of the CRPD, and involves a modification or adjustment of physical structures or procedures to ensure equal enjoyment of rights of prisoners with disabilities[60]. Inaccessible facilities, services and utilities in prisons may thus result in disability-based discrimination and lead to cruel or degrading treatment, which is also forbidden under article 15 CRPD.

52 Paul Leslie Simpson et al, "Prison health service directors' views on research priorities and organizational issues in conducting research in prison: outcomes of a national deliberative roundtable" (2017) 13(2) International Journal of Prisoner Health 113.

53 Rick Lines, "The right to health of prisoners in international human rights law" (2008) 4(1) International Journal of Prisoner Health 3.

54 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12(1).

55 Human Rights Committee, General Comment No. 36, at para 29.

56 Human Rights Committee, General Comment No. 21.

57 *Ibid* at para 9.

58 Committee on the Rights of Persons with Disabilities (2013) Observations on the Standard Minimum Rules for the Treatment of Prisoners. CRPD/SMR, para. 10

59 Committee on the Rights of Persons with Disabilities, 'Observations on the Standard Minimum Rules for the Treatment of Prisoners' (2013).

60 Manfred Nowak et al, "When detainees have a disability: Their rights and fundamental freedoms" (2009) 5(3) International Journal of Prisoner Health 113.

2.2 Council of Europe and European Union

The European Prison Rules (EPR) developed by the Council of Europe contains some specific recommendations regarding prisoners with disabilities. For example, the EPR recommends separating prisoners with psychosocial disabilities in specially designated settings (Rule 12.1) and recommends that prison medical services provide psychiatric care and undertake suicide prevention (Rule 47). Training for staff working with specific groups (e.g. "*mentally ill prisoners*") is recommended in Rule 81.3. The EPR assigns the responsibility of diagnosing physical and mental illness to the prison's general practitioner, as well

> "*identifying any psychological or other stress brought on by the fact of deprivation of liberty*" and "*noting physical or mental defects that might impede resettlement after release*" (Rule 42.3).

The EPR also makes specific recommendations about education programmes for disabled prisoners, including Rule 28.1 which stipulates that prison education should be available for prisoners in a way "which meet their individual needs."[61] Further, Rule 28.2 states that "priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education" and Rule 28.3 notes that particular attention shall be paid to "those with special needs."[62] It should be noted that these rules predate the CRPD and do not fully reflect new developments in thinking about the rights of people with disabilities.

The Council of Europe has recently published a Recommendation[63] and a Resolution[64] in which it expresses its concern for the situation of prisoners with disabilities. The Council underlines the need to guarantee that the principles of equality of treatment, non-discrimination, reasonable accommodation and accessibility are respected in the context of disabled detainees.[65] In its Recommendation the Council emphasises the need to collect statistical data, to consider intersectional discrimination.

The European Convention on Human Rights is also applicable to the prison context and prisoners with disabilities. The European Court of Human Rights (ECtHR) has issued several judgments on the prohibition of torture concerning prisoners with disabilities. In *Semikhvostov v Russia,*[66] the ECtHR found a violation of article 3 of the European Convention on Human Rights (prohibition of torture) due to the lack of accessibility for a paraplegic prisoner, lack of reasonable accommodation and a lack of organised assistance with his mobility and daily routine which resulted in systematic segregation. The Court concluded that this led to mental and physical suffering amounting to inhuman and degrading treatment. In *Price v UK,*[67] the ECtHR found that the inaccessibility of the bed and rest room for a female prisoner who was a wheelchair user also amounted to degrading treatment.[68] In *D.G. v Poland*[69] a wheelchair user had to rely on his fellow prisoners for mobility and sanitation. The ECtHR found that the prison was inaccessible and that the sanitary conditions were inappropriate which made the complainant vulnerable. The Court ruled that the conditions were

61 European Prison Rules. Available on-line at: **https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae**

62 *ibid*.

63 Recommendation 2132 (2018).

64 Resolution 2223 (2018).

65 Council of Europe. Resolution 2223 (2018). Detainees with disabilities in Europe

66 *Semikhvostov v Russia*, [ECHR], Application 2689/12, (February 2014)

67 *ECHR Price v UK* [ECHR], Application No. 3394/96, 10 July 2001.

68 For similar decisions, see *Arutyunyan v Russia* (10 January 2012), para 74, the detention for almost 17 months in a regular prison facility of a wheelchair-bound person who had numerous health problems including a failing renal transplant, extremely poor eyesight, severe obesity and a serious form of insular diabetes was also deemed incompatible with Article 3; *Grimailovs v Latvia* (25 June 2013), paras 154-162 (lack of organised assistance for paraplegic prisoner: violation). *VD v Romania* (16 February 2010), paras 92–99 (medical diagnoses indicated a prisoner's need for dentures, but none had been provided who was unable to pay for them himself and despite legislation making these available free of charge: degrading treatment); *Slyusarev v Russia* 2010, paras 34–44 (detainee suffering from medium-severity myopia not able to use glasses for several months causing considerable distress and giving rise to feelings of insecurity and helplessness: violation); and *Vladimir Vasilyev v Russia* (10 January 2012), paras 60-70 (no provision of special orthopaedic footwear to prisoner resulted in distress and hardship exceeding this unavoidable level: violation).

69 *D.G v Poland* [ECHR], (Application no. 45705/07) (2013)

below the standards set out by article 3 ECHR. In separate cases the ECtHR has also found inhuman or degrading treatment,[70] unjustified use of solitary confinement without appropriate support or care,[71] and not providing adequate rehabilitation (medical, psychological and psychiatric) to prisoners violated article 3 (prohibition of torture).[72] For instance, punishing a person by imposing a disciplinary procedure instead of providing support has also been found to violate articles 3 and 2. In one case, the detainee committed suicide following the failure of the prison authorities to provide him with support.[73] Punishing suicide attempts and not providing support and care to a 16-year-old with psychosocial disabilities was also found by the ECtHR to violate Article 2, the right to life.[74]

In *ZH v Hungary*, the ECtHR said that the burden of proof lies with the State and if the State fails to prove that they have provided necessary reasonable accommodation, it is considered inhuman and degrading treatment. The lack of reasonable accommodation (regarding communication with a deaf prisoner with intellectual disabilities) was found to violate article 3.[75] In *Abele v Latvia*,[76] the situation of a deaf prisoner, who had been placed in overcrowded cells without any support, was also considered to amount to inhuman or degrading treatment. The ECtHR highlighted that the prisoner had experienced a lack of personal space, anguish and feelings of inferiority due to his inability to communicate.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has collected evidence of abuse of prisoners with disabilities by prison staff and of concerning conditions that may violate article 3 ECHR.[77] For example, the CPT has described the conditions of two prisoners with disabilities in Slovakia, who did not receive support to get through daily tasks (e.g. personal hygiene, eating assistance) and had very limited human contact, as inhuman and degrading treatment.[78]

The Committee on Equality and Non-Discrimination of the European Parliament has recognised the lack of accessibility of prisons, which result in unfit conditions of detention of persons with disabilities.[79] The Parliament has expressed its concern about the situation of prisoners with disabilities, due to the lack of provision of reasonable accommodation, lack of accessibility and inadequate provision of their specific needs. Further, it has recognised that prisoners with disabilities may be placed in unsuitable cells and under unfit living conditions, with inaccessible common spaces or where they cannot move around the prison without assistance. The same report identified a lack of access to communication due to lack of accessibility and lack of appropriate care and treatment for prisoners with disabilities, which resulted in a worsening state of health for these prisoners.[80] The Parliament highlighted that this exacerbates the vulnerability[81] and isolation of prisoners with disabilities.[82]

70 *Güveç v Turkey*, [ECHR] App no 70337/01 (2009).

71 *Kucheruk v Ukraine* [ECHR] App 2570/04 (2007).

72 *Murray v Netherlands* [ECHR] App (application no. 10511/10).

73 *Ketreb v France* [ECHR] (application no. 38447/09) (2012).

74 *Coselav v Turkey* [ECHR] 1789 (2012).

75 *Z.H. v Hungary* [ECHR] Application No 28973/11 (2012).

76 *Abele v Latvia* [ECHR] App. No(s) 60429/12, 72760/12 (2017).

77 CPT visit to Romania, CPT/Inf (2019) 7; CPT visit to Slovakia, CPT/Inf (2019) 20; CPT visit to Spain, CPT/Inf (2017) 34.

78 CPT visit to Slovakia, CPT/Inf (2019) 20.

79 European Parliament, Committee on Equality and Non-Discrimination, 'Report: Detainees with disabilities in Europe' (2018).

80 *ibid* at para 53.

81 *ibid* at para 5.

82 *ibid* at para 70.

2.3 Irish Law

The Prisons Act 2007[83] allows for the development and implementation of prison rules through statutory instrument—Prison Rules 2007.[84] Under section 35 of the Act, the Minister for Justice is given power to "make rules for the regulation and good government of prisons". Neither the Prison Rules nor the Prisons Act address disability or equality directly. However, there are provisions that are relevant to people with disabilities in prison.

The Prison Rules 2007 foresee identification of 'mental' or physical illness and transfer to specific facilities of prisoners with disabilities. The Rules note that prisoners are entitled to "the provision of healthcare of a diagnostic, preventative, curative and rehabilitative nature that is, at least, of the same or a similar standard as that available to persons outside of prison who are holders of a medical card."[85] A separate set of Healthcare Standards was developed by the Irish Prison Service in 2011, which, while not legally binding, sets the policy aims of health services within the prison environment. These standards require that prisoners' health needs must be assessed within the first 24 hours of admission.[86] The Prison Rules also allow for ancillary treatment "where a prison doctor certifies that a prisoner requires remedial physical education or therapy, the Governor shall, in so far as is practicable, make provision in relation thereto, in consultation with the Director of Prison Healthcare Services." (Rule 32.4)

The Prisons Act prohibits specific forms of punishment for breach of prison discipline including placement of the prisoner in restraint, sensory deprivation, and confinement in a special observation cell.[87] However, the Prison Rules permit restraint subject to specific conditions in cases where there is urgent necessity to prevent a prisoner from harming themselves or others, or significant damage to property.[88] The Rules define a special observation cell as "a cell so constructed and designed, and incorporating such exceptional safety features, furnishings and methods of observation, as to afford enhanced safety for the prisoner accommodated therein, including safeguarding against self-harm."[89]

Education programmes are provided for in the Prison Rules, which states that: "In so far as is practicable, a broad and flexible programme of education shall be provided in each prison to meet the needs of prisoners"[90].The stated aim of such education programs includes to help prisoners to cope with their imprisonment, achieve personal development, prepare for life after their release from prison, and establish the appetite and capacity for lifelong learning. It is explicitly stated that education programmes "give special attention to prisoners with basic educational needs, including literacy and numeracy needs."[91]

Section 15(1) of the Criminal Law (Insanity) Act 2006 provides for transfers of prisoners with psychosocial disabilities to a psychiatric hospital where:

(a) a relevant officer certifies in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, and

(b) the prisoner voluntarily consents to be transferred from the prison to a designated centre for the purpose of receiving care or treatment for the mental disorder

In the event that a person is not consenting to be transferred out of the prison, forced treatment of the prisoners in a psychiatric hospital is still permissible under Section 15 (2) of the Act, with the certification of two or more relevant officers and at the direction of the Governor. Involuntary treatment on this basis is intended to end on the final day of a prisoner's sentence, and the 2006 Act can no longer be used as the basis for the continued detention of a prisoner after that period. However, a prisoner may have their stay in a designated

83 Prisons Act 2007.

84 Prison Rules S.I. No. 252 of 2007.

85 Section 33(1) Prison Rules S.I. No. 252 of 2007.

86 Irish Prison Service, Healthcare Standards, sections 1.1.7, 1.3.1 and 1.3.4.

87 Section 13(7) Prison Act 2007.

88 Section 65 Prison Rules SI No. 252 of 2007.

89 Section 2 Prison Rules SI No. 252 of 2007.

90 Part 12 110(1) Prison Rules SI No. 252 of 2007

91 Part 12 110 (2)B Prison Rules S.I. No. 252 of 2007.

centre extended if, after the expiration of their sentence, they are found to meet the criteria for involuntary detention under the Mental Health Act 2001.[92]

Recent case law in Ireland shows that people can be detained in a psychiatric hospital under wardship rather than the Mental Health Act.[93] This case involved a prisoner who was coming to the end of his sentence having been transferred from prison to the Central Mental Hospital, diagnosed with a mental disorder and who was perceived to pose a risk of harm to others. In this case the Supreme Court authorised the use of wardship to admit the former prisoner directly to the Central Mental Hospital, which as a result left the individual with no access to the procedural safeguards of the Mental Health Act, 2001 (including the right to a mental health tribunal to review the need for his continued detention). This decision represents a concerning development from a human rights perspective for prisoners and former prisoners with disabilities in terms of the imposition of involuntary psychiatric treatment beyond the expiration of an individual's prison sentence.

Other relevant pieces of legislation for prisoners with disabilities in Ireland include the Equal Status Acts 2000 – 2015, the Disability Act 2005 and the Irish Human Rights and Equality Commission Act 2014. All three acts create legal obligations for prisons in their approach to disabled prisoners. The Disability Act 2005 places a statutory obligation on public service providers, including the Irish Prison Service to support access to services and facilities for people with disabilities. This includes built environment accessibility, as well as accessibility of information and communication within the prison environment. All prisons must have an access officer according to this legislation, and prisons must follow the guidelines set out in Technical Guidance Document M as part of the as part of the Building Regulations 2010 – this includes the provision of level access, handrails, internal ramps and aids to communication.[94]

Prisons are also covered under the Equal Status Acts 2000 – 2015. Under the Equal Status Acts "discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service."[95] The legislation also states that these refusals or failures; "shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question."[96] In determining whether a particular accommodation is reasonable, the Workplace Relations Commission, which adjudicates disputes under this legislation, has taken into account the relative means of the service provider – and the resources available to that organisation to implement the required change. Section four also sets out that:

> "Where a person has a disability that, in the circumstances, could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination."

Section 42 of the Irish Human Rights and Equality Commission Act 2014 sets out a public sector duty which all public bodies, including the Irish Prison Service, must adhere to.[97] This stipulates that a public body shall in the performance of its functions have regard to the need to –

> "(a) eliminate discrimination,
> (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
> (c) protect the human rights of its members, staff and the persons to whom it provides services."

In terms of implementing this duty, public bodies must, with "regard to the functions and purpose of the body and to its size and the resources available to it—

> 42.2 (a) set out in a manner that is accessible to the public in its strategic plan (howsoever described) an assessment of the human rights and equality issues it believes to be relevant to

92 Mental Health Act 2001.

93 *AM v HSE*, IESC 3 (2019)

94 Part M, Building Regulations (2010) available at https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/BuildingStandards/FileDownLoad%2C24773%2Cen.pdf

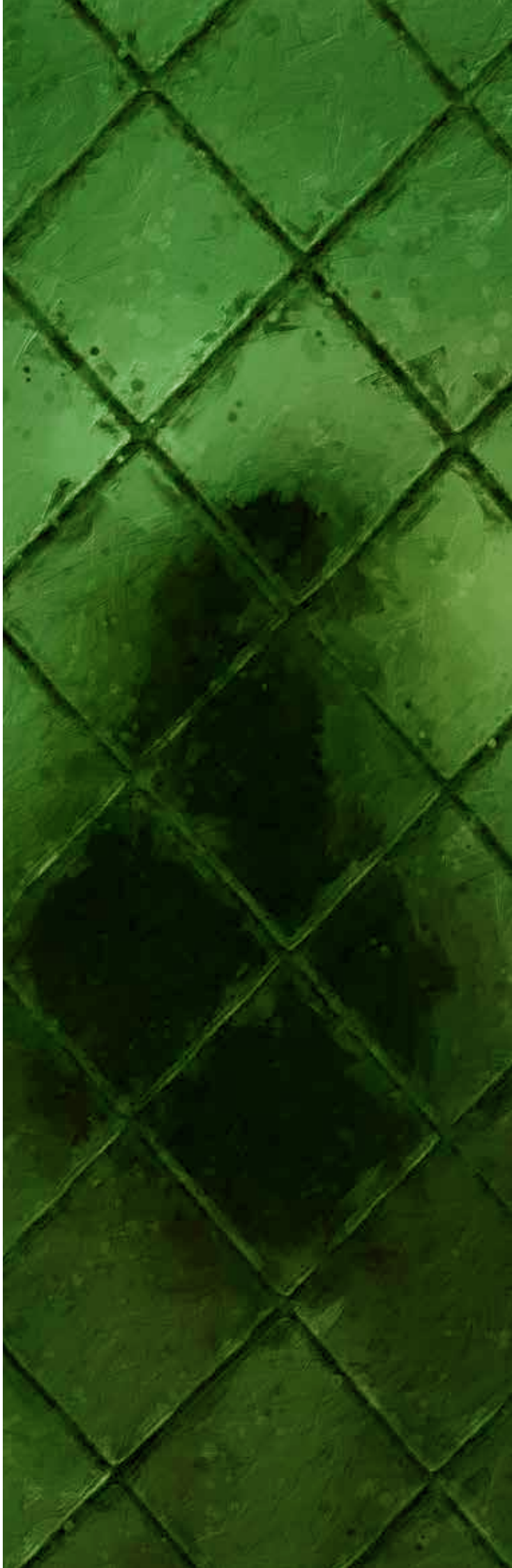
95 Equal Status Act 2000.

96 *ibid*.

97 Section 42 Irish Human Rights and Equality Commission Act 2014.

the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues."

The Irish Prison Service has been very proactive in engaging with its obligations under Section 42. It initially took part in a pilot project on section 42 with the Irish Human Rights and Equality Commission.[98] In this it engaged with the rights of women in the Dóchas Centre in Dublin and in Limerick prison. The IPS also included the public sector equality duty in its two most recent strategic plans.[99] [100] However, more work is needed to explore how the public sector equality duty applies to prisoners with disabilities and how the Irish Prison Service can develop specific policies, plans and actions to achieve this goal.



98 See https://www.ihrec.ie/our-work/public-sector-duty/

99 Irish Prison Service Strategic Plan 2016-2018

100 Irish Prison Service Strategic Plan 2019-2022

3 Methodology

Firstly, a literature review was conducted to identify existing research on prisoners with disabilities, both in Ireland and globally. The research team also reached out to international networks on disability rights to identify grey literature and other reports and guidance documents which had been developed specifically regarding prisoners with disabilities.

Secondly, the team conducted 31 semi-structured interviews with different stakeholders to obtain in-depth views on the current situation in Ireland. The stakeholder groups included 16prisoners with disabilities from different settings, representative organisations of persons with disabilities, prison officers, civil servants and public officials working in justice and the prison system, and advocates for prison reform. Separate interview guides were developed for each of the different stakeholder groups, and are available on request from the research team. Findings were contrasted with the existing literature and discussed with the Advisory Board.

While detailed information on the prisoners' demographic information cannot be provided for reasons of confidentiality, the research team interviewed a broad spectrum of prisoners with disabilities including people with physical and/or mobility impairments, people with psychosocial (mental health) disabilities, people with intellectual and/or learning disabilities (including neurodivergent prisoners), people with acquired brain injuries, deaf people, hard of hearing people, and visually-impaired people. The age profile of prisoners interviewed spanned from those in their early 20s to those in their early 60s. Many prisoners identified multiple disabilities, and several had experiences of other chronic or long-term health conditions in addition to their disability, including experiences of addiction. The research team interviewed both male and female prisoners.

Given the small sample of prisoners interviewed, no conclusive findings about prevalence of prisoners with disabilities in general, nor of prisoners with specific impairments, can be made from this research. It is also important to note that the research team did not require prisoners to disclose their specific disability or diagnosis for the purpose of the research, although all those interviewed did so. The purpose of the interviews was to identify barriers experienced by prisoners with disabilities in the prison environment and regime, and to gather examples of supports and accessibility options that worked well for prisoners with disabilities. Therefore, the researchers did not attempt to diagnose or identify impairments among the prisoners interviewed. Further, based on the input of the project's Advisory Board, the research team were clear that no recommendation of a diagnostic or assessment tool for identifying impairments among the prison population would be recommended as part of the research outcomes, as this falls outside the remit of the project, which is to identify how human rights of prisoners with disabilities can be better protected.

Following the granting of ethics approval for this research from NUI Galway's Research Ethics Committee and the Irish Prison Service, the researchers contacted governors in six different prisons to request access to prisoners with disabilities and prison staff. Access was granted to three different prison settings within the available timeframe for conducting this research. The three prison settings included both rural and urban prisons, and male and female prisons. Information on the possibility to take part in the research project was circulated to prisoners by governors, assistant governors and Integrated Sentence Management officers. Prisoners were given time to decide whether to take part in the research and were offered the option of withdrawing from the research after the interview before the final report was published. A rigorous informed consent process and confidentiality process was undertaken by the researchers conducting the interviews, given the particular sensitivity of this research subject, and an awareness of the need to avoid exacerbating any perceived vulnerability among prisoners whose disabilities may not have been known to other prisoners or to prison staff. Communication supports were provided where needed to facilitate the interview process, including the use of sign language interpretation, and easy to read versions of the participant information sheet and consent form designed for prisoners with intellectual disabilities or limited literacy.

Participants in interviews were guaranteed confidentiality and anonymity. We have been careful to protect the identities of those who took part in our research. We have used codes in the footnotes in order to allow the reader to understand who is speaking at any one time. We have divided the quotes into five groups; prison staff – those who work in prison directly employed by the Irish Prison Service; prisoners with disabilities – people with disabilities in prison; public servants – including civil servants and public officials who work in the criminal justice system in or alongside prisons; advocates for prison reform; and finally disability advocates.

The groups are coded as follows
Pr St (Number) – Prison Staff
PWD (Number) – Prisoner with a disability
PS (Number) – Public Servants
PA (Number) – Advocate for Prison Reform
DA (Number) – Disability Advocate

Following the completion of the interviews, the researchers thematically analysed the findings and discussed these with the Advisory Board prior to completing the report. The findings are presented below.

4 Findings

4.1 Prison (In)Accessibility

Significant accessibility barriers for prisoners with disabilities were reported during this study including barriers in the prison environment (mostly concerning physical infrastructure), and the use of inaccessible forms of information and communication throughout prison settings. In this section, we discuss the concerns of prison staff, prisoners and other stakeholders regarding disability accessibility in Irish prisons, and where relevant, compare this with international research.

4.1.1 Environmental Accessibility

While all of the prison settings visited by the research team had cells or rooms that were designated as accessible for people with mobility impairments including wheelchair users, other stakeholders consulted for this research identified that several prison settings do not have sufficiently accessible cells.[101] [102] In some instances, prisoners were provided with individual cells in order to better accommodate their disability. This was not the case for most of the prisoners we spoke to.

One prisoner noted that he was not able to have the adaptations he would have at home, as they were seen to be a risk for self-harm, and that he had to get by without his normal adaptations. While the wheelchair-accessible cells were meeting basic access requirements, they were not adapted to the extent needed to facilitate mobility within the cell.

Barriers for prisoners with disabilities began in an individual's cell. Some prisoners spoke of the isolation they experienced in their cells, and described it as an under-stimulated environment which was particularly difficult for them because of different disabilities.

> *"When they slam that door at 7 o'clock, that is it, you are in there until there until the next morning."*[103]

There were specific issues raised around furnishings within cells themselves. Several prisoners reported that they weren't given the option for mattresses with sufficient support in spite of chronic pain issues. This was seen to exacerbate existing health issues. Prisoners noted that inappropriate sleep facilities increased their pain.[104] [105]

> *"I need a proper bed for, I think there should be a bed for people with a disability, for their back like. I'm 47 like, I'm no young one, I should have something for support."*[106]

One person managed to navigate these difficulties through self-advocacy, *"I had to try and get a different orthopaedic mattress and all that like, but I got it eventually like, you know?"*[107]

While prisoners often knew that the standard prison mattress was causing them difficulties, very few were aware of options for alternatives, or indicated that options for accommodations could be open to them. There was one instance where there were significant adaptations made to a cell including hoists, sliding boards and the provision of an appropriate wheelchair. In this instance there was significant advance notice of the prisoner's arrival, and the person had support needs which would be "life threatening" if not met "100%" of the time.[108]

Many prisoners with disabilities spoke of the difficulties for them in sharing a cell. Some prisoners with disabilities, such as those using designated physically-accessible cells, were not required to share a cell. Nonetheless, the majority of prisoners interviewed were sharing a cell or living space with other prisoners. For those who would have difficulty engaging with people, sharing a cell proved particularly challenging. Some people spoke of being unnerved at sharing a cell. One prisoner identified the difficulties they faced in sharing close quarters with another person, and was anxious at the idea of "someone standing over me."[109]

101 PS103
102 PS10
103 PWD5
104 PWD7
105 PWD1
106 PWD10
107 PWD1
108 PS105
109 PWD4

Other prisoners we spoke to talked about cell sharing exacerbating existing mental health struggles, including contributing to reduced tempers and increased aggression. Some prisoners spoke about losing privacy around their disability due to sharing a cell. However, there were individuals within the prison who did not share this experience. Indeed some prisoners spoke about relying on those with whom they shared a cell for assistance and support in carrying out tasks. One prisoner opted for a less accessible cell in order to be housed with a prisoner who was counted as a friend, who they could rely on for support.[110] Some prisoners with hearing impairments or sensory sensitivity spoke of difficulties around the location of their cell and where it was positioned in relation to the other aspects of the prison. Noise from landings made life difficult, and there was an expressed preference for a less noisy cell location.[111]

A number of prisoners on protection were interviewed during the research. While prisoners may be placed on protection for a number of reasons, most of those interviewed for this research had requested to be placed on protection for disability specific reasons. Some people felt that they would be better able to manage symptoms such as paranoia or anxiety in a smaller setting, whilst others needed a quieter environment. One prisoner requested to be placed on protection exclusively because of disability: "the noise it wouldn't be good for me, like you know?"[112] Prisoners self-segregating from the mainstream prison population due to social and environmental issues was raised in interviews across prison settings.[113]

While access issues were encountered by prisoners in their own cells, the level of access to the wider prison environment was often worse than within individual cells. Several people described that wheelchair users would not be able to access the various parts of the prison. In some institutions staff described that services would be brought to the prisoner if facilities such as the library, food line, or the tuck shop were inaccessible.[114] This amounted to prisoners being unable to leave their cells or their wings for large portions of their prison stay. This is a further restriction on the liberty of people with disabilities in prison. It also restricted their ability to take part in prison activities more generally.[115] [116]

Prisons have not been developed with consideration for its impact on people with disabilities. As one public servant reported:

> *"I think one of the big issues with prison is if you don't fall within the norm of being an 18-30-year-old, able-bodied male - and even using that term itself I know is not ideal. But if you don't fit within that sort of norm, prison is going to be a challenge for you."*[117]

By virtue of not fitting into the idea of what a prisoner should be – non disabled – people with disabilities are specifically disadvantaged. Prisoners who had no physical impairments saw prison as impossible to navigate if you had a physical disability. When asked if people with physical disabilities are able to navigate their way around prison, prisoners interviewed for this research commented:

> *"If you're in a wheelchair, I would doubt it"*[118]

> *"Sure there's steps everywhere."*[119]

Prisoners with physical impairments found the physical infrastructure outside their cells difficult to navigate. They also noted a distinct lack of support in terms of accessing disparate areas of the prison. Some prisoners noted that support was dependent on a prisoner's individual relationship with a prison officer, rather than on the need of that specific prisoner.[120]

110 PWD7
111 PWD4
112 PWD4
113 PWD5
114 Pr St 1
115 PWD1
116 PWD13
117 PA101
118 PWD2
119 PWD6
120 PWD13

"There was a lift and like trying to get the officers to get me up and down in the lift, I mean, they don't really want to go out of their way for you unless you get on with them."[121]

Individual prisoners spoke of being severely restricted by the inaccessibility in the wider prison. The reasons given for the lack of support varied; one prisoner described officers refusing to support him because they were uninsured.

"Prison officers wouldn't take me anywhere because they weren't insured to push the wheelchair."[122]

Reasons for the lack of access support varied; staffing numbers seemed to prove particularly challenging in ensuring that prisoners were supported in accessing prison facilities. Most of the prisons visited by the research team had areas of the prison which were physically inaccessible to prisoners with mobility impairments, although newer prisons and smaller prisons reported less accessibility issues. Inaccessibility was magnified by the size and age of the prison. One official working in the prison system reported:

"Their cells are accessible, no their cells are accessible because they're placed on the ground floor with wide cell doors. So, in terms of being on the landing that's fine, it's their access to activities that would keep them occupied during the day that can be more of a challenge because of the location of those particularly around physical disabilities. Which makes a day very long and boring and you know. And then I guess when days are long and people are bored, I always worry about what people might do instead, whether that's use drugs or get you know, be more vulnerable to engaging in antisocial behaviour. Not always but it's possible."[123]

Prisoners with visual impairments also struggled to navigate the wider prison environment.

"I'd be banging into people because I don't see them, so I'd be banging into people, you know. That's the kind of stuff that was happening."[124]

This research also reveals barriers in terms of the sensory accessibility of prisons; for example, research by the National Autistic Society in the UK has highlighted that the noise, the lights and a persistent chemical smell creates barriers for autistic prisoners.[125] These conditions are replicated in Ireland, and would create significant difficulties for prisoners with autism or other disabilities.

Prisoners identified that often the schools in prisons, many of the places of employment within the prison, and other areas including the visiting rooms and recreation spaces were inaccessible to prisoners with disabilities. They noted that prisoners with disabilities were more likely to spend extended time in their cell, and isolate as a result of this.

"If you're not going to the yard you're banged into your cell and if you're not going to the school you're banged into your cell."[126]

"She doesn't come out of her cell. She just kind of sits in there."[127]

While similar environmental accessibility issues were identified in the female and male prison settings included in this research, some gender-based differences in prison design or environments were noted by particular stakeholders.

"Women occupy prisons built by men designed by men and run by men. So, not enough consideration in my opinion, although we're getting better given the specific gender differences between the complexities of running a female prison and running a male prison."[128]

While those interviewed did not comment on how

121 PWD1

122 PWD1

123 PS106

124 PWD13

125 Clare Hughes, "Supporting Autistic People in Prison and Probation Services", National Autistic Society (2019). Available on-line at: https://network.autism.org.uk/sites/default/files/ckfinder/files/Support%20in%20prison%20and%20probation%20PDF.pdf

126 PWD12

127 PWD4

128 Pr St 2

the intersection of gender and disability might affect women prisoners with disabilities, this is certainly an area deserving of further study in the Irish context.

The lack of access to these spaces generally increased the sense of isolation of prisoners with disabilities in the prison environment.[129] These findings replicate those in international research on the negative impact of such isolation on prisoners with disabilities, who may develop anxiety or an inability to concentrate, due to lack of stimulation.[130] This can compound the other barriers to participation and general lack of accessibility which prisoners with disabilities experience in the prison environment.

4.1.2 Information Accessibility

Inaccessible information and a lack of information were two key issues identified during the research. A huge amount of information for prisoners was in written form and being unable to access it left prisoners with disabilities at a key disadvantage. The majority of people we spoke to in prison had difficulties accessing information about the prison and about their rights within it.

Many people we spoke to relied on incomplete or no information as a result of a lack of accessible information.

> *"I just don't read it."*[131]

> *"I try and make my own meaning up of it."*[132]

> *"I wouldn't understand it. I'd get all embarrassed."*[133]

Some prisons had different ways of conveying information which were more successful, such as a TV channel or a prisoner designed booklet. While these were helpful, information was still only conveyed in one or two formats and these were usually in written form, or covered orally in the prisoner's committal interview.

Prison staff interviewed for this research were aware of varying literacy levels within prisons, and some interviewees discussed how prison information would be written in plain language for accessibility purposes. In the prison settings visited by the research team, no evidence of easy to read documentation with simple language and visual images were found which conveyed prison information. As discussed above, other forms of communication support needed to make information accessible, such as sign language interpretation, were rarely available to prisoners.

The lack of accessible information led to difficulties and embarrassment for prisoners who attempted to hide their literacy levels.

> *"Sometimes I don't understand things written down in English."*[134]

> *"To be honest with you I was too embarrassed to ask anyone else. Do you know, for my situation, I left school at an early age and I never got to learn how to read and write in school."*[135]

> *"Sometimes you might understand things and sometimes you wouldn't understand. So, you try and read things. You might, like sometimes."*[136]

No prisoners or prison staff interviewed for this research reported information being made available in audio formats, on recorded devices, or in braille, for prisoners who needed these formats.

Committal interviews were seen as the main opportunity for a new prisoner to get to grips with the prison system and to be provided with the information they needed about their time in prison. Some staff noted that there were issues with this from the outset, because on committal prisoners were often not as able to take in information. It was noted that there was a lack of follow up which meant that, if someone had been unable to get to grips with this information at the

129 Nicole Schneider et al, "Deaf or hard of hearing inmates in prison" (2004) 19(1) Disability & Society 77.

130 *ibid*.

131 PWD3

132 PWD6

133 PWD14

134 PWD2

135 PWD14

136 PWD2

outset, they may not have another opportunity to catch up.[137] [138]

Most prison staff seemed confident that a prisoner would be able to work things out as they went along. In one prison, staff spoke of an informal buddy system for when people are committed and suggested that it worked quite well.[139] This view was not shared by the prisoners, many of whom voiced a need for greater information. Word of mouth amongst prisoners was a key way in which prisoners learned the rules within prison. This can also lead to disinformation or inaccurate information circulating. A lack of an accessible reference point for this information also contributed to this inaccurate information circulating.

4.1.3 Communication Accessibility

This research has identified barriers to accessible communication with disabled prisoners, including internal barriers within the prison regarding communication with prison staff and other prisoners, as well as how prisoners communicated with those outside the prison, such as family and friends, through visits and phone calls.

Some prisoners reported that staff did not seem to grasp the extent of their difficulties in processing information and communication. Staff did not necessarily understand that a prisoner was not being deliberately obstructive, but simply unable to process information quickly or communicate a response to a request. One prisoner explained:

> *"My short-term memory is shot. You see the way I'm speaking to you now and telling something, a lot of things I said, it would be in my head somewhere but it would come back to me. And that's a big problem when I'm especially talking to, as I call them, the screws. I keep falling out with them because they tell me to do, I keep forgetting to do things, you know, but they don't understand the problem I have because - they're all just the same to me, they're in prison."* [140]

One prison officer also described how other staff would sometimes shout at Deaf and hard of hearing prisoners, unaware that the prisoner could not respond.[141] Deaf prisoners routinely had no one to communicate with, and often only had an hour or so a week with someone who was proficient in Irish Sign Language, which amounted to communication deprivation and de facto isolation of Deaf prisoners.

> *"So, you just have to be patient, put up with it, like, do you know, and sometimes you're just kind of looking at the four walls, like, and you kind of have nothing to do and that, and you're here for a long time and my sentences and stuff have been delayed, so, do you know, you're just ... it drags on and on and I'm the only Deaf person here. Like there isn't anybody to talk to."*[142]

> *"It's not good for your brain, you know. Like you sort of, you slow down, you know I think your brain kind of slows down, like."*[143]

Other participants in this research reported that organisations to promote Irish Sign Language had some access to prison settings and provided specific classes or workshops for Deaf prisoners. It was clear that these initiatives were limited in what they could offer, often providing a maximum of three months of weekly workshops regardless of the length of sentence facing a prisoner. None of the prison settings visited during this research had made efforts to provide opportunities for prisoners or prison staff to learn Irish Sign Language. This inaccessibility of communication was reported by prisoners to exacerbate the isolation experienced by prisoners in general.

> *"I need to talk to people, do you know what I mean, I need to be able to communicate and enjoy myself. All the hearing lads, I don't understand what they're saying. They're all saying hello to each other and all that. You know, they're talking to each other and you can't lip read it all, and it's very hard with nobody to talk to then, you know."*[144]

137 Pr St 2
138 Pr St 3
139 Pr St 4
140 PWD14
141 Pr St 1
142 PWD2
143 PWD2
144 PWD2

Hard of hearing prisoners also experienced difficulties in this area, with many opting to keep to themselves for fear of misunderstandings.[145]

> *"Even talking to prisoners or anything, it's hard, when they're speaking back, I can't hear them, I'm saying 'What?' So, the people didn't know me yet, they don't know me, and they kept on saying what, it's ignorant, I'd end up getting a box in the head or something, eventually."*[146]

This was amplified by the lack of access to phone calls and issues with the visiting area.

There were some efforts made to accommodate the disabilities of visitors to the prison. The disabilities of prisoners themselves were reportedly not taken into consideration when facilitating visits with friends and family. This caused stress and isolation for the prisoners concerned. Few prisoners we spoke to had friends or family who visited, and few wanted their families to visit. For many people we spoke to visits proved difficult. There were issues around the physical structure of visiting rooms. Fixed benches, or fixed chairs caused difficulties for those with physical disabilities especially those who used wheelchairs.

> *"I can't be leaning over the table. You can't move the chairs either, they're boarded to the floor like but when I came in here they should have accommodated me better for my visits because I couldn't hug them or anything you know what I mean, so?"*[147]

For those who struggled with loud environments, visits were particularly difficult and caused frustration.

> *"They're sitting the other side from me. I can't even hear my kids talking, can't hear my wife speaking, can't hear my father and mother talking. They have to scream on the visit and when they're talking on the visit there's people beside me listening, yeah. Or there could be people that side listening, and then I'm what, what, what, and there's people... like it's awful."*[148]

Access to special visits, with improved visiting conditions, is dependent on being on the enhanced level within the incentivised regime; therefore, many prisoners found themselves in unsuitable visit locations. Not only did people report being unable to understand what their families were saying to them, they also really struggled with the lack of privacy afforded to them on the visits. For Deaf prisoners who use Irish Sign Language, visits proved the only form of communication with the outside world which was reliable to them. This is because literacy levels in English are low among this cohort and phone calls are inaccessible. As a result, they suffered more from being in prisons far away from their community, and from restricted visiting times. It lead to greater isolation within the prison again.

The lack of video call facilities for Deaf prisoners who communicated through sign language was concerning. While video link in one prison setting had been used to facilitate those with families in other jurisdictions, and for those with family in other prisons, this privilege had not been extended to deaf prisoners at the time this research was conducted.[149]

> *"You know there's the phones there and I can't use the phone so as a deaf person, if I need to make a phone call, I can't text, do you know what I mean. So, my phone is kept in the office, like, locked up or whatever. So, if I want to contact my family or whatever, I can't, because I'm not allowed it. You're not allowed mobile phone. So, you know, I can't use the phone. So, as a deaf person it's very hard."*[150]

> *"I can't ring them, there's no video call.No text."*[151]

A Deaf advocate told us of difficulties in setting up in another prison where the rationale given by the prison was "for security reasons";[152] the advocate was clear that this amounted to discrimination because "all hearing people have access to their family but the deaf

145 PWD12

146 PWD12

147 PWD1

148 PWD12

149 Video link is facilitated in those cases on the basis that it is equivalent to a visit. In the case of Deaf prisoners, it is equivalent to a phone call as it is the only way they can communicate in their first language.

150 PWD2

151 PWD2

152 DA1

person can't contact theirs."[153]

Prisoners who had sensory disabilities or who were hard of hearing found making phone calls in the prison difficult as phones were located in loud areas and they were unable to effectively communicate with friends or family.[154]

While some prisoners relayed notes to other prisoner's families, and attempted to facilitate phone calls that way, it is insufficient to meet a prisoner's rights and has significant implications for a prisoner's right to privacy and communication with family and the outside world. This is explored further below in the section on disclosure of disability, privacy and support.[155]

4.2 Prisoners' Rights

The research explored prisoners' awareness of their rights, in terms of their knowledge of disability equality legislation, human rights more broadly, and rights in specific contexts, including employment, education, and health (including mental health). The knowledge of staff and other stakeholders regarding the rights of prisoners with disabilities was also examined, including through interviews with other stakeholders. This section reports the findings in relation to awareness and understanding of the rights of disabled prisoners.

4.2.1 Rights Literacy and Awareness

Prisoners participating in this research reported that they did not receive much information about their rights in prison – either on arrival, or during their stay in prison, and that for the most part, they learned about their rights or what they could request from other prisoners, and occasionally, from prison staff.

> *"You're not given any information of what you're entitled to, your routine, if you look at the television there's a channel on the television, you can read that but it only gives, it doesn't give you everything you know what I mean?"*[156]

> *"They don't tell you your rights."*[157]

The research team noted that there were disparities in rights literacy throughout the prisons. A minority of prisoners who participated in the research were aware to some extent of the existence of human rights in prison. Generally, these were prisoners from more privileged socio-economic backgrounds with strong family and/or legal support.[158] [159] Several prisoners interviewed had no conception of rights within the prison. The conflation of rights and regime increased this confusion. Many people referenced getting a booklet of some description, but being unable to read it or having lost it by the time they settled into prison. The booklet seemed to deal mainly with the operation of the prison regime and consequences for breach of prison discipline.

153 DA1
154 PWD12
155 PWD1
156 PWD1
157 PWD9
158 PWD10
159 PWD1

"It does a bit; it goes on about rules and regulations on that book but it doesn't give your rights."[160]

"I've a little book about that size but it doesn't say your rights in it ... it's hard to understand it."[161]

"Rights? No, nobody gave me information on my rights, even about my hearing. Like I heard it off other people about my ears. Like there's other prisoners in jail, some of their family could be deaf, like their family and they're locked up. Well if they're going up to visit, they get a special visit where all the family come up. But yet I'm in prison, only getting nothing special."[162]

There were also prisoners across institutions who felt that they had been given information on their rights at some point, but that they had missed out on that opportunity at the start of their time in prison. In these cases, prisoners were clear that they would have liked to have had better access to this information.

"I probably did years ago, but I was that bad on drugs, I can't remember."[163]

"I got it when I came here, but I never read it, I just threw it in the bin. I should have looked, really, I should have read it."[164]

By making information like this available at the start of a prison stay, rather than easily accessible throughout, prisoners missed out on this information. This concern was reflected by prison staff, who noted that it generally took a few weeks for a new prisoner to be able to settle in and take in information.[165] [166]

Some prisoners interviewed for this research identified concrete ways in which information on rights could be provided to all prisoners on arrival to prison.

"What would make things better for me, would be getting to know your rights the day you come. And if you can't read and you can't understand things, for pictures to be broken down, like what you have here. I seen what you have there, simple English, the pictures and like you know, when you get to prison that's your time, that's your schooling, you know what I mean, your school practice. Have you any questions about anything you can talk to people."[167]

4.2.2 Right to Reasonable Accommodation

When asked in general about their rights, prisoners tended to refer to the prison regime and the privileges accorded to prisoners depending on their status – especially whether they were on basic, standard or enhanced status within the prison. Very few prisoners identified that they had human rights within the prison, or a right not to be discriminated against on the basis of their disability. Most prisoners felt that they would not be entitled to what they perceived to be "special treatment", which outside the prison environment would be more likely to be recognised as a reasonable accommodation required to ensure disability equality.

"I told them, but they're not just going to give me special treatment."[168]

Those who were able to make staff aware of their disability still felt that no accommodation could be made for them. Some stakeholders spoke of a lack of provision of formal reasonable accommodation.

"There doesn't seem to be a planned approach in terms of making reasonable accommodations for people so that they can participate fully in prison life if they happen to have a disability. It's really down to the goodwill and nature of individual Prison Officers, Class Officers and fellow prisoners, rather than it being a formalised part of the day to day running of the prison."[169]

Several prisoners spoke of being denied specific access

160 PWD14
161 PWD14
162 PWD12
163 PWD11
164 PWD12
165 Pr St 2
166 Pr St 1
167 PWD1
168 PWD12
169 PS103

devices that they had been reliant on outside the prison. In one instance, a prisoner with visual impairment described being denied access to a mobility aid.

> *"I am not allowed my white stick; they won't give me my white stick. So, I haven't got a white stick, they take it off me because it's dangerous."*[170]

In this particular incident, issues around the perceived vulnerability of the prisoner played into the justification for this denial of reasonable accommodation. Therefore, the refusal of the mobility aid seemed to be justified both for the prisoner's own safety (as it might mark this prisoner out as vulnerable to other prisoners) as well as for the safety of the other prisoners if any prisoner tried to use the white cane as a weapon.

For those with memory loss or short term memory issues, assistive technology was not available, which impacted how they were able to go about their day to day.

> *"I've got a Dictaphone outside, but they won't allow me with it in here."*[171]

One prisoner spoke of opting to not use an assistive device, hearing aids, as the over the ear hearing aid marked him out. There was no option for him to acquire a device which would be less visible to others, such as a smaller, in-ear hearing aid, which would allow him to hear, while not compromising his own sense of security.[172]

These perceptions indicate that prisoners with disabilities in general did not feel they had a right to insist upon the kinds of reasonable accommodation they would expect outside the prison environment. Staff who worked with prisoners directly admitted that "sometimes we have to use aids and appliances that are probably not, you know, in the first instance ideal",[173] but were committed to ensuring appropriate aids were available where possible.

4.2.3 Complaints

There was significant reluctance amongst prisoners to make formal complaints, even when they felt that they had been treated unfairly or that their disabilities were not being properly accommodated. Prisoners who had made complaints or attempted to felt that they had been unfairly treated as a result. One prisoner described that after the complaint was made the prison staff "put everything on the long finger and I was told that because I made complaints that's why they wouldn't help me".[174] The same prisoner reported that "when I did go into them and talk to them about things, I suffered for it. Which I think is wrong." Another prisoner described how following pursuit of a legal action against the prison "we were made pay for it by other officers."[175] A further prisoner reported about the experience of complaints: "You get more hassle for them. You get more hassle if you put a complaint form in."[176]

No prisoners interviewed for this research had a positive experience of the complaints process. Only one prisoner spoke of receiving support in putting forward a complaint. The prisoner who was unable to write relied on a fellow prisoner in order to make the complaint: *"I got him to write out the complaint form so in my own words."*[177]

There was also evidence that both prisoners and non-prisoners discouraged people from making complaints for fear of retribution or poor treatment from the staff.

> *"Fellas were saying to me, 'What are you doing that for? If they find that you're going to be in serious trouble.'"*[178]

> *"Like my solicitor said, 'If you keep complaining they're going to ship you out of here and they're going to make your life hell.'"*[179]

170 PWD13
171 PWD13
172 PWD13
173 PS 103
174 PWD1
175 PWD9
176 PWD12
177 PWD14
178 PWD1
179 PWD1

Alongside negative responses from staff, some prisoners spoke of being unable to make complaints as a result of negative reactions from other prisoners.

> *"Because if people hear you're a rat, like, no one will like you. Everybody would be talking about you. That's all they do in this prison, is talk. It is like an animal in the zoo."*[180]

One prisoner who did make complaints also felt that their complaints around accessibility were not being taken seriously by the visiting committee.

> *"There's a visitor committee I meant to say to you, they're a waste of time. Things I told you here I told them exactly the same, I brought my folder over, times, dates, prison officers, me, never put a prisoner's name unless another prisoner witnessed this, or the landing witnessed this, went to the visitor committee. Oh they were writing this down and writing that down and now, for ages now I was trying to get to see them. They wouldn't come down because they didn't want me talking."*[181]

Other prisoners also felt that their complaints were not being taken seriously. *"I don't think they listen to those complaints, I think it's just hello, how are you, goodbye, you know, there's nothing being taken into consideration and checked out."*[182]

4.3 Non-Discrimination in Prison Services

4.3.1 Employment

Employment was an area that showed significant difficulties for people with disabilities. Most of the people we spoke to would have liked a job of some description.

> *"It's very hard here, prison. I'd like a job like, but I don't have any job."*[183]

Very few of the people we spoke to had any sense that they would be entitled to reasonable accommodations and adaptations in order to take up a job in the prison. Overall, the majority of the prisoners with disabilities interviewed had no employment opportunities within the prison. Some prisoners who currently had no access to employment within the prison had been told explicitly that it was as a result of their disability.

> *"Because I'm blind on this side and I kept banging into things, you know, so they won't give me a job."*[184]

> *"And they said I have to wait. I said no, why do I have to wait. And they said oh, it's hard. You're deaf. I said what do you mean like, I need a job, like. You see other people, all hearing lads, they have jobs, like, do you know, and I haven't been in any trouble or anything like that, like."*[185]

Other prisoners were confused as to why they had never been given any sort of job within the prison.

> *"No, no. I'm waiting but I haven't heard anything, like. I've had good behaviour, like."*[186]

> *"Am I asking like can I get a job and the guards are like oh wait, oh yeah, we will let you know, we'll let you know, wait, wait, wait. And then there's some list and your name is on the list, whatever, but it's no good, like."*[187]

180 PWD11
181 PWD1
182 PWD10
183 PWD12
184 PWD14
185 PWD2
186 PWD9
187 PWD2

Overwhelmingly there was a sense that a job would be a good experience for those in prison. People felt that it would occupy them, give them a sense of purpose and some dignity. One staff member noted that jobs were important for prisoners in order to make the prisoner's sentence more bearable, and that was the main benefit to having one: "The main thing they want jobs for is the time, kill the time, pass the time, the longer the better."[188]

> *"And it would be lovely to get a job. Anything like in the kitchen or cleaning or, do you know, doing [inaudible] or painting or cleaning or anything like that, like."*[189]

> *"It's not that I want to be paid for it. I just want to do something just to occupy my brain. I must clean the cell about 20 times a day."*[190]

> *"They don't want to be swapping around jobs. I have no job because I suffer from depression as well, long-term depression. I don't like crowds either. I get claustrophobic and get panic attacks and seizures."*[191]

Some participants reported that jobs were more likely to be made available for long-term prisoners, and this was told to us by two of the prison staff we interviewed.[192] [193] There was a waiting list for jobs in several prisons.[194] While this may explain why some of the people we interviewed did not have a job, many of the prisoners who participated in this research were serving long sentences, and had not been in employment in the prison in spite of seeking it out.

4.3.2 Education

Access to education programmes varied across the different prison environments visited by the research team. While the education systems within the prison are often doing their best to meet the individual needs of specific prisoners, the prisoners with disabilities interviewed for this research reported that in general their needs were not met and the education opportunities offered in the prisons were often inaccessible to them. Generally schools were seen to be insufficiently resourced within the prisons themselves.

Prison staff interviewed for this research made it clear that the school was in theory open to everyone. In more than one prison participants reported that in order to be able to access the school, prisoners would have to be able to climb stairs or physically get to the school, which meant that many people with physical disabilities were unable to access education within the prison. No participant interviewed for this research was able to identify alternative forms of education for those who were unable to access the physical school building.

It was stated that while there were some excellent programmes in place, they often were not suitable for prisoners with the greatest needs. Those people were seen to be excluded from the education system within the prison.

> *"Under the prison education service, and it's written into the prison rules, that they must provide, where required, basic literacy services. So all of the 13 education centres would provide basic literacy services to people, and that could involve full-time teachers or English tutors that they would bring in to work one to one, or we also use a method called Toe by Toe, which is where one prisoner will mentor another."*[195]

The classroom environment was not seen as suitable for many prisoners with disabilities. Classes were seen to be too busy and noisy which impacted on many prisoners with disabilities. As a result of this a number of prisoners interviewed for this research opted out of education within the prison system altogether.

> *"There's too many crap heads anyways up there who'd be messing and blaggering up there so I just had enough of that class, do you know"*[196]

188 Pr St 1
189 PWD2
190 PWD7
191 PWD5
192 Pr St 3
193 Pr St 4
194 Pr St 1
195 PS104
196 PWD14

"I can't go to the school or anything. My ears, I can't hear the teachers talk."[197]

"I can't go into a class because the teacher's speaking and I can't hear them talk. I tried it, like I tried loads of times."[198]

Those working within the system reported being overburdened and under resourced, making it difficult. While some people spoke of positive experiences with teachers within the prison, a number of negative comments were made about teachers' abilities to meet the needs of students with specific disabilities.

"Some teachers have no tolerance at all."[199]

"Some teachers are not so good with that kind of [invisible] disability."[200]

"The teacher wouldn't have the time to come and sit down [with a prisoner with disabilities]."[201]

It was specifically cited by a number of prisoners that there was a lack of literacy education, and while some programmes were operating successfully, these needed to be expanded.

"I have met people in here who can't read and write but not many people would [go to school]."[202]

"I can't read and write. I would like to get help with that."[203]

"There should be one-to-ones for people with learning difficulties."[204]

Deaf prisoners were not provided with interpreters in order to access education in the prison. This resulted in a blanket exclusion from education.

"You need an interpreter but there isn't any. And you're trying to lip read but sure you can't understand what they're saying, do you know."[205]

These findings in the Irish context reflect similar concerns in international research where persons with disabilities may not be able to access employment or education opportunities within prison due to communication barriers.[206] International research also demonstrates that prisoners with disabilities may be denied participation in work and educational programmes or turn them down themselves because these are not adapted or they have not been informed of their options, which often leads to a prolongation of their sentence or makes it more difficult for them to access opportunities to shorten their sentences as their peers do.[207]

4.3.3 Health

The management of long-term conditions was of particular concern for both prisoners and other stakeholders interviewed during this research. Staff reported that problems with the health service more generally were exacerbated within the prison. Prisoners felt that the barriers they experienced made it difficult for them to navigate an already stretched system. Concerns were raised by prisoners, prison staff and people working in the criminal justice system about access to mental health treatment and more specialist treatment. One official interviewed for this research noted:

"There is a primary healthcare services, there is a psychology service, but both of those are totally overstretched. Our mental health services, in-reach mental health service, but again they're also heavily subscribed, staffing overstretched. So my own view

197 PWD1

198 PWD14

199 PWD9

200 PWD9

201 PWD9

202 PWD5

203 PWD11

204 PWD 5

205 PWD 2

206 See N.R. Schneider * & B.D. Sales (2004) Deaf or hard of hearing inmates in prison, Disability & Society, 19:1, 77-89. .

207 Marta Russell et al, "Disablement, Prison and Historical Segregation" (2002) 7 Monthly Review. Walsh cited in Kathy Ellem, "Experiences of leaving prison for people with intellectual disability" (2012) 3(3) Journal of Learning Disability and Offending Behaviour 127.

is that it doesn't currently meet the needs of the population."[208]

Stakeholders also expressed concern about the right to health. There were concerns that doctors would not be equipped to deal with the health inequalities facing blind and visually impaired people, as blind people are not able to self-report symptoms on the same basis as others.[209] [210]

There were concerns that the time it would take to source an in-person interpreter for triage would compromise Deaf prisoners' right to health.[211] There were also serious concerns raised about access to prison psychology services and more broadly, the lack of alternatives to psychiatry.[212]

These concerns are not unique to the Irish prison system, but are reflected in the international literature on the health of prisoners with disabilities.[213] Medication is often the only treatment certain disabled prisoners receive, and this approach is particularly prevalent in the use of forced psychiatry in the prison population.[214] One CPT visit to the UK found that many prisoners found it very difficult to use the technology to apply for medical visits,[215] and that ambulatory services should be made available[216].

Prisoners with disabilities interviewed for this research were often dissatisfied with how their medical transition to prison was managed. Outside of prison some prisoners were on medications which were strictly controlled, and would have included medication classified under the Misuse of Drugs Act, 1977. Following committal to prison for some prisoners these medications were automatically discontinued or their continuation was delayed. This has significant implications for prisoners in the management of medication and their conditions.

"The specialist put me on them outside, and GPs have taken me off them here."[217]

"I can't understand that the IPS [Irish Prison Service] can override the medical council."[218]

"Every time I go into the doctor, the doctor wouldn't put me back on the same medication for my back."[219]

Prisoners felt like their health needs were not being taken seriously as a result of this, and that their health was being compromised. Prisoners interviewed for this research reported increased pain, and that the denial of medication had knock-on impacts for their health.

There were other issues raised about the general day-to-day management of medication. Some prisoners managed a lot of their medication themselves, but this option was not open to everyone. Those working in services supporting those transitioning out of prison noted that often people were put on medication that would not be available to them outside prison due to general medical service restrictions and price barriers. As a result, prisoners were unable to access them upon leaving the prison, which created greater uncertainty in a period of instability.

Prisoners also noted issues in the timing and management of doses.

"I get my medication in the morning. It says 8 o'clock

208 PS103.

209 Without proper support, symptoms such as rashes or other visually indicated symptoms can be missed.

210 DA2.

211 DA1.

212 DA3.

213 Eddie Chaplin et al, "Characteristics of prisoners with intellectual disabilities" (2017) 61(12) Journal of Intellectual Disability Research 1185.

214 *Victor Rosario Congo v Ecuador*, report 63/99, case 11.427 of 13 April 1999. See also the report of the UN Special Rapporteur on Torture on his mission to Moldova (A/HRC/10/44/Add.3) cited in Manfred Nowak et al, "When detainees have a disability: Their rights and fundamental freedoms" (2009) 5(3) International Journal of Prisoner Health 113.

215 CPT visit to the UK, CPT/Inf (2017) 9.

216 CPT visit to Turkey, CPT/Inf (2011) 13.

217 PWD1.

218 PWD1

219 PWD14

on the form right? Some come in at 8 o'clock and give it to me, others come in at 9.30 when they're giving out methadone."[220]

"Just the medication runs out on me, they won't give me, I have to go and pick it up in the chemist, in the doctor's in here but sometimes they come around, they don't have it on them, they just don't come near me."[221]

"Medication then comes around every so often. Sometimes ten o'clock, sometimes eleven o'clock at night. The medication comes by sometimes nine o'clock, sometimes eight o'clock, do you know, but it's not good enough. It should be on the same time as every night."[222]

How punishment within the prison interacted with the distribution of medication was an issue highlighted by one prisoner who said they had faced disciplinary action as a result of not taking medication at the prescribed time.[223] Another prisoner was concerned about being re-admitted into hospital for a physical illness. This prisoner had negative experiences with physical healthcare services in the past and did not want to repeat them, but was aware of how concerned prison staff were about this decision:

"They're all worried about me for my health. They think – I won't go to the hospitals. I just don't want to go to the hospitals. They're not nice places."[224]

There were a few instances where access to secondary treatment seemed to be unavailable to prisoners with disabilities. In one instance a prisoner reported not being able to get the necessary surgery while in prison because the surgery required significant physiotherapy both before and after.

"I'm not getting it done in here because they're not bringing me out for physio and they're supposed to."[225]

"And there's no one to help him talk which I think is wrong. There's no speech therapy whatsoever, he doesn't talk to any of the prisoners."[226]

"She was saying that she couldn't feel her fingers, but there was no physiotherapy."[227]

Prisoners and prison staff reported that there were some opportunities to access other supports including Alcoholics Anonymous and Narcotics Anonymous, but that these may have been more difficult for prisoners with disabilities to use. Depending on the physical location and sensory environment of these meetings, as well as needs for communication access including sign language interpretation, several prisoners with disabilities would not have been able to attend such meetings. This is a common concern also found in the international literature which recognises that programmes run to treat alcohol or drug dependencies, mandatory sex offender programmes or educational programmes are often inaccessible for persons with disabilities.[228]

4.3.4 Mental Health

Mental health treatment for prisoners was an issue of concern raised by all categories of participants interviewed for this research. However, several prisoners were unaware of the existence of supports to access (such as psychology and counselling services as well as access to workshops or programmes on managing mental health issues), other than psychiatry if they were to become emotionally distressed in prison.

"If the head goes a bit just ask for a medic."[229]

Some prisoners interviewed saw that the approach to mental health taken within prisons as out-dated and not reflective of advances in thinking about non-medical responses to emotional distress.

220 PWD1
221 PWD13
222 PWD14
223 PWD6
224 PWD7
225 PWD1
226 PWD1
227 PWD7
228 See N.R. Schneider * & B.D. Sales (2004) Deaf or hard of hearing inmates in prison, Disability & Society, 19:1, 77-89..
229 PWD14

"It's not nice the way it's being done, it's not, the regime is 60/70 years old, those times like, gone are the days of giving people that have psychiatry problems loads of medication."[230]

"You get just really, really depressed, it's tough. And I think there should be classes in here for depression as well, you know, there should be some kind of community-based learners come in and do some talks on how to deal with stress and depression and how to use your time in prison wisely."[231]

"Not in here. No, supports groups not in here. [That], there would be mental health base like. I'd like to see people come in that knows what they're talking about or people knowing about your own trouble, basically, do you know. Then you could sit down and explain to them about your mental health or your issues, your health problems, things like that you know. But nothing here. I'd like to see people doing that."[232]

Where prisoners were aware of psychology services, they were often unable to access it. People were told to wait until a later date, or were unable to access the service during their sentence. One prisoner had requested counselling support but this was not to be provided until towards the end of the person's fairly lengthy sentence: *"I asked for the general counsellor they said, no, but they said, when I get close to my time is over."*[233]

Public servants working within and alongside the prison service also identified the lack of non-medical responses as a barrier for holistic care and the need for further recognition and resourcing of Prison Psychology Services.

"I mean like I think that the Prison Service is quite medicalised and informed by the medical model which is obviously difficult for the psychology service."[234]

"A complete dearth of provision and a complete disregard for human rights for people with mental health disabilities in prisons."[235]

The medicalisation of mental health meant that people with psychosocial disabilities perceived that they were seen as something to be fixed, rather than as a group of disabled people who need support. There was limited understanding of mental health as a disability as articulated by one public servant interviewed for this research: *"Somebody with a mental health disability, how they're treated and how they're approached and how people interact with them, they don't see that as on a parallel with the wheelchair when it is."*[236]

Prisoners with disabilities also spoke about facing the choice between being near family support and requesting a transfer of prison to get appropriate supports for mental health or emotional distress.

"If I could go to a different jail I would, I'd pick a different jail but it's just because this is close to my family here."[237]

Prisoners with disabilities also reported the damaging impact of isolation and inaccessibility of the prison environment on their mental health, and identified that greater access to recreation facilities, as well as to employment and education, would improve their sense of wellbeing.

"More gym access, suppose that would help everyone, the gym is good for your head like, it's good for your mental health you know what I mean."[238]

While the lack of alternatives to psychiatry was raised consistently, prisoners reported issues with access to psychiatry itself. In the settings visited by the research team, prisoners and prison staff reported that access to treatment was very much dependent on location of a prison. Some stakeholders spoke of issues around prisons which faced overburdened psychiatric lists,

230 PWD1
231 PWD10
232 PWD14
233 PWD15
234 PS106
235 PS105
236 PS105
237 PWD15
238 PWD16

and reliance on transfer to other prisons. Prisoners were also transferred to other prisons and other approved centres under the Mental Health Act to receive psychiatric treatment. Prisoners who had to be transferred for this purpose found the experience particularly difficult.

> *"They get you up at like 6.00 to go, and then you have to sit in a holding cell [redacted] all day and don't get spoken to or anything, it is bad like."*[239]

> *"I'm still waiting."*[240]

> *"You don't want to be waiting a few weeks or a few months if you feel like you are in a bad place, you want to see a psychiatrist kind of immediately like because doctors can't really do much for you mental health wise."*[241]

Some stakeholders also talked about the need for prison staff to be better informed about ways of de-escalating situations of emotional distress among prisoners without resorting to coercive interventions. One interviewee in particular identified how prison staff were shown ways of responding to a prisoner's self-harm that were more respectful of the prisoner's autonomy and dignity.

> *"There's a particular approach that we should take in dealing with [the] self-harm, and it's to not react, not to over-sympathise, to not get angry, and just to deal with it as a matter of fact."*[242]

This interviewee felt that there should be more opportunities for prison staff to learn about these kinds of approaches.

This was mirrored in other interviews:

> *"Training that we do where you look at kind of de-escalating violence, like looking at those techniques, you know, and looking at your own, reflecting on your own ability to manage it and kind of what does it trigger in you if you know that somebody that you're working with comes with a very violent history and yeah, I think we'd have lots of suggestions kind of around training."*[243]

Staff working on the landings also identified the need for this kind of training, in particular how to communicate and support someone in a time of crisis;

> *"I don't mind how simple the training is or just to identify, it's just you can't speak the same or you have to try and maybe use a different approach to somebody who is vulnerable or someone that has a mental illness"*[244]

There was a clear sense among prison staff and other stakeholders interviewed of a need to establish more holistic approaches to mental health:

> *"I think that trauma informed training is just really, really important. I think understanding violence. I think understanding mental health and depression and understanding the invisible nature of most disabilities, I think, would be really, really important. Knowing that behaviour doesn't operate in a vacuum, you know, people act out of certain places."*[245]

There was some understanding of self-determination in health care, with one interviewee talking about a shift from health care moving from a best interest principle to respecting patients' choices:

> *"I suppose the big thing for me is that healthcare, modern healthcare has to start from the base of human rights."*[246]

Stakeholders interviewed for this research believed that there was much more diversion from female prisons to psychiatric units than from male prisons. These diversions were primarily to more restrictive forensic psychiatric institutions. The staff member noted that

239 PWD15
240 PWD15
241 PWD15
242 PS103
243 PS102
244 Pr St 4
245 PS102
246 PS105

this was considerably higher than comparatively sized and larger men's institutions.[247] This finding also reflects international research, which indicates that women with disabilities have been subject to stricter measures (including placement in higher security forensic settings) than their peers due to lack of alternative settings.[248] Activists we interviewed were clear that diversion to secure psychiatric settings was unacceptable: *"I would prefer prison myself than that system. I'd probably prefer prison, to be honest, to Dundrum."*[249] This was due, in part, to the potential to be detained past the end of an individual's sentence through wardship or the Mental Health Act.

247 Pr St 2

248 Elizabeth Beber, "Women with intellectual disability in secure settings and their mental health needs" (2012) 6 (3) Advances In Mental Health And Intellectual Disabilities 151.

249 DA3

4.4 Identification of Disability, Privacy and Support

Within this research, all prisoners who participated self-identified as having a disability. Most prisoners had acquired their disability prior to entering the prison, and some only received a formal diagnosis for the first time in the prison environment. In this section, we explore the experience of receiving a disability diagnosis in the prison, as well as concerns regarding the privacy and confidentiality of information relating to the diagnosis, and the support available following the identification of a prisoner's disability.

4.4.1 Diagnosis

This research showed that many people with disabilities had no formal diagnosis upon entering prison. This is particularly relevant for prisoners with intellectual or learning disability. The failure to identify a disability or related support need can be due to a multitude of social and economic factors. It is not uncommon for someone to fall through the cracks, and have made it to adulthood without diagnosis, interventions or supports.

As one interviewee reported:

> *"A lot of those people would probably have never engaged in services in the community even because from an early age they were probably not engaged properly through the school system. Probably not picked up in the school system and I think when people with a learning disability go beyond the primary school level and haven't been engaged, they're at a severe disadvantage of ever being able to access the service and get engaged."*[250]

Another participant commented:

> *"The problem is that the full medical assessment doesn't examine whether the prisoner has a learning disability, an intellectual disability. So, that is a huge omission and really, you know, we have to read between the lines quite often when we get probation reports, psychological reports, as to whether a prisoner may have an intellectual disability."*[251]

Services within and alongside the prison reported that they were accustomed to working with prisoners who had received no formal diagnosis:

> *"We would be quite good at picking up undiagnosed for example Autism, queries over ADHD and traumatic brain injuries or injuries due to substance abuse and that kind of thing. So, it's only then that's sometimes picked up if it wasn't previously diagnosed and gives us an opportunity to decide what is the best course of action for that person."*[252]

In general, participants noted that a diagnosis could be made by psychology, education or medical teams in the prison.

> *"It's only if a particular teacher feels that a person has never been properly diagnosed, they may request someone from their [Education and Training Board]"*[253]

However some participants expressed concern about the impact that receiving a disability diagnosis only after entering prison might have on the supports available to a person especially when leaving the prison:

> *"You're talking about disability in prison, the worst case if they had no prior contact with the HSE, that means that they're classified as a prisoner offender, something to be worried about, demonised or something like that, it's hard to access services like that. If however they had prior contact with the HSE, either mental health or whatever the case, that case, even if it's historical, it's a reference point, depending on the length of time in prison it may even be open and then you classify them, not as a prisoner necessarily but as a patient, so it depends on – so there's another part in this, what is their prior classification that prior contact with health services, mental health, physical health whatever it is before prison. So that's very important."*[254]

Internationally, research findings of over-representation[255] or disproportionate representation of persons with disabilities in prison have sometimes led to the use of screening tools to improve the rate of disability diagnosis and identification within prison. Many studies

250 PS105

251 PS108

252 PS106

253 PS104

254 PS101

255 Definition proposed by Skiba et al., 2008 at 266.

have examined different screening tools and their usefulness, or proposed new tools. However, screening tools to identify different impairment types can be problematic from a human rights perspective, as they traditionally do not consider the attitudinal and environmental barriers that hinder the participation of people with disabilities.[256] Further, they typically do not give any information on actual support needs, rather focusing on deficits and functional limitations. The use of medicalised disability assessment tools has been challenged by the UN Committee on the Rights of Persons with Disabilities,[257] which calls for the creation and use of "*human rights-based disability assessments, which reflect the characteristics, circumstances and needs of persons with disabilities*."[258] The UN Special Rapporteur on the rights of persons with disabilities also states that these screening tools must be respectful of the dignity and privacy of persons with disabilities, and that any screening process must be based on the individual's consent as well as incorporating gender and age-sensitive approaches.[259]

4.4.2 Privacy

Serious concerns about privacy regarding disclosure of disability were raised by both prison staff and prisoners alike. Some prison staff felt that, by supporting prisoner with disabilities they could be compromising a prisoner's privacy, especially if the prisoner had a hidden or invisible disability that was not known to other staff or other prisoners. A number of prisoners interviewed expressed concerns that the privacy and confidentiality of information regarding their disabilities was not respected.

> *"The prison officer said they were talking to the doctor about me and like I had no problem* [meaning the prisoner's disability was not believed to be real] *I mean, where's the privacy?"*[260]

> *"Like, whatever you tell the medic is supposed to be confidential between you and the medics. The officers are different compared to the medics. But somehow the officers would get to find out your problems or what you're going through or what you're telling the medics, or what you're telling the doctor."*[261]

Some frontline prison staff spoke of learning of other prisoners' disabilities from other staff or other prisoners "on the grapevine", rather than from the person directly.[262] However, an official working alongside the prison system interviewed for this research believed there was a strong respect for privacy in the healthcare teams: *"I know the healthcare teams in prison are very, very protective of people's privacy and confidentiality by way of medical diagnosis".*[263] It was noted that IT systems used in healthcare were completely separate to the ones used in the rest of the prison.

In some settings, prisoners spoke of keeping to themselves, in order to avoid confrontation or misunderstanding as a result of their disability.

> *"Over this side everybody looks after themselves and that's it"*[264]

> *"I don't really mix that much."*[265]

4.4.3 Staff Support for Prisoners with Disabilities

Several prisoners had positive things to say about the staff, and how prison officers had supported them or others diagnosed with a disability.

256 UN Special Rapporteur on the rights of persons with disabilities, 'Disability assessment from a human rights perspective', Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU and the Member States, European Commission.

257 CRPD/C/GTM/CO/1, para. 9; CRPD/C/SVK/CO/1, at para. 11.

258 UN Special Rapporteur on the rights of persons with disabilities, 'Disability assessment from a human rights perspective', Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU and the Member States, European Commission.

259 *ibid*.

260 PWD1

261 PWD14

262 Pr St 1

263 PS104

264 PWD13

265 PWD7

"A lot of the officers are okay. If you feel down and whatever, you just say it. They will get you the doctor."

"You can always turn to the staff, no matter what."[266]

It was made clear that this support was dependent on an individual relationship with a prison officer, but that where a good relationship existed, some staff were known to go "above and beyond."[267]

"He was really well looked after, he was really well diagnosed and he was minded very well, you know, kind of by the prison because he'd been a good prisoner."[268]

However, many prisoners, including those who had positive things to say about prison staff including chaplains, counsellors and ISM officers still felt that they could not rely on prison staff to always advocate for their rights and ensure their support needs were met.

"They're a bit more for the prison than us."[269]

There were some issues where prison officers were perceived to infantilise prisoners because of their disability.

"To come in here then to be made feel like a child, like, you know?"[270]

Prisoners also spoke about difficulties in requesting support from staff, in some cases because of communication barriers, but also because a lack of formalised avenues to seek support: *"If I have to ask for something, it's very hard for me to ask."*[271]

Other prisoners described how some prison staff aimed to build relationships with prisoners, and were seen to use less severe routes in order to encourage compliance from prisoners.

"There's some officers there, just more laid back and sit back and say, 'Yeah, I'll do that for you if you don't put on the light anymore for the night'."[272]

One officer spoke of staff and prisoners working together in order to support a prisoner who had autism anxiety and was struggling to enter his cell. It took the cooperation of the prisoner with whom he was sharing his cell and the prison officer to assist him into the cell.

"It's funny and people in the community mightn't see it but you'd see a Prison Officer and a prisoner working together. Like they might say, 'Like [name], come on, come on, come on', and the Officer might be saying, '[name] you have to go in', and he'd be talking to him this way and then his cell mate would bring him in, he'd be coaxing him in."[273]

However, several prisoners reported that staff would target particular prisoners with disabilities and described incidents of bullying and harassment. One prisoner described how another disabled prisoner was treated by staff: *"the officers gave him a hard time. About how his expression on his face looks, do you know, and mocking him basically, do you know, which is not a nice thing."*[274] A public official working within the criminal justice system remarked that: *"there's an inherent power built into the role of prison officer and there are personalities that can, you know, as prison officers can abuse that."*[275]

4.4.4 Prisoners Supporting Disabled Prisoners

Many people we spoke to relied on other prisoners for help and support in carrying out day-to-day tasks. Over the course of the project we heard examples of prisoners making phone calls for deaf and hard of hearing prisoners, cleaning other prisoners' cells, providing emotional support, providing advocacy, transcription and even helping in medical emergencies.

266 PWD6
267 PS102
268 PS102
269 PWD05
270 PWD1
271 PWD2
272 PWD03
273 Pr ST1
274 PWD14
275 PS102

> *"The prisoners are very good, they'd come in, they help me clean my cell and you know, they're very good like that."*[276]

> *"There's loads of supportive people. No, I have to say there is."*[277]

One physically disabled prisoner described how grateful he was to have the support of another prisoner during a medical emergency when no staff were on hand to assist him.

> *"I couldn't move my leg and another prisoner lifted me up and another took my pants off and everything. And I needed it like and he said, 'Work away, I don't care what you do, I'll hold you.'"*[278]

Deaf and hard of hearing prisoners reported how other prisoners made efforts to support them to communicate and access information in prison. One Deaf prisoner described how he received support even from prisoners who had no knowledge of Irish Sign Language initially:

> *"We'd write stuff down as well. But now, like, we do a little bit, a little bit of signing as well, but at the start it was just writing stuff down. So, he's above and I'm down below and we just write stuff down. So, it's not great but we do have something ..."*[279]

A hard of hearing prisoner described the support he received from another prisoner to access workshops and courses offered in the prison school: *"But my mate, he kind of transcripts stuff to me, yeah? He's like a brother to me. So, say I could be doing a course, he'd tell me [name], they're at such a thing', so he'd see it. I wouldn't be always now, yeah. Sometimes if it was just a day course or something, yeah."*[280]
An official working alongside the prison system noted:

> *"I think a lot of the support that happens, probably informally and are provided by fellow prisoners, where somebody else might collect their tray for them and bring it up to them, so that their food isn't freezing cold by the time they get up to their cell, or if they're not able to carry it themselves or whatever. I don't know whether it's a formalised, planned approach."*[281]

Disability activists were clear that this wasn't acceptable: *"it is not fair that a blind person has to rely on another prisoner to be a guide."*[282]

Women prisoners interviewed for this research identified a strong informal culture of peer support, in particular around mental health, and described how female prisoners could be open about issues facing them.

> *"I talk to my cellmates when I want to talk to someone."*[283]

There were mixed views about whether female prisoners were more open about disclosing disability than men. One female prisoner commented:

> *"There's a lot of people in there with disabilities but they just don't tell. And there's a lot of people either – when I got diagnosed with bipolar, there was loads of people that would go, 'Oh, I've that as well'."*[284]

However, a staff member reported that

> *"Women vocalise their problems, they vocalise their issues, they want to offload. They will tell you – the staff here more than once per day will get a disclosure of rape or sexual assault or some kind of trauma."*[285]

Mixed views were also expressed about whether female prisoners were more supportive to prisoners with disabilities than men would be. One prison staff member noted that: *"People with physical disabilities, the women would probably be more sympathetic. As in, you know, 'Leave her alone, she's got a limp', or, 'Leave*

276 PWD1
277 PWD11
278 PWD1
279 PWD2
280 PWD12
281 PS 106
282 DA2
283 PWD11
284 PWD7
285 Pr St 2

her alone, she's in a chair'. So, they'll be more sympathetic to that. But unfortunately... Well, actually, similarly with a learning disability, women here would be protective of that. But on a similar thread, some women would take advantage, yeah."[286]

Other staff also identified that prisoners were not always respectful of those who were given a diagnosis of learning disability. One staff member commented:

> *"I would have seen people with learning disabilities over the years where there's potential for women to skit with them, do you know what I mean? For fun."*[287]

Several prisoners interviewed spoke of issues around bullying, mostly linked to misunderstanding and disclosure. This was one of the impetuses for people in the decision to hide their disability. There were several instances of bullying amongst the prisoners.

> *"'What are you on about?' 'All of them [redacted] were making a laugh of you'. It really doesn't bother me. But that's prisoners. They talk about everybody."*[288]

> *"People laugh at you and make jokes and fun about you like that, do you know, it's not a nice thing to be listening to. That's going to cause arguments and fights, you know. So, I do be saying, 'Feck off out my face before I do something that I'll regret', you know."*[289]

> *"You kind of isolate yourself because you're not able for the pressure of others."*[290]

The prevalence of these attitudes towards disabled prisoners in general was reaffirmed by prison staff and public officials working alongside the prison system as well as advocates for prison reform.

> *"Yeah. They'd be preyed upon. They'd be seen as weak and things like that but that's the law of the jail, that's the law of the jungle. It's the same as you don't have to be disabled, you come in here and you're a quiet fella, if you're looked upon as an easy touch you'll be preyed upon."*[291]

> *"There's also a culture I think in prison of being strong, of covering up issues that you might have, of putting a brave face on things. So around maybe not being able to use forms or challenge decisions because of something which is... for whatever barrier people might choose not to... they may not want to disclose that kind of thing because it shows a kind of weakness."*[292]

Some prisoners spoke of avoiding access devices as a result of bullying. One prisoner spoke of avoiding hearing aids for the duration of his time in prison due to his fear of becoming a target of bullying if his hearing aids were visible to other prisoners.[293]

286 Pr St2
287 Pr St 1
288 PWD7
289 PWD14
290 PWD4
291 Pr St 3
292 PA101
293 PWD12

4.5 Prison Rules, Discipline and Regime

Prisoners, staff and other stakeholders expressed concern at the failure of the prison regime to recognise or adapt to the needs of prisoners with disabilities, and how forms of behaviour related to disability might be interpreted as a breach of prison discipline. In this section, we explore the barriers for disabled prisoners in adapting to prison life, learning and conforming to prison rules and disciplinary procedures, the use of isolation or solitary confinement on disabled prisoners, and the transition from prison back into the community.

4.5.1 Prison Rules

Prisoners with disabilities reported a lack of information and clarity around prison rules.

> *"I don't really [know the rules], basically, I don't really. That's the thing, I don't, do you know. Just with the officers saying that's the rules of ours you know. But they have their own rules basically. But I know feck all about the rules, you know... I'm in here for a long time and it's hard to know what's going on."*[294]

> *"I wouldn't necessarily know the rules, particularly."* [295]

The information that was produced was generally not made available in an accessible format which created difficulties for many prisoners. Prisoners were expected to learn as they went along, and had little support in adapting and transitioning to this area of prison life. Often prisoners only learned about a specific rule by breaching it and being subjected to a disciplinary sanction as a result.

> *"I didn't get any rule book, I didn't get nothing really like you know what I mean?"*[296]

> *"At the start there was no one telling me anything, the prisoners were telling me what I was entitled to, what I wasn't entitled to. Even as an ordinary just, coming in as a prisoner without a disability I found it very hard to find out what way the regime was."*[297]

> *"You just learn them as you go along."*[298]

> *"They make up their own rules as they go along in here so they do."*[299]

It was clear that prisoners were supposed to pick up information on rules and regime as they moved through their sentence, however this clearly disadvantages those who struggle with communication and learning.

4.5.2 Incentivised Regime and Disciplinary Procedures

The incentivised regime which operates in Irish prisons has broadly been accepted as a positive measure by staff and prisoners alike. The existing system has three levels: basic, standard and enhanced regimes. Following committal, prisoners are placed on the standard regime, and can increase or decrease their privileges (including visits and phone calls) depending on their behaviour and engagement with the prison authorities. This research demonstrates that people with disabilities are having a significantly harder time navigating that system. There was significant confusion as to what would allow a prisoner to be placed onto the enhanced regime.

> *"It is very hard to get enhanced [you have to] do the gym every single day like, for eight weeks. Or else you can do the school. You have to do five subjects in the school to get enhanced like."*[300]

> *"So, I'm just finding it very hard to get off basic. I am getting some acceptable weeks and some unacceptable weeks."*[301]

Prisoners could access the enhanced regime if they engaged in the employment, education and rehabilitation programmes available in the prison. As identified above, many of these options were inaccessible to prisoners with disabilities.

294 PWD1
295 PWD2
296 PWD1
297 PWD1
298 PWD6
299 PWD14
300 PWD3
301 PWD6

"You have to do jobs to catch up before you get the seven stamps [recognition of good behaviour]. And that's difficult when you have motor sensory difficulties, you know."[302]

Where prisoners did not participate in those activities due to their inaccessibility, they remained confused as to why they were not transferred onto the enhanced regime when they had good behaviour for weeks or months.

"I haven't been in any trouble and that's all been written down. I haven't been in any trouble and like if you have good behaviours, you're supposed to be transferred but there's a kind of a waiting list with certain people jumping out, and I seem to be at the end of that list, waiting and trying to be patient all the time and I'm waiting for that to happen. But I think some of the guards like, they just kind of go 'Oh yeah, you can', you know, they just, you know, they just give it out to people that they want or whatever."[303 304]

Even prisoners who had previously served prison sentences reported confusion or misunderstanding about how the prison regime operated:

"I've been through it. I've been through it now, since I'm in and out of prison I've been through [prison] and but... what's the life and all that about [it but] I really don't know how the system works".[305]

While some prisoners with disabilities felt they understood and could navigate the system fairly well, they were concerned about other disabled prisoners who they perceived to be more vulnerable:

"They probably get lost in the system in here. They would be pushed back. They wouldn't know what way to get things, how to go about things." [306]

4.5.3 Isolation, Solitary Confinement and Other Forms of Prisoner Separation

Some of the prisoners with disabilities interviewed had experience of being placed in safety observation cells, or other forms of isolation from the general prison population (including placement on healthcare wings) or solitary confinement.[307] In its Strategic Plan 2016–2018, the Irish Prison Service included a commitment to "reducing the use of solitary confinement to only extreme cases and where absolutely necessary for security, safety or good order reasons and for the shortest possible time. We ensure that in such cases prison management has in place an individual management plan for each prisoner and access to appropriate services is provided as far as possible and that the mental health of the prisoner is regularly reviewed."[308]

One prisoner who had experienced being placed in isolation had managed to adapt to that environment but expressed concern about others who might find the experience more distressing:

"I was okay because I can read, and I can write. But I would say for someone who can't read, to be in isolation would be horrible because there is nothing to get away from your head whereas in reading you can kind of escape. For girls that have mental issues, for instance the girl who is up in healthcare she would be locked back in a pad. That would be absolutely horrible. I pitied her the last couple of nights screaming up there."[309]

In this instance the prisoner was concerned about the use of a healthcare setting within the prison to isolate another prisoner based on mental health diagnosis and challenging behaviour. One official working alongside the prison system remarked on the use of solitary confinement and isolation for prisoners with psychosocial disabilities:

"It is used by default for people with mental health

302 PWD10

303 PWD2

304 PWD2

305 PWD4

306 PWD9

307 While prison staff were clear that it was safety observation cells, and that was distinct from solitary confinement, prisoners themselves saw it as solitary confinement and experienced it as such.

308 Irish Prison Service Strategic Plan 2016 -2018.

309 PWD9

issues, absolutely and again it comes back to doing something that we do in prisons which is lock people in a room when they're at a risk of self-harming or harming others, which we wouldn't do in a clinical setting, because it's the safest place we have for them."[310]

A member of frontline prison staff noted that restraint was also used to respond to behaviour of prisoners with disabilities:

"Irrespective of his learning disability, he'll be, if he had to be restrained he'll be restrained and put into the appropriate area."[311]

In responding to so-called 'challenging behaviour' exhibited by prisoners with disabilities, prisoners, staff and other stakeholders expressed concern that this behaviour was not viewed in the context of the inaccessibility of the prison environment for prisoners with specific disabilities. As a result, punitive approaches were more likely to be used to respond to these behaviours, rather than any investigation into the source of the behaviour and its relationship to the prisoner's disability. One official working within the criminal justice system noted that:

"It could be communication issues that aren't fully, I suppose, addressed that could end up with a frustrating situation for both prisoner and prison officers that, and sometimes you know it can be an aggressive outburst, purely down to the frustration of the prisoner concerned not being able to communicate appropriately." [312]

Staff expressed concerns that people often didn't respond effectively in these scenarios; mainly due to a lack of knowledge;

"you get guys who roar and shout, but that's just their way. You can get guys [staff] that roar and shout back at them, which is going to get you nowhere."[313]

There was also a clear sense, that partly due to resources, partly due to regime, that there was little space to take these factors into account. Self-harm or certain kinds of behaviour from prisoners with disabilities might be interpreted as challenging behaviour or a breach of prison regime, when in fact the behaviour was often a response to not understanding a specific rule or was being used as a coping mechanism used to deal with the stresses of prison life. Some international research has shown that prisoners may also self-harm to get placed in what they perceive as a safer setting for them, for example, the hospital wing.[314]

While special isolation cells are not permitted for use in punishment, some prisoners still experienced their time in isolation as a form of punishment, or felt that it was used in response to behaviour rather than as protection. Some prisoners also reported that they were unaware of the reason for being placed in isolation, or unsure about how long they would remain in that setting:

"I didn't [know] really, I didn't really. I was like why the fuck am I here, do you know?"[315]

"At the start I didn't really know how long I was going to be there for. Do you know, with a thing like that they don't tell you, you're just here for... say if I got 30 nights on a P19 [disciplinary measure], I used to think say after my 30 nights I'm down, yeah. But it might be say 20 nights and you're back down. It depends on whatever they think, they can come and bring you back down to the landing."[316]

In understanding the specific impact of isolation and segregation on prisoners with disabilities, as well as in responding to perceived challenging behaviour it is important to take into account the inaccessibility of the prison environment, information and communication, and the failure to reasonably accommodate the needs of disabled prisoners, as discussed above.

4.5.4 Transition from Prison to the Community

Many concerns about leaving prison and transitioning into mainstream society were raised by both staff and prisoners throughout the research. Step down

310 PS105

311 Pr St1

312 PS103

313 Pr St4

314 See N.R. Schneider * & B.D. Sales (2004) Deaf or hard of hearing inmates in prison, Disability & Society, 19:1, 77-89..

315 PWD14

316 PWD13

programmes, parole, community release schemes and open prisoners were often not offered or available to people with disabilities. Prisoners expressed frustration at not being able to access these services.

> *"I can't go to an open jail because there's no medical team there 24 hours a day."*[317]

> *"There are other fellas getting schemes, they're getting on this, they're doing, you know what I mean? I mean, like why am I being, why am I still here when I have the same charge as them?"*[318]

> *"You know, they're getting weekends home and everything like."*[319]

It also became clear over the course of the research that a prisoner's ability or inability to engage with the regime had a knock on effect when it came to accessing transition services or other forms of early release. One official working within the criminal justice system noted that: *"Community support scheme is for people who have under a year and the community return scheme is for people between kind of one and seven years. But it depends on your engagement within custody whether or not you achieve that."*[320] Alongside this expectation, there would be an expectation on those entering certain schemes to take part in activities including manual labour, which often excluded people with disabilities.[321]

Pre-release programmes for prisoners to support their reintegration to the community were often described as being inaccessible to prisoners with disabilities:

> *"You know, for example there are some, you know offender treatment and rehabilitation programmes are devised, not just here but you know, internationally on the basis that everybody is starting from the same level. So, for example, a lot of treatment or rehabilitation programmes assume that you know, people will understand what the programme is about, will be able to do written exercises and reading exercises you know, where they're required. And that's simply not the case in all situations. So, there's always the possibility that somebody with a particular disability will fall behind or won't get access to the relevant programme at all. I'm conscious that in some countries for particular programmes, I think of for example, programmes for sex offenders, that particular programmes have been developed for offenders with intellectual disabilities which take a different approach. So yeah, we haven't been too good and doing that and I think that we do need to do more."*[322]

In some contexts, prisons were unaware of the steps needed to prepare disabled prisoners for release:

> *"Regardless of what category you fit into here, everybody is treated equally in terms of sentence planning. There's no differentiation made here. In order to answer a question in relation to pre-release for people with disabilities, that's a difficult one to answer because we really haven't had here somebody with a severe – that I can remember in 21 years – a severe disability that we had to take into consideration for release planning. What we have had to take into serious consideration in relation to release planning is women who are vulnerable because of mental illnesses. And in a situation like that, we'd always case conference in situations like that before somebody is released."*[323]

Other participants in the research expressed the view that prisoners with disabilities serving life sentences may be less likely to receive parole. One official working within the criminal justice system noted that these prisoners may be perceived to be riskier than non-disabled prisoners.[324] Often pre-parole or release risk assessments were amplified by a lack of supports and resources both within prisons to achieve the transition and in the community following release. The same official commented that:

> *"There were two or three cases of prisoners with serious mental health issues and [it was] felt that they shouldn't be in prison but the supports weren't there in the community, you know. They needed extra*

317 PWD1
318 PWD1
319 PWD1
320 PS106
321 Pr St 1
322 PS107
323 PR ST1
324 PS108

supports because of the mental health challenges. They weren't there, so we felt they'd be a risk to the community if the supports weren't there.[325]

Concerns around housing were front and centre for a lot of prisoners, many of whom had experience of homelessness. These concerns were often shared by public officials working within and alongside the criminal justice system:

"By far the biggest challenge is the transition from custody back out into the community and trying to advocate for appropriate accommodation and my success in that has been mixed."[326]

Lack of community supports for prisoners with disabilities following release was expressed as a concern across the sector. One official expressed concern that prisoners were less likely to be able to access HSE disability or mental health services upon release:

"We see it in terms of the criminal record is used a lot, and particularly if somebody's got a history of violence, you know. And the violence from our perspective can stem from that undiagnosed kind of mental illness, you know, or mental health issue. Once it's diagnosed and the person is stably medicated, then they should from a rights perspective be able to access the service in the community that maintains that stability, rather than just always looking at the GP and having them just continue to medicate. We do need that mental health service to be able to step in, so there is a more holistic response in the community and that can be something that we struggle with. And also you're looking at under-resourced community services where they close lists. So, if we've got somebody who is in a severe state and needs to access a service, they don't always take them because their lists are full and that's that, really. And that's the challenge and that's the challenge that we see constantly and it has a serious effect in terms of the knock-on."[327]

Another official agreed that community disability and mental health services could be reluctant to accept ex-prisoners with disabilities:

"Like some services will be very open to providing their service to people who have a criminal record and others will be much more reluctant and that's probably down to staff members' personalities and preferences and biases and whatever, I don't know."[328]

A different official expressed concern that the medication available to prisoners with disabilities may not be accessible or affordable for them upon release:

"We're also seeing people coming out from the prison, on medication, that's not always available on the medical card in the community... that's something we've raised with them in terms of asking them to make sure that they're coming out, whatever prescriptions they're on in the prison, make sure they can get it in the community. You know, and they do reassure us and then it comes out and they've got something that's not on the medical card that costs thirty-something euros a week and you're like ... you know. So, there is that blinkered piece at times, from some prisons – not all – when some of the medics in some of the prisons are better than others, you know."[329]

Many prisoners who took part in the research were concerned with a lack of support to navigate the transition to mainstream society, and were not clear about who could help them. Issues around housing, employment, and health represented significant concerns. Several prisoners expressed concern about needing support to navigate that transition.

"I'd need a support worker, a keyworker."[330]

"You need help to get a proper place to live...That's kind of the basis for everything else."[331]

"I could do with some person to help me yeah, just have a course or scheme or a job or something else like because like I'll be going from structure into no structure again. And that's how I've reoffended you know. Having no structure."[332]

"I had something lined up, I wouldn't be as worried

325 PS108
326 PS106
327 PS102
328 PS107
329 PS102
330 PWD10
331 PWD4
332 PWD15

getting out, lined up for when I get out I wouldn't be as worried."[333]

"Being honest with you I'd say before I get out, I'll be stressed out because I've been in here so long. It'll be different. If I got into normal jail or something and I started getting weekends I would get used to... like when I'm getting out, I don't even know if I want to get out because I've been in that long, even though I have a family and all out there. But I've been in prison so long."[334]

Many prisoners with disabilities expressed concern about a lack of support to avoid reoffending and were unsure about whether the prison system was really committed to their rehabilitation and reintegration in the community:

"That's why there's a revolving door. The prison officers act like rehabilitation is only a word ... I'm not going to depend on the system because the system doesn't work."[335]

This view was also shared by some officials working in the criminal justice system: *"There's a concern at the moment that it's becoming, that a lot of that rehabilitation focus is potentially getting lost with all the changes and that we're becoming back into that operational piece and that's a concern that we would have."*[336]

The prisoners who were more confident about their ability to avoid re-entering prison following release cited the existence of strong family and community support as key for their rehabilitation.[337] However there were marked gender differences in the family and community support available to male and female prisoners with disabilities who participated in this research, with men typically reporting that they had more family support outside prison than the women did. One prison staff member remarked that:

"Unlike [name] over in the male prison who his mum, his girlfriend, his aunt, his sister and his granny are all bringing up money and parcels and everything else, the women here have nothing. The majority of them have nothing. So, they rely on their gratuity. They rely on that money."[338]

Much of this was seen in the international literature as well. A 2019 study by the Prison Reform Trust in the UK found that almost 50% of women in prison had been victims of serious crimes themselves, and that their situation after release is usually poorer than their male counterparts, often experiencing homelessness and having lost their children's custody.[339]

Ultimately, prisoners who participated in this research had clear recommendations for how the system could be improved to support better reintegration and transition to the community following release.

"I just wish there was changes made in the prison for the better, like support workers, keyworkers, extra classes, one to ones, support when people are getting free from prison to not, to proper accommodation, not hostels, to get onto the council and to have suitable, a proper like apartment, flat or a house ready waiting for them when they leave prison for a fresh start so I think that would be good."[340]

The recommendations included in the following section of this report have incorporated the views and ideas of participants – including prisoners and prison staff, and disabled activists including those who participated in the projects Advisory Board.

333 PWD15

334 PWD12

335 PWD1

336 PS02

337 PWD1, PWD10, PWD5.

338 PS102

339 Tracy Hammond et al, "Out of the shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system" (2019) Prison Reform Trust.

340 PWD10

Conclusion

Disabled people are a significant but overlooked population in Irish prisons. This research has shown that disabled people face challenges in all areas of prison life, from navigating the prison environment to engaging with prison services, to complying with prison rules and discipline and in reintegrating in their communities after prison. The experiences shared by prisoners with disabilities over the course of this research have made it clear that having a disability makes prison significantly more difficult to navigate. While only a small sample of prisoners participated in this research, their views were generally substantiated by other research participants, including prison staff, public officials and advocates, and are also broadly reflective of findings in the international literature review conducted as part of this research.

One of the most significant findings of this research has been that the majority of the prisoners who participated struggled to conceptualise themselves as holders of rights, and were often unaware of any legal obligations that the prison services might have to reasonably accommodate them due to their disability. Requests for reasonable accommodation or accessibility measures related to disability were often perceived as 'special treatment' or being in conflict with the prison regime, and were rarely granted. When changes were made, these usually were the result of considerable effort and advocacy of the prisoners themselves and those supporting them outside the prison (including family and legal representatives).

This report documents a number of significant barriers facing disabled prisoners in Ireland, which need to be addressed. Recommendations provided in this report are simply a starting point for reform, and the suggestions provided should be expanded with the direct involvement of disabled people's organisations, as well as prisoners and former prisoners with disabilities who are often best placed to determine the changes required. Models for good practice in respecting the rights of disabled prisoners can be established throughout the Irish prison system, but that will require considerable effort on behalf of both the Irish Prison Service and civil society. Adaptations to prison rules, the provision of supports and training of prison staff are clearly necessary, but these steps can only be a foundation for more fundamental changes required throughout the criminal justice system as a whole in order to address the discrimination faced by people with disabilities in prison.

Recommendations

1. Embed the principle of imprisonment as a sanction of last resort in legislation

Imprisonment should be a sanction of last resort for everyone. The Department of Justice and Equality should progress the Penal Policy Review Group[341] recommendation to enshrine the principle of imprisonment as a sanction of last resort in law.

2. Implement the Public Sector Equality and Human Rights Duty across the prison system

In order to fully meet its obligations under the Public Sector Equality and Human Rights Duty, all criminal justice agencies in particular, the Irish Prison Service should undertake accessibility audits of all prison settings and engage in a disability equality analysis of its service.

3. Provide accessible information on rights, regimes and complaint systems in prison

The Irish Prison Service should develop information on the rights of prisoners, the prison regime, and complaints processes in different formats including: large print, easy to read, electronic formats, audio files, sign language videos, plain language and braille. These should be proofed by those who use these formats to determine their accessibility. These materials should be available for an individual to access throughout the prison sentence. In addition to general resources, prisons must make adaptations for prisoners whose specific disabilities mean that those formats are not accessible for them.

4. Introduce human rights based disability assessments

A full assessment of the support, accessibility and reasonable accommodation needs of a person with disabilities should be conducted and led by the Irish Prison Service and Prison Healthcare upon admission to prison and/or when a disability is first disclosed or diagnosed. A holistic approach should be taken in collaboration with the prisoner who is best placed to articulate their needs for support.

5. Deliver peer-led training in disabilities to all people working in prisons

The Irish Prison Service Training College should ensure that all those working in the prison environment, from governors to prison officers to medical, educational and rehabilitative staff, should receive specific training on responding to the needs of prisoners with disabilities. This includes the basics of terminology used to describe different experiences of disability and the communication and accessibility needs of different groups. Training must be designed and delivered by people with disabilities. Training should address the human rights of prisoners from a disability perspective, and include trauma-informed and gender-sensitive approaches.

6. Ensure non-discrimination and equal access to services

The Irish Prison Service must ensure that people with disabilities in prison have access to the entire physical prison environment on an equal basis with other prisoners – this includes accessible cells, bathrooms, gyms and recreation facilities, the school, workshops, medical and rehabilitative facilities, offices, etc. This includes physical access (e.g. barrier-free routes without steps) as well as broader environmental access (e.g. avoiding certain kinds of lighting for prisoners who experience seizures).

Additionally, in order to make prison services such as the schools accessible to prisoners with disabilities, individual adaptations and special provision of supports may be needed, including the provision of sign language interpretation, one-to-one assistance for prisoners with learning disabilities, etc. There should also be special provision of supports for prisoners with disabilities, for example access to assistive technology, appropriate aids and the use of video conference facilities to maintain contact with families.

Prisoners with disabilities must have equal access to programmes such as Incentivised Regimes, structured early release programmes, as well as access to open prisons.

7. Undertake a review of the use of disciplinary sanctions and restricted regimes

A review of the use of disciplinary sanctions in prisons should be undertaken to ensure that no one is punished for behaviours that relate to their disabilities. The Irish Prison Service should further examine the use of restricted regimes to identify whether people with disabilities are disproportionately represented.

341 Strategic Review of Penal Policy, *Final Report (2014)*

8. Ensure access to single-cell accommodation

In particular, the Irish Prison Service should accommodate people with sensory issues with access to a less noisy cell location. This can only be met through a variety of stakeholders working together in order to reduce prison numbers and ensure that imprisonment is used as a last resort (See Recommendation One).

9. Prohibit solitary confinement

The placement of people with disabilities in solitary confinement should be prohibited, in line with international human rights standards.

10. Provide access to non-medical supports

Non-medical supports are key to facilitating equal access and participation for prisoners with disabilities, and these must be provided as part of reasonable accommodation obligations. For example, resources should be provided by the State to the Irish Prison Service to ensure personal care assistants are available to people with disabilities and older people in prison, along with access to speech therapy and occupational therapy.

11. Ensure continuity and equivalence of care between community and prison

The Irish Prison Service and Prison Healthcare should ensure that prisoners with disabilities have full access to the medical and rehabilitative supports which they had prior to entering the prison setting. Otherwise, the prison environment is directly contributing to a diminished standard of health among prisoners with disabilities and further exacerbating existing impairments.

12. Facilitate access to non-psychiatric responses

All prisoners experiencing mental health difficulties should be offered appropriate non-psychiatric responses (including access to psychology, counselling, and survivor-led peer support).[342] Where people are assessed as in need of transfer to forensic mental health facilities, there must be robust safeguards and protections in place regarding procedural rights, consent and treatment.

13. Plan for the implementation of the *Assisted Decision-Making (Capacity) Act 2015* in prisons

The Irish Prison Service should consider how to facilitate the application of the Assisted Decision-Making (Capacity) Act 2015 and equal access to supported decision-making within prisons when the legislation is commenced.

14. Make the complaints system fully accessible

Specific steps should be taken to ensure that prisoners with disabilities are fully supported and have opportunities to make complaints in a number of accessible ways. Information on complaints procedures must be available in accessible formats.

15. Ensure the right to confidentiality and privacy

Prisoners with disabilities have equal rights to confidentiality and privacy, including regarding disclosure of a disability or diagnosis. It is not necessary for prison staff to be made aware of a prisoner's diagnosis or disability for them to be made aware of supports and accommodations required. Since many disabilities are hidden or invisible, it is important that prison staff accept when a prisoner discloses a disability or diagnosis and do not question the legitimacy of the person's identity.

Where prison staff are informed of a prisoner's disability in order to provide support, this should be done sensitively and with the consent of the prisoner. Prisoners should not be forced to rely on other prisoners for support where they request the assistance of a trained professional (e.g. for sign language interpretation) as this can violate their privacy. While prison staff should receive training in forms of communication which are accessible to prisoners with disabilities, this should not be considered a replacement for professional services when required to protect the privacy and confidentiality of the prisoner.

16. Undertake further research

Further research on this cohort is needed, especially to understand the pre-prison experiences and post-release experiences of prisoners with disabilities. This may be one specific area that the Department of Justice and Equality might examine as part of its Data and Research planning. This research focused specifically on experiences in prison of adults with disabilities, but more information is needed about young disabled people in the children detention campus, as well as on the experiences of people detained in forensic psychiatric settings.

342 This has the potential to greatly reduce the escalation of distress and crisis in the prison population.

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