

The COVID-19 crisis is an unprecedented national public health situation for our communities and all society. This includes the 3,791 men and women detained in Irish prisons (30 April 2020), the 3,300 people who work in our prisons, and families on the outside. Prison health is public health ([WHO 2019](#)) and an outbreak of COVID-19 in prisons would have devastating consequences for the whole community.

Based on a review of emerging international literature, we have updated key points in this document as the COVID-19 pandemic continues to evolve.

IPRT welcomes pre-emptive measures taken by the Department of Justice & Equality and the Irish Prison Service in response to the pandemic – and in particular, measures taken towards safely reducing the prison population.

Here, IPRT sets out a number of proposed measures in three areas:



1. Significantly reduce the prison population



2. Support structured releases from prison



3. Ensure preventative and protective measures within prison

Context:

- **The State has a duty of care to protect the health of the prison population** ([UN Mandela Rules](#), [Penal Reform International 2020](#), [SPT 2020](#), [WHO 2020](#), [Inspector of Prisons 2016](#))
- The State must fully take into account the rights of persons deprived of their liberty, their families, detention and healthcare staff when taking measures to combat the pandemic ([SPT 2020](#))
- All possible action must be taken to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff ([CPT 2020](#))
- Key principles including ‘do no harm’ and ‘equivalence of care’ should be adhered to when taking measures to address the risks to prisoners and staff ([SPT 2020](#))
- People in prisons and places of detention should enjoy the same standards of health care available in the outside community, without discrimination on the grounds of their legal status ([WHO 2020](#))
- The prohibition of torture, cruel, inhuman or degrading treatment cannot be derogated from, even during exceptional circumstances ([SPT 2020](#))
- States that have taken COVID-19 emergency measures that derogate from ICCPR obligations should provide immediate notification to the UN ([ICCPR 2020](#))
- Prisons, and in particular poor prison conditions such as overcrowding, cell-sharing and a lack of access to proper hygiene standards, are high-risk environments for the transmission of infectious diseases such as COVID-19; the substantial risk of the virus spreading in closed establishments such as prisons is referred to as “cluster amplification”
- Prison populations disproportionately experience complex, co-occurring health problems with higher levels of compromised health, ill-health and chronic conditions ([WHO 2019](#)). The prevalence of respiratory conditions is 15% among prisoners compared with 8% in the general population ([House of Commons 2018](#)) 15% of people serving sentences in Irish prisons are aged 50 or above ([IPS Feb 2020](#))



1. Significantly reduce the prison population

Physical distancing, a key measure to prevent the spread of the virus, cannot currently be achieved in Irish prisons. The prison population must be significantly reduced to minimise sharing of cells and ensure that there are sufficient medical services, and enough staff, to protect the health and safety of everyone.

IPRT welcomes a reduction in the prison population by 9% between March 11th 2020 and April 7th 2020 ([Department of Justice and Equality 2020](#)), however we reiterate our calls for further releases to facilitate access to single-cell accommodation and regimes for those who remain in prison.

This can be achieved by the following:

Note: IPRT is clear that any decision-making on eligibility of prisoners for release must be guided by **assessment of immediate public safety concerns and individual health needs**. This is in the interests of the health and safety for everyone in prison, staff and prisoner alike.

- **Identify and safely release the following people**, unless doing so would pose a serious risk to the physical safety of the person or the community:
 - Individuals who are elderly
 - Populations classified by the HSE as vulnerable to serious complications arising from COVID-19 (those with asthma, COPD, cancer, heart disease, lung disease, and diabetes)
 - Pregnant womenAuthorities must examine ways to release those particularly vulnerable to COVID-19, among them older detainees and those who are sick ([UN High Commissioner for Human Rights 2020](#)). It is important that victims who are engaged with the Irish Prison Service Victim Liaison Service are kept informed of any relevant releases.
- **Presumption of bail in district court for non-violent offences¹**

The number of remand committals must be reduced immediately to limit the flow of entries to the prison system.² Approx. 300 men (of a total 385 on 20th March 2020) are held in triple cells in Cloverhill prison, Ireland's main remand facility ([IPS 2020](#)). Pre-trial detention should be used as an exceptional measure (Article 5, ECHR). Cases where people are being held on remand should be reviewed in light of the current pandemic, and bail only denied in the most serious of cases (SPT 2020). People should not be sent to prison as a result of being unable to pay monetary bail. Where remand prisoners are detained in custody, they should be detained separately from sentenced prisoners (Art. 10a, ICCPR). In the context of current crisis, and to reduce community transmission of COVID-19, this is urgent.
- **Lower the number of prison committals**

The 'churn' of people coming in and out of prison must be reduced. In particular, the Courts should cease committing people to prison for offences that attract custodial sentences of <12 months, in line with the principles of the [Criminal Justice \(Community Service\) \(Amendment\) Act 2011](#).
- **Increase standard remission to 33%³ and enhanced remission of up to 50%⁴**

IPRT has previously proposed that rates of remission are increased to be in line with neighbouring jurisdictions. All prisoners who would have been assessed as eligible for the community return programme and who have been engaging with prison services and regimes should be granted up to 50% remission. The community service element of the Community Return Programme could be deferred until community services are operating at full capacity again.

¹ IPRT 2015 Position Paper 11 Bail and Remand

² IPRT 2019 Progress in the Penal System (PIPS): A Framework for Penal Reform, Standard 10

³ IPRT 2012, Oireachtas Committee on Justice 2013, Strategic Review of Penal Policy 2014

⁴ IPRT 2012

- **Remove the prohibition of temporary release under s.15A⁵**
As recommended by the Penal Policy Review Group, the statutory bar for cohorts of prisoners who may otherwise be deemed suitable from accessing temporary release must be removed.
- **Increase the use of temporary release, including for “grave reasons of a humanitarian nature”⁶**
COVID-19 is a humanitarian crisis. This is a valid reason for releasing a substantial cohort of prisoners in order to protect life, particularly elderly prisoners and prisoners with chronic health conditions. Prisoners can and should be discharged under compassionate release.
- **Community-based sanctions**
Community sanctions should be used as an alternative to a prison sentence or to accelerate release as part of early release schemes (Council for Penological Co-operation Working Group 2020). The operation of community-based sanctions should be monitored by the Department of Justice and Equality in order to ensure their continued effectiveness, tailored as required, during this period. IPRT recognises that certain sanctions may have to be deferred until community service sites are running at capacity again. IPRT notes that other jurisdictions regularly defer sanctions until there is capacity, including custodial sanctions (see below). Previous proposals to reduce the prison population through alternatives to prison include:
 - **Commute all prison sentences of <6 months to community service⁷**
 - **Expand eligibility for the Community Return Programme⁸**
 - Other non-custodial options such as **home detention or electronic tagging** should be considered.

Emerging Development: Finland has already acted to prevent the spread of COVID-19 in Finnish prisons through signing an Act which delays the execution of maximum 6-month sentences and fine conversion sentences.⁹

- **Parole**
No one should be detained in prison for longer than necessary as a result of COVID-19. All criminal justice bodies, including the Parole Board, will need to find alternative ways to continue their important work. This may mean using virtual modes (Skype, Whatsapp or others) to continue parole review processes during the COVID-19 emergency period.

Imprisonment should always be a sanction of last resort (Strategic Review of Penal Policy 2014).
This is necessary and urgent in this unprecedented national health crisis.

⁵ IPRT 2012, Strategic Review of Penal Policy 2014

⁶ IPRT 2012

⁷ Oireachtas Committee on Justice 2013, Oireachtas Committee on Justice 2018

⁸ Strategic Review of Penal Policy 2014, Oireachtas Committee on Justice 2018

⁹ <https://twitter.com/MikaPeltola1/status/1241287528373800960?s=20>



2. Support structured releases from prison

All people being released from prison should have a plan in place, with emphasis on securing accommodation and linking in with services in the community in advance. Existing pressures on housing and current closures of schools, some projects and community services due to COVID-19 will present particular challenges at this time.

➤ **Release and screening**

It is pivotal that as many people as possible are safely released from custody prior to a confirmed case of COVID-19 in prisons, which would make safe releases from custody into the community more challenging. People should be screened by the Irish Prison Service for symptoms of COVID-19 prior to leaving prison. If a person has tested positive or is the contact of a COVID-19 case at the time of their release and is within the 14 day quarantine period, prison health authorities should ensure that the person discharged has a place to go where they can continue quarantine and the local authority is notified ([WHO 2020](#)).

➤ **Multi-Agency working**

Achieving the best outcomes for everyone leaving prison will require a strong multi-agency approach between Government departments, State agencies, community-based organisations and other services.

➤ **Prevent release into homelessness**

The Government must commit to investing in the manpower and the social supports needed to prevent people leaving prison into homelessness, and support linking up with community services, such as methadone clinics and mental health supports, on release from prison.

➤ **Facilitate access to phone supports**

Many community-based services have moved to phone supports in response to COVID-19. Ideally, all people leaving prison should be given a mobile phone on release. Freephone numbers should be facilitated to ensure there is no financial barrier to accessing supports.

➤ **Provide continued support for people leaving prison**

The Probation Service and relevant community-based organisations (such as those managing Community Support Schemes) should continue to offer post-release supervision and support. Adaptations can be made in order to maintain national health guidelines on COVID-19, including use of video-calls (e.g. Whatsapp, Facetime or Skype) to continue to offer support and guidance.



3. Ensure preventative and protective measures within prisons

For those men and women in prison who are not released, all steps must be taken to minimise the impact of this crisis, in order to promote the overall safety of prisoners and staff alike. IPRT requests the following:

➤ **Provide information**

Provide clear, up-to-date factual information about the virus and preventative and protective measures to all prisoners and visitors, in various formats (including the use of pictorial information and taking into account language/communication barriers)¹⁰. Disseminate information related to the risk of COVID-19 for the elderly and those with underlying respiratory illnesses. Include daily updates on the current situation in the community and in prisons, to allay fears insofar as possible.

➤ **Screening**

Introduce screening for everyone entering prison or, at a minimum, check everyone's temperature in order to reduce the chances of community transmission. People being transferred between prisons or coming out of prison should also be screened. Ensure that appropriate measures are in place for those who test positive and for those vulnerable to infection ([SPT 2020](#)). While newly admitted prisoners must be screened, unnecessary medical isolation has negative impacts on mental health ([WHO 2020](#)).

➤ **Testing**

Prisoners should be classified as a priority group for testing. Reducing the potential for settings such as prisons to act as 'epidemiological pumps' to the wider community is an urgent consideration ([Coker 2020](#)). Early testing is key, and results should be prompt. Early testing and results will reduce the amount of time spent in quarantine/medical isolation conditions.

➤ **Risk Assessment**

In order to identify those most at risk within the prison population, urgent risk assessments should be conducted ([SPT 2020](#)). Procedures should allow that prisoners at high risk be separated from others, and that single-cell accommodation is available to the most vulnerable ([WHO 2020](#)).

➤ **Prison Hygiene**

Provide exceptional standards of hygiene in Irish prisons at this time, with the provision of additional soap and regular access to sanitation throughout the prison system. As outlined in the Prison Rules 2007 and the UN Mandela Rules, prisoners should have access to, at a minimum, a hot shower or bath at least once a week. The European Prison Rules states that prisoners should have access to a shower or hot bath at least twice a week. Repair of any broken shower or washing facilities should be an immediate short-term action. There should also be sufficient access to cleaning products ([PRILA 2020](#)).

➤ **Social Distancing**

Along with an overall reduction in the prison population, additional measures should be taken, for example around mealtimes, to ensure physical distancing guidelines can be achieved.

➤ **Family Contact**

Facilitate prisoners to maintain family contact in multiple ways ([CPT 2020](#)), including through:

- **increasing the number of phone calls** for every prisoner
- ensuring that basic minimum rights as outlined in the Prison Rules 2007 continue to be met, whereby sentenced prisoners have a 30-minute **video call** equivalent to a 30 minute visit a week, and remand prisoners have a minimum of three 15-minute video calls a week
- **increasing access to IPS issue mobile phones**, electronic tablets and other relevant technology
- ensuring prisoners with hearing or other impairments who cannot use phones have **access to alternative means of communication** with their families and have their needs accommodated for in line with the Public Sector Equality and Human Rights Duty ([IPRT 2020](#))

- **ensure information is provided by the IPS to concerned family members seeking updates on the safety of their loved ones in prison**
 - **continue to provide updates on the current situation in prisons on the IPS website**
 - communicate measures taken and the reasons to prisoners, families and the media ([SPT 2020](#))
 - special considerations should be made on a case-by-case basis on the use of compassionate release (e.g. for purpose of a close family member's funeral) with appropriate protective measures
- **Increase Gratuity**
- Increase the current prisoner gratuity (across all levels of regime) to ensure access to newspapers, magazines, etc. at a time when families may not be able to financially support their family member in prison.
- **Access to Psychological Support**
- The State has a duty to protect the right to life (Art 2, ECHR) and to protect the health of the prison population. This includes both physical and mental health. Given the current restrictive measures imposed, the State must be cognisant of prisoners' psychological well-being and the right to mental healthcare. People in prison must be provided with additional psychological supports during this time (CPT, 2020). This is necessary in order to reduce incidents of self-harm. Staff should also have appropriate access to psychological supports ([SPT 2020](#)).
- **Continue Activity**
- Facilitate as much out-of-cell time as possible, and take all measures available to provide substantial access to activity in cells during lock up.
- Prisoners retain the right of daily access to the open air of at least one hour ([CPT 2020](#))
 - Access to yards will support the mental wellbeing of people in prison, with appropriate safeguards in place to maintain physical distancing at this time
 - Prison education services should continue to support students so far as possible. Consideration should be given to televising classes through the prison TV channel. Provision of education services should be prioritised for students studying for Leaving Certificate examinations, in order to ensure fairness with Leaving Certificate students in the community
- **Disciplinary Sanctions**
- People in prisons and other places of detention are already deprived of their liberty and may react differently to further restrictive measures imposed upon them ([WHO 2020](#)). When imposing sanctions or the loss of privileges under the P19 system, Governors should consider the impact of the COVID-19 crisis on the behaviour of a prisoner during this period.
- **Definitions**
- Definitions such as 'cocooning', 'quarantine' and 'isolation' should be made clear to both prisoners and the general public, including a description of what each practice entails. Medical isolation and quarantine should be used only as medically necessary, and these procedures and living conditions should be distinct from the practice of solitary confinement ([Amend 2020](#)). People on any form of restricted regime, including medical isolation, should be able to avail of meaningful human contact ([CPT 2020](#)).
- **Medical Care**
- Clear procedural safeguards should be in place when imposing medical isolation ([WHO 2020](#), [SPT 2020](#)). It should be based on an independent medical assessment and authorised by law. Measures should be proportionate, time-defined, and where possible, it should occur outside of detention ([SPT 2020](#)). The person isolated should have access to family contact through the appropriate means and activities within the cell.

➤ **Maintaining Services**

The 'equivalence of care' principle applies to people in prison. If, for example, addiction services are operating in the community through telephones, the same must be provided for in prisons. This applies equally to probation and other services.

➤ **Complaints, Monitoring, Inspection and Record-keeping**

The complaints system should remain accessible ([SPT 2020](#)). Independent monitoring bodies such as the Office of the Inspector of Prisons must be guaranteed entry to prisons in order to maintain oversight and protect against potential human rights violations during this period, while respecting the 'do no harm' principle ([CPT 2020](#)). Prisoners and staff should have access to monitoring bodies through telephone and letters ([PRILA 2020](#)). Meticulous record-keeping must be maintained during this period to allow for the review of decisions at a later date ([PRILA 2020](#)). Monitoring bodies should be able to review decisions taken in instances where operational matters may come into conflict with healthcare advice and on the temporary release of vulnerable prisoners ([PRILA 2020](#)).

Prison visiting committees should continue their work, ensuring that prisoners are able to have their complaints heard in private during this time. One method of ensuring preventive engagement in the current context would be to establish hotlines ([SPT 2020](#)). In the UK, independent monitors have set up a confidential phone line for prisoners to report their concerns during the pandemic ([Independent Monitoring Boards 2020](#)).

➤ **Publication of Data**

IPRT welcomes that to date there has been no confirmed case of COVID-19 among the prison population. However, as a high-risk cohort, if and where cases arise, the number of confirmed cases of infection in a prison setting and the number of COVID-19 deaths in prison should be published at a national level in an anonymised format.

➤ **Prison Staff**

The health and wellbeing of all staff in prisons is crucial during this emergency period ([CPT 2020](#)). All staff members working in prisons should receive information and training on protecting themselves and others against COVID-19 ([WHO 2020](#)).

IPRT has previously highlighted the poor ratio of healthcare staff (doctors and nurses) to the prison population.¹¹ The current national recruitment process for healthcare staff must also provide for additional prison healthcare staff. Public healthcare and prison healthcare must take a co-ordinated joined up approach to this crisis. As healthcare staff are a group most at risk to becoming infected with COVID-19, special protective measures should be in place and equal to that provided to healthcare staff in the community.



Conclusion

COVID-19 presents major challenges for the criminal justice system. IPRT welcomes actions taken to date by the Irish Prison Service and the Department of Justice & Equality towards minimising the impact of this crisis on the whole prison community. Further actions will need to be taken to protect the lives, health and wellbeing of people in prison, prison staff, their families in the community and all society, including more releases from prison custody.