



IPRT Submission to
Department of Justice: Penal and Policing Applied Policy
Public Consultation on Spent Convictions
5th November 2020

About IPRT

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and for the progressive reform of Irish penal policy. Since 1994, IPRT has advocated for policy reforms that make communities safer, based on the evidence of what works to prevent and reduce offending and reoffending. Our vision is of a penal system that is just and humane; protects and promotes human rights, equality and social justice; and only uses prison as a last resort.

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Introduction

IPRT has long advocated for an effective spent convictions scheme in Ireland that allows people who have stopped offending move on with their lives.¹ Having a criminal record can present a barrier to those protective factors that support desistance from offending, including, *inter alia*, employment, education and training, housing,² and volunteering.³ **A criminal record can amount to lifelong punishment that is disproportionate to the gravity of the offending behaviour and often has the effect of compounding economic and social exclusion.**⁴ By excluding people with convictions from the labour market, society loses skills and talent while paying costs associated with a lack of productivity.⁵ On the other hand, more expansive schemes of expungement can support safer communities, improve access to the labour market, and interrupt intergenerational cycles of offending:

“Employment and the skills, opportunities and hope that it brings, can support routes out of offending, thereby contributing to safer communities ...[and expanding the expungement scheme]... can have a positive impact on our economy as well as society.” Scottish Justice Secretary, Humza Yousaf⁶

These social benefits are also laid out by the Department of Justice in the Review document that accompanies the current public consultation.⁷

Although data is not available on the number of people who carry convictions in Ireland, research in Scotland and in England & Wales estimates that a third of the adult male population and one in 10 adult females has a convictions history.⁸ Therefore, IPRT welcomes that the Department is engaging

¹ See *IPRT Position Paper 2: Spent Convictions Bill 2007*: http://www.iprt.ie/files/IPRT_Position_Paper_2_-_Spent_Convictions.pdf

² Mercy Law Centre (2013) Submission on Criminal Justice (Spent Convictions) Bill 2012: <https://mercyaw.ie/wp-content/uploads/2013/12/Final-Submission-2.pdf>

³ Other obstacles include presenting access to certain professions and licences; accessing car or home insurance, with implications for obtaining mortgages; and travel to foreign countries, with implications for promotions at work or emigration. The long-lasting impact of a criminal record was documented in an online survey conducted by IPRT in 2019 (see Appendix I).

⁴ “Research into the causal factors of crime conclusively demonstrate that offenders...generally come from the most disadvantaged backgrounds in society and, typically, that they are unemployed, unqualified, addicted, and likely to reoffend. The label of having been in prison becomes a further layer of disadvantage in the community. Offenders... experience multiple disadvantages which accumulates leading to economic and social exclusion and to an extreme form of marginalisation from the labour market.” See: *National Development Plan, 2000-2006* at p. 194.

⁵ McIntyre, TJ and O'Donnell, I (2017) ‘Criminals, data protection and the right to a second chance’, 58 *Irish Jurist* (ns) 27, p.2: <https://ssrn.com/abstract=3150591>

⁶ Davidson, G. (2020) ‘Delayed changes to spent conviction process to be introduced’, *The Scotsman*, August 2020: <https://www.scotsman.com/news/politics/delayed-changes-spent-conviction-process-be-introduced-2951122>

⁷ Department of Justice (2020) *Review of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016: Public Consultation*: http://www.justice.ie/en/JELR/Review_of_the_Criminal_Justice_Act_2016-Spent_Convictions.pdf/Files/Review_of_the_Criminal_Justice_Act_2016-Spent_Convictions.pdf

⁸ See SCCJR (2018) *The use and impact of the Rehabilitation of Offenders Act (1974): Final Report*: <http://www.sccjr.ac.uk/wp-content/uploads/2013/07/SCCJR-ROA-Final-Report-26-June-2013.pdf> and Ministry of Justice (2010) *Conviction histories of Offenders between the ages of 10 and 52 England and Wales Ministry of Justice Statistics Bulletin*:

in a public consultation on the issue, given the significant potential benefit and wide relevance to the general population.

Core to the spirit of rehabilitation is the principle that any person who has demonstrated their commitment to move on from offending through the completion of a conviction-free period should be able to benefit. Ireland has so far lagged behind in this regard compared to other countries. This is now an opportunity to lead the way in rehabilitative legislation, and transform lives and communities positively.

1. Limitations of the current legislation

Under the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, where a person has one, and only one, conviction (other than for certain motoring or public order offences), which resulted in a custodial sentence of less than 12 months or non-custodial sentence of less than 24 months, it may become spent after 7 years. If you have two or more such convictions, none can become spent. Convictions for sexual offences and convictions received in the Central Criminal Court are not eligible to become spent.⁹

IPRT's position is that the *2016 Act* is so limited that it fails to fulfill its rehabilitative purpose and it fails to apply the principle of proportionality to rehabilitative periods. The Committee on Justice and Equality in its 2018 Report on *Penal Reform and Sentencing* similarly found that the *2016 Act* is extremely limited in its application and fails to support rehabilitation of more serious offenders.¹⁰ Limitations of the *2016 Act* were also identified by the Steering Committee of the National Drugs Strategy¹¹; in the Mulvey Report¹²; and, by application, analysis of the Irish Human Rights Commission on previous versions of the legislation.¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217474/criminal-histories-bulletin.pdf

⁹ A more extensive expungement scheme exists under s.258 of the Children Act 2001, whereby convictions received for offences committed by children aged under 18 may become spent after 3 years have passed since conviction. Convictions for sexual offences and for offences tried at the Central Criminal Court are excluded.

¹⁰ Rec. 26, Houses of the Oireachtas (2018) *Joint Committee on Justice and Equality: Report on Sentencing and Penal Reform*, May 2018: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2018/2018-05-10_report-on-penal-reform-and-sentencing_en.pdf

¹¹ *Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025*, July 2017.

¹² Mulvey, K (2017) *Dublin North East Inner City: Creating a Brighter Future*.

¹³ *IHRC Observations on the Criminal Justice (Spent Convictions) Bill 2012*, available at: https://www.ihrec.ie/app/uploads/download/pdf/ihrc_observations_on_spent_conviction_bill_2012_june_2012.pdf

The introduction of the *Criminal Justice (Rehabilitative Periods) Bill 2018* by Senator Lynn Ruane was a positive step towards a more effective spent convictions scheme. However, IPRT's position was that the Bill as introduced was also limited, and could go much further to facilitate reintegration and rehabilitation.¹⁴ Therefore, IPRT welcomed the amendments passed at Committee stage, and – notwithstanding the need for further amendments to strengthen the Bill – would support the reintroduction of the Bill as amended at Report stage.

Recommendation 1:

- Reintroduce the *Criminal Justice (Rehabilitative Periods) Bill 2018* as amended, 20th November 2019.

2. Eligibility: Sentence length limits for spent convictions

In order to support rehabilitation in a meaningful way, the maximum length of sentence that can become spent must be increased. In Sept 2020, 91% of male sentenced prisoners and 75% of female sentenced prisoners were serving sentences of longer than 12 months,¹⁵ and therefore cannot benefit from the 2016 Act. In effect, the law is telling these men and women that they will never be able to move on from their offending behaviour, and their punishment and barriers will persist for the rest of their lives. CSO research published in October 2020 found that just 11.8% of the men and women in prison in Ireland in April 2016 were in regular employment three years later.¹⁶

The current upper limit of a 12-month custodial sentence or 24-month non-custodial sentence is highly conservative when compared to other European Union jurisdictions, including Spain, France, and Germany.¹⁷ These countries allow expungement of custodial sentences exceeding four years through various mechanisms;¹⁸ all convictions (with some exceptions such as a life sentence) can become spent in Germany, and in Spain it is possible to seal a conviction record for any crime.¹⁹ As a member of the European Union, committed to common values and principles, IPRT believes Ireland's spent convictions scheme should model itself on the approaches of other Member States.

¹⁴ See IPRT Briefing on Criminal Justice (Rehabilitative Periods) Bill 2018 [PMB] (Feb 2018) [http://www.iprt.ie/files/IPRT_Briefing_on_CJ_\(Rehabilitative_Periods\)_Bill_2018_%5BPMB%5D.pdf](http://www.iprt.ie/files/IPRT_Briefing_on_CJ_(Rehabilitative_Periods)_Bill_2018_%5BPMB%5D.pdf)

¹⁵ Irish Prison Service (2020) Monthly Information Note – September 2020: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/SEPTEMBER-2020.pdf

¹⁶ See Central Statistics Office (2020) *Offenders 2016: Employment, Education and other Outcomes, 2016-2019*: <https://www.cso.ie/en/releasesandpublications/FP/p-offo/offenders2016employmenteducationandotheroutcomes2016-2019>

¹⁷ McIntyre, T. and O'Donnell, I. (2017) Criminals, Data Protection and the Right to a Second Chance, 58 Irish Jurist 27: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3150591

¹⁸ Ibid., p.10

¹⁹ Ibid., p.10

IPRT notes that our nearest neighbours also offer more expansive scheme of expungement. In England & Wales in 2012, based on more than 35 years of experience of the *Rehabilitation of Offenders Act 1974*, the upper limit was increased from 30 to 48 months' imprisonment and rehabilitative periods were adjusted to be more proportionate and generally shorter overall.²⁰ From 30th Nov 2020, Scotland will follow suit with the commencement of the *Management of Offenders (Scotland) Act 2019 (Part 2)*. The Scottish legislation also allows for sentences over 48 months to potentially become spent on a case-by-case basis by way of a review mechanism.²¹

Concerns about specific categories of offence that would be included through an increase in the upper sentence limit can be addressed separately through vetting for regulated areas of work, guided by principles of relevance and proportionality.

Recommendation 2:

- **Increase the upper limit of eligible sentences to a minimum of 48 months custodial sentence.**
- **Introduce a review mechanism by which convictions that are not eligible for automatic expungement may become spent on a case-by-case basis.**

3. Eligibility: Number of convictions that can be considered spent

There should be no limit to the number of eligible convictions that can become spent, as previously recommended by IHREC.²² Any person who has demonstrated his or her good behaviour and character by completion of a rehabilitation period should be able to benefit from the spent convictions regime.²³ It is particularly draconian that under the *2016 Act*, where a person has two convictions (other than for minor motoring or public order offences), neither can ever become spent – no matter how minor or how long ago. This is in stark contrast to other jurisdictions.²⁴

²⁰ Changes to the Rehabilitation of Offenders Act (ROA) were made through the Legal Aid, Sentencing and Punishment of Offenders Act 2012, enacted 2014. See Unlock (2019) *Is it spent now? A brief guide to changes to the ROA*: <https://hub.unlock.org.uk/knowledgebase/spent-now-brief-guide-changes-roa/>

²¹ Scottish Government (2020) *Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974*: <https://www.gov.scot/publications/guidance-self-disclosure-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/>

²² Commenting on the 2012 Bill, the then IHRC stated “There should be no limitation on the number of convictions per person where they come within the other criteria of the legislation”. See IHREC (2012) ‘IHRC says proposed Spent Convictions legislation too restrictive to be effective’: <https://www.ihrec.ie/ihrc-says-proposed-spent-convictions-legislation-too-restrictive-to-be-effective/>

²³ IPRT (2016) *Submission on Criminal Justice (Spent Convictions) Bill 2012*: https://www.iprt.ie/site/assets/files/6367/iprt_submission_on_spent_convictions_bill_2012_20012016.pdf

²⁴ Under the Rehabilitation of Offenders Act 1974, there is no limit to the number of eligible convictions that can become spent. Limits apply within the Disclosure and Barring Service (DBS) filtering system for standard and enhanced checks, which apply to certain ‘regulated activity’ or areas of work. This has been challenged in the Court of Appeal and the

Removing the limit on eligible convictions would recognise that clusters of offending are most often linked with a particular set of circumstances or factors – for example, poverty, mental health, homelessness, addictions, immaturity, experience of violence or abuse.²⁵ Removing the limit would support people who have worked hard to overcome such circumstances and moved on from offending to lead law-abiding lives.

Recommendation 3:

- **Remove the limit on the number of eligible convictions that can become spent.**

[Among amendments to 2018 Bill accepted at Committee Stage.]

4. Rehabilitative Periods: Principle of proportionality

Rehabilitative periods should be long enough to demonstrate desistance from offending, but not so long as to act as a disincentive.²⁶ The periods should also consider that the detrimental effect of conviction in excluding a person from employment may be long-lasting. Rehabilitative periods should be set so that they are proportionate to the gravity of the offence and the punishment received. A proportionate scale that links the rehabilitative period to the sentence imposed would reflect and complement the principles of existing sentencing law and practice.²⁷

In Spain, rehabilitation periods for custodial sentences of up to six months (for minor offences) are six months from date of completion of sentence; a custodial sentence of five years has a 3-year rehabilitative period; and custodial sentences of more than five years have a 5-year rehabilitative period.²⁸ Cancellation is by application once the rehabilitation period has passed, and a certificate is issued to show that the individual has no criminal record. In 2019, the Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use recommended changes to the

Supreme Court, which found that it was disproportionate for the law to require that all offences were disclosed in every case in which there was more than one conviction. See: <https://ukhumanrightsblog.com/2019/02/04/a-criminal-record-or-a-clean-slate/>

²⁵ See, for example, IPRT (2012) *The Vicious Circle of Social Exclusion and Crime: Ireland's Disproportionate Punishment of the Poor*: http://www.iprt.ie/files/Position_Paper_FINAL.pdf

²⁶ "A period of 5 or 7 years represents an unnecessarily long time for an offender convicted of a minor property offence and the detrimental effect of conviction in excluding that person from employment may be long-lasting." See *IPRT Position Paper 2: Spent Convictions Bill 2007*: http://www.iprt.ie/files/IPRT_Position_Paper_2_-_Spent_Convictions.pdf

²⁷ O'Malley, T. (2006) *Sentencing Law and Practice* 2nd ed, Thomson Round Hall, 2006, p. 144, cited in IPRT 2012.

²⁸ Stacey C (2015) *Rehabilitation & Desistance vs Disclosure Criminal Records: Learning from Europe*, p.20 <https://www.wcmt.org.uk/sites/default/files/report-documents/Stacey%20C%20Report%202014%20Final.pdf>

2016 Act so that all convictions for drug possession for personal use can become spent, with a decreased rehabilitative period of three years.²⁹

Recommendation 4:

- **Develop a proportionate scale that links the rehabilitative period to the severity of the sentence imposed.**

[Among amendments to the 2018 Bill accepted at Committee Stage.]

5. Incorporating a distinct approach to young adults

IPRT welcomes the recognition by the Department of Justice of the disproportionate impact a conviction can have on a young person's life prospects.³⁰ Having a conviction(s) history can be a major barrier for young adults in accessing employment, education or training at a critical point in their lives. IPRT research demonstrates why a distinct approach for young adults is required;³¹ this is linked with neuro-scientific evidence that the development of the adolescent brain continues into a person's mid-20s. The research finds that young adults are more amenable to rehabilitation than older adults who commit the same crimes. **A more expansive expungement scheme for offences committed aged 18-24 would therefore recognise this capacity for positive change and support better life outcomes for young people, with long-term dividends for all society.**

Supporting transitions into adulthood is in line with *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020*,³² which defines a young person as any person under 25 years of age. This is also the upper age threshold of the Youth Work Act 2001.³³ A commitment by the Department of Justice to support this age cohort is also included in its Draft Youth Justice Strategy,³⁴ which IPRT has welcomed as an evidence-led approach. The link between criminal records and the lack of employment opportunities for young people has been cited as a

²⁹ Department of Health (2019) *Report of the Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use*, p. 77: <https://assets.gov.ie/24036/d7e89187ce284bde9ea70f0334c1894a.pdf>

³⁰ Department of Justice and Equality, *Review of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 Public Consultation*, pp.2-3: http://www.justice.ie/en/JELR/Review_of_the_Criminal_Justice_Act_2016-Spent_Convictions.pdf/Files/Review_of_the_Criminal_Justice_Act_2016-Spent_Convictions.pdf

³¹ IPRT (2015) *Turnaround Youth: Young Adults (18-24) in the Criminal Justice System: The Case for a Distinct Approach*, <https://www.iprt.ie/youth-justice/turnaround-youth-young-adults-18-24-in-the-criminal-justice-system/>

³² *Better Outcomes, Brighter Futures, The national policy framework for children and young people 2014-2020*, <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/>

³³ Irish Statute Book, Youth Work Act, 2001, a 'young person' is defined in section 2: <http://www.irishstatutebook.ie/eli/2001/act/42/enacted/en/html>

³⁴ *Draft Youth Justice Strategy 2020-2026*, [http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf/Files/Draft_Youth_Justice_Strategy_2020_\(Public_Consultation\).pdf](http://www.justice.ie/en/JELR/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf/Files/Draft_Youth_Justice_Strategy_2020_(Public_Consultation).pdf)

reason for attraction to the drugs trade, further supporting the need for a discrete scheme of expungement for those aged under 25:

“We have to believe errors committed in youth can be forgotten and overcome. We have to help people into employment and not condemn them to repeated visits to Mountjoy.”³⁵

A more extensive expungement scheme currently exists under s.258 of the Children Act 2001, whereby convictions received for offences committed by children aged under 18 may become spent after 3 years have passed since conviction. (Convictions for sexual offences and for offences tried at the Central Criminal Court are excluded.) Removing this three-year rehabilitative period was among recommendations made by the Joint Committee on Justice and Equality in 2019.³⁶

Recommendation 5:

- **Treat young adults as a distinct cohort within the legislation, including providing for shorter rehabilitative periods.**
- **Reduce the rehabilitative period under s. 258 of the Children Act 2001 from 3 years to 1 year.**

[Among amendments to the 2018 Bill accepted at Committee Stage.]

6. Eligibility: Exclusions and Review Mechanism

Maintaining barriers to full civic engagement is contrary to the public safety objective.³⁷ Research finds that the ability to predict a person’s future offending based on past convictions decreases over time since the most recent offence,³⁸ while access to meaningful sustained employment and pro-social social networks supports desistance from crime.³⁹ This includes sexual crime.⁴⁰ The decision to exclude any broad category of offence from the spent convictions scheme must therefore be

³⁵ Former chair of the Workplace Relations Commission, Kieran Mulvey cited in Young people’s criminal records ‘should be wiped at 25’, *The Irish Times*: <https://www.irishtimes.com/news/social-affairs/young-people-s-criminal-records-should-be-wiped-at-25-1.2959725>

³⁶ Houses of the Oireachtas Joint Committee on Justice and Equality, *Report on Spent Convictions, October 2019*, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-22_report-on-spent-convictions_en.pdf

³⁷ McIntyre, T. and O’Donnell, I. (2017) Criminals, Data Protection and the Right to a Second Chance, 58 *Irish Jurist* 27: https://www.researchgate.net/publication/324910384_Criminals_Data_Protection_and_the_Right_to_a_Second_Chance

³⁸ See A. Blumstein and K. Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks” (2009) 47(2) *Criminology* 343 and Weaver, B (2018) *Time for Policy Redemption? A Review of the Evidence on Disclosure of Criminal Records*. SCCJR and the University of Strathclyde: https://pure.strath.ac.uk/ws/portalfiles/portal/82275796/Weaver_SCCJR_2018_Time_for_policy_redemption_a_review_of_the_evidence.pdf

³⁹ Scottish Government (2015) *What Works to Reduce Reoffending: A Summary of the Evidence*: <https://www.gov.scot/publications/works-reduce-reoffending-summary-evidence/pages/4/>

⁴⁰ Prison Reform Trust (2020) *Thinking Differently: Employers’ views on hiring people convicted of sexual offences*: <https://www.unlock.org.uk/wp-content/uploads/Thinking-Differently-PRT-Unlock-report.pdf>

justified by empirical evidence. In the absence of such evidence, the singling out of any category of offender *regardless of the severity of the instant offence* appears arbitrary.⁴¹ At minimum, there should be a discretionary procedure available to allow individual cases to be considered, given the “high level of variation amongst convicted people both with regard to moral culpability and with regard to future risk.”⁴²

Similarly, any differential treatment of particular areas of employment should be kept to a minimum and must be justified by transparent and objective criteria, and demonstration of clear link to a particular risk.⁴³ Exclusion of areas of employment engages important issues of equality and privacy.⁴⁴ In this respect, IPRT welcomes the inclusion of *Action 16: Promote equality, diversion and inclusion* among the selected priority actions for implementation in *Our Public Service 2020* campaign.⁴⁵ The Public Service should “lead by example” and legislation should ensure that persons with convictions are not excluded from employment with the civil and public service.

In 2019, the Oireachtas Justice Committee recommended that consideration be given to the establishment of an independent oversight committee to “review decisions to disclose specific information arising from Garda vetting to prospective employers, third level institutes, schools and other bodies,”⁴⁶ and recommended that the principle of relevance should be incorporated into the vetting scheme. IPRT endorses this recommendation and proposes that a review mechanism⁴⁷ should be developed to provide a facility for ineligible convictions to be considered for expungement on a case-by-case basis. Such a review mechanism could follow a strengths-based model, and allow the candidate to demonstrate positive actions taken – such as education, training, treatment or volunteering – to address past offending behaviours.

⁴¹ See *IPRT Position Paper 2: Spent Convictions Bill 2007*: http://www.iprt.ie/files/IPRT_Position_Paper_2_-_Spent_Convictions.pdf

⁴² Department of Justice (2020) *Research papers on spent convictions*, p.42: http://www.justice.ie/en/JELR/Spent_Convictions_Research_Report.pdf/Files/Spent_Convictions_Research_Report.pdf

⁴³ IPRT (2016) IPRT Submission on Criminal Justice (Spent Convictions) Bill 2012: https://www.iprt.ie/site/assets/files/6367/iprt_submission_on_spent_convictions_bill_2012_20012016.pdf

⁴⁴ Ibid.

⁴⁵ *Our Public Service 2020, Action 16: Promote equality, diversion and inclusion*, <https://www.ops2020.gov.ie/actions/developing-people-organisations/equality-diversity-inclusion/>

⁴⁶ Houses of the Oireachtas (2019) *Joint Committee on Justice and Equality: Report on Spent Convictions, October 2019*: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-22_report-on-spent-convictions_en.pdf

⁴⁷ See, for example, Scottish Government (2020) *Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974*: <https://www.gov.scot/publications/guidance-self-disclosure-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/>

Recommendation 6:

- Any decision to exclude any broad category of offence or area of employment must be justified by empirical evidence.
- Establish an independent oversight committee to review decisions to disclose convictions information.
- Introduce a review mechanism to provide a facility for ineligible convictions to be considered for expungement on a case-by-case basis.

7. Equality Legislation and Privacy

Along with improvements to spent convictions legislation, the Employment Equality Act 1998 and the Equal Status Act 2000 should be amended to ensure prospective employees aren't discriminated against on the basis of a past criminal conviction that has become spent,⁴⁸ and to provide a remedy where discrimination occurs. This was previously recommended by the Irish Human Rights Commission.⁴⁹ It is even more necessary in a time when information is easily shared online. It is also needed to protect against discrimination in accessing social housing and services.⁵⁰ Other common law jurisdictions have pursued this approach, including Canada, where five states have provisions to ensure protection from discrimination on the basis of criminal records in the area of employment, and Tasmania, where under the Anti-Discrimination Act 1998, discrimination on the grounds of an irrelevant criminal record is prohibited.⁵¹

Discrimination should also be addressed through policy interventions, such as removing questions about convictions from job application forms until later in the recruitment process, and developing

⁴⁸ Irish Human Rights Commission (2013) *Submission to the UN Human Rights Committee on Ireland's Fourth Periodic Report under the ICCPR-List of Issues Stage*, pp. 17-18: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_IFN_IRL_14924_E.pdf Note also the State's responsibility to pursue the rehabilitation of ex-offenders under Article 10(3) of the ICCPR, the right to privacy under Article 40.3 of the Constitution and Article 8 of the European Convention on Human Rights; the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights is also relevant. See IPRT (2018) *Submission to the Irish Human Rights & Equality Commission Consultation on Strategy Statement 2019-2021*: https://www.iprt.ie/site/assets/files/6482/iprtsubmission_to_ihrec_7_10_18_strategy_statement_2019-2021.pdf

⁴⁹ Irish Human Rights Commission, *Observations on the Spent Convictions Bill 2012*, https://www.ihrec.ie/download/pdf/ihrc_observations_on_spent_conviction_bill_2012_june_2012.pdf

⁵⁰ For more on this see a previous submission made by the Mercy Law Resource Centre, *Submission on Criminal Justice (Spent Convictions) Bill 2012*, <https://mercyllaw.ie/wp-content/uploads/2013/12/Final-Submission-2.pdf>

⁵¹ IPRT (2018) *Submission to the Irish Human Rights & Equality Commission Consultation on Strategy Statement 2019-2021*: https://www.iprt.ie/site/assets/files/6482/iprtsubmission_to_ihrec_7_10_18_strategy_statement_2019-2021.pdf

good practice guidelines for employers, as recommended by the Joint Oireachtas Committee in 2019.⁵² Provision in equality legislation would promote wider change in culture and attitudes.

Consideration of the need for compliance with the right to privacy under the ECHR and the right to be forgotten under GDPR has been treated in detail by Dr TJ McIntyre.⁵³

Reform of Section 55 of the Charities Act 2009 is also required. The Act currently requires persons with convictions on indictment to obtain a High Court order in order to participate on charitable boards.⁵⁴ It constitutes yet another disproportionate barrier to effective reintegration and participation in society for people with past convictions.

Recommendation 7:

- **Extend the grounds of discrimination in the Employment Equality Act 1998 and the Equal Status Act 2000 to include a prohibition of discrimination on the grounds of criminal convictions.**

[Amendment to the Employment Equality Act 1998 proposed at 2018 Bill Committee Stage debate not opposed by Government.]

- **Amend Section 55 of the Charities Act 2009 to reduce disproportionate barriers for people with convictions from participating on charitable boards.**

8. Consideration of potential concerns of victims and survivors of crime

It is important that the concerns of victims and survivors of crime are listened to and considered at all stages in the criminal justice system. It is also important to acknowledge the role that rehabilitation plays in a victim-centred criminal justice system: reducing reoffending is reducing crime and reducing harm.

⁵² Houses of the Oireachtas (2019) *Joint Committee on Justice and Equality: Report on Spent Convictions, October 2019*: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-22_report-on-spent-convictions_en.pdf

⁵³ See Oireachtas Joint Committee on Justice and Equality Hearing on Spent Convictions, Wednesday 10th July 2019, *Statement of Dr. TJ McIntyre*, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-07-10_opening-statement-dr-t-j-mcintyre-law-lecturer-sutherland-school-of-law-ucd_en.pdf & TJ McIntyre and Ian O'Donnell, "Criminals, Data Protection and the Right to a Second Chance" (2017) 58 *Irish Jurist* (ns) 27 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3150591

⁵⁴ See IPRT *Submission to the Consultative Panel on Governance of Charitable Organisations*, https://www.iprt.ie/site/assets/files/6460/iprtsubmission_charityregulatorconsult_s_55_charities_act_sent_.pdf

Although research in this area in Ireland is less extensive, international research finds that crime survivors want the criminal justice system to focus more on rehabilitating people than punishing them by a margin of 2 to 1 “to stop the cycle of crime and protect future generations from falling through the cracks”.⁵⁵ Research finds that crime survivors want to feel safe, to heal, and for the perpetrator of harm to desist from offending.⁵⁶ The current spent convictions scheme in Ireland, whereby convictions for minor offences remain on a person’s record for their whole life, is disproportionate and does not support these aims.

A robust spent convictions scheme that is proportionate to harm caused and reduces barriers to reintegration is in the interests of everyone. Changes to the existing scheme should be accompanied by a public information campaign that both informs people with convictions of how they can access the scheme, while playing a dual role in informing the wider public of how rehabilitation supports community safety.

Recommendation 8:

- **Changes to the legislation should be accompanied by a public information campaign.**

⁵⁵ Alliance for Safety and Justice (2016) *‘Crime Survivors Speak’: National Survey of Victims Views on Safety and Justice*, available at: <http://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>

⁵⁶ Sered, D (2019) *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*, p. 48

Summary of Recommendations

The current review of spent convictions legislation is an opportunity to bring about meaningful change to the lives of many in Ireland. It provides a chance for society to meet people with convictions histories halfway:

“society must meet ex-offenders halfway by providing appropriate structural and criminal justice supports that help desisters to fulfil their potential and experience an authentic sense of social inclusion.”⁵⁷

Recommendations:

1. Reintroduce the *Criminal Justice (Rehabilitative Periods) Bill 2018* as amended, 20th November 2019.
2. Increase the upper limit of eligible sentences to a minimum of 48 months custodial sentence, and introduce a review mechanism by which convictions that are not eligible for automatic expungement may become spent on a case-by-case basis.
3. Remove the limit on the number of eligible convictions that can become spent.
4. Develop a proportionate scale that links the rehabilitative period to the severity of the sentence imposed.
5. Treat young adults as a distinct cohort within the legislation, including providing for shorter rehabilitative periods, and reduce the rehabilitative period under s. 258 of the Children Act 2001 from 3 years to 1 year.
6. Any decision to exclude any broad category of offence or area of employment must be justified by empirical evidence. Establish an independent oversight committee to review decisions to disclose convictions information, and introduce a review mechanism to provide a facility for ineligible convictions to be considered for expungement on a case-by-case basis.
7. Extend the grounds of discrimination in the Employment Equality Act 1998 and the Equal Status Act 2000 to include a broad prohibition on discrimination on the grounds of convictions. Furthermore, Section 55 of the Charities Act 2009 should be amended to reduce disproportionate barriers for people with convictions from participating on charitable boards.
8. Changes to the legislation should be accompanied by a public information campaign.

⁵⁷ Hart, W and Healy, D (2018) ‘“An inside job”: an autobiographical account of desistance’, European Journal of Probation, p. 14

Appendix I

IPRT survey: Living with Convictions

(February 2019)



IPRT Survey

Living with Convictions

There is currently no published data available on the number of people who have convictions in Ireland. In January 2019, IPRT conducted a short online survey on the impact of having a criminal record in Ireland. The purpose of the survey was to gather first-hand testimony from people with convictions histories to help demonstrate the real and continuing impact of convictions to TDs and Senators, to garner support for the *Criminal Justice (Rehabilitative Periods) Bill 2018*¹. IPRT has published a separate briefing on the Bill². The survey was sent to a short list of people who had completed a similar survey in January 2015, key organisations working with people with convictions, and people who have been vocal in the campaign for broader legislation governing access to spent convictions in Ireland. The survey was also shared on IPRT social media for 5 days. We asked only those with convictions to participate. In one week, the survey received 148 responses.

We thank all of those who gave generously of their time and of their personal stories to support reform. **All responses were anonymous. Neither IPRT nor the survey tool gathered any personal identifiers.**

Profile of respondents

No. of convictions: 51% (76) of respondents had just 1 or 2 convictions on their record; 14% (21) had 3-5 convictions; 14% (20) had 6-10; 21% (31) had 11 or more convictions. Of those with 11+ convictions who detailed their convictions, the majority were drug-related or for multiple shoplifting or public order offences.

Type of offence: Public order, motoring offences, possession of drugs, shoplifting, theft, robbery and assault and were the most frequent offences listed by those who completed the survey.

Sanction received: The most serious punishment received for 25% (37) of respondents was a small or large fine; for 8% (11) it was a disposal under the Probation Act or a Community Service Order.

Suspended sentences of less than 24 months were received by 16% (24); and a suspended sentence of more than 24 months was received by 10% (15). 15% (22) had served prison sentences of less than 12 months and 26% (39) had served prison sentences of greater than 12 months.

Rehabilitative Period: **It has been 10 years or more since 55% (81) of the respondents have been convicted of an offence. 16% (24) of the respondents had not received a further conviction in 20 years or more. 9% (14) had not received a further conviction in 25 years or more.**

The survey was not designed to gather representative data on people with convictions in Ireland. We do not make inferences about the population of people with convictions based on the survey findings. A more extensive survey or research on the issue would be valuable and welcomed by IPRT. The results of this survey give a general overview of the impact of convictions on those surveyed.

1 Houses of the Oireachtas (2018) *Criminal Justice (Rehabilitative Periods) Bill 2018*, <https://www.oireachtas.ie/en/bills/bill/2018/141/>

2 IPRT (2019) *IPRT Briefing Criminal Justice (Rehabilitative Periods) Bill 2018*, <http://www.iprt.ie/contents/3403>

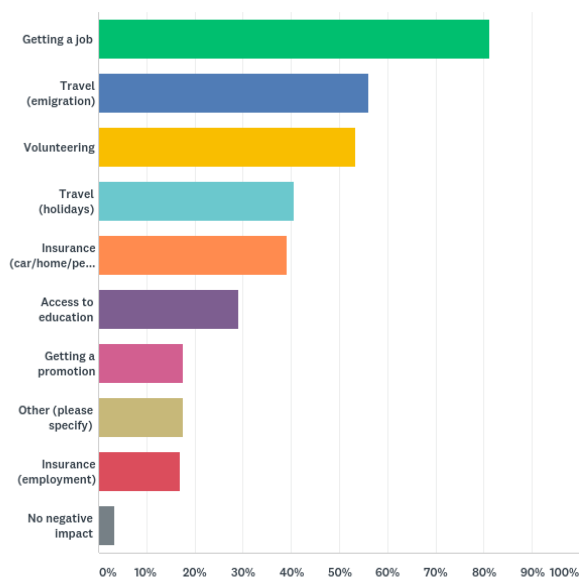
Lasting impact of convictions

Among those who completed the survey, **employment** was the issue of most concern with 81% (120) of respondents stating that having a conviction has had a negative impact on 'getting a job'.

Other issues negatively impacted by having a conviction were **travel (emigration)** with 56% (83); **volunteering** with 53% (79); **travel (holidays)** with 41% (60); **car/home/personal insurance** with 39% (58); **access to education** with 29% (43); **getting a promotion** 18% (26); and **insurance for employment** with 17% (25).

Only 3% (5) said that their convictions have had **no negative impact** on their lives. Of the 5 people in total who stated that their conviction(s) has had no negative impact, 2 of these had been convicted of one offence.

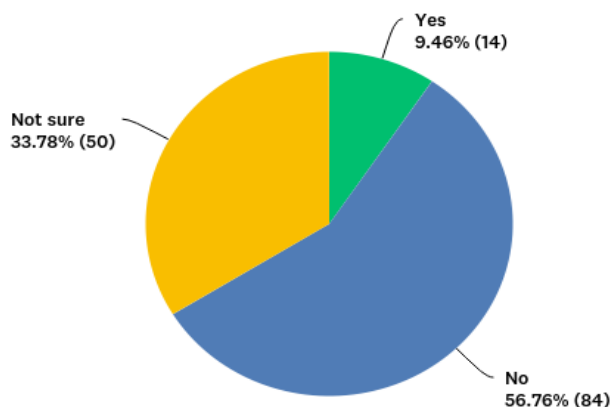
In the 'other' answers to this question, concern was raised by several respondents about the impact of the internet/media on their convictions *"The internet means that the conviction was/will always be just yesterday."* Respondents also raised concerns about the impact their convictions have had on their family.



Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 ('the 2016 Act')

When asked if, to their knowledge, the respondents have benefitted from the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, only 9% (14) said yes. 57% (84) said they had not benefitted from it and 34% (50) said they were not sure. This suggests the need for increased public awareness activities on the application of this law.

Of those with 2 convictions (23), **none** said they believed they could benefit from the provisions in the 2016 Act.



Offences committed aged 18-24

When respondents were asked if they would benefit from a law allowing a greater number of convictions for offences committed between the ages 18-24 to become spent, 37% (55) believed they could benefit more than they are currently benefitting. 30% (44) believed they would continue not benefitting, 10% (15) would benefit the same as they do currently, and 23% (33) were not sure.

Time elapsed

Of those with 1 conviction (53), 12 have not committed a further offence in over 20 years. Of this group of 12, only 3 answered that they believe they have benefitted from the 2016 Act.

Other issues

Access to insurance and prohibitively high premiums are areas of concern which appeared repeatedly in the free text responses in all areas of the survey. A general sense emerged that **most people with convictions surveyed do not fully understand the provisions of the current legislation or the Garda Vetting system.**

What respondents would like to say to their TDs and Senators about the impact their conviction(s) has had on their lives

A common theme running through the responses was the acceptance of blame and demonstration of the steps taken to move away from offending behaviour, mainly through accessing education and addiction services. A selection of the comments is included below. Responses to this question are grouped under five themes: i) offending as a young adult ii) impact of addiction iii) effects on family/social life iv) education and desistance, and v) general comments.

Offending as a young adult

"Many people with convictions committed in their teens and 20s are different people when they get a little older and have a lot to offer society. However, their previous convictions prevent them from gaining employment in areas where their life experience can be used to help others."

"I done wrong at a young age and although I have moved on I can never fully leave that life behind as it pops up everywhere. Work school travel. Which makes bettering yourself harder."

"I made mistakes as an adolescent. Please support the bill for change as [it's a] human right to reform and not be judged. I will continue to grow as a person but would really love to get the backing from my country."

"I work as a youth worker and I see countless young people making bad decisions mainly under the influence of substances or peer pressure that they would never normally do. I think this [is] a very progressive bill that rights the wrongs of the previous bill"

"It's like a tattoo, I feel branded by this event that happened when I was 18, I'm 42 now and still dealing with the consequences of the conviction."

"I made some stupid mistakes as a young man. I have now fully rehabilitated and I would like the same opportunities as my peers. I appreciate that I was very foolish and I accept that I have to live with my decisions but spent convictions will help me in the future."

"I believe that if you do the crime, you should do the time. But I don't think it's a one size fits all. I believe a person's age and situation should be taken into account in terms of "time spent". The intention of penalizing someone is obviously done in the hope that the person will take responsibility for their actions, learn from their mistakes and ultimately change, but if a person who commits a crime had done all of

these things but then cannot get work or travel etc then it defeats the purpose of the initial penalty and keeps a person trapped in a vicious cycle which I believe the government have an ethical obligation to look at."

"Everyone deserves a second chance I made one mistake when I was young and naive and I've suffered ever since. I work every day and pay my taxes and haven't broke the law once since that day"

Impact of addiction

"I committed offences while using drugs but have worked hard since 2002 to become drug free and re-enter the workplace and get on with life, feels like I'm being punished again when asked for Garda Vetting, don't have a problem with that but no crime I committed makes me a danger to anyone"

"I think that if addiction or abuse of drugs is in relation to a charge the person should be offered more services to prevent reoffending and for rehabilitation"

"I was a troubled boy and a drug addict. I am 6 years clean, have a bachelors and a masters now. Why are my convictions relevant now? I am a different person."

Effects on family/social life

"The damage to one's reputation leaves the convicted crippled socially because of the persistence of the press online. It seems it will always be the only important thing about my identity ever again. The 'Right to be forgotten' is too difficult to access. Seven years is long enough to destroy much of your life. Assistance should be given in accessing this. 'Right to be forgotten' should be applied by law not by application."

"It's ruined 20 years of employment opportunities and 3rd Level education opportunities. Which has left my family at times in poverty"

"My family are still being punished because of my crime. My wife has to pay over the odds for car/home insurance."

"After 10 years of study, and 8 years since my last conviction, it remains that I cannot apply for certain job opportunities, go on holiday with my children, struggle to pay insurance, and become ashamed and embarrassed."

Education and desistance

"I had reached a point of desistance, turned my life 360 degrees, became highly educated and became a productive member of society, however the stigma remained."

"Does mistakes I've made really need to follow me around for the rest of my life? Because it really feels like a life sentence. I'm trying my best to educate myself so that I can go back and be a productive member of society. [...] Don't punish me for the rest of my life for making some tiny tiny mistakes."

"You carry that shame and guilt into the whole of your life... 65 yrs old in May... fear of reaching out to a better level of educational development leaves one with stunted growth...and deprives the communities of people who turned their lives around..."

General comments

"People can change their lives around if given the opportunity without a 15 year old conviction that keeps rearing his head every time you try and better yourself"

"More needs to be done, the current spent convictions bill is pointless it does nothing for a person with a number of convictions that has put in the work to change. Convictions are another road block to recovery"

"I would ask for an intervention in relation to job opportunities or assistance with becoming self-employed as have always been. The lack of insurance a huge setback in this regard, also the home insurance is very worrying and causes my wife sleepless nights worrying about this."

"In the field of social care I believe life experience is a method of learning which is greatly overlooked. Given a proven period of rehabilitation peoples past mistakes and criminality can be use as assets in supporting vulnerable young people and adults not to repeat those same mistakes. And provide understanding, support and guidance that you won't learn in any social care text book."

"By sentencing someone once that is the punishment but to leave it as a constant reminder is to continue to punish."

"I have turned my life around immensely and feel this is a huge barrier. I totally understand I committed a crime and have made amends to the wider community. In saying that I would like for it to be looked at, after some time has lapsed and the person in question has made huge changes that there be a review board to look at the individual and how there life is today. [...] I do everything I can to make that right today but there never seems to be getting away from this."

"I paid my debt to society, why should I keep paying for it?"

The Irish Penal Reform Trust

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

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Appendix II

IPRT submission to the Irish Human Rights & Equality
Commission Consultation on Strategy Statement 2019-
2021
(October 2018)



IPRT Submission to the Irish Human Rights & Equality Commission Consultation on Strategy Statement 2019-2021

7 October 2018

About IPRT

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

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Proposal

IPRT welcomes the opportunity to make a brief submission to the Irish Human Rights and Equality Commission (IHREC) on its [Strategy Statement 2019-2021](#).

IPRT believes one of the sustained goals of the Commission should be its continued leadership in *'making equality and human rights real.'* This strategic aim is largely reflective of the Commission's vision of *'an inclusive Ireland where human rights and equality are respected, protected and fulfilled for everyone, everywhere'* and its mission *'to build a fair and inclusive society that protects and promotes human rights and equality in Ireland.'*¹

One approach in achieving this aim is ensuring domestic equality legislation protects the most disadvantaged and that this group are fully benefitting from such legislation. In this respect, IPRT proposes that a key priority for IHREC should be promoting the equality of individuals through extending the currently protected grounds and recognising a tenth protected ground of 'social origin' and/or 'socio-economic status', to be interpreted specifically and explicitly to include those with criminal convictions in domestic legislation, including in the [Employment Equality Act 1998](#) and the [Equal Status Act 2000](#).

Rationale

Part of IHREC's mandate is to ensure that *'a person's ability to achieve his or her potential is not limited by prejudice, discrimination, neglect or prohibited conduct.'*²

A concern to prohibit discrimination on the basis of social origin/socio-economic status is evident in many international legal instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the ILO Convention No.111, Discrimination (Employment and Occupation) Convention, 1958. This concern recognises that discrimination on the basis of social origin/socio-economic status is pervasive and operates as a constraint on an individual's social mobility.³ It has been said that:

*prohibiting discrimination on the basis of social origin/socio-economic status would serve the objectives underpinning the adoption of equality legislation, namely the pursuit of a more equal and just society. It would also promote a more sophisticated intersectional approach to discrimination, leading to greater recognition of the multiple forms of discrimination that many groups face*⁴

IPRT echoes the position of the Equality and Rights Alliance on the interrelationship and intersectional nature of inequality and discrimination –

Socio-economic disadvantage by its very nature impedes full and equal access to all human rights and in particular to economic and social rights. Persons experiencing

¹ Ibid., p.4

² Irish Human Rights and Equality Commission, *Strategy Statement 2016-2018*, p.1

³ *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of Discrimination*, Shane Kilcommins, Emma McClean, Maeve McDonagh, Siobhaan Mullally and Darius Whelan, 2004; last accessed at <http://www.inis.gov.ie/en/JELR/Discrimination.pdf/Files/Discrimination.pdf>

⁴ *ibid*

*socio-economic disadvantages face a number of human rights violations, including their right to education, right to adequate housing or right to work. These human rights violations are exacerbated by the discriminatory treatment such groups also face. A socio-economic status ground in equality legislation thus also supports and enables a more holistic response to socio-economic disadvantages, involving both human rights and equality-based arguments and actions. This is particularly significant in a context where the equality body also has a wider human rights mandate acting as a National Human Rights Institution, as it stimulates such comprehensive responses to socio-economic disadvantage within one institution.*⁵

Indeed, this is not a new proposal; in 2013 the Irish Human Rights Commission (IHRC) identified discrimination against a person with a criminal conviction as an issue and recommended that a prohibition on discrimination on grounds of criminal conviction could be introduced into legislation.⁶ However, in its recent submission on *Observations on the Equality (Miscellaneous Provisions) Bill 2017* while the Commission established that the definition of socio-economic status is best developed by listing key practical and identifiable features of difference across social and suggested a number of indicators, it did not include criminal convictions or connections to intergenerational cycles of offending.

Employer discrimination against those with criminal convictions is an ongoing and significant issue of concern in Europe. A 2016 YouGov survey in the UK, found that 50% of employers would not consider employing an ex-offender.⁷ Research highlights both the dearth of and need for anti-discrimination statutes (rather than simply expungement legislation) to protect this group in Europe:

*“As most European anti-discrimination statutes do not cover criminal records, one implication might be that people with convictions should be legally recognised as a disadvantaged group entitled to special employment protection although this would require precise and binding guidelines to be effective.”*⁸

*“In order to provide individuals with criminal records with a universal and successful remedy against employment discrimination, a statute that explicitly bars employment discrimination based on criminal history needs to be adopted.”*⁹

Adding a protected ground to existing equality legislation, expands and embeds protection of this group. There are other imperatives to pursuing this issue including the State’s

⁵ Equality and Rights Alliance [Kadar, Thomas 2016] An analysis of the introduction of socio-economic status as a discrimination ground <http://www.eracampaign.org/uploads/Analysis%20of%20socio-economic%20status%20as%20discrimination%20final.pdf>

⁶ Irish Human Rights Commission, *Submission to the UN Human Rights Committee on Ireland’s Fourth Periodic Report under the ICCPR-List of Issues Stage* (2013) pp.17-18
https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_IFN_IRL_14924_E.pdf

⁷ YouGov Survey, p.1 https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/42yrwvixdo/YG-Archive-160126-DWPwaves.pdf

⁸ Weaver B. (2018) Time for Policy Redemption? A Review of the Evidence on Disclosure of Criminal Records, *Scottish Centre for Crime and Justice Research*, p. 15

⁹ Ibid., p.388

responsibility to pursue the rehabilitation of ex-offenders under Article 10(3) of the ICCPR¹⁰, the right to privacy under Article 40.3 of the Constitution¹¹ and Article 8 of the European Convention on Human Rights¹²; the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights¹³ is also relevant.

There is also precedent for pursuing this approach in other common law jurisdictions. In Canada, the states of Quebec, British Columbia, Ontario and Newfoundland and Labrador all have provisions to ensure protection from discrimination on the basis of criminal records in the area of employment.¹⁴ Under the *Anti-Discrimination Act 1998* in Tasmania, discrimination on the grounds of an irrelevant criminal record is prohibited.¹⁵

While it is correct that Ireland has introduced the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*¹⁶ there are a number of serious limitations to the current legislation¹⁷ in the employment field, and in any event, its provisions do not extend to the much wider area of equality and non-discrimination in access to all services. In addition, there is currently no broad anti-discrimination provision in this or any other legislation which protects those with criminal convictions. As a result, the ability of those with convictions to achieve his or her potential continues to be limited by prejudice, discrimination and inequality.

The introduction of a “social origin” or “socio-economic status” ground may be challenged on the basis of the status being vague or not immutable. Even if one accepts that it is challenging to conceptualise how one might define “social origin” or “socio-economic status” as a protected ground, the existence of a criminal conviction is a matter of fact and might provide a realistic starting point for an interpretation and explicit example of this protected ground.

Conclusion

IPRT proposes that a key priority for IHREC in its *Strategy Statement 2019-2021* should be promoting the equality of individuals through recognising the protected ground of ‘social origin’ and/or ‘socio-economic status’, to be interpreted **specifically and explicitly** to include those with criminal convictions.

¹⁰ United Nations Human Rights, *International Covenant on Civil and Political Rights*,

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹¹ Irish Statute Book, *Constitution of Ireland*, <http://www.irishstatutebook.ie/eli/cons/en/html>

¹² *European Convention on Human Rights*, https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹³ United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights*,

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹⁴ Linda McKay-Panos, “Human Rights Law and Inclusion of New Grounds – Criminal Record”, *Law Now: Relating law to life in Canada*, 5 July 2017; date accessed 4 October 2018 <<https://www.lawnow.org/human-rights-laws-and-inclusion-of-new-grounds-criminal-record/>>

¹⁵ Shane Kilcommins et al. “Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of Discrimination” 2004, at 8:<www.inis.gov.ie/en/JELR/Discrimination.pdf/Files/Discrimination.pdf>

¹⁶ Irish Statute Book, *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/html>

¹⁷ IPRT (2016) *Passing of Spent Convictions Legislation a historic step for Ireland, but could go much further*, <http://www.iprt.ie/contents/2856>