



## **IPRT Submission to the Committee on Children, Equality, Disability, Integration and Youth on the General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021**

**21<sup>st</sup> January 2022**

### **About IPRT**

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system and the 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. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

### **Introduction**

1. IPRT welcomes the opportunity to make a very brief submission to the Joint Committee on Children, Equality, Disability, Integration and Youth on the general scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021 ('the 2021 Bill'). In doing so, we hope to highlight the needs of people with disabilities in prison and engaged with forensic mental health services in Ireland, and to ensure that this cohort is not forgotten as preparations are made to fully commence the Assisted Decision-Making (Capacity) Act 2015 ('the 2015 Act') and operationalise the Decision Support Service (DSS).
2. By way of background, IPRT in 2019 commissioned research on the experience of prisoners with disabilities, resulting in the publication of the report, *Making Rights Real for People with Disabilities in Prison*, in January 2020.<sup>1</sup> The report addresses the rights and experiences of

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<sup>1</sup> IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), available at: [https://www.iprt.ie/site/assets/files/6565/people\\_with\\_disabilities\\_in\\_detention\\_-\\_single-pages.pdf](https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single-pages.pdf).

prisoners with all forms of disability, including intellectual and psychosocial, and was carried out by researchers attached to the Centre for Disability Law and Policy at the National University of Ireland Galway.<sup>2</sup>

### The Rights and Needs of People with Disabilities in Prison

3. The *Making Rights Real* report notes the limitations of data in regards the prevalence of disability in Irish prisons.<sup>3</sup> That said, the data that is available suggests that a significant proportion of the Irish prison population have a disability.
4. For example:
  - a. It is estimated that nearly one in three prisoners have intellectual disabilities (although data is incomplete).<sup>4</sup> The Inspector of Mental Health Services in turn has noted that people with intellectual disability are overrepresented in all parts of the criminal justice system, including police custody.<sup>5</sup>
  - b. Mental health among the prison population is a serious concern, with some studies estimating that the prevalence of severe mental illness among the prison population is four times that of the general population.<sup>6</sup> Many of these people are detained in Irish prisons for long periods, while awaiting transfer to the Central Mental Hospital (CMH). The average waiting time for transfer from prison to the CMH in 2019 was 120.86 days: the shortest waiting time was seven days and the longest was 504 days.<sup>7</sup>
  - c. Previous research conducted by IPRT into the experiences of older people in prison identified concerns in regards some prisoners living with serious neurological conditions, such as dementia.<sup>8</sup>
5. The above makes clear that people in prison are as likely to experience issues in regards their capacity as members of the public, and will therefore need to be accommodated once the 2015 Act is commenced in full. Practically, this will require consideration as to how they might access the DSS, as well as engagement with the Irish Prison Service and other criminal justice

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<sup>2</sup> The research was funded by the Irish Human Rights and Equality Commission (IHREC).

<sup>3</sup> IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), at pp.10-12, available at:

[https://www.iprt.ie/site/assets/files/6565/people\\_with\\_disabilities\\_in\\_detention\\_-\\_single\\_pages.pdf](https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf).

<sup>4</sup> Gulati G., Cusack A., Kelly B.D., Murphy V.E., Kilcommins S., and Dunne C.P., *Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities*, 12 August 2021, Health & Human Rights Journal, available at:

<https://www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/>.

<sup>5</sup> Mental Health Commission, *Access to Mental Health Services for People in the Criminal Justice System* (2021), at p.17, available at:

<https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>

<sup>6</sup> Gulati G., Cusack A., Kelly B.D., Murphy V.E., Kilcommins S., and Dunne C.P., *Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities*, 12 August 2021, Health & Human Rights Journal, available at:

<https://www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/>.

<sup>7</sup> IPRT, *Progress in the Penal System (PIPS)* (2019), Standard 13, <https://pips.iprt.ie/progress-in-the-penal-system-pips/part-2-measuring-progress-against-the-standards/b-prison-conditions/13-mental-healthcare/>

<sup>8</sup> IPRT, *"In here, time stands still": The Rights, Needs and Experiences of Older People in Prison* (2016), at p.22, available at:

[https://www.iprt.ie/site/assets/files/6388/iprt-older\\_people\\_in\\_prison\\_report\\_web.pdf](https://www.iprt.ie/site/assets/files/6388/iprt-older_people_in_prison_report_web.pdf).

agencies to make arrangements accordingly.<sup>9</sup> IPRT asks that this be noted by the Committee when considering the 2021 Bill, so as to make any legislative changes needed to facilitate such access for people in prison.

### The Rights and Needs of People Engaged with the National Forensic Mental Health Service

6. IPRT does not have expertise in the rights and needs of people engaged in forensic mental health services and/or detained in a facility such as the CMH (which is a designated centre *per s.3* of the Criminal Law (Insanity) Act 2006 but can also accept admissions from other approved centres *per s.21* of the Mental Health Act 2001). We have recently, however, commissioned a scoping study to be carried out on *Access to rights for people detained in secure forensic mental health facilities in Ireland*.<sup>10</sup> It is anticipated that this research will be published in April 2022, and we will ensure that we send a copy of the report to the Committee for your further consideration.
7. In the meantime, IPRT invites the Committee to consider the situation of people detained in facilities such as the CMH, in order to ensure that the 2021 Bill fully vindicates their rights under UNCRC and that they are provided with access to all decision-making supports etc as needed.

### Summary of Recommendations

**Recommendation 1.** The Committee should consider the situation of people with disabilities in prison, who might need to avail of decision-making supports while detained, and make any legislative amendments needed to provide such supports.

**Recommendation 2.** The Committee should ensure that the 2021 Bill vindicates the rights of all people engaged with secure forensic mental health facilities and/or detained in the Central Mental Hospital, and provide such individuals with full access to decision-making supports as needed.

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<sup>9</sup> See e.g. Recommendation 13, IPRT, *Making Rights Real for People with Disabilities in Prison* (2020), available at: [https://www.iprt.ie/site/assets/files/6565/people\\_with\\_disabilities\\_in\\_detention\\_-\\_single\\_pages.pdf](https://www.iprt.ie/site/assets/files/6565/people_with_disabilities_in_detention_-_single_pages.pdf); and Recommendation 7.8, IPRT, *"In here, time stands still": The Rights, Needs and Experiences of Older People in Prison* (2016), available at: [https://www.iprt.ie/site/assets/files/6388/iprt-older\\_people\\_in\\_prison\\_report\\_web.pdf](https://www.iprt.ie/site/assets/files/6388/iprt-older_people_in_prison_report_web.pdf).

<sup>10</sup> More information on the background to this project can be found on IPRT's website, available here: <https://www.iprt.ie/latest-news/invitation-to-tender-access-to-rights-for-people-detained-in-secure-forensic-mental-health-facilities-in-ireland/>.