



**Tithe an  
Oireachtais**  
Houses of the  
Oireachtas

# **Tithe an Oireachtais**

**An Comhchoiste um Dhlí agus Ceart, Cosaint agus  
Comhionannas**

**Tuarascáil maidir le hAthchóiriú ar an gCóras Pionós**

**Márta 2013**

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# **Houses of the Oireachtas**

**Joint Committee on Justice, Defence and Equality**

**Report on Penal Reform**

**March 2013**

**31/JDAE/009**





## Foreword

In October 2011, the Joint Committee on Justice, Defence and Equality agreed to establish a Sub-Committee from within its own Members to investigate the issue of Penal Reform. Senator Ivana Bacik, as a member of the Sub-Committee, agreed to undertake to produce a Rapporteur Report on behalf of the Sub-Committee.

The Sub-Committee met in public on four occasions and in private on four occasions to consider the issue in detail, including written submissions received, and to hear from a wide selection of stakeholders.

The Joint Committee would like to thank Senator Bacik who put an enormous amount of time and personal effort into preparing the Rapporteur report. The Joint Committee would also like to acknowledge the contribution made by the members of the Sub-Committee throughout the period this issue was under consideration.

The Joint Committee would like to express its gratitude to all the witnesses who came before the Sub-Committee to give evidence and to those who took the time to make written submissions. The Sub-Committee gained valuable insights from the organisations and individuals involved.

The Joint Committee, at its meeting of 27 February 2013, considered the Rapporteur's Report and the five key recommendations of the Sub-Committee. The Joint Committee agreed unanimously to adopt this Report, that it be laid before both Houses of the Oireachtas, that a copy of the Report be sent to the Minister for Justice and Equality and that a request be made to have this Report debated in both Houses.

A handwritten signature in black ink, appearing to read 'D. Stanton', written over a horizontal line.

David Stanton, T.D.  
Chairman  
28 February 2013



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## **BACKGROUND**

### **Sub-Committee Brief**

The Sub-Committee on Penal Reform was established by the Joint Oireachtas Committee on Justice, Defence and Equality on 19 October 2011 with the following brief:

“to analyse the recommendations of the Thornton Hall Project Review Group in respect of non-custodial alternatives to imprisonment – in particular back-door strategies which involve some form of early release; and may examine:

- the experience from other jurisdictions of potential models for such strategies, including ‘earned temporary release’;
- release under community supervision;
- parole reform;
- enhanced remission.

The sub-Committee may also:

- consider whether such models could be adopted in Ireland;
- make recommendations as to how such models could be introduced into the Irish penal system;”

### **Membership of the Sub-Committee:**

Mr David Stanton TD (Chair); Senator Ivana Bacik (Rapporteur); Mr Pádraig MacLochlainn TD, Senator Martin Conway and Senator Katherine Zappone (Mr Jonathan O’Brien TD and Senator Denis O’Donovan were members for some of the time the Sub-Committee was sitting).

### **Work of the Sub-Committee:**

The Sub-Committee held four public hearings and also had four meetings in private. The full transcripts of the four public meetings are printed and contained in Appendix 5 of this report. They are also available electronically using the following links: [23 November 2011](#); [1 February 2012](#); [24 October 2012](#); and [19 December 2012](#). The Sub-Committee also visited Mountjoy Prison, St. Patrick’s Institution, Wheatfield Prison and Cork Prison during 2011-12, and visited Finland in November 2012.

An [Interim Report](#) (click link) was published on 29 March 2012.

## **Meetings with Stakeholders**

### **23 November 2011**

Prison Officers Association (Mr John Clinton, General Secretary and Mr Jim Mitchell, Assistant Deputy General Secretary)

PACE (Ms Lisa Cuthbert, Director)

Irish Penal Reform Trust (Mr Liam Herrick, Executive Director)

Etruscan Life Training and Education Centre (Mr Dermot Kelly, Chairperson and Ms Linda Lyons, Legal Director)

### **1 February 2012**

Probation Service (Mr Vivian Geiran and Mr Jimmy Martin, Prisons and Probation Policy and Criminal Law Reform Divisions)

Irish Prison Service (Mr Kieran O'Dwyer)

Care After Prison (Mr Paul Mackay, Chairman and Ms Denise Coulahan, Key Worker)

Irish Association for the Social Integration of Offenders (Mr Paddy Richardson, Chief Executive, Mr Barry Owens, Assistant Manager and Ms Adrienne Higgins)

Inspector of Prisons (Mr Justice Michael Reilly)

### **24 October 2012**

Parole Board (Mr John Costello, Chairperson)

Dr. Kevin Warner (Researcher on Penal Policy)

Jesuit Centre for Faith & Justice (Fr Peter McVerry and Mr Eoin Carroll)

Professor Ian O'Donnell (School of Law, University College Dublin)

Dr. Ciaran McCullagh (Department of Sociology, University College Cork)

### **13 November 2012 – Visit of the Sub-Committee to Helsinki, Finland**

Meetings with: members of the Legal Affairs Committee of the Finnish Parliament; officials from the Department of Criminal Policy, Ministry of Justice; Mr Esa Vesterbacka, Director General, Criminal Sanctions Agency.



Visit to: Suomenlinna Open Prison, Helsinki (For information on the prison, see the website of [RISE](#) (click link), the Criminal Sanctions Agency, Finland).

19 December 2012

Cornmarket Project in Wexford (Mr Paul Delaney, Co-ordinator and Mr Paul O'Brien, Service Manager)

Focus Ireland (Ms Joyce Loughnan, Chief Executive, and Ms Catherine Maher, National Director of Services)

Care After Prison (Ms Bernie Grogan, Liaison Officer)

### **Written Submissions Received**

The Etruscan Life Training & Education Centre

Prison Officers Association

PACE

Irish Penal Reform Trust

Department of Justice and Equality

Care after Prison (CAP)

Professor Ian O'Donnell UCD

Fr. Peter McVerry SJ

Parole Board

Dr. Kevin Warner

Dr Ciaran McCullagh

Cornmarket Project

Focus Ireland



## PREFACE

The Sub-Committee on Penal Reform was established specifically to examine ‘back-door strategies which involve some form of early release’. It was established following the publication of the Thornton Hall Project Review Group Report (July 2011) which identified overcrowding as a ‘pernicious’ issue which ‘seriously impacts on the ability of the Irish Prison Service to provide safe and secure custody, together with structured regime activity for the prison population in its care, in accordance with the State’s obligation’ (p.ii).

The Thornton Review Group endorsed the principle that imprisonment must be a sanction of last resort and noted that the creation of additional capacity of itself would not deal with the issue. In order to ‘reduce the use of imprisonment as a sanction and therefore reduce or manage the prison population more effectively’ (p.59), the Review Group considered the application of alternatives to custody from two perspectives, front-door and back-door strategies.

Back-door strategies involve using early release in some form. There are three forms of early release in Ireland (Thornton Report, p.60):

- (a) The government power to commute or remit any sentence (Article 13.6, Constitution);
- (b) Remission under the Prison Rules which provide that prisoners can earn remission of up to 25% of their sentence<sup>1</sup>;
- (c) Temporary Release, provided for under the Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003.

In addition, section 39 of the Prisons Act 2007 refers to permitted periods of absence from prison on compassionate or other grounds.

The Review Group recommended that the government should introduce an incentivised scheme for earned temporary release, coupled with a requirement to do community service under supervision (p.71). The aim of this scheme would be to prepare offenders for release upon completion of their sentences.

These were the issues upon which the work of this Sub-Committee was focused.

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<sup>1</sup> Rule 59(1) of the Prison Rules (SI 252/2007) provides that a prisoner who has been sentenced to a term of imprisonment exceeding one month ‘shall be eligible, by good conduct, to earn a remission of sentence not exceeding one quarter of such term.’ Rule 59(2) allows the Minister to grant greater remission of up to one-third of sentence where a prisoner ‘has shown further good conduct by engaging in authorised structured activity’ and the Minister is satisfied that the prisoner is thus ‘less likely to re-offend and will be better able to reintegrate into the community.’ The remission rule does not apply to some categories of prisoner, including those serving life imprisonment or committed for contempt of court.

However, early on at the hearings the Sub-Committee was told that ‘We cannot have effective back-door strategies without also having progressive front-door strategies’ (Prison Officers’ Association). This insight informed the work of the Sub-Committee. While focusing upon end-of-sentence measures like remission and temporary release, the Sub-Committee also deliberated upon relevant issues like overcrowding, prison conditions, and prisoner numbers.

The need to address these issues in order to achieve effective use of back-door strategies is reflected in the Sub-Committee’s recommendations. In particular, while recommendations 3 and 4 directly relate to end-of-sentence changes, recommendations 1 and 2 arose out of the hearings held by the Sub-Committee with both experts and with organisations working with offenders both in prison and post-release. Recommendation 5 is a more general recommendation that reflects the view expressed by all those who gave evidence to the Sub-Committee; that end-of-sentence measures and prison or post-prison rehabilitation strategies generally cannot be effective unless overcrowding in prisons is reduced and prison conditions generally are improved.

In formulating the recommendations generally, the Sub-Committee was at all times mindful of the need to ensure protection of victims of crime, and of society generally. It is believed that these practical recommendations, if implemented effectively, could have a significant practical impact in reducing recidivism rates and thereby contributing to greater levels of safety in Irish society.

The remit of the Sub-Committee did not extend to consider sentencing policy or practice directly, although some of the recommendations concern aspects of sentencing. The Sub-Committee notes the importance of developing restorative justice measures in the context of sentencing policy; and welcomes the establishment of the [Irish Sentencing Information System \(ISIS\)](#) and the generation of a more coherent body of information about sentencing practice in Ireland.

The Sub-Committee also noted that there is as yet no equivalent in Ireland to the Sentencing Council for England and Wales, the independent body which was created in that jurisdiction to ensure transparency and consistency in sentencing whilst maintaining the independence of the judiciary.

During the course of its work, the Sub-Committee visited a number of prisons in Ireland (Mountjoy Prison, St. Patrick’s Institution and Cork Prison). Upon the recommendation of expert penologists, it also visited Helsinki to examine penal reform strategies in Finland. This visit, and the potential for Irish penal policy-makers to learn from Finnish experience, strongly influenced members of the Sub-Committee.

The Sub-Committee also drew upon previous reports into and research conducted upon the penal system. Publications consulted included not only the 2011 Thornton Hall Report and the 2012 Irish Penal Reform Trust Report on *Reform of Remission, Temporary Release and Parole*; but also the 2000 Report of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights entitled *Alternatives to Fines and the Uses of Prison*; the 1985 *Report of the Committee of Inquiry into the Penal System* (the Whitaker Report); and other reports and publications listed in the Select Bibliography.

There have been many reports on penal reform and prison policy in Ireland over the years. This report is not intended to duplicate or repeat earlier work, but instead to make a series of practical recommendations for enabling the development of a more effective and progressive penal system.

Its publication is timely, coming shortly after the welcome initiation by the Minister for Justice of a Working Group to conduct a [strategic review of penal policy](#) (announced September, 2012).

The practical recommendations outlined in this report should now be acted upon swiftly. Their implementation would bring about meaningful reforms in penal policy and would contribute to making a real change in Irish penal culture.



## **EXECUTIVE SUMMARY - RECOMMENDATIONS**

### **1. REDUCE PRISON NUMBERS.**

The Sub-Committee is concerned about the significant increase over recent years in the numbers of prisoners in Ireland. It strongly recommends the adoption of a 'decarceration strategy'; a declared intention by the Government to reduce the prison population by one-third over a ten-year period.

### **2. COMMUTE PRISON SENTENCES OF LESS THAN SIX MONTHS.**

The Sub-Committee recommends that all sentences for under 6 months imprisonment imposed in respect of non-violent offences should be commuted and replaced with community service orders.

### **3. INCREASE STANDARD REMISSION FROM ONE-QUARTER TO ONE-THIRD AND INTRODUCE AN INCENTIVISED REMISSION SCHEME OF UP TO ONE-HALF.**

The Sub-Committee recommends that standard remission should be increased from one-quarter to one-third of all sentences over one month in length. An enhanced remission scheme of up to one-half should be made available on an incentivised basis for certain categories of prisoner, particularly those serving a prison sentence for the first time.

### **4. INTRODUCE LEGISLATION PROVIDING FOR STRUCTURED RELEASE, TEMPORARY RELEASE, PAROLE AND COMMUNITY RETURN.**

The Sub-Committee endorses the Irish Penal Reform Trust recommendation for a single piece of legislation which would set out the basis for a structured release system; to include proposed changes to remission set out above, and to temporary release and parole. The Sub-Committee recommends that this legislation could also provide a statutory framework for an expanded community return programme. Legislation could also underpin the strategies currently used by groups working with offenders post-release, and with potential offenders.

### **5. ADDRESS PRISON CONDITIONS AND OVERCROWDING; AND INCREASE THE USE OF OPEN PRISONS.**

The Sub-Committee was informed that structured release and incentivised remission programmes could not operate effectively within prisons unless prison conditions are improved and overcrowding tackled. The recommendations listed above would help to alleviate the overcrowding problem. In addition, actions should be taken to improve conditions within prisons generally. The proportion of open prisons should also be increased.





## SUB-COMMITTEE RECOMMENDATIONS

### 1. REDUCE PRISON NUMBERS.

The Sub-Committee heard evidence as to the recent rapid increase in prisoner numbers, and the overall imprisonment rate, in Irish prisons. This rise does not reflect any consistent rise in crime figures and indeed has occurred at a time when crime figures have generally been falling; CSO figures show headline or serious crime has been falling in most categories in recent years, and that overall crime has fallen by 13 per cent since its peak in 2008, after increasing for some years before that (<http://www.irishtimes.com/topics/crime-statistics-ireland/static/crime-trends.html>).

The average daily number of prisoners in custody in Ireland is 4,275 as at 4 December 2012 (source: [Irish Penal Reform Trust](http://www.iprt.ie/prison-facts-2) <http://www.iprt.ie/prison-facts-2>, also quoted on [International Centre for Prison Studies](http://www.prisonstudies.org) website at

[http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=145](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=145)).<sup>2</sup>

This compares to, for example, an average daily rate of only 3,321 persons as recently as 2007, just five years ago (sources: *Irish Prison Service Annual Report 2007*).

The numbers of persons committed to prisons each year has also been rising significantly. A total of 13,952 persons were committed to prison during 2011, compared to only 9,711 five years ago in 2007

(<http://www.irishprisons.ie/images/pdf/yearagegender.pdf>).

Overall, there was a huge increase in numbers incarcerated in Irish prisons between 2006 - 2010. During this period, the prison population went up by more than 30%. Between 1970 and 2013, the prison population increased by 400% (<http://www.iprt.ie/prison-facts-2>).

The number of prisoners has thus been steadily rising over the last few decades, with a particularly significant increase occurring in the last decade.

This is reflected in the rapid increase in the Irish imprisonment or prison population rate. In 1960, Ireland had a rate of only 16 per 100,000 of the national population, compared to the current rate of 93 per 100,000 (source: *International Centre for Prison Studies*, 21.1.2013).

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<sup>2</sup> The latest figures available from the Irish Prison Service website show 3,697 prisoners in custody at 30<sup>th</sup> November 2011, compared to a daily average of 2,696 in 2007 (<http://www.irishprisons.ie>).

Data from the International Centre for Prison Studies data shows that from 1995 - 2013 the prison population rate in Ireland has risen from 59 – 93 per 100,000; an increase of 57%.

Despite this enormous recent increase in the imprisonment rate, the Irish figure remains below the rate in England and Wales (155).

But it is well above the rate in Scandinavian countries. Finland, Denmark, and Sweden have figures of 60, 68, and 70 per 100,000 respectively. The US figure is approx 700 per 100,000, much higher than the European average (source: International Centre for Prison Studies, 21.1.2013).

It is particularly interesting to compare the Irish imprisonment rate with that of Finland. In Finland, the imprisonment rate in 1960 was 164 per 100,000; but today the rate stands at only 60 (see graph below). Finland's prison population has 'fallen almost continually from a high level just after World War Two – except for an upward swing from 1999 to 2005, which has now turned decisively downwards again' (Warner, submission to the Sub-Committee, p.10).

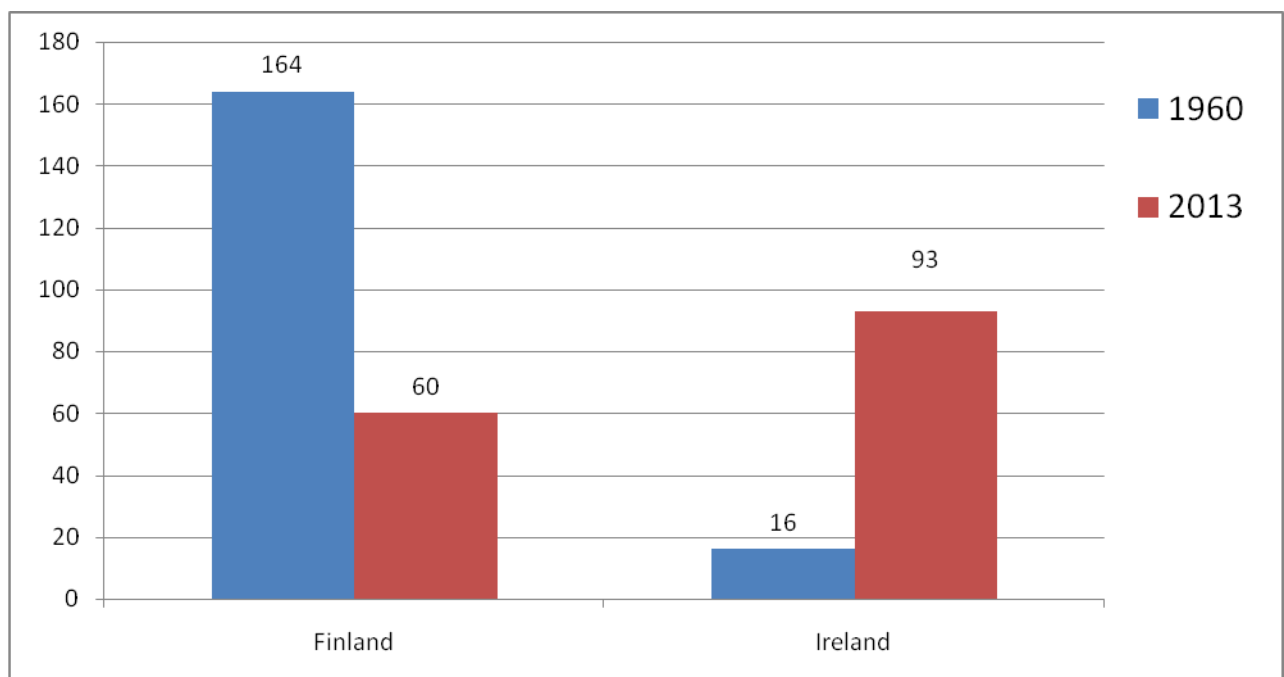


Figure 1: Number of prisoners per 100,000 inhabitants

Thus, while Ireland's imprisonment rate has increased by 481% since 1960, over the same period Finland's rate decreased by 63%.

From these figures two things become apparent. First, Ireland's imprisonment rate is now high when compared with Scandinavian countries. Secondly, the rate has been rising significantly for a number of decades, with particular increases over the last decade.

The Sub-Committee is very concerned at this rapid increase in prison numbers. It notes the view expressed in 2000 by a previous Sub-Committee of the Oireachtas Justice Committee, that:

‘despite popular belief to the contrary, imprisonment rates have a very small impact on crime rates and can be lowered significantly without exposing the public to serious risk’ (*Alternatives to Fines and the Uses of Prison*, Report of the Oireachtas Sub-Committee on Crime and Punishment, 2000, at p.4).

The Sub-Committee recommends that the Irish Government should learn from the Finnish experience and seek to bring about a change in penal culture by declaring an intent to reduce prison numbers and the overall rate of imprisonment.

This position was endorsed by the experts who gave evidence to the Sub-Committee. In particular, Professor Ian O’Donnell recommended that the Sub-Committee should ‘make a strong and unequivocal statement that the prison population is too high ..[that] it is unconscionably high and must come down. Without such a statement, all of the other measures cannot follow.’

The Sub-Committee believes that in order to safeguard victims of crime, and to protect society generally, dangerous and violent offenders should remain incarcerated. However, it endorses the view of experts provided at the hearings that a more effective and genuinely rehabilitative penal policy could be developed if the prison population were reduced by one-third over a reasonable period of perhaps ten years, in accordance with the adoption of a reductionist or ‘decarceration’ policy for non-violent prisoners.

This would mean a return to levels of imprisonment in the mid-1990s, before the change in policy which has been identified as increasingly punitive during the 1990s, when mandatory minimum sentences were introduced for a range of offences, and a prison-building regime was embarked upon (see for example Warner (2012) who states that ‘A ‘punitive turn’ is obvious in Ireland since the mid-1990s, evident by a more than doubling of the number of people held in prison, by .. worsened conditions.. and by more excluding and demonising attitudes towards those who fall foul of the law and are sent to prison.’)

This would be a starting point for a further range of measures aimed at tackling overcrowding in prisons and making the penal system more effective and progressive. It would require a change in penal culture - but the experience in Finland shows that this can be done within a reasonable timeframe, and the results are impressive.

## **2. COMMUTE PRISON SENTENCES OF LESS THAN SIX MONTHS.**

The Sub-Committee heard that there is a noted difficulty with structuring any sort of plan for release with persons serving short sentences. In particular, any offender sentenced to six months or less is likely to be released after two or three weeks due to overcrowding, making sentence planning very difficult. These offenders could potentially be diverted from prison instead.

All those who gave evidence to the Sub-Committee agreed that proper sentence management is vital. Strong support was expressed for the integrated sentence management system now being operated in Irish prisons, and the Sub-Committee welcomes this development. It was suggested however that there is a requirement for an assessment of prisoners' needs upon committal to be carried out in a more systematic way than the current Integrated Sentence Management programme; and that a clear plan for prisoners should be provided at the point of release.

However, the difficulty with structuring any sort of plan for release with persons serving short sentences was emphasised to the Sub-Committee. In particular, any offender sentenced to six months or less is likely to be released after two or three weeks due to overcrowding, making sentence planning very difficult (PACE). These offenders could potentially be diverted from prison instead. CAP similarly recommended that given the difficulty with providing any sort of structured release programme for those serving less than six months' imprisonment, consideration should be given to diverting them away from prison altogether.

In Finland, where sentences are less than 8 months in length, the court may commute the sentence to community work. This option is used in respect of a large number of short sentences. This is a hugely effective strategy in Finland and it is something that could be implemented in Ireland. According to Esa Vesterbacka, the Chief of the Finnish Criminal Sanctions Agency, this has only been a success, however, because community work overall has been made a 'real alternative' to prison sentences.

Therefore, the Sub-Committee recommends that community service be implemented as a 'real alternative' to prison for all sentences in respect of non-violent offences of under 6 months length.

There are examples available of how this could be done in a managed and effective way. For example, Focus Ireland run programmes in Dublin and Waterford in partnership with the Probation Services, where people finish off their probation, serve time in the community and are linked in with supervisors from the Probation Services.

Finally, the Sub-Committee notes with concern that there is still a particular difficulty with people committed to prison for very short periods for non-payment of fines.

Approximately 7000 people were committed for this reason in 2011, despite the passing of the Fines Act.

Changes to the Court Services IT system are required to bring the Act fully into effect and this will have a welcome effect on prison numbers by greatly reducing levels of prisoners committed for very short periods for non-payment of fines. The Sub-Committee urges greater speed in implementation of the necessary changes.

In addition, the Sub-Committee notes with approval that the Criminal Justice (Community Service) (Amendment) Act 2011 should have a significant impact in increasing the use of community-based sanctions.

### **3. INCREASE STANDARD REMISSION FROM ONE-QUARTER TO ONE-THIRD AND INTRODUCE AN INCENTIVISED REMISSION SCHEME OF UP TO ONE-HALF.**

The issue of remission was a common thread among the contributors to the hearings. The Sub-Committee heard that the current system of remission is ineffective. It was described as a 'blunt instrument', since remission of one-quarter is almost automatic in practice. The Prison Rules 2007 provide for remission at the two-third stage if a prisoner has constructively engaged with the service, but to date only one prisoner has benefited from this provision (IPRT).

If the standard remission rate was increased from one-quarter to one-third, this would have an immediate effect in terms of reducing the overcrowding in our prisons, and bringing the imprisonment rate down to more manageable levels.

Reframing the system of standard remission as something *earned* for good behaviour and positive engagement could also have more wide-reaching effects. However, the Sub-Committee recognises that this change of approach would require significant new resources within the prison system and might better be framed as a longer-term goal within penal policy.

The Sub-Committee heard evidence that prisoners undertaking the Building Better Lives programme currently, for example, are frustrated that they received the same remission as prisoners who did not take any steps to earn remission. If remission were used to incentivise prisoners, it would help to alleviate this frustration for these prisoners. Good behaviour and engagement with programmes could be *rewarded* by remission.

Thus, while the Sub-Committee recommends the increase in the standard remission rate, it also recommends that further incentives to engage in rehabilitation could be offered through the adoption of an enhanced remission scheme of up to one-half of a custodial sentence for certain categories of offender; particularly first-time offenders or those sentenced to prison for the first time.

The recent *IPRT Position Paper 9: Reform of Remission, Temporary Release and Parole* (October 2012) deals specifically with this issue, highlighting that in Ireland currently remission is seen almost as a right (though one that may be revoked). This semi-automatic entitlement, according to the IPRT, means that standard remission has 'a limited incentive effect within the prison'.

The IPRT makes a strong argument in favour of implementing a system of remission that may be *earned*, but also points out that 'if engagement with rehabilitative (education/training, drug treatment, etc.) programmes is a requirement, then such programmes need to be adequately resourced and accessible.'

The Sub-Committee strongly endorses this view.

The IPRT also proposes that 'a system of incentives should apply to long-term prisoners through the operation of an enhanced remission scheme to allow prisoners benefit from higher remission (up to 50%) where they can demonstrate constructive engagement with services.' (p16). They believe that this type of system, which would offer up to 50% remission for certain prisoners, could specifically target certain groups of offenders and offer access to addiction, counselling and literacy services for groups who could benefit from them most.

The Sub-Committee considered these recommendations carefully. It is mindful that too radical a reform of remission, such as increasing standard remission to one-half, for example, could have an effect on sentencers and lead to increased sentences.

Bearing this in mind, the Sub-Committee recommends increasing standard remission from one-quarter to one-third (as recommended in the 1985 Whitaker report), with immediate effect.

The Sub-Committee further recommends the introduction of an enhanced system where remission of up to 50% of a sentence could be earned by certain groups of prisoners through engagement with resourced and accessible treatment, education and rehabilitation programmes within prison.

In this way, not only would the prison rates overall be reduced, but the prison system could potentially, if adequately resourced, have a more far-reaching, transformative effect on the prisoners who access training, education or drug-rehabilitation programmes in a meaningful manner – thereby reducing recidivism rates.

A difficulty is that currently there is no system for objectively measuring whether a prisoner has engaged constructively – benchmarks could be set through the integrated sentence management process. For more serious offenders, eligibility for parole or Temporary Release could apply at a fixed proportion point of the sentence, at which point there could be independent adjudication of eligibility. A detailed risk assessment could be carried out under the auspices of the Parole Board.

The potential of an incentivised remission facility to reduce the prison population has not been exploited. If it were, it would incentivise prisoners to take part in programmes, reduce overcrowding, usher in a more structured approach to release, save money and offer real potential for rehabilitation.

#### **4. INTRODUCE LEGISLATION PROVIDING FOR STRUCTURED RELEASE, TEMPORARY RELEASE, PAROLE AND COMMUNITY RETURN.**

##### (a) Structured Release

Currently only very basic provision is made in law for release of prisoners generally; Rule 61 of the 2007 Prison Rules refers to 'basic provision for release' and requires only that where a prisoner is discharged from prison either on temporary release or otherwise, the Governor only has to ensure that 'he or she has sufficient means for travelling to his or her destination within the State'; that they have adequate clothing, and sufficient means of subsistence.

The Sub-Committee heard that proper sentence management is vital from the beginning of the sentence right through to the eventual release. In particular, there is a requirement for an assessment of needs upon committal – more systematic than the current Integrated Sentence Management – and for a clear plan at the point of release. Additionally, many prisoners sentenced to life or to lengthy prison sentences are not aware of what steps they should take to improve themselves while in prison. The initiative of the integrated sentence management scheme is to be welcomed, but the Sub-Committee heard that it should apply to all long-term prisoners, especially those serving a life sentence.

During the Sub-Committee hearings, the IPRT pointed out the difficulty that there is no system in place currently for objectively measuring whether a prisoner has engaged constructively during his/her sentence. An integrated sentence management process could be used to set benchmarks by which to gauge prisoner engagement – and thereby feed into a structured remission and temporary release programme. In addition, creative sentencing could allow specifically for supervised release within the community to ensure less risk of re-entry into addiction and offending upon the transition from prison. The criteria for engagement would include participation in education, training, work and treatment programmes within the prison.

There are significant differences in costing between prison sentences and community service – it was estimated to the Sub-Committee that the current cost per prisoner in a medium security prison is approx 70,000 euro per year, whereas the average cost of a community service order (40-240 hours total) is approx 2,400 euro per order.

Practical supports also need to be put in place to ensure that prisoners do not re-lapse upon discharge or release. The IASIO (formed January 2012, emerged out of Business in the Community Ireland) has done very valuable work on re-integrating offenders – more than 15,000 people have been referred to their criminal justice programmes, and more than 6,000 people have been successfully placed in training, education and employment. Their programmes are funded by the Probation Service and the Prison Service. Linkage is one particular programme. Electronic tagging could also become part of an enhanced incentivised regime post-release, as in Finland.

The IASIO recommends the introduction of a prison-based resettlement support initiative for prisoners serving short-term sentences of 6-12 months. It also recommends investigation of a drug treatment and testing sanction in Scotland and the Finnish model of conditional and unconditional imprisonment, and calls for the carrying out of a mapping service of all the inreach services available to prisons across the country (as BITC have done in respect of community involvement for businesses).

During the hearings, Focus Ireland and other organisations discussed some of these practical problems which can arise for prisoners post-release, particularly in relation to access to accommodation on leaving prison. Many prisoners are homeless and this is a considerable problem, especially for longer-term prisoners. Voluntary organisations such as Focus Ireland, Care After Prison (CAP) and others can and do play a valuable role in assisting with practical supports such as addressing housing needs, and generally in the re-integration of offenders into the community. The Sub-Committee heard from a number of organisations, including the Cornmarket and Etruscans, which have adopted strategies to support offenders post-release, and potential re-offenders, by addressing behavioural change, for example. The Sub-Committee also notes similar work done in another jurisdiction by the [User Voice organisation](http://www.uservoice.org) (www.uservoice.org), and the potential development of a similar pilot project within the Irish prison system.

Integrated policy between all the service providers, and a structured release plan, could also provide for supports with accommodation, training or employment supports to be put in place for those leaving prison – in advance of the date of discharge. Clarity in the legislation, including the Social Welfare Acts, is needed on access to rent allowance, medical cards and other benefits for ex-prisoners.

It was recommended generally that there should be a tightening of all planned discharge to ensure that prison release would be carried out in a structured manner. This would assist in the managed release of people back into the community, and the Sub-Committee recommends that this should be provided for in legislation as part of a larger programme of structured release.



However, supports must be provided for the Probation Service to enable effective implementation of any structured release programme. Clearly, more resources are needed to assist the Probation Service when helping prisoners who are released to reintegrate into society.

If the numbers of prisoners are reduced in the prisons, with a subsequent saving of money, such savings should be transferred to the Probation Service.

#### (b) Temporary Release

The Criminal Justice Act 1960, as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003, provides for temporary release of prisoners. Section 2 of the 1960 Act as amended provides that temporary release may be granted on a number of grounds, including the following:

- to assess a prisoner's ability to reintegrate into society;

- to prepare a prisoner for eventual release;

- to assist in the investigation of offences;

- for reasons of health or other humanitarian grounds;

- for the good governance of the prison;

- or where a person 'has been rehabilitated' and would be capable of reintegration into society.

Temporary release can range from a day or two to a programme of weekend releases in open centres, and then early release. There is day release from the Training Unit and from the open centres. Specific programmes are in place for violent offenders and sex offenders who must earn temporary release by good behaviour and engagement with prison services, although sex offenders have little real prospect of any early release. However, in many cases temporary release is used simply to alleviate overcrowding.

The Thornton Hall Report found that the use of temporary release had increased to 17% of all prisoners in 2011, although according to the Irish Prison Service the normal rate should be about 5%. This meant that in 2011, approximately 916 prisoners were on temporary release on a given day. Clearly, a more structured form of temporary release is important.

The problem with the current overuse and inappropriate use of Temporary Release is it has come to function as a 'safety valve in the system'. But there could be significant benefits to the structured application of temporary release on an incentivised basis.

Professor Ian O' Donnell has spoken of the potential to make temporary release an effective mechanism for rehabilitation of prisoners, having found that prisoners granted occasional temporary release for vocational or family purposes were significantly less likely to be re-imprisoned.<sup>3</sup>

The IPRT (2012) similarly recommends the use of a more structured system of temporary release, but emphasises that this should be offered in relation to a list of clearly defined and specific instances. Five specific grounds are suggested in the IPRT report:

- i. Release for compassionate or family grounds, including illness of the prisoner or a family member or bereavement.
- ii. Day release for other significant family events such as weddings, or religious sacraments or ceremonies.
- iii. Christmas release or release for other equivalent religious events.
- iv. Release for purposes of employment or training in preparation for full release.
- v. Weekend or daily release in preparation for full release.<sup>4</sup>

The IPRT also recommends that the purpose and criteria for temporary release be clearly defined for prisoners. This would not only make it clear to prisoners what type of release is available, but will also make it clear what the prisoner will have to do to qualify for such release. Again this provides incentivisation for prisoners to engage positively with the supports available.

Finally, high numbers of offenders, particularly young offenders, spend time in detention on remand but do not receive custodial sentences on conviction – this should be addressed, as remand prisoners cannot benefit from Temporary Release.

The Sub-Committee recommends that temporary release should be used to *incentivise* prisoners to engage with the services available in a constructive way. It should not function merely as a safety valve to alleviate overcrowding – its use has greater potential if carried out in a structured manner.

### (c) Parole

The Sub-Committee heard that there has been very little change in the parole making process for approximately half a century. The parole window could be widened without delay, and parole could be made a possibility for any prisoner

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<sup>3</sup> O'Donnell et al, 'Recidivism in the Republic of Ireland', *Criminology & Criminal Justice* (2008, vol. 8(2), pp123-146); also O'Donnell et al, 'When prisoners go home: Punishment, Social Deprivation, and the Geography of Reintegration', *Irish Criminal Law Journal* (2007, vol. 17 (4), pp3-9).

<sup>4</sup> IPRT, *IPRT Position Paper 9: Reform of Remission, Temporary Release and Parole*, 2012, p17.

serving four years or more. It is clear that cost implications would arise in the context of the review process, but significant savings could be made in terms of prison time.

The Sub-Committee also heard that the Parole Board remains subject to political control, and this may bring Ireland into conflict with international human rights law. It should be given full independence and placed on a statutory basis, and given power to make binding recommendations on prisoner releases.

Life sentence prisoners can become institutionalised if they have served 15 or 16 years or more in prison. The Parole Board, in conjunction with the Irish Prison Service, should give special attention to such prisoners.

#### (d) Community Return

A pilot system has been introduced for the early release of prisoners with a requirement to carry out community service, operated jointly by the Irish Prison Service and the Probation Service, it is called 'community return' to distinguish it from 'community service.' This scheme was launched in October 2011 on a pilot basis and commenced on 3 November 2011.

The scheme roughly equates to a week of community service for extra remission of one month – essentially a swap of prison time for time in the community paying back through unpaid work (Probation Service). Prisoners are eligible if their sentence is between 1-5 years imprisonment. Prisoners can get out under the scheme as early as half-way through their sentence instead of three-quarters of the way through (normal remission).

Reporting conditions are imposed – prisoners out in the community must sign on every day at their local garda station and every week at the prison. Other conditions such as attendance at drug treatment centres may also be imposed. The type of unpaid work done is that which is done on community service programmes – for example, painting community centres, graffiti removal or site cleaning.

The Sub-Committee heard that a high level of co-operation was recorded in the pilot scheme. Following the Sub-Committee's hearings, updated figures have been provided on the operation of the community return project from the Department of Justice and Equality.

Between 3 November 2011 and 4 December 2012, a total of 344 persons had commenced the scheme (of which 299 had commenced during 2012). A total of 201 had successfully completed it by that date, and 100 persons were still on the scheme. Only 35 persons had breached their conditions and 8 persons were considered to be no longer suitable for the scheme. Thus there is an impressive 90 % compliance rate.

As at 30 January 2013, there have been a total of 375 participants on the scheme (since the 3<sup>rd</sup> November 2011 start date) (Source: *Department of Justice and Equality*, 1 February 2013).

The IASIO recommends moving the community return programme from a pilot phase to full implementation across the entire prison estate from all prisoners serving sentences of between 1-5 years in length. Some prisoners could where necessary be diverted to community return compulsory mental health or drug treatment programmes. People convicted of less serious driving offences could be released to a safer driving course.

The pilot 'community return' programme is being carried out within the statutory framework of the Criminal Justice (Temporary Release of Prisoners) Act 2003. Temporary release is used as a form of conditional release and is more flexible than remission; so that is the structure used for community return.

The Probation Service/Prison Service favour continued application in Ireland of the more flexible statutory framework – they do not see the need for specific legislation to underpin the 'community return' scheme. However, the Sub-Committee recommends that it should be included within more general legislation to provide for a reformed temporary release programme along with recommended changes to remission and parole.

The Sub-Committee heard from some of those who gave evidence that incentivised early release programmes do not need legislation, but can be introduced within the prison system as part of integrated sentence management. However, the IPRT recommendation for legislation to underpin a reformed remission, parole and temporary release system, incorporating provision for community return, is supported by the Sub-Committee as it appears to offer a more substantial basis for the changes proposed.

## **5. ADDRESS PRISON CONDITIONS AND OVERCROWDING; AND INCREASE THE USE OF OPEN PRISONS.**

Finally, the Sub-Committee heard that the effectiveness of back-door strategies can be seriously compromised by poor prison conditions and by overcrowding. The capacity of the prison service to run effective integrated sentence management, release planning, structured temporary release and community return programmes is limited by inadequate prison conditions. As a result of overcrowding, prisoners are released on temporary release in an unstructured way.

Indeed, overcrowding was described to the Sub-Committee by Fr Peter McVerry as 'the most fundamental problem in the prisons.' Echoing what had been said by other

contributors, he suggested that ‘until that is addressed, it is extremely difficult to deal with the other serious issues such as rehabilitation, drug misuse and violence in our prisons’.

Fr. Peter McVerry also told the Sub-Committee that while the mission statement of the Irish Prison Service is to provide safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities, Irish prisons are not safe in reality, there is very little dignity of care and there is very little rehabilitation for the majority of prisoners. Large numbers of prisoners have addiction problems – these issues could be dealt with more effectively in the community.

The occupancy rate of Irish prisons is high at 94.9%; Irish prisons are more crowded than prisons in the Netherlands, Denmark and Germany. The Thornton Review Report sets out a comprehensive review, particularly in chapter 2, of prisoner numbers and occupancy rates. Clearly, there are design capacities and maximum numbers stated for all the prisons but it appears that these are never enforced. When there is a shortage of space the prison management simply doubles, triples or quadruples up – and effective rehabilitative programmes cannot work in such a system.

Similarly, attempts at reform within prisons are severely hampered by the very poor accommodation conditions in Irish prisons, particularly overcrowding, drug misuse, violence, gang conflict and physical conditions. These can restrict the potential of rehabilitation programmes and structured release planning. Many suggestions were made to the Sub-Committee as to how to address overcrowding and poor prison conditions. It was suggested that overcrowding could be addressed through, for example, use of empty office space within prisons.

It was noted that in-cell sanitation is being installed in Mountjoy prison on a gradual basis and this will greatly improve physical conditions. It is proposed to eliminate slopping out in all prisons within three years – a very welcome development.

It was recommended to the Sub-Committee that high support units should be provided in all relevant closed prisons and drug free areas should also be provided for (a dedicated area has now been provided for in Mountjoy prison).

A dedicated committal area has also been provided for in Mountjoy prison; this is of a high standard and should be used as a template for other prisons (operational 1 March 2012 – Inspector of Prisons).

Apart from these issues, a number of other serious deficiencies in prison conditions were raised with the Sub-Committee. These included the high rate of those who must share cells; the fact that many prisoners must go to the toilet in the presence of others; the excessive levels of lock-up time in most prisons; the inadequate gratuity

paid to prisoners which is due to be cut by an average of 28%; and the fact that access to structured activities has been greatly reduced in prisons in recent years.

Dr Ciaran McCullagh suggested that in other countries, reform of prison conditions has only come about when judges have ordered prison closures in grounds of human rights violations. He suggested that the Sub-Committee should call for the immediate closure of Mountjoy prison – and that this might lead to more substantial reform of prison conditions.

Reference was made in the Sub-Committee hearings to the high levels of persons with mental illness detained in prisons. An interdepartmental group has been established to review this problem. Reference was also made to the particular issues concerning detention of children. Children (under 18) continued to be detained in St Patrick's Institution during the Sub-Committee's deliberations, and the Sub-Committee believes this is not appropriate and welcomes the Government's commitment to ending this practice.

Evidence was also provided to the Sub-Committee of the over-reliance in the Irish system upon closed prisons. Dr Kevin Warner, for example, noted that in Ireland currently only 5% of the prison population are in open prisons, contrasted with one third of the population in open prisons, as is the case in Denmark, Finland and Norway.

He also suggested that smaller prisons would offer greater potential for rehabilitation and reintegration of offenders into society, and recommended that 'we should think in terms of having two thirds of all sentences served in the community rather than in prison; the rate currently stands at only about 30% in Ireland, but it is 67% in Sweden and 68% in Denmark.'

## **FINLAND – CASE STUDY**

(Sources: Lappi-Seppala; Vesterbacka; Warner; [www.rikosseuraamus.fi](http://www.rikosseuraamus.fi))

Finland has a population of 5.4 million and is described as fairly homogenous, with increasing numbers of non-nationals (now exceeding 3% of the total population). A review of Finland's penal policy shows that this has been strongly influenced by the country's turbulent political, social and economic history; a bloody 1918 civil war and two wars against the Soviet Union between 1939-44. The penal system was characterised by very high incarceration rates, peaking at 250 per 100,000 just after World War Two.

From the 1960s onwards, a determined political effort was made to bring Finnish penal policy closer to the Nordic model of lower imprisonment rates. A 'decarceration' policy was adopted, based on a political consensus that 'prison is overused.' Despite this policy, and the introduction of some new measures, for example setting remission at one-half for first-time offenders and one-third for recidivists, the prison population rose from 2800 to approximately 4000 between 1999 and 2005.

Since 2005, however, it has decreased significantly, from 4000 - 3000 prisoners. The explanations offered for the 1999-2005 increase include increased convictions for drug trafficking, the imprisonment of more non-nationals and increased penalties for aggravated assault. Since 2005, the decline was brought about through a reduction in the use of prison for fine-defaulters (2006); the extension of parole and new 'revocation' rules (2006); and the introduction of supervision and support with electronic monitoring (2011). The introduction of a new penal Act in 2006 is seen to have been one catalyst for the generation of a changed culture within the penal system.

Other innovations within the Finnish system include the merger of prison and probation services into a 'Criminal Sanctions Agency' (RISE) that enforces both prison sentences and community sanctions under the direction of the Ministry of Justice. The stated aim of the Agency is to reduce recidivism and enhance the safety of society; and the strategic goal of the Agency is to increase the use of community sanctions instead of prison sentences.

This means for instance that the Governor of Suomenlinna open prison, visited by the Sub-Committee, is also the chief of the local probation service. Having a common director for the open prison and the local probation service has helped to bring about a change, fusing the 'hard prison culture' with a 'soft probation culture'.

The use of what is called 'conditional imprisonment' was also impressive, whereby liberty is made conditional upon abiding by set conditions. The proportion of

conditional sentences to prison sentences has changed significantly over the years; with 15098 conditional sentences used in 2010, compared to 6271 prison sentences.

Offenders are described as being released on 'probationary freedom' and are subject to recall if they break the conditions of their release.

Warner (submission to Sub-Committee, p.10) quotes Nils Christie who pointed out that 'Finland's penal history illustrates that prison figures are not created by crime, but by cultural/political decisions..' (2000, p.53).

One prison staff member told the Sub-Committee that the change in penal culture has meant that prison is now seen as 'old-fashioned' – the job of keeping society safe can be done better through other methods such as electronic monitoring and imposing strict conditions upon release.

In Finland now, there are 27 prisons, of which 15 are closed and 12 are open. About 3200 prisoners are in the system on any given day; 14% are foreigners (2011); and the system includes about 1400 prison or supervision staff.

Suomenlinna Prison in Helsinki, which is an open prison visited in November 2012 by the Sub-Committee, is part of the Criminal Sanctions region of Southern Finland. It has 95 prisoner places and a high use of supervised probationary freedom. The prisoners are monitored with the help of electronic equipment, which includes an ankle transmitter and a GSM/GPS receiver. There are 28 staff at the prison and the annual budget (2012) is 4 million euro.

Suomenlinna Prison and Helsinki Community Sanctions Office are part of the same administrative unit with one director (also the governor of the prison). A prisoner's placement in activities is based on an individual sentence plan, which can consist of work, education, substance abuse treatment or other rehabilitation programmes.

Recidivism rates in Finland have been found to be about 35%, much lower than Irish rates. A recent study by the UCD Institute of Criminology found that almost 50% of Irish prisoners were back in prison after four years post-release (O'Donnell et al, 2008).

There is an important lesson for Irish penal policy makers in the experience of penal reform in Finland. The Sub-Committee urges the Irish government to adopt some of the changes in a penal reform strategy here.



## **CONCLUSION**

To address overcrowding, and to ensure that the introduction of back-door strategies like structured release programmes can work effectively, every effort needs to be made to bring down the numbers of those in custody, and to expand the use of non-custodial alternative sanctions.

The recommendations listed and discussed above are all inter-linked, and all aimed at bringing about a reformed penal system. In particular, the adoption by the government of a stated commitment to decarceration over a specified period would make a significant contribution to improving the penal system generally and tackling many of the issues addressed in this report.

It is to be hoped that the recommendations listed in this report, and the broader issues raised during the Sub-Committee hearings and outlined in the transcripts contained in Appendix 5, will help to develop a penal system in Ireland that is genuinely reformed, fair and progressive and that is effective in reducing recidivism rates. To do this, nothing less than a change in penal culture is required. That is what this Sub-Committee seeks.



# APPENDIX 1

## MEMBERSHIP OF THE JOINT COMMITTEE

### List of Members

Deputies: Niall Collins (FF)<sup>6</sup>  
Marcella Corcoran Kennedy (FG)<sup>8</sup>  
Alan Farrell (FG)<sup>1</sup>  
Anne Ferris (LAB)<sup>2</sup> [*Vice-Chairman*]  
Seán Kenny (LAB)  
Pádraig Mac Lochlainn (SF)<sup>7</sup>  
Finian McGrath (IND)  
John Paul Phelan (FG)<sup>4</sup>  
David Stanton (FG) [*Chairman*]

Senators: Ivana Bacik (LAB)  
Paul Bradford (FG)  
Martin Conway (FG)  
Rónán Mullen (IND)  
Denis O'Donovan (FF)<sup>5</sup>  
Katherine Zappone (IND)<sup>3</sup>

### Notes:

1. Deputy Alan Farrell replaced Deputy Billy Timmins by Order of the Dáil on 29 November 2011
2. Deputy Anne Ferris replaced Deputy Joanna Tuffy by Order of the Dáil on 26 January 2012
3. Senator Katherine Zappone replaced Senator Denis O'Donovan on 10 May 2012
4. Deputy John Paul Phelan replaced Deputy Tom Hayes by Order of the Dáil on 14 June 2012
5. Senator Denis O'Donovan was reappointed to the Committee on 14 June 2012
6. Deputy Niall Collins replaced Deputy Dara Calleary by Order of the Dáil on 19 July 2012
7. Deputy Pádraig Mac Lochlainn replaced Deputy Jonathan O'Brien by Order of the Dáil on 25 September 2012
8. Deputy Marcella Corcoran Kennedy replaced Deputy Michael Creed by Order of the Dáil on 7 November 2012



## APPENDIX 2

### TERMS OF REFERENCE OF THE JOINT COMMITTEE

#### Terms of Reference

##### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other matters as shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,

- (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- \* (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any

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\* By Order of the Dáil of 8<sup>th</sup> June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

sub-Committee or Committees standing established in respect of the Select Committee.

- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

#### **b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.





# APPENDIX 3

## MEMBERSHIP OF SUB-COMMITTEE

### Deputies



David Stanton TD



Pádraig Mac Lochlainn TD

### Senators



Ivana Bacik



Martin Conway



Katherine Zappone



## APPENDIX 4

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**APPENDIX 5**  
**TRANSCRIPT OF HEARINGS**





# DÁIL ÉIREANN

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AN FOCHOISTE UM ATHCHÓIRIÚ AR AN GCÓRAS PIONÓS

SUB-COMMITTEE ON PENAL REFORM

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*Dé Céadaoin, 23 Samhain 2011*

*Wednesday, 23 November 2011*

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The Joint Committee met at 09.30 a.m.

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MEMBERS PRESENT:

Deputy Jonathan O'Brien,
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Senator Ivana Bacik,
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DEPUTY DAVID STANTON IN THE CHAIR.

### **Penal Reform: Discussion**

**Chairman:** The purpose of today's meeting is to have discussions with organisations who have made written submissions to the sub-committee on the subject of penal reform. I thank all delegates for their attendance today, for their written submissions and for giving of their valuable time to help the sub-committee in its work. This is the beginning of work on penal reform and we are interested in listening to the views of the organisations. Some organisations were unable to make a written submission within the timeframe but further submissions on this topic will be forwarded to members.

I will invite each organisation to make some brief opening remarks and this will be followed by a question and answer session. The format is that one member of the sub-committee will engage with each group as a lead questioner as this has been found to be efficient. It will be a question and answer session and questions will not be banked together.

I welcome the following: Mr. John Clinton, general secretary of the Prison Officers Association and Mr. Jim Mitchell, assistant deputy general secretary; Ms Lisa Cuthbert from PACE; Mr. Liam Herrick, executive director of the Irish Penal Reform Trust; and Mr. Dermot Kelly, chairman and Ms Linda Lyons, legal director of the Etruscan Life Training and Education Centre.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are to give this committee. If a witness is directed by the committee to cease giving evidence in relation to a particular matter and the witness continues to so do, the witness is entitled thereafter only to a qualified privilege in respect of his or her evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and witnesses are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person or persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice that they should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable.

**Ms Lisa Cuthbert:** I thank the sub-committee for the invitation to submit a written submission and to make a presentation to today's meeting. PACE is a voluntary and community-based organisation established in 1969 to meet the accommodation needs of those leaving prison. The organisation focuses on providing a residential service and training, education and support programmes. We have a holistic approach to our work.

The aims of PACE are to cover the transition between prison and the community. Prisoners who have served long sentences are very vulnerable when they leave prison. They come out to a society which has changed quite dramatically.

PACE works in partnership with the Probation and Welfare Service which is the primary source of referrals into our projects and referrals come from every prison in the country as well as from probation officers in the community. We work with people who have had long-term

sentences and also people who have had short-term sentences.

PACE currently has 40 training places, 17 of which are operated on a day-release basis from the training unit. This is part of a preparation for release programme which is aimed initially at people coming from long-term sentences and life sentences. We also provide accommodation in various levels, at low, medium and high support and we currently provide 29 places. The residential programmes include a pre-release programme for people coming from prison. The preparation for release from a long-term sentence and from a life sentence happens over a period of years. PACE is very keen to continue this work programme of preparation for release from prison.

We talk to our clients to ascertain their needs and issues. We asked what issues they would like us to raise with the committee on their behalf.

The first issue concerns the accommodation conditions in prisons. There are serious issues concerning accommodation in Mountjoy Prison. These have an impact on making the environment stressful, creating tension and opportunities for outbreaks of violence in an unsafe living environment. This was a primary issue our clients wished to have raised.

Another issue, which is more relevant to those serving long-term sentences, including life sentences, is the requirement for an assessment of needs upon committal. We have found that, over the years, people get lost within the prison system, particularly if they are going in for a long time, that is, anything from four to 17 or 18 years. These people find it difficult to be motivated to engage with prison services, including education and training, particularly when the environment is overcrowded. They were keen to emphasise the desirability that, upon committal, an assessment should take place of all needs, including psychological, psychiatric, addiction support, family support, education and training, as well as everything offence related in terms of the type of offence. All of those needs should be assessed and addressed and some type of plan devised.

We are aware that some of that is contained within the integrated sentence management system, but it must be done in a more systematic way. From our perspective as a community-based organisation, the better use that is made of a person's time in prison, the more he or she will get out of it. If prisoners are supported to manage their addiction and receive other types of support they were unable to access in the community, they can emerge much more stable than before they entered prison. A challenge for us is that many of the people we help in keeping themselves clean, sober and addiction-free while in prison have never managed to achieve that in the community. Seeking to maintain that in the community can be a significant challenge for people upon their release.

The main issues of concern for us, and for the people we work with, are physical conditions, overcrowding, the need for assessment and proper sentence management, and the need for a clear plan at the point of release. Of particular concern to the people we meet is that there are increasingly fewer services available to them in the community when they are released, with ever longer waiting lists to access those services. We currently have 45 people waiting to access training places. When we are unable to free up a day release place, somebody must remain in prison for longer.

We work with an average of 200 people per year, including people serving long-term and life-term sentences. In fact, PACE works with the largest number of life-sentence prisoners within communities. We find that it is the people who have served a series of short-term sen-

tences who are most likely to be chaotic. Our experience suggests that short-term sentences do not work in that they seldom meet their purpose of preventing re-offending. Moreover, they do not provide a structure within which the prison experience can be used positively, because prisoners are not there long enough to engage with services, receive a proper assessment of their needs or participate in an integrated sentence management system. These people are emerging from prison more criminalised than before and with less incentive not to re-offend and in terms of managing their lifestyle. What we see on a day-to-day basis is that prison becomes part of the normal life path for many short-term prisoners. In the context of penal reform, there must be an assessment of the issues that arise in respect of people sentenced to short terms. We would argue that such sentences do more harm than good. Within our services, we find we are always balancing the needs of those coming out of prison after long-term sentences with the different needs of those who have been imprisoned for shorter periods over a long period of time and who are continually chaotic. Trying to manage that chaos and the associated problems of addiction and mental health issues is a major challenge.

Temporary release has the potential to be used as an important incentive to encourage people to engage with prison services in a more constructive way. It can encourage people to feel they are making a positive contribution to their own release and can take back some control over their future. For many of the people with whom we work - particularly life-sentence prisoners, where the sentence is indeterminate - there is no sense of autonomy or control as to how they can earn release. We must look at temporary release in a refreshed and renewed way. If employed effectively, it gives people an opportunity to take back some autonomy by providing a way for them to contribute to their own positive sentence management and, ultimately, a positive outcome for their release into the community.

When people come to us we seek to manage their release in a phased way. In terms of accommodation, for example, it could build from as little as one night per month over a yearly period. For training purposes, they are released over a five-day week. This allows them to earn their release, so to speak, and build a sense of autonomy. There is a structure within which that can happen. For some of them it works very well but, from our perspective, there can sometimes be a lack of information as to how people can contribute more positively, how long the process of release will take and how they can be encouraged to engage and reclaim their autonomy.

PACE views its role within the context that everybody who goes into prison comes out, no matter how long their sentence. We had somebody recently who was released after serving more than 40 years. It is much more difficult for somebody who has been in prison for that long to begin to adjust. Unfortunately, that particular individual is now back inside because of health issues. He wanted to die a free man but it was considered that the health care he would receive in prison was better than placing him in a nursing home in the community where nobody knows him. The principle that everybody who goes in comes out is the basis on which the Irish justice system works. Therefore, we must ensure we are using the prison experience as positively and constructively as possible.

**Chairman:** I thank Ms Cuthbert for her excellent presentation. I apologise that we are somewhat tight on time. I propose that the delegates make their presentations before we proceed to questions and answers. That will give us a fuller picture of where they are coming from. I invite Mr. Liam Herrick to make his statement.

**Mr. Liam Herrick:** The Irish Penal Reform Trust, IPRT, greatly welcomes the establishment of the Sub-committee on Penal Reform. We wish members well in their work and look

forward to being of assistance to them. The Irish Penal Reform Trust is a non-governmental organisation campaigning for the rights of persons in prison and in the penal system more generally and also advocating that prison should be a sanction of last resort. We are committed to reducing imprisonment and to the progressive reform of the penal system. The creation of a safer society and safer communities must be the core goal of any criminal justice system. The current system is not capable of achieving that goal to the extent that it should because of problems within the system. In particular, its potential is restricted because of overcrowding, the poor physical conditions referred to by my colleague, Ms Cuthbert, lack of access to workshops, education and training, and the incidence of violence and drug use in prisons. All of these problems are well known.

One of the key impediments to progress within the system is the extreme level of overcrowding in prisons as a consequence of the increase in the prison population in recent years. In this context, the IPRT strongly supports the Minister's proposals for the early release of suitable prisoners. We also welcome the equally, if not more important, shift in policy away from large-scale prison building to concentrating on improving existing prison conditions. The causes of overcrowding were identified by the Thornton Hall review group as being systemic in nature. We do not have a clear articulation of what the various elements of the criminal justice system, including the Garda, courts, probation and welfare service, prisons and so on, are meant to do and how they should relate to each other. The current system disproportionately punishes the disadvantaged and produces high rates of recidivism. It is not delivering good value for society, is damaging individuals within the system and is not reducing the number of victims of crime or making society safer.

If we are serious about penal reform we must review the fundamentals of the system of punishment in Ireland. The White Paper on crime and the Minister's proposed strategic review group on penal policy are steps in the right direction. We have clearly articulated our vision of how the system should be reformed in the various position papers we have published, particularly our Position Paper on Penal Policy with Imprisonment as a Last Resort. There is more to this than merely diverting people from the prison system through the imposition of fines and community service. At every stage in the system we must ask ourselves whether we need to detain people in expensive prisons or whether they could be punished and supervised more effectively in the community.

A particularly notable problem of the current chaotic system is the overuse and inappropriate use of temporary release. It has come to function as a safety valve in the system, which is not its original purpose. Likewise, the current system of remission is a blunt instrument and does not serve as useful a function as it could. The Parole Board remains subject to political control, which brings us into conflict with international human rights law and creates great uncertainty and potential injustice for prisoners and for the community.

We have identified these specific mechanisms around the release of prisoners as ripe for reform. Reform in this area is the most effective and immediate way of bringing the prison population down to a level that is within the capacity of the existing prison system. Ireland is far out of line with most other common law and European countries in having a very restrictive system of temporary release and parole. We will be setting out the proposals contained in our submission in more detail. As the sub-committee will accept, with the time constraints involved, we have only sketched a broad outline for this meeting. We hope we can set down the parameters for how the sub-committee might examine a process of reform in each of these specific areas.

The first relates to the current law on remission and temporary release. Remission is a

blunt instrument and there is potential for it to contribute to a more incentivised system. A distinction can usefully be drawn in respect of less serious offenders who could benefit from remission automatically at a certain point in their sentences. This happens at the three quarter point, but we see no reason this should not be brought into line with the position in most other jurisdictions where remission can be offered half or two thirds of the way through a sentence. For more serious offenders, again, eligibility for parole or temporary release should kick in at a fixed proportion point of the sentence, at which point there should be independent adjudication of eligibility. For example, it is the case in England and Wales that the position of serious offenders can be reviewed at the halfway point in their sentences. We are suggesting it would be reasonable to initiate reviews when prisoners reach a point two thirds of the way through their sentences. However, this is a matter for the Legislature to deal with down the line.

The important principle is that we can distinguish between an automatic entitlement to remission for less serious offenders and, perhaps, a reviewable, discretionary system for more serious offenders. In respect of both categories, however, there should be a more generous provision for remission for those who can demonstrate that they are engaging constructively with rehabilitation services. This is the key to creating an incentivised prison system under which prisoners work towards a final goal of being released. Such a system could very easily be tailored to the existing sentence management programme. It could also be tailored with specific emphasis on particular areas such as, for example, addiction or literacy which are, perhaps, most closely connected with future reoffending. Exceptions to such a system could also easily be made if there were particular categories of offenders, the members of which needed to be treated differently. I refer, for example, to sensitive categories such as sex offenders. There are clear examples - provided by our nearest neighbours and other jurisdictions - as to how such a system might be advanced by building on the existing system. At the same time, the use of temporary release on compassionate grounds, an essential feature of the current system, should be retained.

In the context of how decisions are made, the current system involving the Parole Board is subject to political control. I do not intend any criticism of the Parole Board which carries out its functions to an excellent level. Ultimately, however, decisions are taken by the Minister which creates great uncertainty and arbitrariness for individuals who appear before the board. In addition, it also brings us, potentially, into conflict with the European Convention on Human Rights, particularly in respect of prisoners serving life sentences. The Government has indicated that it is committed to parole reform, which we welcome. A number of essential targets must be achieved in any such reform process. The Parole Board must be fully independent, placed on a statutory footing and allowed to make binding recommendations with regard to prisoner releases. This would remove the release of prisoners as a decision-making function from the Minister for Justice and Equality, which is the key objective we must achieve.

The legislation underpinning the workings of the Parole Board should set out the functions thereof and the criteria to be used in making decisions. In our submission we suggest consideration should be given to a number of issues, including whether oral hearings should take place, who prepares the information on which the Parole Board makes its decisions, how its members are appointed and what is their term and security of office and how the board is to be funded. Individuals who appear before the board should have access to legal representation. There is a growing body of law at Strasbourg level which indicates that, essentially, this is a quasi-judicial process and that individuals should be represented by lawyers, where necessary.

Questions on prisoner releases and how decisions are taken form only one part of the pic-

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ture. Ms Cuthbert has addressed issues relating to what happens in prison. There are many deficiencies in the prison system which would not be capable of delivering the incentives necessary within an incentivised system of parole. The integrated sentences management programme is good, in principle, but it is largely an exercise in paper, as opposed to being fully supported through the provision of the necessary resources and programmes within the prison system. Particular emphasis must be placed on drug and addiction treatment and literacy programmes. The encouraging aspect is that in recent years many jurisdictions have by reducing prisoner numbers and their level of investment in security been able to divert money towards treating individuals within prison. This has had great social benefits in terms of reduced levels of reoffending. Countries and jurisdictions as diverse as Texas have been able to make progress in this area.

Another part of the picture is what happens in the community once people are released. The community service scheme and the community release scheme initiated by the Minister represent a step in the right direction. Again, however, support must be provided for the probation service and the agencies it funds in order to support people beyond release. At a general level, this is an extremely underdeveloped aspect and there is much we could learn from other jurisdictions.

This is an area which is ripe for reform. There is a clear direction from other jurisdiction on how we might construct a system which would be superior to that which obtains. It is also an area in which we are likely to see immediate benefits in terms of reducing the prison population. More generally and in the longer term, the sub-committee can lay the groundwork for many more systemic improvements. I do not refer merely to how the system of parole operates but also as a contributory factor to an incentivised system of punishment, under which prisoners would work towards a specific end in a measurable way and we would move towards more liberal regimes throughout the prison system and, ultimately, temporary release for prisoners at an earlier point than might have been the case in the context of sentences handed down.

We wish the sub-committee well in its work which is very important. However, there is one slight proviso which we would highlight. We have laid down general parameters and indicated time limits. Of course, these are matters which require to be examined in much more detail. We will be publishing a much more detailed position paper on this matter and submitting it to the sub-committee shortly.

**Chairman:** I thank Mr. Herrick. As stated, this is just the beginning. We hope to be able to engage with the various interested organisations and individuals over a period in order that we might bring forward some strong proposals to the Department and the Minister in this matter. I invite Mr. Clinton to make his contribution.

**Mr. John Clinton:** We thank the Sub-Committee on Penal Reform for giving us the opportunity to make a verbal presentation as a follow-up to our written submission of 16 November. Prison officers have interacted with prisoners for decades and have got to know thousands of them very well. Fundamentally, we want a prison system which rehabilitates prisoners and assists them in dealing with the past and engaging in responsible citizenship into the future in an environment that is safe for both prison officers and prisoners alike. Despite the ongoing negative view of the prisons on the part of some, this rehabilitation does happen but, regrettably, not often enough. The onset of the gang culture in the prisons has certainly not been helpful in this regard.

The mission statement of the Irish Prison Service is to:

... provide safe, secure and humane custody for people who are sent to prison. This service is committed to manage custodial sentences in a way which encourages and supports prisoners in their endeavouring to live law abiding and purposeful lives as valued members of society.

It seems all of us involved with and concerned about the prison population want to get to the same place. If that is so, why is this not happening? There are many reasons sufficient progress is not being made. They relate to resources, a lack of motivation on the part of the authorities, a lack of interest on the part of wider society, etc. As the major staff representative body within the prison system, we are a major stakeholder in the system and want a progressive Irish Prison Service to be built, of which we can all be proud in the future. The service must address many of the challenges and difficulties we face. To put in place such a service, many of the following matters must be addressed.

The first issue to which I wish to refer is humane treatment. It is mostly poor people from deprived areas of society who end up in prison. The vast majority of these individuals are subject to all of the negative consequences of social exclusion such as high levels of mental illness, drug addiction, poor educational attainment, high unemployment and inadequate social skills. Unfortunately, the end result is that most young people who go to prison are likely to spend most of their 20s and 30s in and out of the system. We must recognise this background and lack of support and adopt a correct, fair and planned approach to treat this person with dignity and find the mechanism which can give him or her a second chance.

The issue of prison overcrowding must be addressed, as it leads to competition for limited resources and aggression between inmates and against staff. It can contribute to higher rates of illness - even suicide - and severely impedes the process of offender rehabilitation. Today, for example, in nearly 90% of the modern Wheatfield Prison which was designed to cater for 320 inmates there is doubling up. Current levels of overcrowding are simply not sustainable and dangerous.

There is a serious problem of drug misuse within the prisons. Despite the introduction in recent years of enhanced security measures such as the use of drug detection dogs and airport-type security systems for searching people entering prisons, many drug users continue to use drugs while in prison. Having completely drug free prisons is very difficult to achieve; however, this must always be our objective because if it is not, we are admitting failure.

What the Prison Officers Association believes should happen is that there should be an acceptance that prisons are a market for drugs and, therefore, the issue must be tackled as drug use would in any community. Those involved in the drugs trade, most of whom are extremely violent, must be tackled and isolated. There must also be medical interventions available for those who want to get off drugs.

Unfortunately, the level of violence, whether it be prisoner against prisoner or prisoner against staff, has continued to grow at an alarming rate and hardly a week passes without stabbings, assaults or worse taking place. This is, clearly, a feature of overcrowding.

Unfortunately, people with mental health problems, ranging from mild to severe, continue to end up in prison having committed various criminal offences. However, the underlying cause cannot be adequately addressed in a prison environment. The Minister for Justice and Equality has acknowledged that imprisonment can aggravate mental health problems, heighten vulnerability and increase the risk of self-harm and even suicide.



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Proper sentence management is a critical issue which is not receiving the attention it warrants and deserves. If we can introduce an incentivised regime for prisoners, we can make real progress, as has been the experience in the United Kingdom. Prisoners must be given the opportunity to take responsibility for their actions and in so doing gain the benefits of a less intense system. The Prison Officers Association is very much in favour of the introduction of enhanced incentivised regimes for prisoners which we see operating in Magilligan Prison in Northern Ireland and Manchester Prison in England. We see the introduction of the basic, standard and enhanced regimes as a very good way of moving the Irish Prison Service forward.

It is clear to the Prison Officers Association that our current resources could be used much more effectively. The entire prison estate should be analysed to find areas within our closed prisons in which semi-open facilities could be introduced. It is simply unacceptable that in the 21st century we have prisoners sleeping on mattresses in corridors.

We support having an effective independent complaints process. While the Prisons Officers Association believes correct procedures should be in place to deal with such matters, such procedures must have sufficient and adequate safeguards to ensure the protection of prison staff where complaints are vexatious in nature, as has been proved in some cases.

We cannot have effective back-door strategies without also having progressive front-door strategies. Issues such as temporary release and electronic tagging must be fully integrated into enhanced incentivised regime programmes.

I again thank the sub-committee for giving us the opportunity to make this presentation. We will deal with any questions members may have.

**Chairman:** I thank Mr. Clinton for what was a very interesting presentation. I invite Mr. Kelly from the Etruscan Life Training & Education Centre to make his presentation.

**Mr. Dermot Kelly:** I thank the Chairman for allowing us to make this presentation and a submission on 16 November. Clearly, in the space of five minutes I cannot cover all of the points we raised in the submission. While it may not be exactly in line with protocol, perhaps I might take the submission as read and broadly accepted to enable me to talk about other matters.

I am the chairman of the Etruscan Life Training & Education Centre and accompanied by my colleague, Ms Linda Lyons, our legal director. A third person, Dr. Margaret O'Rourke, a chartered forensic and clinical psychologist from University College Cork, was due to be present, but, unfortunately, she cannot be here, as she has to make a presentation in Harvard today. She has written to the committee and I would like to use her letter as part of our submission because it endorses what we are trying to do.

The Etruscan Life Training & Education Centre is a social enterprise which specialises in the provision of life training and psychological education. The organisation provides programmes for people who present with anger-related aggression, behavioural and drink-drug driving issues. We focus on early intervention and, critically, pre-prison and pre-sentencing training. Our aim is to show a reduction in anti-social behaviour, coupled with reduced imprisonment and cost savings for the justice system and the taxpayer.

The service is provided by a multidisciplinary team of professionals with experience in different backgrounds, ranging from consulting, forensic clinical psychology, corporate finance, law, accounting to commercial practice. Our intervention teams consist of psychology as-

sociates, all of whom are supervised by consultant forensic clinical psychologists, principally Dr. Margaret O'Rourke, a consultant forensic psychologist at the UCC school of medicine, whom I mentioned, and Dr. Sean Hammond, a consultant forensic psychologist at the faculty of psychology in University College Cork. His role will be to work on the assessment and measurement of the progress we make. It is important that we make these measurements and that they are published every year in order that our performance can be measured. We only use evidence-based assessments, measurements and interventions. We use risk-need and responsibility with RAMAS protocols, assessment and treatment of emotions using the RAMAS anger management assessment profile, and assessment of personality strengths, problems and assets. Our programmes are designed to change over time as research findings feed revisions, making them specific to Irish society needs, which we believe is critical.

Our interventions, used correctly, can bring together the experiences of probation officers, offenders, gardaí, social workers, victims, academics and third parties and can enjoy huge success in Ireland. Similar programmes have been operated worldwide but, in particular, in Australia, the United States and the United Kingdom. We can place the focus on rehabilitation from the outset and this can be delivered with savings for the justice and health Departments, with a social bonus by way of treating perpetrators in the community, thereby helping family values and family units to progress.

As I said, Dr. O'Rourke cannot be present today, but she has written to the committee to make the following points. In the past 20 years she has set up four community forensic psychology services, three in the National Health Service in the United Kingdom, in Glasgow, Chichester and Guildford, and one independent practice in Ireland, all aimed at providing for early identification and the diversion of offenders from custody. She is very impressed by the efforts of the Etruscan Life Training & Education Centre to address this need in Ireland and happy to be associated with our ambitions to develop robust services in this important domain.

Dr. O'Rourke's background is as a practising forensic clinical psychologist, author, academic and graduate of the universities of Cork, Glasgow and Surrey. Together with colleagues in the United Kingdom and Canada, she has become a leading authority on risk and safety in offender and mental health services. In that respect, I referred to RAMAS, about which members can read on its website. Much of the RAMAS clinical practice and research is focused on public safety and the quality of offender assessment, treatment and care. The role and impact of emotions, cognition and behaviours on health, safety, well-being, offending and reoffending cannot be underestimated. To this end, she has authored ten self-help workbooks on subjects relating to emotional health and well-being and a number of these programmes are specifically targeted at offender rehabilitation with reference to violence, including domestic violence, drugs and so forth.

Through the Etruscan Life Training & Education Centre, efforts will be dedicated to providing only evidenced-based assessments and for interventions to allow public confidence in the provision of non-custodial alternatives. Her clear understanding of us is that practitioners and professionals working with Etruscan will use only evidence-based risk assessment, management and audit systems, and only evidence-based assessments and interventions with offender clients. It is also understood that all practitioners will be registered with a professional body and that they will have professional supervision on a regular basis.

The summary of our aims and values would be: to provide a cost benefit to the justice system; to improve equality of life in society; improve the behaviour and lifestyle of offenders and their families; to reduce the level of re-offence in less serious crimes and to help free up court

time for more serious offences; to help reduce prisoner numbers and make prisons safer places; to compile and publish research data with an evidence base; and to provide professional job creation and training positions.

We provided an amount of data with our submission in terms of what could be possible and the amount of time and cost involved. Our proposal is that life skills training would be included in sentencing policy and options for the Judiciary and would be introduced at the cautionary stage where perpetrators are given cautions from superintendents. We also propose that our models can be used for training key workers, namely, teachers, social workers, probation officers and gardaí, so as to recognise the issues behind anger, aggression and stress and to direct individuals towards training before they become a prison statistic.

**Chairman:** I thank Mr. Dermot Kelly for his interesting presentation. There seem to be a number of themes running through all the presentations this morning. I invite Senator Bacik to lead with questions which she will direct to Ms Cuthbert from PACE and Mr. Herrick from the Irish Penal Reform Trust.

**Senator Ivana Bacik:** I apologise because I have to speak in the Seanad at 10.30 a.m. and may have to leave the meeting abruptly.

I thank all witnesses for their hugely important contributions, both written submissions and this morning's presentations. They are extremely helpful to us in our work on the sub-committee. As rapporteur to the sub-committee I will work with the other members to put together a series of practical recommendations to the Minister on how we can implement what we call the back door strategies to offer alternatives to imprisonment, ease overcrowding and provide for a more positive system of penal justice. I will direct my questions to Ms Cuthbert and Mr. Herrick. I thank them very much for their presentations.

First, on the excellent PACE presentation, I am very familiar with the great work PACE does on service provision. I wish to focus on how one achieves a form of structured release that is rehabilitative in effect and tries to prevent recidivism. The point has been made about the need to tie in integrated sentence management with temporary release in a more formal way. How does she believe that could be done? Does it require legislation or could we do it without legislation? It is clear that integrated sentence management will need to be rolled out. The Prison Officers Association has also pointed that out. We must examine that in more detail. I have two other points to make.

**Chairman:** Perhaps we will get replies to the questions already asked. I ask Ms Cuthbert to be as brief as she can.

**Ms Lisa Cuthbert:** Incentivised early release does not need legislation, in particular for people who have been in prison for a long-term sentence anyway. It needs to be done as part of the structuring of the sentence. That is something that can be done in-house within the prison system as part of integrated sentence management.

Assessment at committal point is essential in terms of planning how the time is used while a prisoner is serving a sentence and introducing the concept of earned release and other incentives based around using the time in prison well. We have worked with people who have done well within the community but then due to outstanding charges they ended up in prison for a long period, up to four years. They came back to us in a much more damaged way than when they first went to prison because they had lost hope. They felt there was no point in engaging with

school or engaging positively in dealing with an addiction because they were in prison and they had lost hope. Incentivised release does not require legislation.

**Senator Ivana Bacik:** That is very helpful. The final question is about resources. In our terms of reference we have referred to a supervised period within the community as release under community supervision. Mr. Herrick mentioned the linkage project. Pilot work is ongoing in that regard. That goes on with temporary release also. What are the resource implications? Reference was made to the hugely important work done by voluntary agencies. Obviously the probation service is the lead agency which is a statutory rather than voluntary one. How does one achieve a more structured system of supervised release?

**Ms Lisa Cuthbert:** That needs a legislative framework in terms of having the supervised release as part of the sentencing package and therefore when people are coming out of prison the benefit of the supervision within the community is huge because, again, it provides a structure and an incentive within which people can work but it does require resources from the probation service in order to supervise people within the community. What we find is that when people are with us first it encourages engagement and it means they are much more likely to sustain programmes and be motivated to participate in training and education and to avail of accommodation services than they would be if they were just fully released without supervision.

We ask people who come to us who are assessed as high risk, who have completed their full sentences without any temporary release component, to engage voluntarily with the probation service as part of a supervision package and it brings in extra support and resources. From our perspective as a community service provider it would be better if the sentencing allowed for supervised release within the community because we know the transition between prison and the community is a vulnerable time both in terms of relapse into addiction and in terms of re-offending, in particular for those who have been in prison for a long time who go in at 18 or 19 and come out in their late 30s. They do not have anything to come out to. In those cases supervised release is essential for us if it is to be a successful release. Even for a six month period it makes a huge difference to people because it gets them through that immediate transition.

**Chairman:** I thank Ms Cuthbert. Senator Bacik wanted to ask Mr. Herrick a question.

**Senator Ivana Bacik:** Yes, I just wanted to ask him a couple of questions. Again, I thank him for a helpful and comprehensive submission. In particular I thank him for setting out the Irish Penal Reform Trust's recommendations for legislative reform, which will be useful in guiding the committee, and also in setting out the detailed comparative models on what is working elsewhere and back door strategies. He is correct in saying that the fact that we are not considering an immediate development of Thornton Hall can be seen as positive. Instead, we are considering conditions in existing prisons and non-custodial strategies.

I wish to focus on remission, which Mr. Herrick talked about and which he pointed out is different in England and Wales. Currently, we operate a system of remission after two thirds of sentence. Mr. Herrick suggests a change to that so that there would be a more or less automatic entitlement at the two thirds point of the sentence for most offenders - the less serious offenders - but for more serious offenders to become eligible for parole or remission at the two thirds point. The system in England and Wales has been changed so that it is now at the half-way stage. Does Mr. Herrick believe we should be moving toward such a system? He referred to a third step of enhanced remission of up to one half of sentence, which would be the incentivised release. How does one build that? Would it be through legislation?

**Mr. Liam Herrick:** That would be through legislation, as remission is currently set out in legislation. What we have at present is automatic remission at the three quarter point in the sentence. The 2007 Act provides for remission at the two thirds stage if people are constructively engaged with the services. As far as we are aware only one prisoner has benefited from that in the past four years which indicates that there is no structure in place for the Prison Service or the Department of Justice and Equality to measure whether people are constructively engaging.

To move from three quarters to two thirds is a modest recommendation. The committee might well choose to go further than that. Beyond that there should again be an even higher rate for an incentivised system. One could very well structure that around the existing model or one could structure it around particular types of service in prison that are seen as particularly important, for example, addiction treatment or literacy, which are likely to have the highest dividend in terms of future re-offending risk. It is basically a very modest proposal within the existing framework under the traditional remission model and the 2007 incentivised model to extend those parameters. The reason we suggest moving from three quarters to two thirds is that most jurisdictions we looked at either had remission at a half or two thirds of sentence. We did not come across any system that was at the higher level of three quarters. We have a very restrictive regime which could easily be changed. It is a minor change.

**Senator Ivana Bacik:** That is helpful and clarifies the matter. I look forward to Mr. Herrick's more detailed submission.

**Chairman:** Mr. Herrick keeps mentioning structure. Could he detail more how that is working? What needs to be done in that regard?

**Mr. Liam Herrick:** The difficulty arises under the 2007 Act where the Legislature has said that prisoners who the Minister believes are constructively engaging with treatment in prison should get a better remission rate. There is currently no system for measuring that. We want an objective and independent system of measuring that. The integrated sentence management process could give benchmarks where people are given targets, that is, they deal with their addiction by engaging with the service in Merchant's Quay or other service providers to prove they are free of drugs or alcohol for a period of time or, similarly, are achieving literacy goals or engaging with training or education models. The prisoners would have targets to work towards. That goes to the wider question Mr. Clinton raised about an incentivised prison system where prisoners are working towards specific goals.

**Chairman:** It is the same message. Deputy O'Brien wishes to engage with Mr. Clinton.

**Deputy Jonathan O'Brien:** I thank the representatives for the written submission and their contributions. We all share the goals outlined in the presentation in the sense that we all want a system that is humane, rehabilitates the individual and prepares him or her for life after prison. Mr. Clinton outlined some of the barriers to that happening, one of which was the problem of prison overcrowding. There is no doubt that is a huge problem and it contributes negatively to the way prisoners are dealt with. This may be an unfair question but I will ask it anyway. Regarding prison overcrowding in the open prisons, some of the figures we received this week from the Minister indicate that there is a 270 bed capacity in the two centres yet only 207 of those are in use. Therefore, approximately 25% are not being used. In terms of the comparison with the overcrowding within the closed prison system, has Mr. Clinton any opinion on that and the way that can be managed more adequately?

The second question concerns current resources. How are the cutbacks impacting on the

prison officers' ability to manage the prisons and give effective rehabilitation to prisoners? How is it affecting staff morale in terms of their safety working within the prisons? We talk about the inhumane conditions for prisoners but we must also remember the people working within the system such as Mr. Clinton's members. How does the current position in the prisons impact on staff morale and their ability to carry out their job as effectively as they wish?

**Mr. John Clinton:** Every single issue in our presentation and our wider presentation interlinks within the prison system. One of the positive aspects of the Thornton Hall project not going ahead from our viewpoint is that we can look at what we have currently in the system. We believe there are a number of ways of improving the prison system. To answer the Deputy's question, staff morale is low because we have seen the numbers of prisoners increase constantly and staff numbers decrease. However, during our negotiations on the Croke Park Agreement we spent a great deal of time outlining a future prison system which would see us move to an enhanced incentivised regime that would allow us use fewer staffing levels in areas of a prison, for example, where all our prisoners would comply with such regimes, and put more numbers into the areas where prisoners would not comply with such regimes. We are not re-inventing the wheel here. We have seen this process in Manchester prison and the way it can work.

Overcrowding can be addressed in a number of ways. For example, a new prison block was built in Wheatfield Prison and if one walks from the old prison to the new prison one can see a complete row of what I would describe as empty offices yet we have prisoners sleeping on mattresses on floors. With a little thought a shower room and toilets could be put in those buildings and not secure cell doors as a way in and out of those buildings. We could have dormitory type accommodation within a closed prison where many people could be housed under a more humane regime and given access to a prison. I refer to people who would comply with the prison systems. They have been doing that in Magilligan prison in Northern Ireland. We are not re-inventing the wheel. There are many ways of doing that.

On the suitability issue for open centres, it is questionable whether the mechanism being used currently is the correct way of doing it. The tendency is to bring a person to an open centre very late into a long sentence but that does not necessarily mean they could not be put in an open centre much earlier if they comply with systems. People should be responsible for their own actions. Outside of prison we are responsible for our own actions every day. It is our own behaviour that will get us places but that seems to be lost once someone goes in the door of a prison. That is the reason we say we have to start at the beginning with a standard regime. The prisoner can move to an enhanced regime through proper, decent behaviour as would be expected in any society. Likewise, if someone does not comply the stick approach should be taken where we move back to a more basic system. It is not the most difficult thing in the world to do but it is difficult to get that culture change because we have a management system that is very security based. Security is the answer to some of the problems but it is not the answer to all of them.

**Deputy Jonathan O'Brien:** It is interesting that in terms of Wheatfield Prison Mr. Clinton said there is scope within the current system to alleviate some of the overcrowding-----

**Mr. John Clinton:** In our viewpoint, yes.

**Deputy Jonathan O'Brien:** Has any analysis been done in the other prisons in terms of the number of bed spaces that could be increased by utilising some of the existing resources within the prisons?

**Mr. John Clinton:** We saw systems in Magilligan prison in Northern Ireland where they put in Portacabin type accommodation and light fencing around it because the people involved have built up trust to get in there. We have land in areas like Castlerea Prison. There is a wall half built around Cork Prison where there is land also. There is room in Wheatfield Prison for these facilities. We put many of those ideas into the submission we gave to the review group on Thornton Hall. We believe there is great scope for doing this type of thing within the Irish prison system but everything must tie in. An integrated approach must be taken to everything in regard to sentence management from the minute the prisoner comes in the door. Everything should be designed to get the prisoner out the door. There is no point in having backdoor strategies if we do not have the correct front door ones.

**Chairman:** That message about integration of ideas, procedures and policy is coming across. The submission referred to mental illness in prisons. Could Mr. Clinton give us any idea as to what is being encountered by staff? What kind of illnesses are prominent and what is his view of people with mental illness being in prison? Are the numbers in that regard increasing or decreasing? We heard in a submission that it may be increasing.

**Mr. John Clinton:** In our viewpoint it is increasing. That seems to be a viewpoint shared by the Minister in his recent annual lecture to the Irish Penal Reform Trust. We are trained to be prison officers and while our training has improved greatly with the new higher certificate in custodial care, HCCC, programme we do in the Irish Prison Service Training and Development Centre we are not trained to deal with people with mental illness of that capacity. If a person is swallowing bed springs or batteries there is something wrong with that person. We have approximately nine cells in the system for dealing with such people. That is not enough, and many of the strategies put forward to try to deal with that over the years have not moved forward at the required pace. We will not help people who are mentally ill to that extent. They should not be in the prison system but cared for elsewhere.

**Chairman:** I thank Mr. Clinton. Senator O'Donovan has questions for Mr. Kelly and Ms Lyons.

**Senator Denis O'Donovan:** Yes. I was interested in that submission. Reference was made to first intervention in prison in detecting certain problems but is it the case that that intervention may take place when a person is 17, 19 or 20 or whenever when it may be too late? Is there any way of intervening before people are confined to prison, although there are situations where that is identified?

I address this question to all the representatives. Is the legal system that feeds into the prisons doing its job adequately? Is it doing its job quickly? Are judges properly trained? There are different sentences and different judges have different views. A judge in County Donegal might have a different view from a judge in Dublin and hand down a longer sentence.

Reference was made to keeping people out of prison by, for example, requiring a donation to be made to a poor box or an alternative-----

**Chairman:** I ask the Senator to rephrase that remark. We cannot move into the judicial side.

**Senator Denis O'Donovan:** I accept that. When people are put in prison, it is up to prison officers and other authorities to deal with the system. I am not asking the delegates to comment as such; I am just saying we are considering the issue of penal reform. It is certainly one we

cannot exclude and have discussed in the Dáil and the Seanad. However, the delegation might not wish to comment.

I was interested in what Ms Lisa Cuthbert had to say on reoffenders being given shorter sentences. This seems to create a problem. Are sentences too short? What crimes are involved? Is there any way of weeding out the chaos within the services?

**Chairman:** We will get a response to that question before we move on to the next one for Ms Cuthbert. We will then return to Mr. Kelly.

**Ms Lisa Cuthbert:** Short-term sentences should be avoided at all costs; I am not suggesting they should be lengthened. We find from experience that the minute somebody goes into the prison system, it becomes normal. If an offender is in prison for any period less than three or six months, he or she does not qualify for access to various services or integrated sentence management. Therefore, the prison does not address any of his or her needs. Needs are not identified and addiction is not managed. As a consequence, damage is done within the community. In regard to women who enter prison on short-term sentences, or any other sentence, the child care issues that arise are considerable. This has a devastating effect on families.

**Chairman:** What does Ms Cuthbert regard as a short-term sentence?

**Ms Lisa Cuthbert:** From my perspective, a short-term sentence is any sentence less than six months. Some prisoners on sentences shorter than six months are imprisoned for less than one or three weeks because of overcrowding. This involves a huge cost for the justice system in terms of the demands placed on the Garda and the courts. People ought to be diverted from the criminal justice system as much as possible.

There has been much research done in the United Kingdom on diversion tactics. The longer one keeps an individual out of the criminal justice system, the greater the chance of keeping him or her out permanently. It is preferable to have diversion straightaway and not use short-term sentences, if possible. However, people end up in prison on short-term sentences. It is the accumulation of behaviour that is not addressed within the prison community that results in the short-term sentence but very rarely in respect of the first offence.

**Chairman:** Does Mr. Dermot Kelly want to comment on that issue?

**Mr. Dermot Kelly:** To respond to Senator O'Donovan's question, anti-social behaviour can begin at a very early age. We have had requests from some community leaders in some towns to help them deal with the anti-social behaviour of teenagers and others. We have been asked to ascertain how these leaders might counsel the offenders long before they enter the criminal process. The issue is that many community leaders, including social workers, have received no real training or have no understanding of anger or stress management, or identifying the issues involved and how offenders might be directed away from the prison system towards training in order that they can solve their own problems.

I support fully what Ms Cuthbert said. We want to keep people out of prison in the first instance. The minute one enters the prison system it tends to become a revolving door. Our objective is to steer individuals away from prison at a very early stage. In some cases, this means starting by training community leaders to identify the behaviours engaged in by individuals to steer them towards self-help. We know the next stage for teenagers is to receive cautionary warnings from superintendents. Sentencing policy is a common theme. The approach must begin at an early stage from the point of issue of cautionary notices. It is a matter of determin-



ing alternatives that can be offered at that stage.

**Chairman:** That answers the general question put by Senator Denis O'Donovan, to whom I apologise for interrupting. I did not want him to stray into judicial matters. He will understand what I was getting at.

**Senator Denis O'Donovan:** I have a question for Mr. Liam Herrick on the Parole Board becoming independent. Is it a matter for the Oireachtas to change the legislation? Given that we are now in an age of absolute political correctness, Ministers tend to err on the side of caution. If we had an independent parole board with a chief executive in charge, we would see greater results.

Reference was made to uncertainty and arbitrariness in the system. If these phenomena obtain, the onus is on legislators to address them. I fail to see why consistency is not already evident in our system. Are there examples, in England or elsewhere in Europe, of parole boards which are totally independent of the political system?

**Mr. Liam Herrick:** In recent years there has been a general shift in common law countries towards fully independent parole boards, as is the case in Britain. Case law from the European Court of Human Rights on life sentence prisoners shows that having governments making decisions on release points is problematic. However, the case law is not fully settled as yet.

The average sentence of life sentence prisoners in Ireland has doubled in the past 20 years, without any change in Government policy or legislation. All we have to go on are statements or the personal opinions of Ministers for Justice and Equality on how long offenders should serve. It may well be that there is public demand for this, but it is not a good way for practice to develop, as it creates great uncertainty for prisoners in that those serving long sentences have no way of knowing when they are likely to be considered for release, or when they will be released. As Senator Denis O'Donovan stated, the idea of having an independent parole process that is objective is worthy of consideration. While I am not saying Ministers are guided by political considerations, an independent body would at least be free of the impression that they are. An objective parole system could weigh the risk of somebody reoffending and the risk to the community against considerations pertaining to the individual alone. There are clear models in Britain and many other countries in this regard.

I understand the Government is committed to reform in this area. We look forward to hearing what the Minister intends to bring forward in that regard.

**Chairman:** Will Mr. Kelly describe how the Etruscan Life Training & Education Centre is funded? What he described represents a very good process, but it is possibly very expensive.

**Mr. Dermot Kelly:** Overall, it is not expensive by comparison with incarceration. We hope early intervention involves the lowest cost. In early models we used systems of half or whole payment by the offender. Also used were full payment by the offender, donations to the court poor box and sponsored interventions through charitable sources. Some anti-social behaviour is attributable to addiction or drinking. In this regard, we have approached the Guinness Trust. Some of the moneys are payable through State funds, that is, through the Department of Justice and Equality and the Department of Health.

**Chairman:** Mr. Herrick mentioned Texas which for many conjures up images of harsh regimes. He referred to justice reinvestment in Texas and stated overall justice budgets had been reduced significantly through parole reform and shifting resources towards rehabilitation

services such as those about which Mr. Kelly spoke, including services providing addiction treatment and to deal with anger management. Will Mr. Herrick state how this works? Has he been to Texas? What level of engagement has he had with the system?

**Mr. Liam Herrick:** I have not been to Texas. We are considering research findings from around the world. In broad terms, the past 20 years have seen a huge process of incarceration internationally, with dramatic increases in prison populations in most developed countries. However, this now is turning around and parallels exist with Ireland in this regard. The position is turning around in the United States because of fiscal considerations and the fact that some states have become bankrupt, partly because of overspending on prisons. States such as Texas have set goals to reduce their prison population. However, they have diverted some of the money saved into treatment in prisons, which has had benefits in respect of re-offending. My point is that in places from which one might not expect to see good examples, interesting examples can be found. The phrase “justice re-investment” was also the title of a major report drawn up by a parliamentary committee in the United Kingdom, which again discussed diverting funds into probation, prevention and early intervention. There is international movement in this regard and Ireland’s decision to not go ahead with Thornton Hall but instead focus on its own system of reducing costs also resonates with much of what is happening in other jurisdictions.

**Chairman:** The health sector uses the phrase “money follows the patient”. In this case, is it suggested that money should follow the offender or potential offender? Rather than the money being used in prisons, which Mr. Dermot Kelly has noted is extremely expensive, funding could be used in other ways. Does that model exist somewhere?

**Mr. Liam Herrick:** There is much to be said for that. There is a real danger in the current climate that probation and services in the community would be soft targets for cuts and that consideration will not be given to the long-term savings that are produced by those services. A number of years ago, the probation service carried out a value-for-money study on its own work in respect of community service orders, which showed that such orders cost quarter as much as the equivalent period of imprisonment and achieve better results in reducing re-offending. The danger is if one only assesses each budget line discretely in its own silo, probation might be vulnerable to cuts to a greater extent than are prisons. The issue here is about diverting prison resources within the prison system to improving services in prisons, while also retaining the probation service budget. As we are saving money by not building to the extent that we have, we have money to use for both probation and prisons in a constructive manner.

**Senator Denis O’Donovan:** The suggestion of reviewing prison sentences was mentioned, as opposed to what is happening at present, both here and in England, with reductions of between three quarters and two thirds. Do the witnesses perceive a need for a return to the Judiciary to review sentences or would this be done independently? I have in mind a scenario in which a person entered a programme in which he or she became involved in education, training or whatever and acted as a model prisoner. Such a person may have received a 15-year sentence but after seven or eight years, it became obvious he or she would not re-offend. For example, I recently encountered someone who had been put off the road for seven years. He was obliged to prove that he had given up drinking. He had received alcohol-related treatment, had insurance, was refocused and had a new job. In this case, the judge decided that a ban of seven years was very severe and agreed to allow him back after four. While I acknowledge this scenario is completely different, does Mr. Herrick envisage a judicial intervention for the reduction of sentences? Alternatively, should the Judiciary be kept out of it completely, that is, should it be independent?

**Mr. Liam Herrick:** There is a constitutional difficulty with judges bringing back persons to review sentences, which has come before the Supreme Court previously. On the more general point, one must bear in mind what is happening at present, which is that a significant number of prisoners are being released in an unstructured way under temporary release. We seek to have a more structured alternative. In the case of longer-term prisoners, this would entail an independent assessment, which would be done appropriately by a parole board in most cases. This would focus on risk in that one would become eligible to come before the parole board at a certain point. Were it satisfied that one was engaging constructively with treatment and if one no longer posed a risk, one should then be eligible for release. The judge should only deal with the original sentence and the parole board should deal with issues pertaining to risk and future release. However, there is much to be recommended about the suggestion that part of a sentence would be served in the community and there is a great deal of scope for this.

**Deputy Jonathan O'Brien:** I have a question on remand prisoners because according to some figures supplied to members, they comprise approximately 15% of the prison population. However, one should consider the number of people who go on to be convicted. When approximately 4,000 people on remand went to court last year, either the case did not go ahead or they were not convicted. A huge number of people are spending time on remand but then do not get prosecuted. There must be some scope to consider the manner in which the system works, especially in respect of prison overcrowding. These are huge figures.

**Mr. Liam Herrick:** This is an issue that can be examined. I refer to a single specific category, namely, that of young offenders, where the proportion is much higher. In the case of young men in St Patrick's Institution and of boys and girls who are detained in the child detention school system, the proportion of persons detained on remand who subsequently do not receive a custodial sentence is very high. A number of years ago, a report was prepared for the Minister of State with responsibility for children and youth affairs, which proposed bail reform and remand reform for young people. However, the recommendations of that report, to the effect that people would be supported in the community and would not go into detention, have not been acted on. This is one category that definitely could be considered but there may well be other potential areas. Again, it appears as though a significant proportion of women prisoners on remand do not subsequently receive sentences.

Moreover, remand prisoners cannot benefit from temporary release. If one enters prison for fine default or for a six-month sentence, one could be out after a day or two. However, if one is in prison on remand, even for a minor offence, one cannot be released until one has been tried. There have been a number of cases in recent years in which women on remand for very minor offences can spend one or two months in the Dóchas Centre, whereas had they been sentenced, they may have been released after a couple of days or weeks.

**Chairman:** Are there any final comments?

**Ms Lisa Cuthbert:** I was interested in Senator O'Donovan's comment regarding the model prisoner because one challenge we see concerns those who can cope very well in prison. They can be model prisoners and can behave very well there. They have no responsibilities and can operate within that structure but then fall apart within the community because they must make their own decisions. They must feed themselves and provide clothing and work. One challenge we see from a community perspective concerns how to build up that sense of responsibility while people are in prison and to ensure they come out prepared for release, because prison is about getting people out there eventually. The primary purpose of this exercise is to consider what is the point of prison. While it is about punishment, ultimately everyone who goes in also

comes out. PACE sees many people who technically are model prisoners but who cannot cope in the community. The community piece is inevitable for everyone who goes into prison and this cannot be forgotten in respect of penal reform.

**Mr. Jim Mitchell:** Deputy O'Brien made a point earlier with regard to bed capacity as a means of measuring overcrowding. It has been noted in a report of the Inspector of Prisons and Places of Detention that it may not be the most accurate way to do this. Up to three to five years ago, overcrowding had been measured in respect of cell capacity. Obviously legislation exists, as well as European and international norms, as to what the size of a cell should be and on the number of people who should be in it. In recent years, however, it appears as though the figures that have emerged have related to bed capacity, which may not give a full and accurate picture. Appalling as is the level of overcrowding as it stands at present, our belief is that it is actually considerably worse, given the manner in which the statistics have been produced. Bed capacity does not provide an accurate reflection of the huge difficulties that exist. In future, when some kind of explanation is given as to the level of overcrowding and the number of people who are in our prisons, it will be that bed capacity is precisely that; it relates specifically to the bed in which a person sleeps and not to the area in which he or she lives.

**Chairman:** That is interesting. Thank you.

**Mr. Dermot Kelly:** I wish to re-emphasise that while I can see the tone relates to imprisonment, our focus is on keeping people out of prison before they go there. Second, there has been quite a lot of discussion on sentencing and community sentences, as opposed to imprisonment. While this is well and good, we need to persuade people to change their behaviour and understand what their behaviour does to the community and how changing their behaviour can improve their lives.

**Chairman:** I thank the witnesses. Obviously, penal reform and what happens in prisons is of huge interest. While this includes the backdoor policies, the witnesses' proposals are also very important and are closely linked to that. I thank everyone for their attendance and for giving up their time to help members with the work they are trying to do. I also invite them to keep in contact with the sub-committee if there are further points they wish to make any stage. We will have similar hearings with other groups. We try to keep proceedings to within a period of an hour and a half. If the groups represented wish to meet the sub-committee again or make further submissions or proposals, they should please feel free to do so. They are also welcome to attend meetings when other groups make submissions to the sub-committee which is serious about the issue penal reform which it wants to address as quickly as it can. I thank the groups for their attendance.

The sub-committee adjourned at 10.50 a.m. *sine die*.

# DÁIL ÉIREANN

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## AN FOCHOISTE UM ATHCHÓIRIÚ AR AN GCÓRAS PIONÓS

### SUB-COMMITTEE ON PENAL REFORM

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*Dé Céadaoin, 01 Feabhra 2012*

*Wednesday, 01 February 2012*

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The Joint Committee met at 09.30 a.m.

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#### MEMBERS PRESENT:

Deputy Jonathan O'Brien,

| Senator Ivana Bacik.

In attendance: Senator Martin Conway.

DEPUTY DAVID STANTON IN THE CHAIR.

**Business of Sub-Committee**

**Chairman:** Are the minutes of the previous meeting agreed to? Agreed.

**Penal Reform: Discussion**

**Chairman:** The purpose of today's meeting is to hear presentations on penal reform, including information on international best practice. I welcome from the probation service Mr. Vivian Geiran and Mr. Jimmy Martin, prisons and probation policy and criminal law reform divisions; and from the Irish Prison Service Mr. Kieran O'Dwyer. I thank them for giving of their valuable time to come before the sub-committee.

For the information of sub-committee members, members of the Irish Prison Service, the probation service and the Department are all civil servants of the Minister for Justice and Equality. While I know they are delighted to discuss the implementation of existing policies and the issues being examined, it is not compatible with their position to express personal opinions on matters of ministerial or Government policy, nor can they go into matters which might be viewed as prejudicing future decisions.

Witnesses are protected by absolute privilege in respect of their evidence to the sub-committee. If a witness is directed by the sub-committee to cease giving evidence on a particular matter and he or she continues to so do, he or she is entitled thereafter only to qualified privilege in respect of his or her evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they do not criticise or make charges against a person, persons or an entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Mr. Martin from the probation service to make his opening remarks.

**Mr. Jimmy Martin:** The latest Council of Europe statistics which were published in March 2011 show the number of prisoners in Ireland per 100,000 inhabitants at 88.1 which is below the European median average of 119.4. The figure in Ireland is well below that in countries such as Spain and the United Kingdom which have high figures of approximately 150 per 100,000, slightly below that in countries such as Germany, the Netherlands, France and Italy but above that in Scandinavian countries such as Finland, Denmark and Sweden which have figures such as 67 and 77 per 100,000.

The figures for overcrowding and population density per 100 prison places are not always the most accurate, but they provide a rough idea of circumstances, as they are dependent on the legal regime in place in the various countries. The occupancy rate in Ireland is shown at 97.8% which is approximately the average for European countries. Other countries such as France, Italy and Spain have a much higher density, but Irish prisons are more crowded than those in countries such as the Netherlands, Denmark and Germany. However, there is a rider, as the number of places per prison can influence the figure enormously.

What is remarkable about our prison population is that there was a huge increase between

2006 and 2010, with numbers increasing by approximately 1,000 which represents an increase of more than 30%. This moved us away from being a country with a traditionally very low rate of imprisonment towards the European average and placed a huge strain on the prison system with regard to accommodation standards and the provision of services. The upsurge was aggravated by the fact that conflict between criminal gangs which traditionally did not extend into prisons did so. The number of criminal gangs means it is far more difficult for prison management to keep matters under control. We conducted an internal analysis to establish the cause of this increase and it suggests a significant increase in the number of long-term prisoners. The percentage of prisoners serving shorter sentences, of less than two years, has decreased as a proportion of the total prison population.

Only a small number of persons facing criminal charges receive a prison sentence. In 2010 more than 250,000 people were convicted on criminal charges. These included a substantial number of convictions for road traffic offences. However, only approximately 15,000 people received a prison sentence. While it is difficult to be definitive, the evidence does not suggest judges are now more likely to impose a prison sentence than previously. However, the number of serious cases being dealt with has increased substantially. In 2006 the Circuit Court which deals with more serious indictable offences dealt with approximately 1,000 accused persons in criminal cases. By 2010 this figure had increased to more than 3,000. The indications are that the proportion of cases attracting a prison sentence has not changed significantly. However, because the volume of serious cases has increased, the number of prison sentences has increased, as has the average length of sentences.

Penal policy cannot be viewed in isolation from the overall objectives of the criminal justice system. The Oireachtas determines the range of offences and what sanctions may be applied; the Garda and the Director of Public Prosecutions decide who is prosecuted and diverted away from the criminal justice system; and the courts determine what sanction is to be imposed when a person is convicted. The Irish courts have taken the general line that once a sentence is imposed, the management of the sentence is a matter for the Executive. In practice, this is done by the Irish Prison Service and the Probation Service in line with policy determined by the Minister and the Government. By international standards, Ireland has a flexible system of early release from prison. In many countries exit from prison can occur only in defined circumstances set down in statute or through a system of early release controlled by a quasi-judicial body acting independently of the government. In this state we have provision for temporary release on which the Executive can decide subject to the requirements of the Act.

The Irish Prison Service is responsible for the safe custody of prisoners and providing rehabilitation services for those in custody. Rehabilitation is a difficult and complex subject on which there are many conflicting views. The majority of offenders in prison are young males with little education or employment experience. Frequently they suffer from substance abuse, come from dysfunctional family backgrounds and tend to act impulsively without regard for the consequences. The mainstream services in prison try to address these matters by providing education and work training, as well as addressing substance abuse. More specialised services are also provided, including the sex offenders programme.

The Probation Service is responsible for providing pre-sentence assessment reports on offenders for the courts; supervising offenders on court-ordered probation, including community sanctions under the Children Act 2001; operating the community service scheme; restorative justice projects; risk assessment of sex offenders and, where appropriate, providing services for the post-release supervision and rehabilitation of offenders in the community. The priority in

all of these is to reduce reoffending by prioritising higher risk offenders. It is the policy of the Government to ensure violent and other serious offenders serve appropriate prison sentences, while at the same time switching to non-custodial options for non-violent and less serious offenders. In particular, commitments have been made to implement legislation that will reduce imprisonment where fines are imposed and increase the use of community service.

In line with the recommendations of the report of the Thornton Hall project review group, a pilot system has been introduced for the early release of prisoners with a requirement to carry out community service. This is operated jointly by the Irish Prison Service and the Probation Service; we refer to it as “community return” to distinguish it from community service. Community service happens after court, while community return is a form of community service for those about to leave prison. An interdepartmental group is being established to examine the issue of people with a mental illness entering the criminal justice system. We expect the Minister to be able to announce the terms of reference in the next few weeks.

There are also plans to establish a group to carry out a strategic review of penal policy. The Minister has committed to introducing legislation on strengthening the role of the Inspector of Prisons and Places of Detention and providing for a more integrated approach between the inspector and the prison visiting committees. He intends to place the parole board on a statutory footing.

In the committee’s invitation it asked about sources of international best practice. I am sure the committee is aware of these already, but, in addition to material published by the Department and its agencies and the usual Irish academic sources, the Council of Europe’s website includes relevant statistics and recommendations on penal policy. The Ministry of Justice and the Home Office in the United Kingdom commission a great deal of research that is accessible through their websites. I once visited their offices and they had more than 100 full-time researchers. Sometimes we avail of their research.

**Chairman:** I thank Mr. Martin for his interesting and comprehensive opening statement. Senator Ivana Bacik will lead with her questions.

**Senator Ivana Bacik:** I thank Mr. Martin for a comprehensive overview which was prepared at short notice. We appreciate the delegation’s attendance. Its help is of great assistance to us in our work.

Directly influenced by the Thornton Hall project review group’s report, we are considering back door strategies involving some form of early release programme. In particular, we are interested in the report’s recommendation that the Minister introduce a form of earned temporary release programme. As such, we were interested in Mr. Martin’s statement that a pilot system had been established, to which he referred as community return, that is, the early release of prisoners with the requirement that they carry out community service. What are the details of the pilot system and how many prisoners are involved? It is in the early days, but what criteria are used in assessing who is suitable for inclusion in such a programme? Mr. Martin has mentioned that, to date, we have had a flexible system - some would say an unstructured system - of early release. This is in contrast with the position in countries in which exit from prison can only occur in defined circumstances set down in statute.

A key concern is whether Ireland should introduce a more structured form of early release on the basis of earned early release. The Probation Service would have a significant role to play in managing such a programme. The Irish Prison Service has already introduced an integrated



sentence management system. We would like to hear more about the community return programme and how it fits in with integrated sentence management.

**Mr. Jimmy Martin:** I shall ask my colleague, Mr. Geiran, who is involved in this area and might be able to supply some details to answer that question.

**Mr. Vivian Geiran:** Following on from the report on the Thornton Hall project review, with the Irish Prison Service, the Department of Justice and Equality, we quickly set about examining how to introduce a system of earned early release incorporating some form of community service performed by prisoners. In October we launched the community return scheme on a six month pilot basis. However, the pilot scheme has been planned and rolled out on a two phase basis. The initial half ran from October until the end of 2011, while the second phase will run until the end of March. In the initial half between 60 and 70 prisoners left prison on early release under the community return scheme.

Mr. O'Dwyer might wish to say more about how the system operates at the prison end. The Irish Prison Service identifies prisoners who fit certain criteria and who, based on their participation in programmes in prison, their behaviour, the nature of their offences, etc., have been assessed as being suitable and presenting a relatively low risk of reoffending following their release. They are considered at a prison-based review meeting of all of the various disciplines involved in working with prisoners. If an individual is found suitable at this initial stage, he or she is referred for further assessment by the Probation Service, part of which is to assess his or her suitability and willingness to participate in the scheme, and to explain to him or her what is involved if he or she is released early, for example, to undertake work in the community. The availability of appropriate work in the community is also assessed. Once the individual has gone through these phases and assuming everything fits, he or she is released early.

The community return scheme involves swapping prison time for time in the community and paying back through unpaid work. It roughly equates to a week of community work for extra remission of one month. The first 60 or 70 people who have been released under the scheme have proved to be extremely successful in complying with the conditions of their release, for example, in terms of their attendance at work and performance of whatever activities in which they are required to engage. As well as the work element, we try to include whatever other structures or programmes that the individuals need in the community, be it resocialisation in their families or community, attendance at drug programmes, etc. To the end of the year, only one or two prisoners needed to be returned to prison. Overall, there was an extremely high level of co-operation and compliance.

This is a unique initiative internationally, as I am unaware of anything comparable in place elsewhere. I am positive about rolling out the scheme to more prisoners.

**Senator Ivana Bacik:** In which prisons is it operating?

**Mr. Vivian Geiran:** It started off in Dublin but was extended incrementally to prisons all over the country during the initial three months. For various reasons, most notably numbers, the majority of early releases have been in the Dublin area, but the pilot scheme has been extended to Cork, Shelton Abbey, Castlerea, the midlands and so on.

**Senator Ivana Bacik:** Mr. Geiran has been helpful. Are there criteria concerning the length or type of sentence that rule out a prisoner during an assessment? For example, to qualify for extra remission, one needs to have served a certain proportion of one's sentence. As

I understand it, the pilot scheme is more flexible.

The Thornton Hall project report mentioned that such a scheme of incentivised early release could provide for electronic tagging or curfew requirements. I take Mr. Geiran's point, in that conditions are already imposed, for example, attendance at drug treatment programmes and so on, but there has been no use of electronic tagging - we do not have this facility - or curfews.

How are the conditions set? Clearly, it is not a court order but an agreement between the prisoner and the Irish Prison Service. I apologise for asking so many questions.

**Mr. Vivian Geiran:** I should have mentioned that the length of prison sentence that one is required to serve to be eligible for participation in the community return scheme is between one and five years. Prisoners can get out under the scheme as early as the half way point in their sentences as opposed to the three quarters stage, as is the case in the normal remission process. This is not to say everyone gets out at the half way stage, but prisoners become eligible at that point. There is a direct swap between prison time and work done in the community.

I also should have mentioned other reporting conditions will be applied. Individuals sign on at their prison every week and their local Garda station every day. Generally, they perform work in the community three days each week. On the other days, they might be required to engage in other activities. For example, attendance at drug treatment clinics or appointments with training and employment officers in regard to appropriate training, employment or education opportunities.

**Mr. Jimmy Martin:** The legal basis for this scheme is temporary release, not remission.

**Senator Ivana Bacik:** Yes.

**Mr. Jimmy Martin:** Therefore, the conditions of temporary release are imposed. While the person on temporary release can be returned to prison if he or she breaches those conditions, the procedure in respect of a person on remission is much more complicated. Although we have tested electronic tagging we have not used it as we are not sure it is viable. International experience suggests it can be expensive and does not necessarily enhance rehabilitation. While it provides some insurance to the public it does not necessarily prevent people from committing offences. During a trial of GPS electronic monitoring in the UK, a test subject killed a person. Electronic tagging does not necessarily prevent the commission of crimes. The expectation may be that it stops people from committing crimes but that is not the case.

**Senator Martin Conway:** What type of work are prisoners doing within the community? Also, has there been positive relationship building with agencies on the outside that might support greater roll-out of the programme into the future?

**Mr. Jimmy Martin:** Mr. Geiran will outline the work which prisoners do. This is a pilot project, in respect of which we are using current facilities and links with agencies in the communities. If we are to expand the programme, we will need to enhance our ability to do so. In Cork, where there is a particular problem in terms of prison overcrowding, consideration is being given to what can be done in the local community area to assist in this regard. There is a great deal of interaction between the Prison Service, Probation Service and local agencies, including NGOs.

**Mr. Vivian Geiran:** Prisoners involved in the scheme undertake the same type of work as people on court order community service. In many situations, the groups of offenders work

side-by-side. We have found that having people coming out of prison working side-by-side with court ordered community service offenders has had a positive impact. The prisoners have been good role models for the people sent by the courts to do community service although there was concern that the opposite might be the case.

The prisoners do work for local community groups, youth clubs and community organisations, which would not otherwise be done, including painting, environmental projects, site cleaning, graffiti removal and so on.

**Chairman:** Does the probation service seek out that work? What is the decision making process in terms of project selection?

**Mr. Vivian Geiran:** We generally source projects through our local connections in various areas around the country. We have established strong links locally with different organisations. During the past year or two, owing to the increase in community service orders and the introduction of community return, we have had to increase our focus on sourcing work projects. For example, in the past two years we have made a particular effort to obtain work in the homeless sector in the Dublin area. This work included renovation, painting and so on work in homeless hostels and shelters. As stated by Mr. Martin, we are assisted by a number of organisations in different parts of the country in accessing work. These organisations either directly provide us with work or put work our way. One of the groups attending appearing before the committee this afternoon is funded by us in that regard.

**Chairman:** It has been stated that the majority of offenders in prison are young males with little education or employment experience, which indicates that society in some way failed these people before they reached the prison system. The issue of substance abuse was also raised. I welcome that an interdepartmental group is to examine the subject of people in the prison service with mental health issues. Perhaps the delegation would elaborate on the type of mental health issues that arise in this regard. It must be challenging for the prison service to support people with mental illness. Perhaps the delegation would give us an overview in that regard.

**Mr. Jimmy Martin:** On the mental health issue, the percentage of people in prison that suffer from mental illness as compared with the average number of people per head of population suffering with a mental illness is high. This is not too surprising for a number of reasons. People who engage in substance abuse are more prone to mental illness than others. One of the affects of taking mind altering drugs is psychosis. There are a range of different people within the prison system, including people who were in reasonably good mental health when they arrived in prison but who have developed mental illness while there. As such, their mental illness has nothing to do with their offending behaviour but developed either as a result of substance abuse or the prison environment, which can be quite alien for most people.

It is the policy of Government to deinstitutionalise people suffering from mental illness and move them into the community. Where there is a weakness in community services and a person suffers an episode, this is manifested in public disorder. The first response to this is the Garda Síochána. Where a person has killed another person he or she will be arrested and will end up in the criminal justice system, at the end of which process he or she may be found not guilty by reason of insanity and will end up in the Central Mental Hospital. It is appropriate in such case that the person is arrested and is dealt with by the criminal justice system.

At the other end of the system is the person whose erratic behaviour is directly as a result

of a mental illness. The choice for the Garda Síochána is whether to bring such person to court or to involve local community mental health personnel. Much depends on the services that are available. There is a protocol in place which provides for a linkage between the local community mental health service and an inspector in the Garda Síochána in an effort to ensure people are diverted from court. The Garda Síochána are the first port of call in these cases. The second port of call is the courts. In some cases it becomes evident during the court procedure that the person concerned is suffering a mental illness. We have introduced a system in Cloverhill prison, which is a remand system, which links with forensic psychiatrists from the CMH to try to identify people with obvious mental illness, which is the root cause of the criminal behaviour, so as to divert them away from the criminal justice system into the mental health system. This is a relatively recent initiative which has been working successfully.

There are also in the prison system people who may have an underlying mental illness that is not immediately obvious. However, on conviction and committal to prison the mental illness may be aggravated by the prison environment. We had difficulties at one stage as prisons are not equipped to deal with severe mental illness, in the same way they are not equipped to deal with severe physical illness. We depend on the Central Mental Hospital to take the most serious cases, and there were problems regarding capacity there at one time. We had a long period that caused great distress, as somebody who was severely mentally ill, with concurrent stress for the person and prison staff, could not be placed anywhere until space became available. The regime has changed as there is slightly more capacity in the Central Mental Hospital. That hospital also provides an in-reach service to prisons and the Irish Prison Service is becoming more competent in dealing with these cases.

The ideal situation has not been reached yet but we are getting to a position where people with a mental illness can be managed within the prison, whereas more severe cases would be transferred to the Central Mental Hospital to be treated. Sometimes there are catch-22 cases. We had somebody convicted of murder who suffered from a severe mental illness. The person was transferred to the hospital and responded to treatment but as soon as the person returned to prison, there was a relapse. What can be done with such a person, who is guilty of murder and was not guilty by reason of insanity? In the end, the prisoner was moved to an open prison where conditions were more suitable for the illness. Mr. O'Dwyer may have some comments.

**Mr. Kieran O'Dwyer:** I have some figures. The HSE Central Mental Hospital in-reach service to Clover Hill now diverts 110 per annum approximately, primarily to community-based services. Approximately 80% of those would be known to community services and have a case history. That is working very well and we are looking at ways to extend this with the HSE. To confirm Mr. Martin's comments, in 2009, the Central Mental Hospital provided an additional ten beds in Dundrum, which eased waiting lists considerably at the time. There are still prisoners on waiting lists to go to the Central Mental Hospital.

**Mr. Jimmy Martin:** The Chairman asked about society and criminality. The vast majority of people who end up in prison come from socially deprived areas. Any link is a question of speculation, as many people living in socially deprived areas do not become criminals, and those areas tend to have the majority of victims of crime. It is a very complex issue. When assessing risk and indicators, we find that if a person is illiterate, does not have a job and is involved with substance abuse, he or she is much more likely to end up involved with crime. How to address that is complex, as it would involve a range of services provided by the State and family background. Whether the problem can be successfully tackled is beyond our knowledge. There is a link of some kind but what it is and how it can be addressed is very complicated.

**Chairman:** It is work for sociologists that is probably ongoing.

**Deputy Jonathan O'Brien:** Will the witnesses comment on some of the challenges that we may be facing in expanding some of these programmes, such as community return? Is it the case that in considering a suitable release, prisoners are matched with work programmes? Is there a difficulty in getting enough work programmes to meet demand or the numbers of people that would be deemed suitable for those programmes?

**Mr. Jimmy Martin:** As it is currently a pilot project, there is no real issue as we have sufficient resources to address it. The Minister is quite keen to expand the programme and go beyond the pilot. There is a natural limitation on the number of people suitable for the programme, as some prisoners would be violent or unsafe to release before their prison sentence is finished. Others may not be interested, and although it may sound surprising, some would prefer to hang around serving their sentence rather than getting involved in these activities. There are many factors involved.

There is a natural limit, although we have not yet established what it is. We are exploring the possibilities and as we increase numbers, the question of resources must come into play. This is particularly relevant as we go outside Dublin to more rural areas, as it may be a challenge to find work suitable for a particular prison. There are restrictions on the number of public servants who can be employed so as we progress the scheme we must examine whether more community supervisors can be employed by the Probation Service. There is a requirement to match the work to the individual, and I will ask Mr. Geiran to talk about that. Some prisoners can be quite elderly and they would not be able for physical or manual work. Others may suffer a disability. One must match the location of the prison with the prisoner and the work in an area in gauging suitability.

**Mr. Vivian Geiran:** I agree with Mr. Martin's comments on matching prisoners with work. The work and environment is important, and we often find that offenders would have a very good experience of doing community service work and would be able to make a very valuable contribution to the community, not just because of the nature of the work being done but the environment in which they do it and the extent to which they can interact with the local community and work with others as a team, for example. They can feel they are making a valuable contribution and paying something back to society.

Having said that, where possible we try to match people with appropriate work. To an extent, we must try not to put people in inappropriate work placements. A percentage of the people on community service or community return would have individual placements organised. Most of the work arrangements are for groups, with a community service supervisor for a group of offenders undertaking a task. Sometimes we are able to organise individual placements in organisations. From memory, I recall somebody being able to work on their own under the supervision of a voluntary organisation providing meals on wheels for the elderly. That is not a placement for everybody on community service. Some people are suitable for individual placements with less intensive supervision, although some people need more supervision. It is partly about work and partly about environment, contribution and the value that people can add to the community. That makes it worthwhile.

**Deputy Jonathan O'Brien:** I know it is a pilot project but with regard to expansion, resources and personnel would be key.

**Mr. Vivian Geiran:** Yes, and as Mr. Martin has correctly noted, we have not had a real

problem there so far with the initial phases of the pilot. People coming out on community return are spending much more time on community service than people ordered there by the courts, as they are at the more serious end of the scale. In some parts of the country we would have more capacity but we would have less capacity elsewhere. As the pilot continues we must keep resources under review.

**Chairman:** The costs may be €8,000 or €9,000 per week to have somebody in prison. Is that correct?

**Mr. Jimmy Martin:** In calculating costs for a prisoner, the total costs of running a prison is divided by the number of prisoners. As a result the average cost has become much smaller over recent years because we put more prisoners into the system. The costs that are specific to an individual prisoner are relatively small. The current cost is approximately €70,000 per year for a prisoner in a medium security prison. However, if we take out ten prisoners, we will not save €700,000 because much of it is fixed costs and labour costs. The saving is that we would have to buy less milk, food and such things. One must be careful about equating not sending somebody to prison with a saving of €70,000. That is not necessarily true. However, we do make savings. Obviously, if we managed to keep 500 people out of prison, that equates to a prison so we could close down a prison and make significant savings with that. It is a complicated matter.

Community service is relatively cost effective in the sense that there is the cost of the community service supervisor, administration costs and a few material costs, but they are not very significant. Vivian Geiran can discuss that.

**Mr. Vivian Geiran:** On the cost of community service, the figures I have are a couple of years old and, for similar reasons regarding the prison numbers, we have more economies of scale because there are now more people doing community service. However, even a couple of years ago we calculated the average cost to us of implementing a community service order was €2,400 per order. The cost of carrying out an assessment for community service if the case was adjourned was €244. More recently, we have introduced same day assessments in the courts for community service in certain cases and they are €55 each. The total cost therefore is €55 or €244 as well as an average of €2,400 per order for community service. That cost has probably gone down for the various reasons outlined.

**Chairman:** Would time duration be a factor with some orders?

**Mr. Vivian Geiran:** Yes, it would. Court ordered community service can be between 40 and 240 hours. We worked out an average over the year for the average community service order.

**Chairman:** Do people with community service orders get some form of payment or stipend?

**Mr. Vivian Geiran:** No, there is no payment.

**Chairman:** How are people who are homeless when they leave prison supported?

**Mr. Kieran O'Dwyer:** I will respond to that, if I may. I was going to intervene earlier to point out at these schemes are not magic bullets due to the complexity of the needs which you mentioned earlier, Chairman. Whether it is a combination of things, employment, training, education or simply the chaotic lifestyles they have or their dependencies, all of these need to be addressed in the context of temporary release, community return or whatever it might be.

That is a huge challenge.

The Prison Service and the probation service work closely in trying to address those issues for prisoners in terms of finding local accommodation in hostels or emergency accommodation. A very high proportion of prisoners come into the system with accommodation difficulties and it is nearly worse when they are heading back out. It is a concrete and immediate need. If one does not have accommodation and employment, it is a recipe for recidivism and other trouble down the line. If we are to be successful in our attempts at resettlement, all of these issues must be addressed as part of a package.

**Chairman:** You have identified that as an important issue, that is, somebody who comes out of prison and does not have a job, has no place to live and who might have other issues, and the supports they require to support them in not falling back into crime and being returned to prison. On the payment issue, if somebody is working for three days per week and they are signing on at the Garda station as well, are they on jobseeker's allowance?

**Mr. Vivian Geiran:** They would be on jobseeker's allowance or benefit. The fact that they are doing community service does not interfere with their social welfare payment, and this has been the case since the origin of community service in 1985. If somebody got a job while they were on either community service or community return, we would, and do, make appropriate arrangements. We certainly would not stop somebody taking up a job or a training place. In fact, we would encourage it.

**Chairman:** Mr. Martin mentioned in his introduction that Finland, Denmark and Sweden have low rates of incarceration. Why is that?

**Mr. Jimmy Martin:** That is a very good question and I do not have a straight answer. It is partly cultural. They tend to impose very low sentences. When I was dealing with rape legislation I looked at the average sentences in Sweden and in Ireland. The average sentence in Ireland would be at least twice as high as the average in Sweden. They tend to go for low sentences. They also have many institutional supports. If one looks at statistics for youth crime in Sweden, for example, they appear to be extraordinarily low, but that is because a person under 16 years of age does not go into the criminal justice system. However, there are many people in homes and so forth.

Some of their issues are different from ours. Alcohol related issues are very strong in these countries, so the make-up of the prison population can be different.

**Chairman:** What do you mean by alcohol-related issues?

**Mr. Jimmy Martin:** It is not unusual for a person convicted of drink driving in a Scandinavian country to go to jail. They have stricter regimes than ours. However, one tends to deal with a different type of person.

Finland went out of its way to reduce its prison population. It made a policy decision to reduce the number of people it would imprison and introduced a number of measures. Why a country has a high prison population is a choice in some cases. The United States has a very pro-imprisonment policy. In Europe, Spain and the UK have a high rate of 150 per 100,000 persons but in the US it is 700 per 100,000 persons. That was a policy decision. In other cases, it can be cultural or due to many other factors.

As I said, it is partly cultural and partly that there are many more supports in the community

than, perhaps, in this country. I cannot give you a good scientific answer, and I have not heard one from anybody.

**Chairman:** If somebody finds the answers, we will be doing well.

**Deputy Jonathan O'Brien:** The socio-economic circumstances would be different in those countries.

**Mr. Jimmy Martin:** Yes, they would be different. However, I was once asked by a Finnish colleague about our murder rate. He said their murder rate was much higher than ours and I asked him why. It turned out their murders tended to occur at queues for taxis. Finland does not have late night buses and one cannot hail a taxi. One must queue for one. When they all go out drinking the fights tend to be in the queues. We have similar murders but they appear to have a higher number, that is, where people have been drinking on a Saturday night and so forth. They also had a higher rate because they have greater access to firearms. Instead of beating up the wife, therefore, they might shoot the wife and then shoot themselves.

However, it is correct that they have many more social supports. Their economy and society are different from ours so one is not necessarily comparing like with like. It is very complicated.

**Senator Ivana Bacik:** I have a final question. I have found this discussion very helpful and I thank the witnesses. However, I will return to Mr. Martin's point about the legal basis for the temporary release. Is the Criminal Justice (Temporary Release of Prisoners) Act 2003, which amends the 1960 Act, sufficient to expand the programme of community return or the idea of incentivised release or would another legislative basis be necessary? I do not know if Mr. Martin can comment on that. Is there a sufficient legislative basis at present to run this programme?

**Mr. Jimmy Martin:** Yes. The recommendation from the Council of Europe about early release favours what it calls conditional early release. We have two systems, one of which is remission. Once one is released on remission, it is unconditional and the sentence is finished. We use temporary release as a form of conditional release and it is a flexible system. It is easy to get people out and get them back in. To some degree, it is an administrative system. We tend to let people out on extended renewable temporary relief of a week or a month. There is no legal issue about ending the release. We are quite happy with the system.

The UK changed the system of remission from one third remission to a 50% conditional release. As it is a statutory system, it tends to be inflexible and, effectively, every prisoner in the UK is released on conditional release after serving half of the sentence. Prisoners can be called back but it requires a complicated procedure. Temporary release is flexible because we can impose conditions. It is easier because, if we encounter an obstacle, we can rapidly change the community return system. We set guidelines that the Minister approves. These are the structures in which we operate the pilot system. There may be something to be said for having a more structured system once we work everything out. Introducing this through primary legislation can be restrictive because it reduces flexibility.

**Chairman:** Mr. Martin mentions that a group is being established to give a view on penal policy. When will that be established?

**Mr. Jimmy Martin:** I understand that might be quite soon, in the next month or two, but I cannot give an indication when it might happen.

**Mr. Kieran O'Dwyer:** Senator Bacik asked me about temporary release at the beginning.



It is used for the vast majority of prisoners and only prisoners of a violent disposition or those serving sentences for a particularly heinous crimes serve until the last day. Temporary release can range from a day or two to a programme of weekend releases in open centres and early release. Not all prisoners will be on community return but we have other conditions that we can impose, such as participation in addiction programmes and curfews.

**Senator Ivana Bacik:** Is there day release, where people can go back at night?

**Mr. Kieran O'Dwyer:** There is day release from the training unit and the open centres. These people do work in the community or a training course and come back into custody in the evening. We want to move towards earning a temporary release by dint of what they do in prison, such as engaging in sentence planning, structural activities such as work training and education, or other programmes to address offending behaviour. We have specific programmes for violent offenders and sex offenders. They must earn temporary release by good behaviour and engagement with the services in the prison. Community return applies to those who are serving one year or more, which coincides with the integrated sentence management model. We are looking at options for those serving shorter sentence. We would not like to overlook them and particular measures can be taken.

**Chairman:** How many sex offenders are in prison?

**Mr. Kieran O'Dwyer:** Between 325 and 330 are in custody, most of whom are in Arbour Hill, Wheatfield and the Midlands Prison. We operate the sex offenders programme in Arbour Hill. Our system assesses them in the prisons and works to bring them to Arbour Hill at some stage so that they can undergo the programme and return to the original prison on completion. We introduced a new programme in 2009, which processes higher numbers than the previous programme.

**Chairman:** Is there a measurement of how effective the programmes are?

**Mr. Kieran O'Dwyer:** Ongoing research is examining it. It is early days and we do not have a control group we can measure against because we try to get as many through as possible. It is based on international best practice and is modelled on programmes in Canada, where there is evidence that supports the programme's effectiveness. It fits with psychological theories and we take comfort from that but we do not have hard evidence yet.

**Chairman:** How many people end up in prison because they do not pay fines after the legislation was passed to reduce imprisonment for unpaid fines?

**Mr. Jimmy Martin:** On any one day, there are only 50 or 60 in prison. Their sentences are very short and the big issue is the number committed to prison. It could be 7,000. The numbers increased because the Garda Síochána has become more active in chasing down warrants. A judge used to imposed the fine and the automatic default for non-payment was imprisonment. The Garda Síochána became more active in enforcing outstanding warrants. Also, people heard that if they did not pay the fine, they would go to prison and get out the next day. The volume of people going to prison for non-payment of fines increased dramatically. They do not spend very long in prison so the number in prison on any given day is not very high but it creates administrative issues. It is expensive as it involves Garda time. Legislation was introduced so that a fine would not be imposed unless the person could afford to pay it. The only people who can go to prison are those who refuse to pay it, not those who cannot pay it. We are trying to move away from the default position of imprisonment. The Fines Act allows us to appoint a receiver

PENAL REFORM: DISCUSSION (RESUMED)

and if that does not work, the option is community service or imprisonment.

We are considering attachment of earnings as an option. There were difficulties in implementation because it required a change to the computer system of the Courts Service. The money has been provided and has now been implemented. There is the odd person who refuses to pay but we hope the threat of seizure of goods will increase the number of people who pay fines. The judge can only impose a fine that can be paid, which eliminates the situation where people do not pay because they have no money. We do not approve of anyone going to jail because they cannot afford to pay the fine.

**Deputy Jonathan O'Brien:** Will the attachment orders require legislation?

**Mr. Jimmy Martin:** Yes.

**Senator Ivana Bacik:** Will the Fines Act be implemented soon?

**Mr. Jimmy Martin:** As soon as the Courts Service has adjusted its computers, we will provide a commencement order that will bring it into effect. I know money has been provided in this year's budget to adjust the computer system but I do not know how long it will take.

**Chairman:** How many people were processed every year?

**Mr. Jimmy Martin:** Over 100,000 people received fines and some 7,000-----

**Senator Ivana Bacik:** The figure for 2011 is 7,000.

**Mr. Jimmy Martin:** I do not have the figures before me but that sounds about right.

**Chairman:** The hope is that this will reduce substantially.

**Mr. Jimmy Martin:** It will be almost eliminated.

**Chairman:** It will take pressure off the prison service.

**Mr. Jimmy Martin:** The pressure is caused by the fact that they must be admitted into prisons before they can be released.

**Chairman:** I thank the witnesses for their attendance and their information. It was extremely helpful and informative.

*Sitting suspended at 10.30 a.m. and resumed at 2.30 p.m.*

**Penal Reform: Discussion (Resumed)**

**Chairman:** The purpose of today's meeting is to hear presentations on penal reform, including information on international best practice. I welcome the following: Mr. Paul Mackay and Ms Denise Coulahan, from Care after Prison; Mr. Paddy Richardson, Mr. Barry Owens and Ms Adrienne Higgins from the Irish Association for the Social Integration of Offenders; and Mr. Justice Michael Reilly, Inspector of Prisons. Members should be aware that Mr. Justice Reilly is somewhat restricted in his contribution and cannot comment on matters of policy. I ask members to bear this in mind when framing questions.

Witnesses are protected by absolute privilege in respect of their evidence to this committee. If a witness is directed by the committee to cease giving evidence in relation to a particular matter and the witness continues to do so, the witness is entitled thereafter only to a qualified privilege in respect of his or her evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and witnesses are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the salient ruling of the Chair, members should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I now invite Mr. Paul Mackay to make his opening remarks.

**Mr. Paul Mackay:** I thank the Chairman and members for their kind invitation to this meeting of the sub-committee of the Joint Committee on Justice, Defence and Equality. The Care after Prison, CAP, project is jointly promoted by the Carmelite Community Centre and the City of Dublin YMCA. It was successfully launched on 13 October 2011 and its office is based in the Carmelite Community Centre, 56 Aungier Street, Dublin 2. CAP was launched as a six-month pilot programme with a total initial capacity of 35 service users. CAP is an information, referral and advocacy service, open to ex-prisoners and their families currently residing in the Dublin 2 and Dublin 8 postal districts.

The primary aim of CAP is to promote safer communities, reduce the rate of recidivism and support ex-prisoners in leading crime free lives. CAP's successes will be achieved through its key workers developing a holistic care plan tailored to each individual's needs. These needs are wide and varied and may include such issues as education, further employment training, housing, social welfare information and assistance, counselling, family mediation services, liaising with other organisations such as drug or alcohol recovery programmes, and pre-prison preparation.

In terms of activity to date, we are pleased to report that CAP has engaged, as of today, with up to 59 service users from the postal areas of Dublin 2 and 8. The majority of these clients engage on a weekly basis with their relevant key worker. We now have three key workers, two of whom have just been awarded an MA in criminology from DIT. Other clients have used the service intermittently, where they have less need for support and information. I know we are talking about a short period of four months, but CAP has a zero re-offending rate. Although the project is in its infancy, our experience to date points to a definite and vital need for the services currently being provided.

The recent plans announced by Mr. Michael Donnellan, director general of the Irish Prison Service, involve offenders who receive short sentences and serve them in the community. The CAP project teams could act as a supervisory body for such offenders as well as prisoners who receive early release on community supervision orders. Similar measures in the UK under the social impact bond scheme have provided funds to finance rehabilitation and crime preventive programmes. This funding is used in conjunction with voluntary community organisations to prevent re-offending. Such measures are not only beneficial to the offender and his or her community in the longer term but also are a very cost effective measure in terms of the financial burden placed on the State to maintain an individual in prison on a day to day basis. We are of the view that a voluntary organisations such as CAP are worth supporting and investing in as a community supervisory group. They may well be in a favourable position to assist in rebalancing the levels of imprisonment, reduce the rate of recidivism and create a pathway to rehabilita-

tion and reintegration into the community.

**Chairman:** I now invite the Irish Association for the Social Integration of Offenders to make their opening remarks.

**Mr. Paddy Richardson:** I welcome the opportunity to address this sub-committee and thank the chairman and members for taking the time to listen to what we have to say.

The Irish Association for the Social Integration of Offenders, IASIO, recognises this process as a significant and much welcome undertaking for the Irish criminal justice system and for Irish society as a whole. In particular we welcome the opportunity to reflect the role of the community and voluntary sector in the Irish criminal justice system and offer observations and recommendations based on that perspective. We do not speak on behalf of community and voluntary sectors but rather from the experience of our own operational experience as a national service provider with 11 years in the criminal justice field.

Let me put our presentation and status into context. We are an independent company formed in January 2012. We are the only national community-based organisation for adult offenders in the criminal justice system, with a specific focus on alternatives to both offending and re-imprisonment. This is achieved through the provision of direct services to offenders both in the community and in all Irish prisons. The twin pillars of IASIO's services are supported stability leading to change, and opportunity to do so. Our strength lies in our ability to adapt to the changing needs of our funders and to the changing landscape of the external environment, while keeping the offender central throughout. In this sense IASIO's services represent an important bridge between the criminal justice system and the community, one that is unique in Ireland.

We also work with all categories of offenders, including high risk offenders and people convicted of a sexual offence. One of our programmes, Linkage, is funded by the Probation Service since 2000. The mentoring and gate services are funded by the Irish Prison Service since 2007 and 2009, respectively. The 28 highly experienced and professional staff have their development and history firmly rooted in the past 11 years under the employment programmes section of Business in the Community Ireland, *bitc.ie*. The full transition of the programmes and staff from BITCI to the Irish Association for the Social Integration of Offenders will be completed by 30 March. It is, therefore, from this strong background of knowledge and experiences that we bring key facts and recommendations before the sub-committee.

Key facts include the following: access to employment allows for social integration and resettlement, provides financial independence, boosts the economy at local and national level and brings prosperity and security to communities. Our national programmes are fully funded by the probation service and the Irish Prison Service and assist prisoners and former offenders in accessing training, education, employment and sustainable resettlement in the community. To date, more than 15,000 people have been referred to our three criminal justice programmes, of whom more than 10,000 have successfully engaged. More than 6,000 people have been successfully placed in training, education and employment. All our programmes have a proven track record of success, while delivering outstanding results based on value for money principles.

From a community and voluntary perspective and based on current pressing demands within the prison system and our accumulated experience of working in and across the criminal justice system, the Irish Association for the Social Integration of Offenders respectfully makes the following recommendations toward a more positive, equitable, efficient and effective penal

system. On connecting services, all community and voluntary sector activity related to criminal justice should be mapped as the first step in creating a cost effective strategy which establishes the integration and co-ordination of criminal justice activities across the country, particularly those that reach into prisons. Clear procedures should be written and communicated to relevant agencies in order that access and entitlements to housing, welfare and medical supports for prisoners are expedient and consistent across the country. Education and training links should be created between prison and community based colleges and programmes that recognise prior prison learning and accreditation. Placement opportunities in the community should be formalised as much as possible to facilitate access for those who have been convicted of a criminal offence. The responsibility for post-release placement should be accepted as multidepartmental and, where necessary, operationalised through multidisciplinary, high support processes for released prisoners.

On working to reduce prison numbers and early release strategies, the community return programme should move from a pilot phase to full implementation across the entire prison estate for prisoners serving sentences of between one and five years. Prisoners who are not currently eligible for community return community service work, for instance, for health reasons, should be diverted to a community return compulsory mental health or drug treatment programme or a developmental or work related programme which takes place indoors and is sedentary in nature. People convicted of less serious driving offences could be released to a safer driving course. We also recommend establishing a prison based resettlement support initiative for prisoners serving short-term sentences, specifically sentences of between six and 12 months, with assessment for suitability and needs at the time of committal and in line with integrated sentence management practices. Those who receive sentences of less than six months should be diverted from prison into a community based resettlement support programme which will address many of the underlying causes of criminogenic behaviour and encourage desistance from crime.

On non-custodial sanctions and community service, we recommend the establishment of a site seeking initiative as a wholly independent national programme in response to the expected and much hoped for impact of the legislative changes in the Criminal Justice (Community Service) (Amendment) Act 2011, as well as the effect of demand for community service projects arising from the community return programme. We must also ensure the necessary resources are available within each prison and the community to meet the demand for services from prisoners wishing to earn and keep their release. A public media campaign should be implemented to support such a programme. We need to address potential public concern around the early release of prisoners through a positive media campaign.

As practitioners in the field for the past seven years, we in the Irish Association for the Social Integration of Offenders have a number of observations to make on best practice in other jurisdictions. We have identified gaps in service provision for offenders here for which highly effective approaches can be found in other jurisdictions. These include, for instance, a bail supervision and support programme for remand prisoners and circles of support and accountability for high risk sex offenders. More detail on such endeavours is available in the body of the report.

We further understand there are practices in other jurisdictions that link in with the sub-committee's brief which require legislative changes in sentencing policy that are beyond the range of IASIO's experience. As these practices have had a significant impact on reducing prison numbers, they are worth noting. I refer, for example, to a drug treatment and testing

sanction in Scotland and the Finnish model of conditional and unconditional imprisonment. Further information on these approaches is also available in the body of the report. I would welcome any questions.

**Chairman:** I thank Mr. Richardson for his highly interesting contribution. I extend a warm welcome to Mr. Justice Michael Reilly. Unfortunately, owing to time and unexpected work pressures, he was unable to provide a written opening statement in advance. However, he provided a letter which has been circulated outlining the ideas on which he will comment. I invite him to make his opening remarks.

**Mr. Justice Michael Reilly:** I thank the Chairman for his kind words. I welcome the opportunity to address a body such as the sub-committee as this is the first time I have been invited to appear before an Oireachtas committee. I apologise for not providing a script prior to the meeting. Unfortunately, developments in one of the prisons took up all of my time yesterday and on the previous working day.

It may be helpful to briefly outline my powers and duties. I ask the Chairman to bear with me as I will take about two minutes longer than my colleagues.

I was appointed Inspector of Prisons with effect from 1 January 2008. The Office of the Inspector of Prisons is a statutory independent office established under the Prisons Act 2007. I have power to enter any prison at any time of the day or night. I have free access to all parts of the prisons and can request and obtain any books, records or other documents held in any prison. I have free access to all prisoners and prison staff. Governors, prison officers and other persons employed in prisons and prisoners are obliged, in as far as is reasonably practicable, to comply with any requests for information I may make. My obligations are to carry out regular inspections of prisons and present a report to the Minister on such inspections. I am also obliged to present an annual report to the Minister. As soon as practicable after receiving my reports, the Minister causes copies of these to be laid before each House of the Oireachtas and published.

As members will note from this brief description of my powers and duties, they do not extend to offering policy advice. I thank members, therefore, for their understanding and the comments they made at the start of the meeting.

I propose to focus on two broad issues, namely, my examination of individual prisons and standard setting. The latter will bring into focus international best practice and where one should look. My examination of an individual prison takes place over a number of months and sometimes lasts for up to nine months. I carry out numerous visits which are, in the main, unannounced and take place not only during the working day but also at night and weekends. I have been in prisons at 3 a.m. and other times. Visits can last from between one and nine or ten hours in one day. Unannounced visits are not made for the purpose of wrong-footing anyone but simply because inspection systems which are entirely predictable as to timing no longer carry any measure of credibility, a point I made clear when I started this job in 2008.

I visit all parts of the prison, including the cells, educational and recreational facilities, workshops and kitchens. I examine records, as I deem appropriate, and speak to prisoners, visitors, prison officers and management. However, I also speak to the full range of those who provide services for prisoners, including teachers, doctors and dentists, and other relevant groups from outside which provide services either for the prison or prisoners. During this time I obviously bring matters of concern to local management. The purpose of carrying out my

inspections which is different from what is done in other jurisdictions is to ensure my reports will not reflect the position at one particular point in time but will be reflective of an ongoing inspection and consultative process over a number of months.

My major findings in my inspections cover such matters as overcrowding and slopping out. These issues are in the public domain because they are referred to in my reports which have been published and are matters to which I would like to return briefly.

The other broad issue I wish to touch on is the setting of standards. Prior to my appointment, this country had no standards against which prisons could be benchmarked. I was told that our obligations to prisoners were to be found in the Constitution, in domestic laws and in jurisprudence but, as a judge and as a lawyer, I did not believe that.

Ireland is a state party to many international treaties emanating from the United Nations and the Council of Europe and is subject to the European Court of Human Rights but is also subject to international scrutiny from such bodies as the Committee for the Prevention of Torture in Human or Degrading Treatment or Punishment, more commonly called the CPT. In order to set standards it was clear to me that I would have to look outside this jurisdiction for certain guidance. I consulted relevant people in the Council of Europe. I made contact with people from the CPT, I consulted with internationally recognised experts in penal policy and prison policy and continue to maintain these contacts. I meet the CPT formally once a year and I meet other bodies informally.

I published Standards for the Inspection of Prisons in Ireland. These are informed not only by the Constitution, domestic laws and jurisprudence but the many treaties to which I have referred, the various instruments that come from the United Nations and the Council of Europe, the jurisprudence of the European Court of Human Rights, the reports of the CPT and relevant court decisions from other jurisdictions that might be relevant here.

In addition to the standards I have also given advice to the Irish Prison Service on best practice in numbers of areas. These are optimal cell size, the regimes and services that must be provided in prisons, guidance on the use of special cells, guidance relating to the investigation of prisoner complaints, guidance on prison discipline, best practice relating to the investigation of deaths in custody and guidance on physical health care in a prison context. All of this advice is contained in stand-alone reports that I presented to the Minister and which he has published. In formulating this advice I was guided by exactly the same principles as guided me when I was producing the Standards for the Inspection of Prisons in Ireland, national and international.

There are many problems that beset Irish prisons but I am happy to report that the Irish Prison Service has been and is reacting positively to many of the problems that I have identified. The major issues that need to be addressed, in addition to overcrowding and slopping out, are the provision of a dedicated committal area in prisons, the provision of a high support unit for vulnerable prisoners in all closed prisons, the dedication of a drug free area in all prisons, a robust and transparent prisoner complaints procedure and a fair and transparent prisoner disciplinary procedure.

I wish to share with the committee the measures that have been taken to get over these difficulties. Overcrowding which I think will be with us for some time to come will be reduced with the opening of a new block in the midlands prison in autumn 2012. In-cell sanitation has been installed in one wing of Mountjoy prison. This whole wing has been refurbished from top to bottom and has been done to a very high standard. Members of the committee have visited

Mountjoy Prison and have seen that work. I understand it is the intention of the director general of the Irish Prison Service that slopping out in all prisons will be eliminated within three years.

The Irish Prison Service has committed itself to identify an area in each prison which will be a dedicated committal area within the next three months. Such an area has been provided in Mountjoy Prison. I have inspected this area on numerous occasions during its construction and I am satisfied that it meets the highest standards and will be operational by 1 March 2012. It is the intention that this will be used as a template for other prisons.

The Irish Prison Service acknowledge that high support units will be provided in all relevant closed prisons. Such a unit has been commissioned in Mountjoy prison and has been operating for in excess of one year. This unit has received commendations from such renowned organisations as the World Health Organization, which has just awarded it one of its most prestigious awards.

Drug free areas have been provided in a number of prisons but a dedicated area will be in operation in Mountjoy prison from 1 March, just four weeks away, with agreed protocols for those prisoners deemed sufficiently motivated to be accommodated in this area. The Minister has asked me to suggest a model for dealing with prisoners' complaints. I am dealing with this request and should have a report with the Minister within the coming weeks.

The Irish Prison Service is working on a prisoner disciplinary model which is following the advice I have given in one of my reports on this issue. I have been actively involved in discussions with IPS and, because we have reached nearly the end of the road, I am confident that the model to be agreed will be a fair and transparent one.

None of this could have been achieved without the goodwill and direction of the Minister. Neither would these initiatives have been possible without the active support of his Department but also the willingness of the Irish Prison Service to embrace best practice, as detailed in my reports.

While the above initiatives are welcome there are still many defects in the prison system. I know, because of his public statements, that the Minister is attentive to the ongoing needs in our prisons. I will continue to report on the state of our prisons in the manner which I have done, which I trust will continue to be regarded as being fair, robust and independent.

**Chairman:** I thank Mr. Justice Reilly for that most interesting presentation. I invite members to engage in questions. We shall have a question and answer session rather than banking questions. Will Senator Bacik indicate whether she has one or two questions. We will go back and forth rather than take them together.

**Senator Ivana Bacik:** I thank all the representatives for taking the time to appear before the committee to speak on issues around penal reform. This sub committee is looking at penal reform and, specifically, at backdoor strategies to reduce imprisonment such as programmes on earned temporary release, how to reform remission on parole systems and so on. We are particularly interested, therefore, in prison conditions in so far as they impact on the management of release and structured release and we are also interested in care after prison and specifically in the resettlement of offenders. It is very instructive for us to hear from all of the representatives of their wide experience and expertise.

I have a couple of general questions. The first is directed to Care after Prison and the Irish Association for the Social Integration of Offenders Limited. We heard earlier from the proba-



tion service and the Irish Prison Service of the new pilot community return programme. We understand it applies to those who have got sentences of between one and five years. Mr. Paul Mackay specifically said that those serving sentences of under 12 months do not tend to have direct engagement with the Probation Service. What is the best way to engage with those on shorter term sentences? I was very impressed by what we heard about the community return programme and I would support Mr. Paddy Richardson's point about expanding it but how then does one deal with the shorter term offenders? Should a different type of programme be developed for those serving shorter sentences? Should they be diverted away altogether, as some of the representatives have recommended, and, if so, is legislation required?

I would be interested also to hear the inspector's views on issues on prison conditions. From reading his reports, it is clear that sometimes it is the shorter term prisoners who have been most directly impacted because they are not in long enough to be settled in cells. Often the most horrific incidents of abuse or fatalities have happened to people who have just come into the prison. Does he wish to comment on shorter term prisoners?

**Chairman:** Does Mr. Mackay wish to respond?

**Mr. Paul Mackay:** When short term prisoners, who have been in prison for six months to a year, get out of prison and are prepared to get involved with us, we invite them to provide a plan for themselves. Therefore, they decide what they want to do or what their needs are. When we get that plan or information from them, we endeavour to provide the services that they need. We do not dictate to them. They effectively dictate to us what their needs are and we, hopefully, can provide some assistance to them. That is our model. As I have said, ours is a pilot project - we are only four months in being - and we are in the early stages of it. We have 59 people on our books currently. This is how we see our programme at the moment and we hope to develop it in the future.

**Mr. Paddy Richardson:** Any suggestion we would make about return to community and early release must be underpinned by, as we mentioned, the need for the co-ordination of other services and more communication between services. This must also be backed up with a media campaign to keep the communities accepting people back informed, because we do not want sensationalism or other issues to arise. In our view, the preparatory ground must be addressed before the proposal can be put into effect. However, the sooner that happens the better. My colleague, Mr. Owens would like to address assessment.

**Mr. Barry Owens:** We must be clear about what we mean by "short term" - from zero to 12 months for instance - because a minimum time is needed to work with people who are in prison. If we target from six to 12 months, we can probably work with that group but before that prisoners are moving through the system too quickly for effective planning to take place. All kinds of things fall into place or questions can be asked about each group. For example, for the six to 12 month group, reassessment planning can be put into effect and certain short-term courses could be delivered and connections with colleges and programmes could be created so there would be true care from the prison to the community, which would provide a more stable re-entry into the community. That is one practical outcome that could result.

Before six months, there are other ways to divert people. At a recent meeting in Cork, we were told that many of the short term offenders in Cork prison are not in prison for dangerous offences and they could be diverted. Therefore, we could look at diverting people who are in prison for less than six months and putting something in place for those in prison for more than six months.

**Chairman:** Mr. Mackay said that young short-term prisoners have the highest rate of re-offending. We were told by the group that presented to us this morning that many of those in prison are young men who are disposed to violence for no apparent reason. We are looking at the issue of the growth of violence in society and considering why it is we see so many acts of violence. These sociological-type issues all seem to be linked.

**Ms Denise Coulahan:** In my experience of working with the Care after Prison, CAP, project, I have been working with clients who have been involved in gangland violence. Some of these are very young people in their late teens - 17, 18 or 19 years - and are involved in serious instances of violence. I agree with the Chairman that there is a circle of violence. We find that they have grown up in that environment and it is the norm for them and they get involved in events that are beyond their understanding. Then they come in to us having got themselves into a situation where they are fearful, perhaps because they are trying to back away from the gang with which they have become involved or the violence they have seen. They are fearful for their safety. We have come across quite a few such issues. However, those who come to us recognise their behaviour and the violence within their communities that has led them to become involved and they are keen to move away from that.

**Chairman:** That is interesting. Does Mr. Justice Reilly wish to come in on this?

**Mr. Justice Michael Reilly:** I agree that it is difficult to deal with short term prisoners. With more long-term prisoners, the integrated sentence management that has been rolled out in prisons makes it possible to plan for the person's time in prison and for his or her reintegration into society. However, where somebody is in prison for only a short period of time, three months or so and that reduced by 25% before the sentence commences, the period in question is very short. I have no doubt that the service providers in prisons would find it very hard to plan anything for those prisoners. Perhaps some of these people would have literacy problems or the like. As we all know, a certain amount of time is needed for any programme. First, one needs to formulate a policy and then time is required to bring that policy to fruition. Therefore, I have no doubt that the service providers find it difficult to provide programmes for short term prisoners.

**Senator Martin Conway:** I have a question for Mr. Justice Reilly. Please forgive my lack of knowledge, but does he have any role in the case of juvenile detention centres?

**Mr. Justice Michael Reilly:** No. My obligation is to inspect prisons, of which there are 14 in Ireland. The closest I get to the juveniles is St. Patrick's where there are 16 and 17 year old prisoners. Today, there are approximately 37 prisoners in that age category in St. Patrick's.

**Senator Martin Conway:** Does Mr. Justice Reilly inspect the female sections of the adult prisons also?

**Mr. Justice Michael Reilly:** Yes I do, but they do not have 16 or 17 year old girls in them.

**Senator Martin Conway:** I know that. I was just seeking clarification.

**Mr. Paul Mackay:** There is pressure from peers within prison for inmates not to engage with prison authorities while in custody. We also find that a number of these young people have grudges against the State, usually as a result of their relationship with State bodies and authorities over a period of time. We find this is a major issue and when they are released they do not like to be too involved with State bodies and bureaucracy.

**Mr. Paddy Richardson:** Our key partner is the probation service, whether dealing with

those in the community or in prison and one of our criteria for referrals is that they must come through that service. The probation service carries out the various assessments required before referring somebody to us, which helps in selecting who is ready to move on. From that point of view, we are less likely to have issues, which is not to say that issues do not arise - of course they do. However, this partnership helps to minimise risk.

I do not want to harp on the issue of the return to community, but for years the probation service and all of the 50-odd agencies funded by it have been doing terrific work. However, we must be very modest in how we do this work, because communities do not always accept that these people are coming back into it. Communities must take responsibility for this reintegration in some way, but we need positive media around that. Therefore, we have decided not to engage further with RTE, for example, on its "Prime Time" programmes until we establish some policies around how that will be managed. I will not make further comment on that because we are working on the positive aspects of it. The media needs to be positive on that.

**Mr. Paul Mackay:** In our situation, it is a partnership between the Carmelite community, the City of Dublin YMCA and the community. We are only looking after postal districts Nos. 2 and 8. We are trying to make it very much a community effort and we are calling on the community to support their own within the community.

**Mr. Barry Owens:** There is a lack of trust among prisoners but we believe and it is our experience that we can positively engage with them. It is a matter of how it is done and of having enough time to work with them before they are released. It is our experience and we believe that it is possible to engage positively with prisoners. It is about how to do it, especially if we have enough time to work with them before they get out. There are ways to look at this. If a person comes in contact with the criminal justice agencies, they usually have a set of avoidance goals, which are things not to do: do not drink, do not take drugs, and avoid certain places. That is really the strategy on release from prison. There is something else which has to go with that, namely, approach goals. We have avoidance goals in this country, but perhaps we are missing another type of thinking, which is the reason someone is motivated to engage. That kind of thinking is found throughout different programmes like Building Better Lives and strength-based approaches that have been found to be very good elsewhere and that are in this country, but we need to develop that thinking. There are ways to engage with people, but we have to look at that. We believe it is possible.

**Senator Ivana Bacik:** I have another question for the IASIO, which is about the mapping of community and voluntary activity. Is it the organisation's concern that there is a duplication of services, or is the concern that there is a lack of knowledge about what is being offered? Mr. Owens was saying that there are groups like Care after Prison which are operating in local areas and which are more likely to get buy-in from local communities, but that no one has done systematic mapping. That is interesting in itself. Clearly that should be done if it has not already been done.

**Ms Adrienne Higgins:** In BITC we have done a mapping process in respect of the community involvement for businesses, which looks wonderful. It is a map of Ireland whereby the user clicks on a county and is informed of all the volunteer and community services that businesses offer to their local communities. We thought that something similar could be done for inreach services to prisons throughout the country. We could list the prisons on a map of Ireland, click on the prison and see what services are being delivered into that prison, and then we could see where the gaps are and where there is an overlap. The problem at the moment is that it is a disparate service throughout Ireland. We have no idea what is being offered where,

for how long, by whom, who is funding it and so on. We believe it would be very cost-effective if there was a mapping process or some way of integrating all those services.

**Mr. Barry Owens:** It is worthwhile taking a strategic view of the community and voluntary sector as it relates to penal reform. That is an element of it. Penal reform is carried out by the criminal justice agencies and if we are to change one part of that, then an associated thing happens in the community. The way the services are spread around the community differs, as Ms Higgins was saying. At the moment, we are not sure about it. I do not think anyone has this list of services. When we look at services, we do not just look at what service exists, but when it exists, and how many hours of addiction services exist per prison and per head of the population. That is a very interesting thing. Why does it differ from county to county if the same service is delivering it?

**Senator Ivana Bacik:** We heard earlier from the Probation Service about difficulties with accessing community work opportunities. Clearly that will differ depending on local community arrangements and contacts.

Mr. Owens helpfully mentioned experience elsewhere and different models from other countries. Can he point to another country that has done that mapping or has integrated its services in a better way?

**Mr. Barry Owens:** The Third Sector works in criminal justice in the UK. We know of different agencies and I am not quite sure if there is one agency that controls everything. It is how they co-ordinate, share information and establish best practice to address economies of scale, training and all kinds of things. When we were looking at this, we looked at the UK.

**Ms Adrienne Higgins:** We looked at the Third Sector and the Ministry of Justice, and our idea came from there and from the mapping done by BITC. It does not exist here and perhaps there is a possibility that it could.

**Senator Ivana Bacik:** I have one other question for Mr. Justice Reilly about people coming to the end of their sentences and approaching release. I do not know how much he can say, but when he has been interviewing prisoners about coming to the end of their programmes, how much support do they have generally? I am sure there is a difference between short-term and longer-term prisoners, and those involved in the integration sentence management and so on. Does he think enough is being done at the moment and whether there are enough supports for prisoners within the prisons towards the end of their sentence?

**Mr. Justice Michael Reilly:** I do not. If there were enough supports, I do not think that we would have the rate of recidivism that we do have. That is the milestone. We need an integrated policy between all of the service providers. A person with a chaotic lifestyle who has been on drugs all his life and who ends up in prison needs very different intervention and support than the person who has been stealing cars but who leads a relatively normal lifestyle in his community. One size does not fit all. While we might have excellent supports for one type of prisoner, his friend in the cell next door who is going back to a very chaotic lifestyle might find that very difficult.

We all tend to gravitate to our comfort zones. I have no doubt that it must be very difficult for prisoners who leave prison, even with the supports they have. If they have to go back to those comfort zones, it must be difficult for them not to get back to the way of life that they had. Undoubtedly, a huge amount more could be done, although a huge amount has been done.

Many prisoners leave prison with nowhere to go. They have nowhere to live. In fact, that might not be as bad for short-term prisoners because it is not long since they have left a home, but for long-term prisoners it is a considerable problem. It is magnified in the case of those who have been sent to prison for certain specific types of offences. Living in the community will be difficult for them, but it would be twice as difficult if there was a perception in the community that these are dangerous people to have living around them.

**Deputy Jonathan O'Brien:** The Care after Prison submission referred to a lack of legislation for prisoners coming out for things such as accessing insurance and spent convictions. Are there any other legislative issues which would help prisoners coming out to reintegrate into the community?

My second question is for Mr. Justice Reilly. To what extent is the lack of supports available down to a lack of strategic planning or resources? Is it a mixture of both?

**Mr. Paddy Richardson:** There is one piece of legislation that we have called for on other occasions, which is the expunging of sentences in certain categories. I do not think we need to emphasise the point in respect of the difficulties caused when people are criminalised from a very young age and have to carry that for the rest of their lives. It is the single greatest barrier that we have for progressing people into employment. There are also travel limitations. I know that it has been addressed and I think Senator Bacik mentioned it last year at a meeting here.

**Senator Ivana Bacik:** It is in the Government's priority legislation.

**Mr. Paddy Richardson:** That is brilliant. Does the Senator have any idea when that might become a reality?

**Deputy Jonathan O'Brien:** I think it is on the A list at the moment.

**Senator Ivana Bacik:** It should be enacted before the end of this Dáil session, along with the legislation on the Inspector of Prisons.

**Chairman:** Our problem with this committee, as Deputy O'Brien has indicated, is that we do not have enough legislation to deal with at the moment. Is that not right? I jest.

**Deputy Jonathan O'Brien:** I am interested in the spent convictions, because there is a debate about the cut-off point for them. I would be interested in hearing Mr. Richardson's opinion on what the cut-off should be, or if there should be any.

**Mr. Paddy Richardson:** I was in front of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights in 2003 and we mentioned it then. We gave examples of the issues and difficulties that surround it. We did not feel then that we were in a position to say what the cut-off point should be, and perhaps we are still not in a position to say so. Our view is that risk assessments must be carried out in various categories. We believe that is the case for all levels of offence. We would be quite happy as an organisation to see this being phased in so that people can accept it. There are categories of offence, from one year to five years, that could certainly be considered to be expunged after that period.

If a person is in prison with a criminal record because he or she drove a car or did not pay a TV licence, for God's sake, he or she might as well have been in for a capital offence; it is the same difference. We have to weigh it up and balance it, in my view. Mr. Owens may have another opinion.

**Mr. Barry Owens:** It is something we debate. It is very difficult. We have gone back and forth on the issue of expunging. One way of thinking is that if a certain amount of time has lapsed, there should be expunging, but for very serious violent or sexual offences, there is another argument that maybe we should never forget. Getting the balance between those two things is difficult. In general, for day-to-day offences, blanket bans are usually counterproductive. Studies tell us that most people stop or change their pattern at some stage. For example, the area of taxi regulation has been interesting recently, with the introduction of bans against serious offenders. In our thinking, when a person applies for a taxi licence, being judged on a case-by-case basis means that a criminal record will be noted, but it allows him or her to present mitigating factors that may also be judged.

**Ms Denise Coulahan:** In support of Mr. Richardson, we have a lot of clients who have trouble accessing education and employment opportunities because of previous convictions even though, from the time of the conviction to the present day, they have never re-offended. They have made efforts in their lives through rehabilitation and re-integration into the community, but they feel everything is against them. They cannot seem to access these services or get on with their lives.

As mentioned by one of the Deputies, one of the biggest issues for our clients when they leave prison is accommodation. They will often come out and find themselves homeless. We have had clients who are sleeping on the street or are in hostels. There is a lack of resources from our point of view. There are not enough beds. If they do not get down to the homeless unit by a certain time, there will be no beds there, and that is it. They are on the street for the night. Often, they are with three people in a room, and people who are on a drug or alcohol recovery programme are often put in the same room as people who are still active users. That is very traumatic for the person who is going through recovery and trying to stay off the drugs or the drink. They will come to us, saying they cannot stick it any more. Certainly, we identify the lack of resources as a problem.

**Mr. Barry Owens:** There is a need for clarity in legislation, including the Social Welfare Acts, about access to rent allowance. These are different things that affect returning prisoners. There is a lack of clarity about the application of that in different parts of the country. If a prisoner is released to an urban centre, he or she will have one set of experiences, while another prisoner released to a smaller town or rural centre will have a different set of experiences. There seems to be scope for local authorities to interpret the legislation differently. That gets in the way of stable resettlement. It is the same with access to medical cards. We can consider all of those things. Access to services and the procedures among Departments are issues that could be clarified.

**Chairman:** Knowing how to do it.

**Mr. Justice Michael Reilly:** Deputy Jonathan O'Brien asked whether I would address part of his question. He asked whether the lack of support was due to a lack of planning or resources. I will deal with the second thing first. Of course there are never enough resources available. Everyone suffers from that. With regard to a lack of planning - this does not really fall within my remit, but I will still comment on it - I think there probably is not enough planning for prisoner releases. A person who is released is going from a closed institution to open society. If, say, a person has been on methadone in prison, it is essential that he or she makes contact with a clinic in order that he or she can continue with the programme on the outside. This happens in 99% of cases. However, we need even more planning than that. We need to ensure the person actually goes to the clinic. If not, he or she will be back in prison within a short time. Some of

the agencies work both inside and outside the prison, but I wonder - I am only asking the question - whether there is sufficient contact among all agencies, or whether they are all working, to a degree, independently of one another. I often feel there is a lack of joined-up thinking or sufficient contact among the agencies.

**Mr. Paul Mackay:** A number of prisoners are allowed out on temporary release to make way for committals. They are effectively let out two or three weeks before the expected date, and they just go out on the street without proper planning or facilities available to them. This is a major issue, especially for the short-term people.

**Mr. Barry Owens:** In the ISM community integration plan, there are things in seed form that could be developed. Some programmes or mentoring services use a multidisciplinary format for referral and discussion of cases. The problem is that it does not happen for every prisoner. In some participating prisons, some of these resources or services are available, but they are not spread evenly. It is the same point that the system is different from prison to prison.

**Senator Ivana Bacik:** Deputy O'Brien mentioned legislation. We are particularly interested in finding out whether legislation should be changed or established to assist in developing the strategies we are talking about to improve the structured nature of release. I notice that the submission from the Irish Association for the Social Integration of Offenders mentioned a number of examples from elsewhere, such as, for example, the bail supervision and support programme, the drug treatment and testing order from Scotland, and the Finnish model of the different types of conditional and unconditional imprisonment. Is there any specific legislation that could be necessary to underpin any of those?

Something we talked about in this morning's session was the benefits of the flexible model we have in the temporary release legislation under which the community return programme is being run. Is it better, therefore, to keep it flexible by not putting anything new into primary legislation? This is something we are teasing out. The drug courts are the closest thing we have to the Scottish model, but that is very much a pilot project.

**Mr. Barry Owens:** It is possible to grant people temporary release, but there are some who will return with 20-year sentences made up of discrete parts. What happened there? One can understand each case in terms of something that happened. A system of bail supervision and support can address, at the early stage of the process, how to stabilise and divert released prisoners, which is interesting to us.

**Ms Adrienne Higgins:** The same could be said of the drug treatment and testing system, which is a sentencing option in Scotland that seems to work. It diverts people who are addicted to drugs away from going to prison and into a programme they actually need.

**Senator Ivana Bacik:** That is based in legislation?

**Ms Adrienne Higgins:** Yes.

**Senator Ivana Bacik:** That is the difference.

**Chairman:** In Portugal, I understand, the use of certain substances on certain occasions has been decriminalised. That is something we must consider at some stage.

I ask Mr. Justice Reilly to comment, if he can - we understand if he cannot - on the issue of mental illness in prison. This has come up time and again with various people we have met.

**Mr. Justice Michael Reilly:** It is a considerable problem, not only in Ireland but throughout the world. At the moment, one section of Cloverhill Prison is a high-support unit for the care of these people. My view is that mentally ill people should not be in prison at all. Unfortunately, the only place they can go if they do not go to prison is to the Central Mental Hospital and it has approximately 100 beds which are always full. This means one will have people with mental problems in prisons. It is a significant problem and one which I have stated I will deal with in a report to point the way to best practice. However, I have been waiting because I took the view I should not waste time doing that because I have been waiting to see what comes out of the commission of inquiry set up to examine the death of Gary Douch in Mountjoy Prison.

The terms of reference of the commission are clear. The chairperson of the commission is charged with examining a wide range of things. Since I have such limited resources I took the view it would be a waste of time for me to proceed. I suppose nothing is ever a waste of time but I believed I should wait until that commission reports. I am unsure of the current expected timescale of that report but from what I heard some time ago it is not too far way. I have committed myself in a report to stating that if it does not deal with the problems in prisons, I will revisit the matter. It is a considerable problem. There are people in prisons who suffer from serious mental health issues.

**Chairman:** Can you give us any examples of what you found in your inspections of prisons in this regard or would you prefer not to do so?

**Mr. Justice Michael Reilly:** I can tell the committee what is in one report but that is as much as I can say. While I refer to this case I would prefer for it not to be taken as a sensational case; I would prefer for people to take this as what I found. In one particular prison, we came across a person who was unable to control themselves in any way. They could not control their bodily functions or anything. At times, this person was lying on the floor of one of these rooms in the prison.

The committee should not forget that those who must look after these people are disciplined, trained prison officers. The training for a prison officer is totally different from that of a nurse in the Central Mental Hospital. They have nurses in the prisons but they cannot be there 24 hours per day. Due to the nature of prisons, this person was locked in a particular room. The prisoner had to be locked in a room for their own safety, not from themselves but perhaps from other prisoners. We were met with a very distressing sight. I held discussions with the management of the Irish Prison Service, IPS, and with people in the Central Mental Hospital, CMH, and that prisoner was taken into the CMH. Everyone agreed with it. I am not in any way attaching any blame to the prisons because the prisons must take in these people but, at the same time, these people should not be in the prisons. Likewise, if there are no secure places to keep these people, that is no reason for letting them out onto the side of the street and saying that they suffer from a mental illness. There must be some other way of dealing with them. It is not the fault of the prisons but of a system that has always been in place.

**Chairman:** This has arisen from time to time with various groups we have met to discuss this subject. I wish to play Devil's advocate for one moment. There is a school of thought - Mr. Richardson adverted to it diplomatically earlier - which holds that we are nowhere near hard enough on prisoners and that if prison was really a tough regime, people would have no wish to go back in again. This school of thought exists and, even today, someone offered such a view to me when I said we were meeting to discuss penal reform. Does the delegation wish to comment on this? I note that in certain jurisdictions in the United States those responsible have changed from this policy because the prisons were getting full and they began spending more on univer-



sities than on prisons. Some states have begun to change their policy from being really tough. That view exists and I wish to give the delegation an opportunity to comment on it.

**Mr. Paddy Richardson:** I will make a quick comment on it. I am on the board of the Irish Penal Reform Trust. In a recent report at the Irish Penal Reform Trust, IPRT, annual general meeting, the Minister stated that prison is the punishment and that anything else is dehumanising people. If one dehumanises people, what can one expect when they come back out but for them to act inhuman? Therefore, I do not agree with that school of thought. I emphasise again, for the third time today, that the discourse in the public domain must change through good media management and the positive things that exist and which can contribute to the communities by bringing people back out and making them gainfully employable and re-integrated. I could go on at length about the benefits of it to everyone, including the Exchequer, the communities, the people involved and the families involved. The number of people affected by someone being in prison with a criminal record is extensive and includes not only the prisoner but his or her family and the wider community. I am not in favour of dehumanising people. There should be punishment by all means with prison but then ex-prisoners should be reintegrated.

**Mr. Barry Owens:** Punishment and penology is debated in the media from extremes and using the worst case scenarios. As practitioners, we are always guarding against the worst case scenario. We try to imagine resettlement and we are handling uncertainty; perhaps this is what the public picks up on and this is what is reported. The public does not have a true picture of what it is like or of the people involved. They have a picture of our worst offenders and the most dangerous. Some of these people are dangerous and should be separated from the rest of us and we should be protected against them. However, I have met one or two who have said to me that prison is a break. It is a measure of the disadvantage in society if they believe prison is a break. Some take the view that they can get a rest or go to the gym and get three square meals per day, which they cannot do elsewhere. Usually, these are young men but prison becomes more difficult with age and there is no bravado attached to it. For everyone, even the hardened criminals and those who have done heinous things, it begins to wear 15 years into a sentence; these people are physically changed and altered and it is certainly a punishment.

**Mr. Paul Mackay:** I share the view that people are there as punishment and not for punishment and that they are human beings and should be treated accordingly. One of the issues is that they are all treated the same in the media. This is especially the case when a major case comes along. Often, there is considerable publicity and unfortunately all prisoners are put into the same category and not treated separately. This is a problem.

**Ms Adrienne Higgins:** I wish to add a comment. I gather the Chairman was alluding to Texas. The policy did not work there and they have since revamped everything and come up with a penal policy that is based on the Finnish model, which is working a good deal better.

**Chairman:** We have heard about that.

**Ms Denise Coulahan:** As everyone else has said, prison is the punishment. People's perception is an issue. Mr. Richardson referred to the media and how we must put out a positive message by engaging the community in services and in order that they can be a part of the rehabilitation of an ex-prisoner. This is because more than likely when a person is released they will go back to the same community where their family is situated. It is not only that person who is affected. The community and the family are affected as well and there are wider implications. The number of people affected by one person going to prison is considerable. Should these people be penalised for the rest of their lives?

PENAL REFORM: DISCUSSION (RESUMED)

**Mr. Justice Michael Reilly:** I was a practitioner for many years, a judge for 26 years and I have been an inspector of prisons for four years and in that time I have come across no one who has been improved by going to prison.

**Chairman:** That says it all. Thank you. We visited Mountjoy Prison as a committee. We commented on and commended the efforts being made to improve the situation there. We would encourage that improvement to be carried out in other prisons. We will do anything we can as a sub-committee to prevent people going to prison or reoffending and keep them in society. That is the objective of these hearings and the report that will be launched. If everybody is satisfied we will draw the proceedings to a conclusion.

I thank everybody for coming here today and giving of their time and expertise. We appreciate it because we know everyone is very busy. I congratulate the delegates on the work they do. We are aware of the tremendous work done by Mr. Justice Michael Reilly in his time as Inspector of Prisons and Places of Detention. We commend him on it and support him in his work. If he wishes at any stage to make further submissions to the sub-committee, he should feel free to do so. If something occurs to him which he feels might be helpful to us in our work, I ask him to communicate with us.

The select sub-committee adjourned at 3.40 p.m. *sine die*.

# DÁIL ÉIREANN

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## AN FOCHOISTE UM ATHCHÓIRIÚ AR AN GCÓRAS PIONÓS

### SUB-COMMITTEE ON PENAL REFORM

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*Dé Céadaoin, 24 Deireadh Fómhair 2012*

*Wednesday, 24 October 2012*

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The Joint Committee met at 2 p.m.

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#### MEMBERS PRESENT:

Senator Ivana Bacik,	Senator Katherine Zappone.
Senator Martin Conway,	

DEPUTY DAVID STANTON IN THE CHAIR.

**Penal Reform: Discussion**

**Chairman:** The purpose of today's meeting is a discussion on submissions on penal reform, including information on international best practice. I thank all of the witnesses for attending today's meeting and for the submissions which they previously supplied to the sub-committee. The sub-committee will first hear a brief opening statement from each of the witnesses, following which there will be a questions and answers session.

I welcome Mr. John Costello, chairman of the Parole Board, Dr. Kevin Warner, researcher on penal policy, Fr. Peter McVerry and Mr. Eoin Carroll, Jesuit Centre for Faith and Justice, Dr. Ciaran McCullagh, UCC, and Professor Ian O'Donnell, UCD. Members have received the submissions and any opening statement received has also been circulated. The running order is as I listed the delegates.

Witnesses should note that they are protected by absolute privilege in respect of their evidence to the sub-committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or persons or an entity by name or in such a way as to make him, her or it identifiable. Members should be aware that, under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the Houses or an official either by name in such a way as to make him or her identifiable.

We established the sub-committee on penal reform earlier in the year, have held a number of hearings and done some work. We plan to travel to Finland in the next number of weeks to see what has been done there. We are told the sector exercises best practice. We are interested in obtaining the advice of the delegates before we go. The full committee will visit Cork Prison tomorrow and we have already visited Mountjoy Prison, St. Patrick's Institution and Wheatfield Prison. We plan to visit as many prisons as we can in the near future.

We want to be challenged. I note from the submissions that the delegates are in a challenging mode. However, as we want to challenge the system rather than just ourselves, I look forward to our interaction with them.

**Mr. John Costello:** I thank the Chairman and sub-committee members for inviting me to attend. I would like to summarise my submission which I sent to the sub-committee in August.

When I took over as chairman of the Parole Board July 2011, there were regular delays in reviewing the cases of prisoners. From 2013, however, I am hopeful that all prisoners will be reviewed by the board on time. If there are delays, the individual prisoner will be notified and informed when the review will take place. From feedback we have received, it appears that many prisoners are not fully aware of the work of the board. Accordingly, in the next 12 months I hope to visit all the prisons and have meetings with the relevant prisoners to inform them about the work of the board. Only today we had a board meeting in Arbour Hill Prison and I had a meeting with a number of prisoners about the parole process. I hope to speak to prisoners in Wheatfield Prison and the Midlands Prison in November.

There is no formal training of board members before they are appointed to the Parole Board. I have introduced a system whereby the board is addressed, at most meetings, by a member of

the Irish Prison Service, the Probation Service or the psychology service on relevant matters. One of the problems we have identified is that there is only a small number of fixed-term prisoners participating in the parole process. Most of the prisoners participating are serving a life sentence. The following initiatives might be helpful to encourage these prisoners to participate in the process.

The Prisons Act 2007 provides for 33% remission for those who engage with the rehabilitation services. This provision has been used infrequently and the Parole Board could play an important role in this area in terms of enhanced remission. Many prisoners sentenced to life or a long prison sentence are not aware of what steps they should take to improve themselves while in prison. The initiative of the integrated sentence management scheme is to be welcomed, but it should apply to all long-term prisoners, especially those serving a life sentence.

The Minister for Justice and Equality, Deputy Alan Shatter, has suggested prisoners might be reviewed after four or five years by the Parole Board. While welcoming this idea, the board could not review greater numbers of prisoners without increased resources, as well as without increased resources for the probation and psychology services which must prepare reports for it. When a prisoner is released on remission, it is not possible for supervision orders to be made. It is only when a prisoner is released on parole or given temporary release that supervision orders or conditions can be made. This is a problem which causes complications in practice.

I will mention some points on life sentence prisoners. It is important that such prisoners are given a sentence plan from the start of their sentence. As mentioned, it is hoped the integrated sentence management scheme will deal with this matter. The Parole Board only reviews life sentence prisoners after they have served a sentence of seven years, but it might be helpful for it to review them after four or five years. However, a life sentence prisoner was recently granted parole, with the Minister's consent, after serving a sentence of 12 or 13 years. He was a model prisoner and quite exceptional in how he had rehabilitated during his prison sentence. He has offered to speak to other life sentence prisoners when we are addressing them in the next 12 months or so.

Life sentence prisoners can become institutionalised if they have served 15 or 16 years or more in prison. The Parole Board, in conjunction with the Irish Prison Service, should give special attention to such prisoners. If a prisoner in the United Kingdom is sentenced following a murder conviction, he or she normally receives the benefit of a tariff, or a minimum sentence which the court directs he or she must serve. If he or she subsequently transfers to Ireland and continues his or her sentence in Ireland, he or she loses the benefit of this tariff, as Irish law applies and there is no recognition of tariffs imposed by the English courts. The Law Reform Commission, in a report earlier this year on mandatory sentencing, recommended that courts might be given discretion to recommend a minimum sentence which persons convicted of murder might serve. There is merit in this suggestion, but sentencing guidelines would be essential if such reforms were to be introduced.

The privacy of prisoners should be respected after they have been released from prison, but quite often the press have no regard for these issues. On a related point, elderly prisoners and prisoners suffering from intellectual disabilities should receive special treatment in prison. More resources are needed to assist the Probation Service when helping prisoners who are released to reintegrate into society. If the numbers of prisoners are reduced in the prisons, with a subsequent saving of money, such savings should be transferred to the Probation Service.

The Minister has confirmed that the Parole Board will be placed on a statutory footing and

mentioned that he hopes the legislation will be introduced in 2014. However, if this reform is introduced, there should be an appeals process from the board to a tribunal or other appropriate body. I also have a concern that when the board is placed on a statutory footing, there could be increased demand from prisoners for legal representation. I am in favour of legal representation in some but not all cases. There could also be a greater number of judicial reviews of board decisions and these matters would have to be examined.

I welcome recent initiatives such as the community release scheme, the new incentivised regimes policy and the new integrated management programme. I also welcome the community integrated plan which will be developed nine months prior to the release of a prisoner back into the community. I congratulate the Irish Prison Service, the Probation Service and the psychology service for all the excellent work they do.

**Dr. Kevin Warner:** I thank the members of the sub-committee for the invitation to attend. My submission makes the case that there are multiple aspects of the prison system crying out for reform. We can see this whether we look at the overall or macro aspects of the prison system, or whether we look at what happens to individual men and women in prison, in other words, when we look at the conditions in which they are held, what it is like to be in a typical cell and so forth. In all these aspects of the prison system I stress that there are very strong models for doing things in a far better way such as, for example, in the Nordic countries. To show how things could be done differently I incorporated an article on the position in Denmark, Finland and Norway in my submission. The submission points to where reform is urgent in making 13 recommendations, all of which are eminently feasible. With every one of these proposals for improvement, we can learn lessons from at least one Nordic country and usually from several of them.

I wish to highlight four proposals for reform which relate to the shape of the overall prison system and, in particular, the way we plan the prison estate. We could and should plan for a reduction of at least one third in the prison population. This would merely bring Ireland closer to the rate of incarceration it consistently had up to the mid-1990s, or near to rates in Nordic countries today. We should have at least one third of that reduced population in open prisons, as is the case in Denmark, Finland and Norway. Ireland has only 5% of the prison population in open prisons such as Loughan House and Shelton Abbey.

There is another side to the coin in reducing the prison population. We should think in terms of having two thirds of all sentences served in the community rather than in prison; the rate currently stands at only about 30% in Ireland, but it is 67% in Sweden and 68% in Denmark. We should have much smaller prisons, as is generally the case in Nordic countries. In Ireland we are clearly incapable of operating prisons with more than about 150 prisoners without resorting to extensive, very destructive and costly segregation measures. Every one of the nine largest prisons, including Arbour Hill Prison, has severe segregation measures and it seems these systems do not work.

Looking more closely at regimes, by which I mean the way people in prison are treated and the conditions in which they are held, I would mention five serious deficiencies as I see them. First, 60% of those in prison in Ireland share cells, in contravention of the European prison rules. Second, as a consequence of that, most prisoners must go to the toilet in the presence of others. I cannot put it any more delicately than that. Third, lock-up time is excessive for the great majority in prison. "Excessive" is the word the Whitaker report used about lock-up times in 1985 and matters have worsened rather than improved since then. Fourth, an utterly inadequate gratuity paid to prisoners is due to be cut by an average of 28%. Fifth, access to

structured activities has been greatly reduced in prisons in recent years due to a variety of factors. I will give just one example. Up to 2008, 125 or more long-term prisoners were involved in third level study each year, mostly through the Open University across the prison system but also through an NCAD course in Portlaoise. Today, that has been reduced greatly, to approximately one third of the previous level. I would be happy to elaborate on any of those points or on any matters in my submission.

**Fr. Peter McVerry:** I thank members for the opportunity to address them. I visit the prisons on a regular basis. I spend most of my weekends in the prisons and I spend my time meeting prisoners, so that is the perspective I am coming from. I would have no hesitation in saying that from that perspective, our present prison system is a total disaster.

The mission statement of the Irish Prison Service is to provide safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities. The only word in that which is actually appropriate is "secure". Our prisons are not safe. There is very little dignity of care and there is very little rehabilitation for the majority of prisoners. I refer to something in the report by the Inspector of Prisons on St. Patrick's Institution which is very instructive about the attitude towards prisoners. He said he found that the prisoners there, who were not allowed to wear their own clothes, were wearing prison clothes which were ill-fitting, torn, had holes in them and were dirty. To give prisoners clothes like that is a symptom of the attitude that exists towards prisoners - they are of no value. There is no respect for the prisoners and the majority of prisoners feel that. Even though there are some wonderful prison officers who really care and who try very hard, the system itself communicates a total lack of respect and care for prisoners.

The most fundamental problem in the prisons is overcrowding. Until that is addressed, it is extremely difficult to deal with the other serious issues such as rehabilitation, drug misuse and violence in our prisons. For example, when Wheatfield Prison opened in 1989, it was a model prison. It had 320 cells for 320 prisoners and it had constructive activity for almost all of those 320 prisoners. Then it started putting bunk beds into the cells. Most cells in Wheatfield are double now. The number of prisoners rose to 500. A new extension was opened and the number rose to more than 700, but not one single extra classroom or workshop was built. That is a symptom of the way the prison system has been going. We could now describe the prison system as a warehousing of prisoners. As long as the problem of overcrowding exists, it is difficult to deal with other problems.

The Irish Prison Service has repeatedly stated that it does not have control over the number of people going into prison. I accept that, but it does have control over the number of people coming out of prison. One thing we could do immediately, which was recommended by the Whitaker committee in 1985, is to introduce one third remission. I would go further, but politically that may not be possible. One third remission for good behaviour would immediately free up a considerable number of spaces. It is not a hugely radical proposal. In the UK, which is hardly a model of good penal policy for us, there is 50% remission, but during that 50% remission time one is under the supervision of a probation officer and can be recalled to prison if the supervision breaks down.

Approximately 80% of the people going into our prisons have an addiction problem and for many of them, that is the reason they are there. One way to ensure people do not go to prison is to deal with their addiction problems in the community. There are various ways to do that. The drug court is a small example but it is very limited. Nevertheless, if addiction facilities within the community are better, fewer people will eventually have to go to prison. Within

the prison system itself, there are nine detox beds for 4,500 prisoners, most of whom have an addiction problem. There are very few drug-free spaces in our prisons for those who are drug free. I personally know about 40 people - the number grows every month - who never touched a drug before they went into prison but came out addicted to heroin. They may be sharing a cell with a heroin user or they may be living within a drugs culture. The boredom and monotony of prison life, because there is very little for most prisoners to do, drives people to using drugs just to escape from that boredom.

There is a proposal - the Irish Prison Service may be thinking about this - that the medical unit in Mountjoy Prison, which is capable of accommodating maybe 50 to 60 prisoners, should be designated as a drug detox centre. When people have completed their drug detox, the training unit would be one option. They would move to an intensive rehabilitation programme in the training unit and from there they would be released on a phased basis, perhaps into day treatment programmes in the community. If we could deal effectively with the addiction problems of people going into prison, we would reduce the numbers going into prison enormously.

In regard to rehabilitation, there are excellent school and training facilities in most of our prisons but they are available only to a tiny proportion of prisoners at any one time. The profile of prisoners is well documented. They have low levels of literacy, are early school leavers, have few qualifications or skills, have a poor employment history and sometimes have a history of homelessness or mental health issues. We have an opportunity in prison, particularly for those serving longer sentences of 12 months or more, to try to address some of those deficiencies, but for the majority of prisoners it just does not happen, as they do not have access. They may have access to the school one morning per week and they may have access to a training programme one morning a week. The statistics we get from the Irish Prison Service are hopelessly unreliable. It will talk about 58% of prisoners attending school. That could mean attending school one morning per week but being idle and bored the rest of the time. It will talk about a certain number of prisoners attending a particular workshop, but if one goes to the workshop one finds that only a quarter of the prisoners who are supposed to be attending are actually there because it does not have the required number of staff due to the embargo on recruitment. Rehabilitation in an overcrowded prison becomes virtually impossible.

Integrated sentence management is the best thing I have heard of but, in reality and despite all the hype, it is not happening. The Irish Prison Service will attack me on that but, basically, it is not happening. If it is, it is happening for a tiny number of people. It has huge potential but it is not happening.

Putting people into 23 hour lock-up, as a huge number are, to keep them safe is inhumane. If one locked a dog in a cell for 23 hours a day, one would be reported to the ISCPA. It is just inhumane. I know prisoners who spent three or four years on 23 hour lock-up and were psychologically and emotionally disturbed when they came out of prison. It can only be damaging to a person. We cannot deal with the problem of violence until we deal with the overcrowding issue. Therefore, we are condemned to putting people into prison cells for 23 hours. The prison system is a disaster. A root and branch reform of attitudes, policies and procedures is needed.

**Chairman:** Does Mr. Carroll want to add anything to that?

**Mr. Eoin Carroll:** I do not want to take advantage of the time afforded to us. I understand that when members of the sub-committee travel to Finland, they will have an opportunity to meet Mr. Tapio Lappi-Seppälä who made a presentation at our conference last month. The achievement of political consensus is a central part of his thesis on how the prison population



can be reduced. There can be no political consensus in the absence of a culture of acceptance that this is a real issue. Perhaps this committee might examine how best to foster a culture in which political consensus can be achieved. The recent report on St. Patrick's Institution highlighted cultural issues on the ground, at the highest management levels of the Irish Prison Service and perhaps within the Department. Mr. Lappi-Seppälä emphasises that the reaching of political consensus has been of great importance in Finland. The Minister has asked a new working group to review penal policy. While that is to be welcomed, I am concerned that the group will not have sufficient time - it is due to report back by mid-2013 - and that its composition suggests it is heavily laden with departmental appointees, especially by comparison with the group established on foot of the Whitaker report.

**Chairman:** We will produce our own report. That might prove useful also.

**Professor Ian O'Donnell:** I would like to make three specific recommendations. They are all underpinned by the need to reduce the prison population without putting the public at risk, whether in terms of the extra burden of victimisation or additional costs. Before I outline my recommendations, I would like to make the observation that discussions about crime and punishment tend to have a circular feel to them. When I was compiling my submission, I was reminded that an Oireachtas sub-committee on crime and punishment had met and reported 12 years ago. Some of the observations made by that sub-committee are worth repeating. It is striking that despite the sub-committee's recommendations and the recommendations made by all committees in the last 30 years, the prison population is continuing to increase and the same kinds of recommendations are being restated. It is probably fair to say there is a reasonable degree of consensus about what needs to be done, which is to reserve prison for the most serious offenders or those who pose the greatest threat, to minimise the harm that incarceration poses to such persons and their families and to deal with as many people as possible in the community. The problem seems to be to obliterate the blocks in the way of progress.

It is worth running through a couple of the recommendations made by the previous sub-committee 12 years ago. There was consensus that greater recourse to imprisonment was not the only way in which the problem of crime could be addressed. That consensus continues.

There was a real concern about fine defaulters going to prison. It was suggested there should be a more effective and efficient way of imposing financial sanctions, recovering the moneys involved and reducing the burden on the courts and the prisons. Approximately 1,300 fine defaulters were committed to prison in 2007. That figure had increased to approximately 7,500 by last year. It accounted for almost half of the total number of committals, which is a huge problem. It was very pressing 12 years ago and is even more pressing today.

The idea that the number of prison places is in some way related to the crime rate was challenged vigorously by the sub-committee which drew the conclusion that the size of the prison population was, to some extent, a political calculation that lay within the power of our legislators. It is much more difficult to change the rate of crime. We need to recognise that these two things need to be separate. When that lesson was learned in Finland, it had a dramatic impact on that country's penal policy.

The sub-committee also recommended that statistical models be used to help us to understand how many prison places were required. Such models would require a detailed understanding of sentencing practice. There is a huge informational vacuum in that regard. Interestingly, the sub-committee noted that as Ireland was then in the happy position of lagging behind other European countries, we had the fortune to be able to design a system that prevented some

of the unintended harmful consequences of penal expansionism. However, we did not seize that opportunity. The prison population has increased substantially since the sub-committee reported 12 years ago.

I have identified three areas where swift and effective action is possible. I will run through them briefly and we can elaborate on them in our discussions.

First, we should support temporary release on humanitarian grounds or for vocational training purposes, which used to be part of the prison system, particularly around Christmas time when there was a willingness to allow prisoners to go home. They almost always came back on time and if they did not, they generally returned shortly afterwards. It was uncontroversial and attracted very little adverse media comment. There were some years in the mid-1990s when almost one in five prisoners was given temporary release at Christmas. Last year one in 25 prisoners was given temporary release for Christmas. There has been a substantial change in this area. The issue could be addressed quickly. Clearly, there are more prisoners on remand than there were in the past. Such prisoners are ineligible for temporary release. In addition, there are more prisoners from overseas who might not have the community contacts that allow temporary release to take place. The decreased prevalence of temporary release might be an indication of a punitive shift in the criminal justice system. Temporary release is important because it is effective. When the UCD institute of criminology followed up on 20,000 prisoner releases, it found that those who were granted occasional temporary release for vocational or family purposes were significantly less likely to be reimprisoned. That held true up to four years after they were eventually released. That is a clear empirical demonstration of the benefits of showing trust in people and allowing them to repay that trust with good behaviour. Therefore, my first recommendation is that we should return to the situation where there was an openness to allowing this kind of temporary release in a structured and tailored way, rather than as a safety valve to ease overcrowding.

The second recommendation I would like to make relates to parole. There has been very little change in the parole making process for approximately half a century. The Minister for Justice and Equality makes a determination on the issue of release in every single case, having received a recommendation from the Parole Board. The process is secretive and has not been scrutinised in the way it has been in other jurisdictions. It is encouraging that the new chairman is open to this kind of dialogue and open to reform. The reality is that life sentence prisoners who are released on licence today will have spent a decade longer in custody than their counterparts in the early 1980s. The average time before release now is over 17 years. In the 1980s, it was seven years. In almost every case the prisoner in question is someone who has committed murder. It is not as if murders have become much more dangerous in the intervening period. There has been a reluctance to grant parole until people have served huge quantities of time that would have been difficult to imagine 25 or 30 years ago. The parole window could be widened without delay. I know Mr. Costello indicated that there would be cost implications if this were done. In Finland parole is possible after 14 days. In Ireland the earliest possible review is after 1,460 days, the halfway point of an eight year sentence. Why not make parole a possibility for anyone serving four years or more? It is clear that cost implications would arise in the context of the review process, but significant savings could be made in terms of prison time. Last year imprisonment cost €65,000 per prisoner per year. If we open the parole window a little wider, we will have the scope to reduce the prison population in a structured and substantial way. There would be cost savings in that regard.

My final recommendation relates to enhanced remission. It has been mentioned that one

third remission, as opposed to the standard one quarter, is possible under the prison rules for prisoners who take part in treatment programmes. The potential of that facility to reduce the prison population has not been exploited. If it were, it would incentivise prisoners to take part in programmes, reduce the threat they pose, reduce overcrowding, usher in a more structured approach to release and save money. It is fair to say politicians in Ireland have often shown restraint that is not evident among politicians elsewhere in the Anglophone world, which is to be welcomed. The debates about penal policy in England, Australia, New Zealand and the United States tend to be much more polarised and punitive. Anything that will allow our context to continue is positive.

The Chairman said at the outset that if we could make some suggestions as to where inquiries could be directed in Finland that would be welcome. I would like to propose two suggestions and then I will finish. What is the sense over there as to the optimum size of a prison? We have had discussions about prison building in recent years which have anticipated gargantuan developments in our scale. What would be considered in Finland or Scandinavia as the optimum prison size, it is for 100, 200 or 300 prisoners. The second point is the Finnish example where we can learn something from them about judicial training. The prison population is driven to a large extent by the behaviour of judges - that is something about which we know very little. There are European Union ways of going about judicial training and it would be very helpful to have a sense of those.

**Chairman:** I thank Professor O'Donnell.

**Dr. Ciarán McCullagh:** I thank the committee for the invitation to appear before it. If some of what I have to say sounds as if I come from a parallel universe I should show the committee that apart from having written about crime I have also been involved with the Cork auto crime diversion project for about ten years, which is unique, in that it closed not due to a lack of money but because it ran out of car thieves to deal with. If one can buy a company car in Cork, that has failed the national car test, for €20, why does one need to rob one?

I have experience in the field. I am slightly older than Professor Ian O'Donnell. While he can remember reports from 12 to 14 years ago, I can go back 32 years. The first one which came to my notice was a group chaired by Seán MacBride, set up by the Prisoners Rights Organisation, of which the Minister of State, Deputy Joe Costello was a member. It was treated by the Department of Justice and Equality at the time as if it was a group of subversives, though among the subversives on the committee was Michael D. Higgins and Mary McAleese. From the first five years in 1985, there was a report every year about the prison system and the juvenile justice system. That can be followed up in all the subsequent years. Every two or three years there was a report that laid out the problems and suggested what should be done and we end up with the kind of prison system described by Fr. Peter McVerry. What all the reports share in common is that they advocate a reduction in the prison population and most see alternatives to custody as the means of achieving the reduction.

The second and most significant issue is that they have all largely been ignored and have all failed to have a significant impact on how the penal system operates. Why has there been such a level of failure to act on the issue of prison reform? It appears to me that the committee has to address the question of what it can do that other groups failed to do. The issue is not a shortage of ideas or a shortage of information. There is much information around how to reform prison systems. The issue could well be a lack of political will, a fear of talk show fascism, or a culture of denial among the Department of Justice and Equality about the extent of the problems of the prison and whether prisons actually need to be reformed. In 2006, Fr. Peter McVerry said that

St. Patrick's Institution damaged inmates and their conditions had regressed over the previous 21 years. He said that some prison officers "should be immediately dismissed" as they did immense damage to the young people. The director of the Irish Prison Service said that the report was out of date, at best, and, at worst, inaccurate. He rejects its findings. After what we saw last week, which of them is right? Those aspects need to be addressed.

It is not that things have not happened. A plethora of projects has been set up all over the country with the stated aims of diverting from prison, reducing offending and tackling drug use. Many of these projects have been set up as a way to put a claim on community resources and also not to deprive communities. Only a few of them have been systematically evaluated in terms of their effect on offending. What they are part of is what criminologists call bifurcation. They talk about the way in which alternatives to prison grow at the same time as the size of the prison population increases. One of the ways in which this can be explained is that if one adds non-custodial alternatives to the current pool of non-custodial alternatives what happens is that they become interchangeable. Dr. Paul O'Mahony, for example, has argued that one of the things about restorative justice is that it is not being used instead of prison, but instead of some other sanction, a fine, a caution, or whatever. What happens in many of the projects with which I have had contact is that over time they find themselves working with soft-end offenders, offenders with whom it is easier to work and the long-term persistent petty criminals tend not be the people who end up in these projects. If there are alternatives to custody the key question in evaluating their success is whether the prison population falls. Prison does not work and these projects do not work immediately but have a much longer term effect.

A third issue addressed in the submission is the question of cost. It has been argued that alternatives to prison or part of their appeal is that they are cheaper than prison. There is an argument that is not the case. The traditional figure used for the cost of prison is the average cost of prison but the marginal cost of putting another prisoner in prison is quite low. For example, we can double the number of people in prison without having to increase the number of beds. That does not cost any more to get the same number of people in there. The other issue about alternatives to custody is the way in which they are funded, the way in which they are put at arm's length by the Department of Justice and Equality. In other words it will give money to local projects but they are run through voluntary committees. They get people with a huge level of commitment but they raise the usual questions of who in the community gets involved and they seldom have very few young people on them. The staff in these projects have no career structure or career progression and do not have the career security that is necessary for the work they do. The level of commitment given by these people to working with offenders is admirable but the level of staff burnout and staff turnover is very high. If we want people to work with hard end offenders they must be rewarded appropriately.

The final issue I raised is the wider question of how prison systems change. I suggest that at least three factors are important. One way in which prisons change is when the prisoners themselves revolt against prison conditions and then something has to be done. The Attica prison riot is probably the most famous example. The second is when the courts start to imprison middle class offenders, a factor of some significance in the development of open prison and other alternatives in the US. This is unlikely here because the call for the use of prison for the corporate criminal is as old as the call for the reform of the prison system and is equally ineffective. There may be a few tokenistic presentations but do not expect a significant increase in the number of prisoners who come to Mountjoy from Dublin 4 addresses and have to be resettled in Dublin 4 when they emerge from prison. The third factor is an important one. Prison reform in other jurisdictions happened when a country's judiciary has ordered the closure of prisons as

a result of human rights abuses, overcrowding and ineffectiveness. In many cases it has little impact on crime levels but when judges closed prisons it forced people to think imaginatively and urgently about what should be done. The Massachusetts juvenile justice system still remains very important here. It is also a fact that the decline in crime in New York, which is one of the most significant declines in the contemporary penal criminology area, was accompanied by a decline in incarceration because what it came up with is more imaginative alternatives to prison.

It is in that context I suggest that the committee could call for the immediate closure of Mountjoy Prison. One could be liberal about it and give them a year in which to do it. If Mountjoy was a hospital and had the same record of failure to cure people, where patients left with more illnesses than they had going in, it would have been closed long ago. The promise or the threat of closure would concentrate minds and lead to creative thinking about how to deal with offending behaviour.

**Chairman:** I thank Dr. McCullagh.

**Senator Ivana Bacik:** I thank the delegates for taking the time to appear before the committee to give us the benefit of their experience and expertise in this area. We appreciate it. The submissions and notes provided to the committee are helpful and stimulating. The presentations were substantial and challenging.

All of us on the sub-committee share the frustration of the witnesses at the number and extent of reports carried out in the past on the penal system. Professor Ian O'Donnell referred to the previous justice committee report 12 years ago gathering dust. We are all anxious to ensure the report we produce at the end of this year will not be another of these reports - I am aware everyone says this when producing a report - but it seemed to us when we set up this sub-committee that there was a window of opportunity at this time. I am the rapporteur for the sub-committee and having been involved in penal reform for years, I see an opportunity now with the new Minister, who has announced the establishment of a penal policy working group and has shown more of an interest in penal reform than has been evident for some time. Also, there is a change of regime within the Irish Prison Service and the Department of Justice.

We were all very depressed by the findings of the report on St. Patrick's Institution. We went into that institution some months ago with the Chair of the committee and saw a very sanitised version of the prison and the detention centre. I understand the Minister, Deputy Shatter, said the same thing and that when he visited he did not understand the extent of the immense abuse going on. However, action will be taken on foot of the report and perhaps this committee will invite the Minister in to ask what specifically is being done to address the problems in St. Patrick's Institution. We are very pleased that the detention of minors there is being phased out, but clearly more needs to be done.

With regard to the report on St. Patrick's Institution, this sub-committee was set up in light of the Thornton Hall review group report, which highlighted the issue of back door strategies to try and reduce the reliance on imprisonment and address problems of recidivism by looking at how we deal with end of sentence management. There has been significant work done on sentencing and the need to ensure greater reliance on community sanction and reserve imprisonment as a last resort. However, statutory reform has been very slow in terms of implementing the Fines Act. This committee is looking specifically at what happens at the end of a sentence. This work is assisted by the work done already in the Irish Penal Reform Trust's excellent report, which was published on Monday, on reform of remission, temporary release and parole

and this will inform what we do. Therefore, we are very grateful these issues are addressed in all of the submissions.

I have a few specific questions for the witnesses on their views and recommendations with regard to what we should be looking at. Professor O'Donnell referred to an optimum prison size. What is the optimum prison size and is there a cap above which prisons should not go? With regard to optimum rules on remission, the Irish Penal Reform Trust has recommended a standard remission rate of 50% should be introduced for those serving sentences of less than five years and that enhanced remission of 50% should be possible, on an earned basis, for those serving sentences of over five years. I am aware the witnesses today have put forward different suggestions on remission. Dr. Warner said that 30% or one third was standard and 50% for young offenders. What is the optimum remission in an ideal world?

What can be done through statutory reform? We heard previously that the work being done on the community return programme is being done on foot of current legislation and there was disagreement among those who came before us as to whether statutory reform was needed if we were to recommend putting community return on a more formal footing. Fr. McVerry referred to integrated sentence management, of which we have heard glowing reports from the Irish Prison Service. However, Fr. McVerry said it was not working. How can we achieve the potential of that programme and other good initiatives such as community return? The community return programme is only a pilot programme currently and there appears to be some disagreement as to whether integrated sentence management is being rolled out.

With regard to people who are just released from prison, how can we ensure practical supports are in place? Does this require legislation or do we simply need to reform the social welfare provisions to ensure people have access to accommodation, medical cards and cash on their release? I thank Dr. Warner for the Finnish and Swedish examples he has given us, which are very helpful. We have taken his recommendation on board for our visit to Finland.

**Dr. Kevin Warner:** I will respond on the question regarding size. This is a good question, because the size of a prison population is ultimately a political decision and not something that happens as a result of external factors. Countries can decide how many people they will imprison and work to that. I am glad the committee has made a decision to visit Finland, where it is government policy to reduce the prison population. Finland has been doing this systematically. After the Second World War, its prison population was very high and it has been reducing it since. First it reduced it to other Nordic levels, but has now reduced it well below these.

It is a question of political realism, as Professor O'Donnell said. In September 1995, we had 2,054 people in prison, almost the same as in the previous September. Perhaps it would be better to look at this in terms of the rate of incarceration per 100,000 of the population, because the overall population has changed over the years. The rate has fluctuated from 98 to 100 in recent times. For many years up to 1995 our rate of incarceration was always below 62. Therefore, going from 62 to 98 is more than a 50% increase. When I suggested we cut by one third, I was simply suggesting we reverse that increase so that we reduce numbers to approximately 3,000.

There are all sorts of considerations to be taken into account, such as the rate at which we imprison people, how long we imprison them for and how quickly we release prisoners. The largely forgotten Whitaker report does not state it explicitly, but if we relate what it discusses to the population of the country at the time, it refers to a rate of incarceration of 50. We might say the country has changed greatly since then, but it has not changed greatly since 1995. The level of crime has not changed either. As Professor O'Donnell would probably tell us, it has dropped

since then. Therefore, we could certainly look to go well below a prison population of 3,000.

A question was also asked about remission. My submission went back to the Whitaker report, which suggested one third rather than one quarter remission in general, as suggested by others here. However, they suggest 50% remission for juveniles. This week, the Irish Penal Reform Trust spoke about 50% remission for anyone serving a sentence of under five years. These are all good ideas. The Whitaker report also suggested measures we see taken in Denmark, such as releasing people earlier under supervision and on certain conditions, perhaps drug treatment, education or work. We need a whole range of initiatives.

**Fr. Peter McVerry:** With regard to the ideal size for a prison, the smaller the better. I suggest a size to cater for 150 prisoners, with a maximum of 200. We are building larger prisons currently. Wheatfield is approaching a prison population of 1,000. Currently it has 700, but one unit is to be doubled up and that will bring the population there to almost 900. The Midlands Prison, if it has not already reached it, is approaching a population of 1,000. The population of Mountjoy will be back up to 700 when it is refurbished. Therefore, we are moving in the direction of bigger prisons all the time.

What happens within the prisons is important. The sub-committee has visited Wheatfield, which was built on the basis of the best physical model available in Europe at the time. The unit the committee visited was meant to be self-contained. Prisoners were supposed to be out of their cells from 8 a.m. until 10 p.m. This is what happens in the same physical units in other countries. They were meant to cook their meals communally in the unit. They had access to the outside through a door in the unit and a sensor would indicate if they moved beyond the area where they were supposed to be recreating. They had freedom all day long within the confines of the unit. We built it according to the best model that was available in Europe but we imposed the Mountjoy regime onto it, which destroyed it.

The United Kingdom has a 50% remission rate and it is not especially enlightened in terms of prison policy. I do not understand why we cannot go that far although politically it might be a problem. There would be a great outcry but I would favour a move towards it.

The problem with integrated sentence management is that in order to be effective it would require a vast increase in resources. The idea of integrated sentence management is that the needs of every prisoner going in would be assessed by a multidisciplinary team within the first couple of weeks. Then a plan would be drawn up with the prisoner to address those needs. One would need a vast increase in training, education and other resources to effectively introduce integrated sentence management on a wide scale. The problem at the moment is that many prisoners are keen to do something constructive but they cannot because the facilities are not in place or they do not have access to them. The idea of an enhanced regime whereby someone will get extra benefits if they participate in rehabilitation programmes is blind to my mind because the programmes in which people wish to participate simply are not there.

There should be better co-ordination for people leaving prison. I received a telephone call this morning from a man who had been released last night at 5 p.m. but he had nowhere to go. He slept on the street last night. He wanted to know whether he could meet me this morning to sort something out. He has no money, nowhere to go and he cannot get welfare. Unstructured, early temporary release is a total disaster. People are being told to pack their gear and that they will be out in two hours. This person said to me that he should have insisted he would not go because he came out to nothing. It simply needs co-ordination. There is a good service. Two community welfare officers go into prisons to deal with homeless people. They arrange accom-

modation and a welfare cheque at the gate for when they are released but this requires planned release. Unstructured temporary release falls flat on its face for the majority of prisoners. They come out of prison into homelessness with no money and no access to money perhaps for several weeks because the welfare system takes that long to process a claim. How can we be surprised that the recidivism rate is so high?

**Professor Ian O'Donnell:** I wish to echo the points made but I will also make a specific recommendation when it comes to the scale of the prison population. I also wish to say something about the scale of individual institutions. Dr. Warner remarked how the prison population in Ireland used to be low, even in relatively recent times. The world prison population list was published initially by the Home Office in London. It was first published in 1999. We measure the rate of imprisonment because the population is increasing a good deal. Our rate of imprisonment in that list was approximately 65 per 100,000. The EU 15 average was approximately 85 per 100,000. This meant we were 20 percentage points below average. The latest edition of that list came out last year. The average was approximately 100 per 100,000 and we sit on that average position now.

Senator Bacik asked how could we produce a report that will not simply gather dust. One way would be to have something specified with sufficient precision such that when it is returned to in several years, people will say that it either has had the desired effect or otherwise. What might that be? We might return to a situation whereby we are 20 points below the European average within a specified timeframe. Much of the increase in imprisonment has been during the past five years. It would not be outrageous to suggest that we pull our rate of imprisonment back down to 20 points below the European norm in the coming five years. That represents a quantifiable, measurable target and a reasonable period to get there. The increase took approximately five years and it has been somewhat uncontrolled; it seems reasonable to redress the increase in the same period.

A question was asked about optimum prison size. From the literature with which I am familiar my sense is that the optimum is somewhat higher than the suggestion of my colleagues, approximately the 300 mark, but certainly a good way below the prison populations in this country at the moment. Specific points were made about remission, prisoner reintegration and structuring a sentence such that the planning for release begins on the first day of a period of imprisonment. The issue of prisoner reintegration was something the National Economic and Social Forum devoted a full report to some ten years ago. The report made several useful recommendations and there may be some merit in re-examining them. Although it has not been used, given that is possible under prison rules at the moment, a remission rates of one third would be a good place to start. If the rate of remission were increased above that level there is a possibility of a knock-on effect in terms of the sentences imposed. Why not start with that measure? There would be fewer ripples of disquiet. We can do it so why not proceed and see what happens?

**Dr. Ciarán McCullagh:** I will take up that point. Currently, prisons have maximum numbers. The design capacity of Cork Prison is 170 or 180 but on average there are 300 there. One can specify the maximum size of a prison but how does one stop more and more people being put in? It is fine to say that a prison can only take 300 people but in Ireland such a prison will have 500 in it within a couple of years. There are design capacities and maximum numbers stated for all the prisons but they are never enforced. When there is a shortage of space they double, treble or quadruple up and we must stop that happening. There cannot be rehabilitative programmes in a system that works in this way.



**Chairman:** Father McVerry said that if we did some work on remission there would be an outcry. Can he expand on that and explain where it would come from?

**Fr. Peter McVerry:** It would come from the press. The report of the Irish Penal Reform Trust was severely criticised in some of the press. There was reference to letting out murderers and sex offenders early. There is a hostile attitude towards offenders generally within the population and certainly within some of the media. There is bound to be media opposition to any such measures if they are too dramatic. However, it might be different if they were introduced gradually. Professor O'Donnell noted that there is provision for one third remission in the prison rules already and that could take place without anyone noticing. That is the way to go. If one announced it, there would be a backlash from the tabloid media and from many sectors of the population. This might make it politically difficult to implement.

**Mr. John Costello:** I met prisoners in Arbour Hill. Lifers and sex offenders were strongly of the view that there should be enhanced remission. The prisoners undertaking the Building Better Lives programme were frustrated that they received the same remission as prisoners that did not get off their backsides to do anything. They were strongly of the view that there should be enhanced remission. That could represent a compromise. There could be enhanced remission above the 25% automatic remission and I would be in favour of it.

**Senator Ivana Bacik:** I was struck by that comment in the submission that such prisoners felt badly treated if people got out with the same level of remission and that they had participated in programmes while others had not. Mr. Costello said that 30% of prisoners declined to be reviewed by the Parole Board. Why is that?

**Mr. John Costello:** That was mainly life sentence prisoners, virtually all of whom participate. Let us suppose one is serving a fixed sentence for eight years. One gets 25% remission and gets out after six years. We can only review such cases after four years. In practice, because of delays in our system, we were only reviewing such cases after five years instead of four years. The prisoners were wasting their time because they were going to get out a few months later in any event. That was happening in many cases. We are working to reduce those delays into the future.

**Senator Ivana Bacik:** Will Mr. Costello comment on the argument put forward by the Irish Penal Reform Trust that legal representation should be available to all prisoners appearing before the Parole Board, in accordance with international jurisprudence norms?

**Mr. John Costello:** My understanding is that such representation is not required in every instance. In the case of life sentence prisoners, for example, their case is reviewed after seven years. This involves an interview by two members of the board who then submit a written report to the board. In addition, we receive reports on the prisoner from the psychology services, probation and welfare service and so on. The position heretofore is that previous Ministers for Justice have indicated an unwillingness to release any life sentence prisoners until they have served a minimum of 15 years. We have just received the agreement of the current Minister, Deputy Alan Shatter, that a life prisoner can be released after 12 years. The case remains, however, that no such prisoner will not be released following the seven-year review and the provision of independent legal advice to the prisoner will not change that position. One could argue that such advice might be useful in the case of a fourth or fifth review, after the person has been incarcerated for 12 to 16 years. In the case of the first or second review of a life sentence prisoner, however, there is no chance of parole being granted and, as such, legal representation would not add any value to the process.

**Mr. Eoin Carroll:** I wish to make two quick points. First, the development of prison campuses is, in my view, a regressive step. Second, Senator Ivana Bacik referred to the community return programme. Although this seems excellent on paper, there are issues to flag. As Dr. McCullagh pointed out, there is a risk of net widening, with prisoners on temporary release being assigned a high level of supervision which is not necessarily required. There is also the concept of low-lying fruit, that is, the tendency to select those prisoners most likely to succeed in the programme rather than the more challenging candidates. As I recall, the Minister indicated at the launch of the scheme that there would be no risk to society in it. In reality, nobody can guarantee there will be no risk, but we must be prepared to take chances.

**Dr. Ciarán McCullagh:** It strikes me that penal policy is a very odd aspect of Government policy in general, being one of the few aspects of policy where public opposition is sufficient to prevent certain proposals being implemented. One does not find the same effect when it comes to opposition to the imposition of a universal social charge or increases in income tax or VAT, for example, as compared with opposition to a scheme of early prisoner release. The argument is made that there is a broader interest than merely public opposition. In other words, it is justified in terms of some overarching principle that is wider than the immediate concerns of the readership of the *Daily Mail* or whatever. There must be a more far-sighted approach to the formulation of penal policy. Why should those people who call Joe Duffy to voice their opposition to a particular measure have the power to make politicians run away from taking that action?

**Chairman:** We would surely have an outbreak of talk show fascism if radical proposals were made in this area.

**Dr. Ciarán McCullagh:** Should fascism not be resisted?

**Chairman:** I should certainly hope so.

**Dr. Ciarán McCullagh:** There is a historical pedigree there.

**Chairman:** Absolutely.

**Senator Martin Conway:** This has been a most enlightening discussion. I certainly support the concept of 50% remission as a step towards resolving the problems facing the penal system. However, I agree that there might well be a high degree of public resistance to such proposals which would, in turn, manifest itself in a significant degree of opposition in the Oireachtas. A solution might be found by introducing some type of restorative justice process whereby perpetrators could hear at first hand about the effect of their crimes on the victims. Giving a stronger voice to victims and obliging criminals to face up to the realities of their crimes might make any proposal for 50% remission more palatable to the public. What are the delegates' views on restorative justice in general? The problem this committee is facing is that very little has come of previous proposals for significant reform, with report after report left to gather dust on the shelf. I hope we are not wasting our time here and that our deliberations will be taken on board.

**Professor Ian O'Donnell:** I take the Senator's point about reports being shelved. It is several years since the National Commission on Restorative Justice made recommendations regarding the mainstreaming of these types of practices.

**Senator Martin Conway:** What is Professor O'Donnell's view on restorative justice?

**Professor Ian O'Donnell:** My view is that it has a role to play at every point in the system,

particularly in terms of diverting people away from the criminal process as well as addressing some of the issues that come up during the term of a prison sentence. There seems to be an appetite for it nationally. When members of the National Crime Forum went around the country in the late 1990s trying to get a sense of the public mood on crime and punishment, the issue of restorative justice came up again and again. There was a real sense, particularly among communities beleaguered by crime, that prison was not the only or whole solution. People certainly wanted respite from criminality, including anti-social behaviour, but there was a view that restorative justice might be one element of a package of measures to assist communities to deal with the problems confronting them.

The National Crime Forum was an exercise in ascertaining the public mood and on foot of its report, the National Crime Council was established. This, however, was one of the few so-called quangos to be abolished some years ago. The crime council is gone, the report of the crime forum is long forgotten, but the issue of restorative justice came up for discussion once again with the establishment of the National Commission on Restorative Justice. It is an issue that certainly is worthy of debate. In my view, it might be more relevant in terms of keeping people out of custody and diverting them from crime rather than at the reintegration stage, when they have already served a sentence.

**Chairman:** Fr. McVerry indicated that some 80% of prisoners have drug addiction problems. The rise in drug use in society generally seems to be paralleled in increased rates of criminality and incarceration. In recent years we have seen the proliferation of many different types of drugs, both legal and illegal. We had a very good debate on this issue in the Dáil recently. I am concerned that we are attempting to treat drug addiction and misuse in silos - education, health and so on - without any overarching approach. Will Fr. McVerry comment on the impact of increased drug misuse on criminality, incarceration, penal policy and so on?

**Fr. Peter McVerry:** When we talk about addiction, we must include alcohol as one of the substances which may potentially drive people towards crime. I understand that 80% of all monetary crime is related to drugs, that is, the perpetrators engage in crime in order to acquire the money to purchase drugs. There has been a huge increase in drug misuse in recent years. Moreover, we are seeing new drugs with increasingly psychotic effects and drugs which arouse aggression and violence in those who consume them. A user told me the other day that crystal meth is the new drug on the block and that coming down from it causes a depression like nothing he had experienced before. When he is coming down, he said, he would kill his granny to get another fix.

In my experience, many prisoners would love to deal constructively with their drug problem but do not, unfortunately, have the opportunity to do so. I am involved in a small project where, with the consent of the relevant judges, I bring people from Cloverhill Prison down to the drug treatment centre in Athy run by Sr. Consilio. I have accompanied approximately 120 prisoners there in recent years. I get a huge number of requests from people in Cloverhill Prison and in other prisons at they approach the end of their sentence asking if I could get them a place on a drug treatment programme as they do not wish to be released back on to the streets to fall into the same pattern of drug misuse. I believe there is a real appetite among drug users to deal with their problem. One of the triggers that brings that about is the possibility of a prison sentence looming over them. If we expanded the opportunities for drug treatment within the community, I believe that considerably fewer people would go to prison.

In terms of the Misuse of Drugs Act 1977 - this is interesting because drugs were not a problem here in 1977 - a far-sighted civil servant proposed that an alternative to imprisonment would

be a custodial drug treatment centre. Instead of people being handed down a sentence, they would be sent to a custodial drug treatment centre and would still be locked up but in that centre they could deal with their addiction and provided they dealt with it, successfully completed the programme and presumably were under the supervision of a probation officer afterwards, they would not receive a prison sentence. We do not have a custodial drug treatment centre in this country more than 30 years later. That provision has real potential for reducing the prison population.

I was on the Whitaker commission and went to visit some of the prisons in Sweden and one of the ways the Swedes address prison overcrowding is by putting a limit on the number of people in prison. If one is sentenced to imprisonment there, one goes on a waiting list, a little like accessing hospital services here. That was one of the ways the Swedes addressed overcrowding in prisons. They also had a mandatory 30-day imprisonment for drink-driving. That meant many middle class people went to prison, which meant that prison conditions improved considerably. I am not advocating that but it is an interesting point.

**Dr. Ciarán McCullagh:** To return to the issue of restorative justice and the commitment there is to it and the fact that everyone is in favour of it, I understand the Nenagh project is the longest running restorative justice project in Ireland. It has been running from 1998 and it is still called a pilot project. When do they learn how to fly? When will these be mainstreamed? If one thinks about the range of interventions at community level, they are always pilot projects. They do not seem to move on to the next stage whatever that is but they do not get to be mainstreamed. Restorative justice programmes, to some extent, may be in that grey area.

**Chairman:** Dr. McCullagh mentioned the declining crime rate in New York. It was put to us previously that a factor in that was the impact of the community courts. Are the witnesses familiar with that approach, as it was pointed out they were very effective in New York?

**Dr. Ciarán McCullagh:** They were very effective because they were immediate. It was a quick response and the issue was resolved quickly. That was a significant factor in that approach.

**Chairman:** A debate on this issue has begun in the UK under the auspices of the Prime Minister. Do the witnesses wish to comment on the direction it is taking or do they have any knowledge of that? No.

**Senator Katherine Zappone:** I wish to make one of two comments. I feel very impacted by the witnesses' presentations and they have really put it up to us. I have not been a member of this sub-committee or a public representative for very long. I would have sat where the witnesses are sitting and like them would have an extraordinary commitment, passion and academic rigour but would have still felt a little powerless to bring about change such as the change they seek. As I am sitting on this side I still have a sense of that powerlessness but on the other hand somebody has to have the power. That is the way I feel right now.

The witnesses have put it up to us. We could take all their more extended submissions, and what is emerging from this discussion, and order the recommendations in terms of which are the most important and what should happen first in all the categories. My colleague, Senator Ivana Bacik, not unlike the witnesses, has extraordinary expertise in this area. We could bring her expertise and the political expertise of my colleague, the Chairman, Deputy David Stanton, and the other members and we could probably get the best set of recommendations within a very strong theoretical framework. However, the question is would that bring about any change and

that is really what the witnesses are saying to us.

I like Dr. McCullagh's suggestion about putting it up to us and that we call for the immediate closure of Mountjoy Prison. At the very least, we should be able to say why we might not be recommending that and the other things we believe we could recommend that would bring about some change. I am relatively new to this issue and perhaps that is not such a bad thing because I have not drilled down on this to the level all the witnesses have. I know what happens when I do that in other areas in which I have some expertise. I thank the witnesses for what they have said and they have really put it up to us.

**Chairman:** Dr. McCullagh mentioned hard-end offenders and that work should be done there. He said they are more challenging and difficult and success can be harder and less immediate. Will he say a little more about that and give examples of what he means?

**Dr. Ciarán McCullagh:** These would be persistent petty offenders who make up approximately 80% of the population of Mountjoy Prison. These are people who commit small offences on a recurring basis as distinct from a person who commits a public order offence once or twice. Public order offences were a great boom to community projects. The war on public order offences allowed people to deal with soft-end offenders because most public order offenders are not recidivists. They get caught, their mothers give out to them and they do not do it again.

**Chairman:** What is the rate of recidivism? What percentage re-offend?

**Fr. Peter McVerry:** Some 50% of all those released from prison are back in prison within four years. The Department of Justice and Equality sees that as a sign that prison works in that the other half did not end up there, and that is a quote.

**Chairman:** The claim that we are doing well because the prison population has increased, that the more people there are in prison, the better we are doing in combating crime, is contradictory.

**Fr. Peter McVerry:** We should keep an eye on Mountjoy Prison because in few years time it could be the model prison. All the wings are being refurbished and the present governor is committed to idea of one person one cell. Whether he will get away with that, I do not know but the C wing which has been refurbished is a wonderful place to have to spend one's sentence. If the other wings are refurbished and the policy remains one person one cell, it could be the model for all our other prisons.

**Senator Ivana Bacik:** I was struck by Dr. McCullagh's suggestion because it is a radical and attractive one on one level but it is true. We had a longer visit in Mountjoy Prison and judging by the difference in its physical appearance and state of the place it has improved and it has scope for improvement. Many of us would be very wary of recommending its closure after what happened with Thornton Hall and that crazy plan to have a super prison that would replace Mountjoy. It is better to try to bed down reforms on the site in Mountjoy. The prison that should be closed is St. Patrick's institution. It has been recommended for closure so many times-----

**Dr. Ciarán McCullagh:** Probably for 35 years give or take.

**Senator Ivana Bacik:** -----and it is something we should do here.

**Senator Ivana Bacik:** The Care After Prison group put it up to us - to borrow a phrase Senator Zappone used in saying the witnesses have put it up to us - that because it is very hard to provide structured release programmes of any sort for people serving very short sentences, which they put at six months or less, that instead of considering remission and so on should we provide that people serving that length of sentence should be diverted altogether? There is an attractiveness to that because many of these people, to return to Dr. McCullagh's point on public order offences, are in prison for those offences. They pose a minimal risk if they have received a sentence of six months or less for a non-violent offence. There are examples from elsewhere of diversion in that sort of case, are there not? Are they effective?

**Fr. Peter McVerry:** I think that in Spain all sentences of under two years are automatically suspended.

**Senator Ivana Bacik:** Is that right? I knew there was some models of that elsewhere.

**Dr. Ciarán McCullagh:** In that respect, that is going north, perhaps we should go south. Portugal is undergoing quite a radical restructuring of its criminal justice system in an attempt to reduce the size of its prison population and it shares one thing in common with us, it is also broke.

**Dr. Kevin Warner:** I would like to revert to a couple of points that have been raised and hopefully point to practical lessons members might wish to take on board. On the drugs issue, there has been a huge effort in respect of resources, priority in policy and so forth in trying, not very successfully, to control drugs getting into prison. As Fr. Peter McVerry has pointed out, very little effort has gone into the treatment side. I point to Denmark, where as much attention is given to trying to control demand for drugs as to the supply of drugs. Moreover, while the Danish prisons have the same sort of screening and security procedures within prison, as well as drug testing and so forth, to try to control the supply, in addition to that each prisoner who still has three months left to serve and who asks for drug treatment is guaranteed to get that within two weeks. That is a policy. In addition, the treatment, where it is needed, is full-time. In one new prison I visited, namely, East Jutland Prison, about which I wrote a bit in my submission, one third of the entire prison is given over to full-time drug treatment for as long as people need. As Fr. McVerry noted, members should compare that with the nine beds in Mountjoy Prison for our entire system. Consequently, there must be that kind of balance between demand control and supply control.

I wish to make one point regarding community service and the issue that has been raised. As people have noted, alternatives to prison very often become add-ons rather than alternatives and do not reduce the prison population. When members visit Finland, they might examine what has been attempted there. I gather from the writings and comments of Tapio Lappi-Seppälä that this has been successful. When they introduced community service on a large scale, they brought in what he calls a two-step solution. The judge gives the sentence, presumably on the same basis as previously, but thereafter another body looks at it and essentially second-guesses it by stating while it is aware the judge sentenced the person to six months in prison, it will consider offering the person community service instead. This means the alternatives are not going to people who would not have gone to prison any way and this appears to work.

Finally, I wish to make one plea regarding conditions and regimes in general. Members should look beyond Mountjoy Prison and St. Patrick's Institution in respect of where the problems are. While there certainly are problems in those places, the dreadful conditions, problems arising from segregation and so forth also apply to some of the prisons we built within the

last few decades. They apply to Cloverhill, Midlands, Castlerea and, as has been mentioned, Wheatfield prisons. If one considers somewhere like Harristown wing in Castlerea, with which not many people are familiar, it houses 120 prisoners. The people in Harristown wing are kept separate from all the facilities and activities in the rest of the prison for no apparent good reason and are further divided into four separate groups. There is a huge level of 23-hour lock-up and of doubling up in cells and all that goes wrong with that. Incidentally, I believe the problem with doubling up in cells is that it increases the likelihood of abuse, violence, stress and bullying. Members also must consider some of these newer places. It is the same in Cloverhill, where there are three inmates to a cell. There is little activity for people in Cloverhill and in Harristown wing in Castlerea, the amount is minuscule.

**Chairman:** Finally, I invite Mr. Carroll to respond. While our time has almost expired, I note he mentioned cultural attitudes and issues when he spoke previously. I take it he was referring to people in the Prison Service and the Department. However, am I correct that generally speaking in society, the feeling might be that prison is for punishment, that prisoners should be locked up and the key thrown away, that it cannot be hard enough and there should be hard labour, floggings and all that stuff? I believe Dr. McCullagh's comments also may have bordered on that subject. If I am wrong, he should correct me but I refer to that general attitude.

**Mr. Eoin Carroll:** In respect of Finland, it appears to have very different media which I am unsure we could replicate here, in that people take out annual subscriptions to newspapers. This appears to have an impact, in that people are less interested in sensationalised news although they do have a fondness for "Big Brother". On culture, it is interesting when one breaks it down a little. A considerable number of years ago, the Irish Penal Reform Trust produced a report on public attitudes towards people who were addicted to drugs or had a drug dependency. When the authors teased out with members of the public whether they would prefer to send someone with a drug dependency to prison or for their drug dependency to be tackled and an alternative offered to address the reason for their criminal behaviour, I believe approximately 75% of the public opted to address the behaviour and the reason behind the criminality. That said, this is not to advertise *TheJournal.ie* but in the public response to the Irish Penal Reform Trust's position paper during the week, not a single person was in support of it. That was stark. I certainly think it is an uphill effort but as Dr. McCullagh was saying, if one makes decisions and sticks to them, the tide will go back out quickly.

**Professor Ian O'Donnell:** On Senator Zappone's point on what committees and reports can do-----

**Senator Katherine Zappone:** Professor O'Donnell started it.

**Professor Ian O'Donnell:** Finland is interesting, not only because its prison population is low but because it was very high. Consequently, one thing an Oireachtas committee can do is to make a strong and unequivocal statement that the prison population is too high. It can state it is unconscionably high and must come down. Without such a statement, all of the other measures cannot follow. While such a statement is required for the other measures to follow, seldom is it put in such stark terms. I believe a parliamentary committee can state matters have got out of hand and the numbers have drifted too high because of a lack of political will to pull them back down. It can state so doing lies within our control and that getting it back down to a more appropriate level will take time, will be complex and will require taking some risks. A statement along those lines is essential if there is to be movement to bring the numbers back down. A statement from a committee at this level in such spare terms really would help create a context in which a downward momentum might be generated.

**Fr. Peter McVerry:** The sub-committee should consider seriously the idea of limiting the numbers in any particular prison. There should be a certain number that can go to Mountjoy or to Wheatfield or wherever. Judges contemplating sending anyone to prison should be obliged to find out if there is a place in the first instance and if not, they must be conscious that someone will be released. This actually happened in the juvenile detention system when Trinity House first opened. It had a certain number of places and a judge in the children's court who wished to send someone to Trinity House had to telephone to ascertain whether a place was available. If not, the judge was obliged to remand the case.

**Senator Ivana Bacik:** This still happens in respect of Oberstown. The High Court was sending kids there and it was as Fr. McVerry described as it was necessary to check first.

**Fr. Peter McVerry:** The only way in which this problem will be addressed effectively is to state that Mountjoy can hold 400 prisoners or whatever, Wheatfield so many and that this number will not be exceeded. That would focus the minds of the Judiciary because its members are critical in this regard. It would focus their minds on whether they really should send certain people to prison in the knowledge that others would be released to make way for them.

**Chairman:** This may involve additional training. Members also considered the issue of a sentencing council and some work was done on that subject recently.

**Senator Ivana Bacik:** In response to Professor O'Donnell's point on political commitment, I was greatly struck by a paragraph in Dr. Warner's paper on Finland about the upward swing in the Finnish prison population from 1999 to 2005. It now has turned decisively downwards again as reducing prison numbers is a Government objective. It is a good example and one members must really scrutinise when visiting Finland and about which they must ask more questions. Clearly a political decision was made and the numbers fell, as the witness said. So it does give us heart that where committees are pushing, governments can change political objectives and change prison numbers. There has been a drift, however, and I do not think there has been any discernible, decisive shift in policy at an articulated level. It has certainly drifted upwards.

**Professor Ian O'Donnell:** It has not been a policy decision to push it up.

**Senator Ivana Bacik:** No.

**Professor Ian O'Donnell:** It has just been a corrosive kind of rise upwards, so it can be addressed.

**Chairman:** Does Dr. Warner want to come in?

**Dr. Kevin Warner:** Senator Bacik is right. There was a rise, between 1999 and 2004 or 2005, of the prison population in Finland. It drifted up as Professor O'Donnell was saying. When I was doing my research there I asked a number of people why it happened. None of them, neither the academics nor the prison management, could really explain it to me. I think it was that they took their eye off the ball for a bit. I interviewed the director general of the prison system. He told me that around that time there was a proposal to build more prisons in response to this rise, although he was not director general at that time. He said he was very grateful that the Finnish Department of Finance refused funding on the basis that to build more prisons would be a waste of money and that it would make more economic sense to have fewer people in prison.



## SUB-COMMITTEE ON PENAL REFORM

We have not dwelt much today on the economic issue but, as somebody said, our prisons are enormously costly. There are huge savings to be made from reducing the prison population substantially, notwithstanding what Dr. McCullagh has said. Resources can be diverted into alternatives elsewhere.

The other point that should be made is that open prisons cost about half what closed prisons cost in Nordic countries. They are much more effective in terms of not institutionalising people, preparing them for release and treating them with dignity. In or around 35% of prisoners in Denmark, Finland and Norway are in open prisons. The figure for Ireland is 5%. It seems a no brainer that, as well as reducing the prison population, we should aim to make that switch to open prisons. That should be kept in mind.

As well as reducing its prison population, Finland has made deliberate efforts to switch the proportion of those who remain in gaol to open prisons. It has closed some closed prisons and has opened some new open prisons.

**Chairman:** I thank the witnesses for their time. We have almost finished this piece of work, although we will be doing some other visits. We will also invite representatives of the Cornmarket Project in Wexford to meet with us. They are quietly doing some impressive work down there, which is unheralded. I visited them with the Minister and was impressed with what they are doing.

I wish to thank the witnesses again for their attendance here today. They have a wealth of experience and knowledge in this area and we are grateful for their time and effort. We will do our best to ensure that this report will not gather dust on a shelf. We will push this matter as hard as we can to do some of the things the witnesses have suggested. Their contributions have been important to the process. I thank them on behalf of the members of the sub-committee and the Joint Committee on Justice, Defence and Equality.

The sub-committee adjourned at 3.45 p.m. *sine die*.

# DÁIL ÉIREANN

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## AN FOCHOISTE UM ATHCHÓIRIÚ AR AN GCÓRAS PIONÓS

### SUB-COMMITTEE ON PENAL REFORM

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*Dé Céadaoin, 19 Nollaig 2012*

*Wednesday, 19 December 2012*

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The Joint Committee met at 13.45 p.m.

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#### MEMBERS PRESENT:

Deputy Sandra McLellan,*	Senator Ivana Bacik,
	Senator Martin Conway.

\* In the absence of Deputy Pádraig Mac Lochlainn.

In attendance: Deputy Sean Fleming..

DEPUTY DAVID STANTON IN THE CHAIR.

*The joint sub-committee met in private session until 1.55 p.m.*

### **Penal Reform: Discussion**

**Chairman:** The purpose of today's meeting is to have discussions with those who made recent submissions on penal reform, including information on international best practice. I thank those attending today for giving of their valuable time and expertise, which is very much appreciated, and for the submissions they supplied to the committee. I will invite each organisation to make brief opening remarks followed by a question and answer session with members. This is a sub-committee of the Oireachtas Joint Committee on Justice, Defence and Equality and it has five members.

I welcome from the Cornmarket Project in Wexford Mr. Paul Delaney and Mr. Paul O'Brien; from Focus Ireland Ms Joyce Loughnan, chief executive, and Ms Catherine Maher, national director of services; and from Care after Prison Ms Bernie Grogan, liaison officer. Members have received submissions and any opening statements received have also been circulated. We will begin with the Cornmarket Project after which we will hear from Focus Ireland and then from Care after Prison.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are to give to this sub-committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter to only qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or persons or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable. I invite Mr. Paul Delaney to begin.

**Mr. Paul Delaney:** I thank the Chairman and members of the committee for this opportunity to further expand on our written submission. The Cornmarket Project was established in 1999 as a multi-agency response to criminality and substance misuse issues in County Wexford. Each year, the project deals with approximately 250 individual clients with criminality and substance misuse issues, 170 of whom on average are direct referrals from the Probation Service. The Cornmarket Project receives core funding from the Department of Justice and Equality through the Probation Service, and is under the umbrella of Wexford Local Development, the local development company in County Wexford mandated to deliver rural development, social inclusion and community development programmes on behalf of the Government.

The project has an outcome-focused, community-facing and client-centred approach. The Cornmarket Project's primary goal is to work in collaboration with the Probation Service and other partners to ensure positive behavioural change in medium to high-risk offenders with a concurrent reduction in recidivism. To this end, the Cornmarket Project adds value to the work of the Probation Service by addressing issues of motivation, problem solving and skill building in offenders to diminish criminal behaviour and enhance resistance to substance misuse. The methodologies used by the project are underpinned by evidence-based behavioural interven-

tions delivered by trained staff concentrating on enhancing client motivation for successful participation in the rehabilitation and reintegration programmes delivered by the project and for moving offenders towards other suitable external progression routes.

Enhancing offender motivation to make positive behavioural change lies at the heart of the work of the Cornmarket Project. I hope that at the conclusion of this session the committee will be better informed about our change outcome and impact measurement, COAIM, system, which is based on evidence-based intervention techniques for offender programmes which have shown demonstrable effects in other jurisdictions. The COAIM system uses unique evidence-based algorithms and metrics and was primarily developed to measure, and ultimately enhance, the determination to change in offenders who can very often be low in motivation when first referred. Research on effective offender rehabilitation interventions suggests many existing programmes target offenders who are already motivated to make positive change. However, a significant cohort of offenders needs a very structured motivational enhancement programme to enable them to get to this stage.

In this regard we know from previous submissions to the committee by the Irish Prison Service that young short-term prisoners have the highest rate of re-offending, and this has also been our experience over the past 14 years. In accepting this we can also point to a sub-category among this cohort of offenders with little or no motivation to change. We also suspect that this category of recidivist offender places a significant burden on the State in terms of costs associated with Garda, court, probation and prison services.

Tremendous work is being done by organisations working with offenders who are already motivated to make progress but if we do not also concentrate our efforts on those offenders who are harder to work with as they initially lack the motivation to make positive change we are likely to have a mismatch of resources in this area. This can lead to missed opportunities, particularly with regard to enhancing and maintaining motivation for positive change with this significant cohort of offenders with low motivation to do so.

As the committee is aware, an important new Irish research study undertaken jointly by the Probation Service and the CSO was published recently, and was the subject of an article in *The Irish Times* last Monday by Mr. Vivian Geiran, the director of the Probation Service. In this article, Mr. Geiran stated:

Clearly, custodial sentences are warranted for those who commit very serious crimes and who represent an ongoing danger to the public. However, it is extremely difficult to rehabilitate offenders through imprisonment alone. While prisoners deserve rehabilitative opportunities as well, offender rehabilitation programmes are most effective in reducing risk of reoffending when they are delivered in the community and target key risk factors.

The Cornmarket Project seeks to target this offender group through the provision of a community-based rehabilitation and reintegration programme which, through the use of the COAIM system, targets the main criminogenic antecedents in a very planned manner which in turn, encourages desistance from crime. At this stage I am talking not only about offenders who have been before the courts and who are on probation but also low-motivated ex-prisoners returning to the community and those who have found themselves in trouble again with the criminal justice system and who may well be on the road back to prison.

A strong driver for reliable assessment, monitoring and outcome measurement systems has been to satisfy funders and other decision makers. However, the COAIM system also recog-

nises the importance of the offender's perspective and involvement in the measurement of their participation in rehabilitation and reintegration programmes, particularly as a motivational enhancement strategy. It is hard to ignore the issue of system integrity if offender input to the measurement of programme efficacy is excluded. Therefore, the COAIM system challenges conventional methods of measuring programme outcomes where the offender is the passive recipient of programmes and services and the deliverer of those services decides how beneficial they are or were for the offender.

The tools of the COAIM system are predicated on assessing, targeting and measuring factors that can be changed in the lives of offenders, known as dynamic factors. Those that cannot be changed are static factors and include prior record or family criminality. There is general agreement throughout the international research literature concerning the ten main dynamic or criminogenic target areas that need to be worked on with offenders in order to reduce recidivism. Committee members will already have these ten areas outlined in some sample documentation and tables that were supplied prior to today's meeting. Studies have shown that programmes that target four to six of these criminogenic risk factors more than non-criminogenic risk factors can have a 30% or more effect on recidivism while programmes that target more non-criminogenic risk factors have virtually no effect. This research also suggests that community based-programmes that demonstrate good evidence of effectiveness include evidence-based behavioural therapies, intensive case management, a multi-systemic approach and interpersonal skills training.

Historically the development of services for offenders in Ireland has not always been marked by adherence to best practice based on empirical evidence. Expediency, personal conviction and a sincere desire to do something to respond to anti-social behaviour and criminality in our communities have been more common drivers. However, policy development in Ireland in recent times concerning offender reintegration strategies seeks an increasing use of community options including non-custodial alternatives to prison and in suitable cases, the use of back-door strategies involving some form of early release while also seeking a reduction in expenditure. We suggest that the COAIM system that is at work in the Cornmarket Project, together with its range of tools, can assist in meeting these requirements and thus support the overall penal reform agenda.

We are now in a new era that presents both challenges and opportunities. We must develop new approaches and ways of working to meet the needs of today for the users of the services, the funders and the communities in which we all live. Those charged with effecting positive change regarding offender reintegration and rehabilitation are asked to demonstrate programme efficacy, value for money and evidence on client outcomes. Departments, funders and other stakeholders, including this committee, are increasingly seeking that credible and validated outcome-measuring systems are in place in State-funded organisations. We believe the system at work in the Cornmarket Project can help to fulfil these requirements. We hope our submission will make a positive contribution to the work of the Sub-Committee on Penal Reform and to the wider discussion on evidence-based best-practice rehabilitation and reintegration programmes for offenders.

**Chairman:** I thank Mr. Delaney for a very impressive presentation. If it is agreed, we will hear from all the witnesses before have questions and answers in case any more divisions are called in the Seanad.

**Ms Joyce Loughnan:** I thank the Chairman for the opportunity to allow us to air what we have learned from the services we deliver. Focus Ireland has been working very closely with

Seamus Sisk on the implementation of the integrated services management system. Through that engagement, we were able to form partnerships with the Prison Service, the Probation Service, the HSE and other NGOs with which we work closely. Initially from 2007 we worked in the Dublin prisons and then had the opportunity to expand to Limerick in 2009 and Cork in 2010. We are in the process of negotiating starting in the Dóchas Centre prison in 2013. In the Waterford area we have commenced a project around community service.

We are engaging within the prison and outside the prison, which has been a key aspect of our learning and success. We develop those relationships, develop the trust and continue working with people when they are discharged to help settle them back to have a place they can call home, living independently in the community. We are dealing with people with high levels of mental health problems and many of them have addiction issues. There is a cohort of young people who have been in care and have come through the prison system. Other aspects of our work manifest themselves in what we see in the prison area. We have worked with several hundred people during the years we have been operating and have learned a great deal.

I would like the committee to focus on four things. The first is the assessment of housing need of people who are admitted into the prison system. The earlier that assessment can be done the more opportunity it will give us to help preserve any home situation somebody may have so that he or she does not lose that home, especially in the case of those who are in the prison system for a very short period of time. Focus Ireland is trying to shift much of its emphasis to preventing people from becoming homeless. Our work in the prisons is very much geared around that and all the outcomes we measure focus on how we prevent people from becoming homeless.

In doing that assessment an holistic care plan is prepared by our project worker engaging all the relevant services needed to ensure success upon discharge. We need more tightening of the planned discharge so that we can manage the release of people back into the community. It would be very beneficial for us to have more units of supported temporary accommodation. We have been able to provide some of Focus Ireland's stock of housing in the Dublin and Limerick areas. Unfortunately we have not yet been able to secure any accommodation in Cork. We would certainly need more units of supported temporary accommodation where we can manage the release of people from prison so that they do not fall into the homeless system and do not fall back into their old ways. We can actually start them on a better life for the future.

The final thing on which the committee should focus is how these services get funded. We have been very fortunate to receive some contribution from Pobal's dormant accounts fund over the years. However, that has all dried up and the ongoing continuation of our work is purely funded by public donations to our organisation. Having said that, when we measure the outcomes for the people with whom we have worked the number who have remained settled in the community and not re-engaged in the prison system is extremely positive. Many people, including the prison governors and those in the probation services, have said that the people with whom we are working are of the highest level of need and yet we have had a great success rate in reducing the levels of recidivism. While what we are doing is not the whole story, it is a contribution to reducing recidivism. We would be happy to take questions at the appropriate time.

**Chairman:** I thank Ms Loughnan for that interesting presentation.

**Ms Bernie Grogan:** It is an absolute honour to be here with such established organisations as the Cornmarket Project and Focus Ireland. I am here representing Care After Prison, which is really just a baby compared with the other groups represented here, as we have been in opera-

tion for just over a year. Members will excuse me because I am smothering with the flu.

**Chairman:** We will stay well away.

**Ms Bernie Grogan:** I am a full-time liaison officer with the City of Dublin YMCA and I work part time on the Care After Prison project, which is a partnership project between the YMCA and the Carmelite community centre. We are based in the south inner city. We found that there is a need presenting itself through our support of temporary accommodation in the local community for community-based information and support services for ex-offenders and their families. The project was originally set up as a six month pilot project in October 2011 but the need was so great that it was extended and we are hopeful it will run on. We had plans to work with 30 ex-prisoners in a six month period. We were delighted the Chairman, Deputy Stanton, launched our impact report in October. We worked with 280% more people than originally planned. This includes the family members as well as ex-offenders. Primarily, we are an information, support and referral service. We do not want to duplicate the work already in place for service users. Ours is a place of contact, where people can come in for a cup of tea and a chat about where to go next. Housing and social welfare benefit are high on the list of priorities.

It is heartening to see that we are following in the footsteps of what others are doing. At the beginning, we decided to measure impact and examine outcomes. We looked at numbers and the soft and hard outcomes of working with people. These are early days and it is hard to tell what will happen down the line. At the moment we have a 0% reconviction rate for everyone who has interacted with the service in just over a year. Hopefully, with the work we are doing, that success rate will be maintained.

We have a free counselling service and our written submission on international best practice refers to family support as a hugely important part of our service. International research shows that when a family is supporting someone coming out of prison and where there is a family mediation network, the person is more likely to reintegrate into the community and less likely to reoffend. We get many calls from mothers, wives and girlfriends and we arrange free counselling for children when people are taken into custody. There is a major emphasis on family support. Instead of just working with ex-offenders, there is an emphasis on people affected by imprisonment.

Another reason for success, which is in line with international best practice, is that we are piloting a peer support model. We do not have direct State funding or constant streams of funding, although we received some funding from the St. Stephen's Green Trust and the American Ireland Fund and we are lucky enough to have two community employment placements through the Carmelite Community Centre. We are also working with volunteers. The group of people working and volunteering with us includes two ex-prisoners. Their in-depth knowledge of the regime and the system is of huge importance to us. The written submission refers to the peer support model being piloted in Scotland.

It has been a positive start although it depends what way one looks at it because the need for our service exists. Until the end of September, we had worked with over 133 service users. The current figure is over 150. We receive some 20 inquiries every week. We also have active key caseworkers working on care plans, such as the client centred approach. We meet with them and every so often there are phone calls, e-mails and people dropping in for information. There has been a major demand for our free counselling service. We are learning as we go along and we are trying to put these things in place, hoping that the impact report and the work we do will allow us to continue next year. We have been lucky with the local community in that people

have referred family members to us. We have worked with the prisons and we have also been invited to speak to prisoners in the pre-release period. Although we have spoken to men so far, we have also been invited to the Dóchas Centre. We tell them about the service and many of them contact their family members who contact us before their release.

With regard to pre-prison preparation, we have been flexible in the pilot phase in seeing where the need exists. Parents and mothers of people awaiting sentences contacted us and we linked up with them and created a support group for those getting ready for prison. We explained the importance of linking in with the integrated sentence management, ISM, system when in prison, taking advantage of educational opportunities and making the most of the sentence. We were lucky enough to be brought into Mountjoy Prison on a tour with two ISM officers showing us the process. It is all about multiagency working, collaborative work and seeing where we can fit in to support ex-offenders reintegrating into the community and their family members.

**Chairman:** I thank Ms Grogan and I congratulate her on the work her group, Care After Prison, is doing along with the Cornmarket Project and Focus Ireland. It is good to hear positive stories and reports.

**Senator Ivana Bacik:** I echo the Chairman's words in thanking the witnesses for coming in and sharing their expertise and experience with us. We have had an interesting and informative set of hearings over the past year in which the sub-committee has been in place. This is our last public hearing before we produce a report at the end of January. As rapporteur, I am taking careful notes as we go along. A range of different groups have been before us. Our terms of reference consider the backdoor strategies to see what is best practice, nationally and internationally, to ensure higher use of non-custodial alternatives to try to reduce recidivism. We are grateful to the witnesses.

My first question is for the Cornmarket group. The reliance on empirical studies and outcome measurement is impressive. The group has been in place for a long time. I am very familiar with Ms Grogan and Care After Prison, which has been very impressive in a short space of time. The two groups present two different experiences. In respect of the Cornmarket group, organisations such as this work in specific areas and carry out important and useful work that has tangible outcomes. Is there any intention to expand the programme beyond Wexford? Is there a system in place to roll out the best practice that is occurring in pockets throughout the country? Has an attempt been made to do so at a national level?

**Mr. Paul Delaney:** Through the good offices of the committee Chairman, Deputy Stanton, we visited Cork a couple of months ago and met a group representing the local police fora, the drugs task force and others, the probation service and the Garda Síochána. They are interested in replicating the system on a pilot basis. We are in discussions with the group at the moment and we hope to be able to support it to develop a pilot project in the new year. Our system has been piloted in a project in Ballyfermot. It is much smaller than the Cornmarket Project but has the same type of clients as its primary group. These include medium to high risk offenders who are also, in the main, substance misusers. We have spent the past few years refining the system, developing it, testing it and making sure it delivers in respect of the outcomes. We are at the stage where we would like to be of assistance in rolling it out further.

**Senator Ivana Bacik:** I have a similar question for all three groups in respect of trying to ensure a national strategy on reducing recidivism and offering people structured release programmes, which seems to be the key. Focus Ireland emphasised housing as a key issue, which



is also emphasised in the research and by the other groups that have appeared. The difficulty in accessing accommodation is a key factor in increasing the risk of recidivism on release. What is the best way to try to roll out a system to ensure a national strategy on this?

We have heard from the State authorities about the community return programme that is being piloted by the Probation Service and Prison Service. Would anyone like to comment on it or on the recommendation that Care After Prison made to us before, that there be a structured release and community return programme? A structured, national community return programme for medium and high risk offenders would reduce the incidence referred to by Focus Ireland of unplanned early release leading to people falling into homelessness.

Care After Prison also made the point that people sentenced for non-violent offences to terms of less than six months should really be diverted from the system entirely, given the high rates of recidivism, particularly with young people who have been given short sentences. There is a difficulty with having any structured programme in prison and post-release where the person is sentenced to six months but is out after two months. Should we look at structured community return for longer term sentences and diversion programmes instead of shorter sentences?

**Ms Catherine Maher:** It is important there is a structure in place to enable people to avoid prison while serving their sentences in managed way. We are currently finishing an evaluation of our three services and we will have good recommendations stemming from those in line with identifying other avenues for alternatives to prison sentences. The reason for focusing on that is the overcrowding that is happening in the prisons. We must address that because overcrowding is the cause of unplanned early release. If we can address that we can have a way to manage the situation.

Currently we operate two programmes, one in Dublin and one in Waterford, in partnership with the Probation Services. These are community service projects, where people finish off their probation, serve time in the community and are linked in with supervisors from the Probation Services. It operates on a three to five day programme, where they come in two or three days a week and serve a number of hours, doing work such as gardening and painting and decorating. That is all managed and supervised by a maintenance team in cooperation with the Probation Service and it is working well. It has been so successful in Waterford that we have been asked to extend it into another project we have in Ferrybank. We have a report on that coming out soon and we will pass that to the committee so it can see how successful it has been.

**Ms Joyce Loughnan:** Trust is key. It is very important that a project worker can work in the prison, because it takes time to build up trust with those who are most marginalised and who have had all relationships with family, friends and community break down. It is very difficult to get them accommodation on discharge because of their past histories. The more trust we can build while they are in prison, the better. They can then start preparing for their discharge in a managed way, so there is a full care plan where we can link in all the appropriate services in the community. It is not just about having a house but having the support that allows someone to then live independently in the community where they know we will continue to provide the service for as long as they need it, most intensively upon discharge, but it could go on for years as they address the issues they have in their lives.

**Ms Bernie Grogan:** We mentioned integrated sentence management in our written submission for sentences of more than 12 months. If there could be a system where as soon as someone entered the prison system, they could make contact with us, through prison officers or teachers, so we can start the support and the planning for release from the very first day. No

one would be released then with nowhere to go and unaware of the services available. In some cases, we work with someone with a release date but something might happen and that person is released a couple of weeks early. The preparations are in place but the person was released early and the release that was being anticipated does not happen. It is best if the relationship starts as early as possible in the sentence.

We have been invited to meetings where the teachers have a festival of services, with people attending from the colleges and community services, so prisoners can meet them before release. The prison officers could also be informed of the services available so in their daily interactions with prisoners, they can pass on leaflets or put up posters around the telephones so they are not going out and not knowing where to go. That is where the highest risk exists, during the first couple of weeks after release, particularly if addiction is an issue.

**Senator Ivana Bacik:** In its submission, Focus Ireland made the point of women prisoners being a special case, with about 50 women in a cycle of homelessness and prison. What is the best way to approach that? That is a different issue where there is a very small cohort that can be identified. What is the best way to support those women to reduce recidivism? How could they be targeted?

**Ms Joyce Loughnan:** We are working in partnership with St. Vincent de Paul and PACE to plan a strategy for a pilot for a small cohort of those 50 women, to look at how we can best integrate a service for them that will enable them when leaving prison to link into the right services, such as housing and family services, and that identify their individual needs. The best way to do it is on a case by case basis, where the needs and wants of each person for her life are identified and that is followed through with an implementation plan that will bring the woman to where she wants to be so she does not fall into homeless services without thinking about is happening next. There would be a plan for each individual but it must be done on a case by case basis that must recognise that not everyone will take the same route. The big issue is having the right accommodation, if that is a requirement, or if that support is available to the family and the individual. We must look at how we can prevent this churning of people coming into prison and then coming into homeless services, offending and re-entering prison.

**Senator Ivana Bacik:** I was interested in the remarks about pre-prison preparation, speaking to people who are still awaiting sentencing post-conviction. Has that been done anywhere else and what have the outcomes been? It is obviously still early days.

**Ms Bernie Grogan:** We have kept up links with the guys who have been convicted. We have done the pre-prison support and then offered outreach key working with them and family support. At present our work concentrates on supporting the family. That can be as simple as talking to them about what will happen during a visit. Like everything, things are less daunting when a person is informed and knows what to expect. One person we are working with is doing well in his sentence and has looked into educational opportunities. Straight away he was linked with the ISM and he knew the group would come to see him. The initial upset about entering prison was helped by providing information. We are still offering support to his mother.

**Mr. Paul Delaney:** We work closely with the Probation Service in Wexford and we have a constant flow of information back and forward through the service and the probation officers in the prison itself. Let me emphasise, and it goes back to the Senator Bacik's previous question, in order for the judicial system to have confidence in alternatives to custody, we need to change. We must adopt best practice and a uniformity in targeting the key risk factor areas. I do not discern an unwillingness by the judicial system to use backdoor strategies. The chal-

lenge lies in convincing the judicial system that there are alternative measures that will reduce recidivism. It is not a soft option. The day has gone when we can rely on outputs alone to make that arguments. It is not enough to simply say to the judge that the Cornmarket Projects works with 300 people a year, he or she might want to know the impact of the behavioural changes that have come about as a result of that work. I think the issues are interlinked and we need to move toward the argument by giving valid and reliable evidence that backdoor strategies are a real and alternative way of working.

**Chairman:** I wish to acknowledge the presence in the Visitors' Gallery of people from the Probation Service and from the Irish Association for the Social Integration of Offenders, IASIO. We hear nothing but praise for their work and I thank both groups for attending this meeting and for their input earlier to the work of the sub-committee.

Mr. Delaney mentioned COAIM or change outcome and impact measurement system and its ten target areas. Could he give a brief overview of the ten criminogenic target areas and how they impact on the life of the offender?

I know that others might also wish to comment on this matter.

**Mr. Paul Delaney:** This will not be a new concept to members of the sub-committee. They are based on best international practice. The concept is that if we do not address the ten key risk factor areas with offenders, the chances of reducing recidivism are appreciably lower. One of the target areas we address is attitudes and cognitive style. We work with offenders who have serious issues about how they interpret their impact on society. Many are at the stage in which they do not look at the long-term impact of their behaviours. We use a model called motivational interviewing, which is again highly respected as an intervention methodology in other jurisdictions. We bring about a shift in negative attitudes and cognitive style as a precursor to working with people towards making positive change. Another target areas is offending behaviour. The majority of people we work with, some 82%, have already been before the courts. We work in a targeted way to enhance motivation to change what we call "created discrepancy" to build self-efficacy, not self esteem which is another dimension. Many of the young offenders with whom we deal would not regard themselves of being capable of changing their behaviour. That might sound strange but that is the reality. We work to address that. We also have them engage in pro-social activities. Many of the clients we work with only become involved with other pro-social groups when they come into the project. Many have been living and operating in a very narrow band of people who are also offenders. Anger and emotion management is another area that is addressed.

Anger and emotion dysfunction can stem from a variety of complex issues but if it is not addressed it tends to pollute the progress that can be made in other areas. Drug and alcohol misuse is another target area. We work very intensively with people who have both drug and alcohol issues. A key hallmark of our project is that we work with people with where they are on a continuum of services so we do not demand that they be drug or alcohol free in order for us to engage with them. We have a continuum of services that are suitable for people on the dysfunctional end of the continuum and those who want to become completely drug and alcohol free. Lifestyle and associates is tied in with the idea of pro-social activities and we link people in with other groups. We link people into non-offending activities. Another factor is training and employability. We have a very good track record in moving people on, but only when they are ready. This is at the heart of our programme. At our team meetings we would be very careful not to set somebody up for failure. If we feel somebody is not yet ready to take a work placement or a particular training course, we do not push them into it just because it is there. If

one does that, relapse rates increase. We take a much more pragmatic look at it. We also target accommodation, to which my colleagues from the other two services have just referred.

The interesting fact about the COAIM system is that it gave us the statistics we needed to sit down with the housing authority in Wexford and set out the facts. We used to have anecdotal evidence but we now have very clear evidence that accommodation is a serious issue for offenders. That has changed the dynamic completely. We have been able to have a businesslike conversation with the council and the borough council.

Another key area is financial issue and debts. I do not think I have come across a drug user who does not have substantial debts as a consequence of his or her drug use either for general services such as the ESB, gas, rent and so on or owing money to other detailers. We constantly link in people with the MABS, which is a fantastic resource to us in Wexford.

As my colleague from Care After Prison said, relationships and family issues are a significant part of the dynamic. We have built into our system a family support group, where we support the family members. These are the ten criminogenic target areas. It is not to say that other activities such as sport activities, adventure sports, art and so are not of good in and of themselves. We run a number of other vocational skills programmes. We do it as well as and not instead of the COAIM system. We do it alongside it, so that every single client who comes into the project gets a change plan base. They work up their change plan with our staff based on these ten criminogenic areas.

**Chairman:** I thank Mr. Delaney. Does Senator Conway wish to put a question?

**Senator Martin Conway:** I had questions initially but it has been clarified in the latter contributions. The standard of the contributions and submissions are very high. I would have been familiar with the work of Focus Ireland but to a lesser extend with the Cornmarket Project and Care After Prison. Both these groups have had remarkable success in a year.

How has Ms Grogan found her interaction with the probation services? Is there any area in which it could be improved? Is there room for improvement in the interaction of personnel from Care After Prison with the Irish Prison Service?

**Ms Bernie Grogan:** We have been building relations with the Irish Prison Service and have received referrals from the Probation Service. My colleague and I had a meeting with the assistant director of the Probation Service to discuss the project. We launched the impact report in October and that gave us a vehicle to communicate better with people but throughout the year we have been making contact with all agencies working with ex-offenders and their families. We have been invited to prisons. We were brought on a tour of Mountjoy and talked through the ISM project. We have been in St. Patrick's Institution. A number of our staff and volunteers have prison clearance and can meet the governors and the staff. We have been building up these contacts and relationships. They have welcomed us and they recognise the need for the work we are doing and the services we are providing.

We will apply for funding next year. We attended the NEVA meetings, the national ex-voluntary agency meetings in Portlaoise. We have met with the Bedford Row family project and prison support groups from Cork and Cavan. These meetings take place every couple of months and provide a national view of developments. Beladd House is open to us attending meetings held on the premises and meeting other agencies working in this area. While our experience thus far has been good, we need to build on it.

**Deputy Sandra McLellan:** I thank the witnesses for their informative presentations. I am not a member of the sub-committee but I have made some notes for Deputy Pádraig Mac Lochlainn for whom I am deputising. I acknowledge the value of the work the groups before us are doing. It is important to roll out a national strategy or programme. I deal with a small number of prisoners who visit my constituency office and the main issues they face are access to housing, social welfare benefits and medical cards. I presumed a programme was in place to address these issues for prisoners prior to release and I am surprised to learn this is not the case.

**Chairman:** I welcome Deputy Sean Fleming.

**Deputy Sean Fleming:** I apologise for arriving late to the meeting. I, too, am not a member of the sub-committee. As a Deputy from the Portlaoise area, I am familiar with the prisons in the town. The issue of care after prison is my main concern and I apologise if the witnesses have addressed the issue. Many prisoners receive early release, while others will complete a full sentence. Do prisoners receive a discharge letter when they complete their sentence? I have encountered cases where persons who are discharged on completion of their sentences have been told by the local community welfare officer or an official in the local social welfare office that their application for jobseeker's payments will not be processed without a discharge letter. It may be a new development that the Department of Social Protection is specifically advising that persons who are on temporary release are not eligible for jobseeker's allowance because they are not available for work. Community welfare officers are taking a similar approach and are requiring a letter of discharge. These letters have become an issue recently.

On the linkage into State agencies, some local authorities take a sympathetic approach to people who have completed a prison sentence, while others are unduly unsympathetic towards them. The latter do not want to know about the circumstances of former prisoners and will try to move them elsewhere. What are the witnesses' views on the different approaches taken by local authorities to former prisoners? It can boil down to the attitude of an individual director of service.

**Ms Bernie Grogan:** While levels of discrimination and inequality experienced by ex-offenders and their family members differ, they are a significant problem. The types of offences for which a person has been convicted may limit his or her options for social housing, particularly if the conviction is for anti-social behaviour or sexual offences. While I do not have full information on discharge letters, I am aware that persons on temporary release are registered in the system as being on temporary release and should liaise with the prison in question. Again, however, the circumstances vary. Some prisoners may be released during the day and return to prison at night, as in the case of the training unit in Mountjoy Prison, while others are released from Monday to Friday and return to prison at weekends. The time a person on release will be available to work depends on the circumstances of his or her release.

We work closely with Beatrix Sheehan, the community welfare officer in the homeless persons unit. She is an amazing lady who is overworked and under-resourced. Long queues form when she visits Mountjoy Prison to meet prisoners prior to their release. Her work includes sorting out social welfare entitlements for prisoners by ensuring they do not leave prison without information, identification or letters. This allows community welfare officers to deal with their cases immediately.

The unfortunate reality is that a former prisoner's experience with local authorities will depend on the person he or she meets on the day. We try to provide non-judgmental support. We fill in forms with prisoners, direct them to the appropriate agencies and so forth. Sometimes

this involves making a telephone call in their presence to ensure they know where they should go and avoid scenarios where they knock on doors and are turned away. This is a horrible but common experience. When a person is motivated to make changes it can be difficult when doors are repeatedly closed in his or her face and obstacles are continually placed in his or her way.

**Ms Catherine Maher:** I agree with Ms Grogan that prisoners are dealt with on a case-by-case basis and their experience will depend on individual circumstances. Discharges are both planned and unplanned. Where a discharge is planned, the former prisoner will have a better chance of having discharge letters and so forth arranged and it is more likely the community welfare officer will be on board. Where a discharge is unplanned, the position is much more chaotic as it requires a crisis response from us as we try to make arrangements with the community welfare officer. In our experience, our relationships with community welfare officers who know we work with prisoners and services becomes a factor. They will work with us by recognising we are supporting somebody. This is the reason we are able to advocate successfully on behalf of people and enable them to obtain rent supplement.

In the majority of cases, the former prisoners in question will seek to access private rented accommodation or accommodation provided by housing associations such as Focus Ireland because local authorities do not have one bedroom properties for single males.

Where appropriate supports are made available, individuals may be able to reintegrate in their families. Again, this depends to a great extent on whether the prisoner's release is planned or unplanned. In the case of the former, we can engage with the family and support reintegration, whereas in the latter case, the position can be more chaotic and emergency accommodation must be found on a short-term basis to address the issue.

**Deputy Sean Fleming:** None of the local authorities has housing available for anyone who shows up seeking accommodation because all of them have long waiting lists for housing. The issue is whether they will accept an application for rent supplement. In most areas, people must be on the housing list to receive rent supplement. The issue is not one of councils providing accommodation but one of councils making life difficult for former prisoners by refusing to process an application form. The prison system is a structured environment where prisoners know at what time they will get up, go to bed and have breakfast, dinner and tea. On their release, they are at sea when they visit Government offices.

A person who has spent more than 183 days in an institution can be certified as homeless. Does this apply to prisoners? What is the position regarding former prisoners against whom barring orders have been granted? Many of those in prison are in this position, which makes it even more difficult to secure accommodation when they leave prison.

**Ms Catherine Maher:** I am not sure of the position regarding the Deputy's question on those who spend 183 days in an institution but I will revert to him on the matter.

On barring orders, we have implemented a protocol across all emergency accommodation which involves a reduction of the barring order. It also ensures there is sustainability for someone to get into accommodation. For example, if a person is barred from one place he could be allocated another place and then, if he gets in, the plan would be to maintain him in that accommodation. We work with the providers and we have agreed, where it is appropriate, to pair with a particular organisation. If that organisation has someone whose behaviour is unacceptable at a given point, that person could move across to our accommodation for a short period and

then go back. New protocols have been agreed throughout the homeless sector for emergency accommodation to sustain people in emergency accommodation rather than have them barred. This is a recent development within the emergency accommodation services.

**Deputy Sean Fleming:** My last question follows from an earlier point. I came in when Paul Delaney was speaking. It is important not to set someone up for a course that he is not able for. A person may be unable to concentrate for so many hours in a day or perhaps it is not in his nature and that is probably part of the reason he ended up in trouble in the first place. I am unsure who is best qualified to answer the question. How do the delegations find dealing with FÁS? The Probation Service is fine, the community welfare officers can be sympathetic and the Department of Social Protection will try to set a person up with a payment. Perhaps a community welfare officer will tide him over for a while until all that gets done. However, FÁS has an important role. I do not believe the sympathy element comes in at a FÁS counter. When organisations are trying to get someone onto a course it is important that FÁS is very much a part of the service to get people in during their first week out. A person can go off the rails after one week if three or four doors have not opened for him. What is the position with FÁS and the National Learning Network, which used to be called Rehab? Both these organisations can help ex-offenders or ex-prisoners. Is FÁS in the network for dealing with these projects?

**Mr. Paul Delaney:** Deputy Fleming has raised an interesting issue that is even broader than the issue of FÁS. It relates to having an integrated plan for offenders. We approach this with a case management plan. In other words, we try to avoid exactly what Deputy Fleming has just referred to, that is, where a person is all at sea or bounced around. The change outcome and indicator mapping, COAIM, system we use ensures that if we identify training as a need for a particular offender, then we are able to do the advocacy for them and we are able to take FÁS on board. In fairness, it has worked rather well. A representative from FÁS sits on our steering committee and FÁS is used to working with offenders. However, we must approach this in a case management way. I agree entirely with Deputy Fleming. To ask offenders, especially homeless dysfunctional offenders, to do such work themselves invariably leads to failure. Our COAIM system is predicated on having a plan. We refer to it as a change plan rather than a care plan; there is a slightly different emphasis. However, if one has a plan then the people who sit on our steering committee are committed to doing their part. We need not reinvent the wheel. If an organisation is responsible for housing, then that is what it does. If an organisation is responsible for finance issues, such as MABS, that is the role it plays. If an organisation is responsible for training and employment, then that is the role it plays as well. We act as the bridge between these groups. The case management approach is something that should be rolled out nationally because otherwise people will be left at sea and we have seen where that leads.

**Mr. Paul O'Brien:** I wish to add some comments. We find that what works well at the Cornmarket Project is to take the mystery out of what we do. This is why the case management approach works well because sometimes people looking from the outside in wonder where they could fit into a role in the Cornmarket Project. The steering committee of the Cornmarket Project adds to this as well. People can sit around and discuss the issues. They do not discuss individual clients per se but our COAIM system is able to bring up factual statements rather than anecdotal statements. Mr. Delaney referred to this earlier. We have been able to sit down with the housing officers and make the case that in our open access drop-in area accommodation has come up to the high 70% region. We were able to put the case factually. It helps when we work on a factual basis rather than on an anecdotal basis.

**Chairman:** I note that you work with the harder-to-work-with offenders and people with

little or no motivation to change. It is not simply a case of people who come to you. You have a relationship with the Probation Service and you identify people who are especially difficult to work with and who have a low motivation. This is even more challenging. As you have noted, these people can often slip through the system and be back and forth from prison. That is a real challenge.

**Mr. Paul O'Brien:** It is a real challenge. We have an automated system on the technological side. If a client is with the Cornmarket Project and we do not see him for three weeks an e-mail is automatically sent to our outreach worker. The outreach worker knows at that point to check in with the client. We are always seeking to reduce the gaps that a client can fall through and using technology is another way of doing that.

**Chairman:** I also note that you have a high level of training and an emphasis on teamwork for the people who work on the project.

**Mr. Paul O'Brien:** One of the last points of business at our last team meeting was to pick the next six training dates for next year. It is important for us to keep on top of this. We have spend a good deal of time tweaking and fine-tuning the COAIM system. We will spend a good deal more time on this as new information becomes available and as new statistics become available and also as we feed back into our system. We are always keen to go back and examine and see whether this is the best way of doing things today. It may have been the best way six months ago but we must determine whether it remains the case today.

**Mr. Paul Delaney:** I wish to add a rider to that. There is a principle called the responsivity principle, a principle on which there is great emphasis in other criminal justice jurisdictions. Basically it means matching the offender to the type of staff member and programme that will work for him. That is very important in terms of the training. We concentrate on ensuring that the staff we have delivering our services deliver them in accordance with the same evidence-based model. This means no one is doing his own thing. Many of our clients have literacy issues and we have staff members who are specifically trained in this regard. Many of our clients have anger management issues and these are all issues which staff must be trained in. Otherwise people simply do not come back; offenders vote with their feet and will not come back to our project.

**Chairman:** I believe we are done. I thank all the witnesses for their attendance today and for giving their valuable time and expertise to the sub-committee. We hope to have a report out of the end of January or thereabouts. Perhaps at that stage we will invite you back for the launch of the report. We hope to move it on from there. That will not be the end of the work of the committee. Your contributions are important. Thank you and have a good Christmas.

The sub-committee adjourned at 3 p.m. *sine die*.