



National Commission on Restorative Justice

Interim Report
March 2008

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PREFACE

For a number of years past, the concept of restorative justice has been gaining favour in the criminal justice jurisdictions of many countries. Indeed, in Ireland, in addition to its operation on a statutory basis under the Children Acts, two progressive pilot projects for adults have been operated in Nenagh, Co. Tipperary and Tallaght, Co. Dublin, with the active assistance of the local District Courts, the Probation Service and An Garda Síochána.

I have a long-held interest in this approach to justice and I and some of my colleagues of the District Court have tried to apply the principles in the course of our own work as Judges. It was, accordingly, with great pleasure that I was able to accept the invitation to become Chairperson of the National Commission on Restorative Justice, which is asked to consider the potential for a wider application of restorative justice in this jurisdiction.

The Interim Report sets out some national and international background to restorative justice practices and outlines the considerations the Commission will be pursuing over the coming year, with a view to making recommendations to the Minister for Justice, Equality and Law Reform in its Final Report.

I am indebted to my colleagues on the Commission and to the staff of the Secretariat, for their dedicated work and support in enabling this Interim Report to be completed in the short time since the Commission became operational.

Judge Mary Martin
Chairperson

ACKNOWLEDGEMENTS

The Commission wishes to acknowledge the fulsome support it has received from all of the organisations it has encountered in its work to date.

A particularly important input to the Commission's work has been that of the Garda Research Unit and the Garda Diversion Programme. Garda Juvenile Liaison Officers have pioneered the application of restorative practices in the youth justice area on a national scale in recent years, providing a valuable source for assessing the general effectiveness of restorative justice as an option for the Irish criminal justice system in addressing ongoing crime.

The Commission is appreciative of the assistance afforded by the Nenagh Community Reparation Project and Restorative Justice Services Tallaght, which are facilitating the Commission's review of their work in the application of restorative justice for adults. The commitment and enthusiasm which is evident in both projects reflects considerable merit on the pioneering restorative justice practitioners and supporting services which continue to deliver a unique justice response to the victims, offenders and the communities they serve.

The Commission is also indebted to the mediation organisation, Facing Forward, which has facilitated the Commission in accessing international expertise.

The Commission also records its gratitude to the Minister for Justice, Equality and Law Reform and his officials for their ongoing support of its work.

TERMS OF REFERENCE

To consider the application of the concept of restorative justice with regard to persons brought before the courts on criminal charges and to make recommendations as to its potential wider application in this jurisdiction including its possible application in the context of community courts and to this end:-

- (a) to review the existing models of restorative justice in this jurisdiction in particular those involving the Probation Service and/or community based groups supported financially by public funds;
- (b) to review contemporary developments in restorative justice in other jurisdictions;
- (c) to seek the views of relevant bodies, interest groups and individuals;
- (d) to consider the recommendations of the Report on Restorative Justice by the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights (January 2007);
- (e) to review, as far as practicable, the research based evidence and evaluation as to the effect of different restorative justice models, compared with other forms of court disposals, with regard to:
 - (i) the views of and impact on victims,
 - (ii) offenders and their rate of recidivism,
 - (iii) its use as an alternative to imprisonment,
 - (iv) cost,
 - (v) the public interest, and
 - (vi) the range of offences to which it is most applicable;
- (f) to consider whether restorative justice models should be further developed in Ireland at a national level and if so to indicate:
 - (i) which model or models would be most appropriate and cost effective in this jurisdiction,
 - (ii) whether such models require or should have a statutory basis,
 - (iii) the range of offences and courts to which it would be applicable,
 - (iv) the role of the Courts, Probation Service and other key bodies,
 - (v) an estimate of the number of offenders likely to be dealt with and the costs per annum, and
 - (vi) the number of offenders likely to be diverted from a custodial sentence;

and to submit an interim report to the Minister for Justice, Equality and Law Reform within six months of establishment with a final report to be submitted before the end of 2008.

CHAPTER 1

Introduction

- Setting up the Commission
- Commission Membership
- Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights
- Work of the Commission to Date

Setting up the Commission

- 1.1 On 11th March 2007, the then Tánaiste and Minister for Justice Equality and Law Reform, Mr. Michael McDowell, T.D., announced the establishment of the National Commission on Restorative Justice.
- 1.2 He highlighted the victim and community focus of a restorative justice response to crime. He noted how this approach requires the person who committed the crime to face up to the harm he or she has done and to repair or make good the damage caused.

Terms of Reference

- 1.3 The terms of reference specifically require the Commission to submit an interim report to the Minister within six months of establishment, with a final report to be submitted before the end of 2008.
- 1.4 The Commission came into operation on a full-time basis on 1st August 2007. It met nine times since and also on three occasions prior to that date. This interim report has been prepared in response to the timescale set.

Commission Membership

- 1.5 The members of the Commission are:
- Judge Mary Martin
Chairperson and Judge of the District Court.
 - Ms Olive Caulfield
Principal Officer, Courts Service
 - Dr Mary Henry
Medical Practitioner and member of Seanad Éireann from 1993 - 2007
 - Mr Eugene McCarthy
Company Director
 - Chief Superintendent Gabriel McIntyre
Community Relations Department, An Garda Síochána
 - Mr David O'Donovan
Deputy Director with responsibility for Research, Training and Development, Probation Service,
 - Mr Ronan O'Neill
Principal Prosecution Solicitor, Office of the Director of Public Prosecutions.

Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights

- 1.6 The Commission is fortunate to be in a position to build on the work of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, which conducted a review in 2006 of the potential benefits of restorative justice methods in Ireland. This review arose from the parliamentary work conducted by the Oireachtas Joint Committee, in reviewing criminal justice policies in Ireland.

1.7 Its report, which issued in January 2007, made a number of recommendations, including the creation by the Department of Justice, Equality and Law Reform of a cross-sectoral working group to develop a national strategy for restorative justice based on international best-practice. The Oireachtas Joint Committee's recommendations are contained in Appendix I.

1.8 The report is informative and highlights a number of issues which the Commission will evaluate over the course of its work. The report begins with an explanation of the Joint Committee's interest in restorative justice, describing the process as an "additional option in law enforcement and judicial proceedings". It presents an overview of the main aims of restorative justice and outlines potential advantages and common criticisms of the concept.

1.9 The report refers to international evidence from the perspectives of victims, offenders and the community. It demonstrates that while satisfaction and participation rates among victims and offenders may be positive across many countries, additional research is necessary when exploring restorative justice in the context of reducing recidivism rates. The report also provides an up-to-date analysis of restorative justice measures currently operating domestically and makes recommendations as to how current schemes could be improved.

1.10 The Commission welcomes and is appreciative of the work carried out by the Oireachtas Joint Committee

on Justice, Equality, Defence and Women's Rights and is confident that, in the course of the Commission's work, the Joint Committee's report will provide a useful source of guidance on many areas that require consideration.

Work of the Commission to date

1.11 One of the first steps taken by the Commission to assist its review of restorative justice was to invite, through advertisement in the national press, members of the public and representatives of concerned groups and relevant bodies to submit their views on the wider application of restorative justice in the Irish criminal justice context.

1.12 The Commission received 25 submissions from private individuals and interested organisations. In addition a number of organisations were invited to make presentations at the Commission's scheduled meetings. A list of parties who made written submissions and/or oral presentations is set out in Appendix II.

1.13 The Chairperson of the Commission visited both the Nenagh and Tallaght-based adult restorative justice pilot projects and was afforded the opportunity to observe casework in action at both projects. From these visits, the Commission has gained some insight into these processes and the immediate impact the approaches adopted are having in each project. The Commission will continue to examine both projects so that it can reflect in more depth on their

processes, experiences and effectiveness.

- 1.14 The Commission has had the benefit of meetings with a number of experts from abroad who were visiting Ireland. The experts included academic researchers, policy makers and practitioners visiting from Australia, New Zealand, Canada, United States of America and Belgium.
- 1.15 Commission representation at the European Forum for Restorative Justice seminar in Lisbon entitled "Restorative Justice in Europe: Needs and Possibilities" in May 2007 provided valuable access to a network of policy experts and practitioners who are actively engaged with the development of restorative justice throughout Europe on an ongoing basis.
- 1.16 In addition, Judge David Smyth, Q.C. and Ms Alice Chapman, Director of the Youth Justice Agency in Northern Ireland, made a presentation to the Commission on the context in which restorative justice is evolving in Northern Ireland. They highlighted the significance of the Good Friday Agreement in leading to major public service reforms, including criminal justice reforms, part of which relate to youth justice and the adoption of restorative justice measures.
- 1.17 The Commission, in pursuance of its remit, met with the Commission for the Support of Victims of Crime and further meetings are planned with a view to developing its thinking on victim considerations in a restorative justice context.
- 1.18 Contacts have also been initiated with the Law Reform Commission in the context of exploring the issue of statutory options in the framing of restorative justice models. In its recently published Third Programme of Law Reform 2008 - 2014, the Law Reform Commission undertook to take into account the work of the National Commission on Restorative Justice in the course of its examination of statutory considerations for restorative justice.
- 1.19 Commission representatives attended a number of conferences, workshops and lectures on restorative justice and related issues. A list of conferences, workshops and lectures attended is set out in Appendix III. The Commission is particularly interested in developing more links with academic and professional experts and will pursue this avenue further in the coming months. The Commission's work includes a wide-ranging examination of the literature on the application of restorative justice across the world.
- 1.20 Arising from these exercises a number of valuable contacts have been made and networks have been developed to enhance the knowledge gained. This offers the prospect of ongoing expert and informed deliberations with a number of authoritative sources on restorative justice, as the work of the Commission progresses.

CHAPTER 2

What is Restorative Justice?

- Historical Overview
- How is Restorative Justice Defined?
- What is Restorative Justice?
- What does Restorative Justice seek to achieve?
- What format can Restorative Justice take?
- In what contexts can Restorative Justice be used?
- How is Restorative Justice measured?

Historical Overview

- 2.1 The concept and use of restorative justice has a lineage encompassing many indigenous traditions¹ and practices. Indeed, many of the ancient Celtic practices found in the Brehon Laws also had elements of restorative justice². These indigenous traditions include those of the Aboriginal or First Nation people of Australia and Canada, the Maori of New Zealand and the Native American Tribes within the United States.
- 2.2 The use of the term "restorative justice" is a relatively recent development³ and it was first used in

its modern sense in the 1970s to refer to victim-offender mediation programmes that emerged in North America⁴. During the 1990s it became a widely accepted way of describing a variety of programmes and initiatives that had as their core philosophy, the participation of victims, offenders and the wider community, with a view to repairing the harm caused as a result of wrongdoing.

How is Restorative Justice Defined?

- 2.3 Restorative justice is a wide and varied discipline encapsulating a variety of measures such as victim-offender mediation, conferencing and sentencing circles, among others. However, one should be aware at the outset that the term restorative justice is often associated with other criminal justice provisions and initiatives that do not necessarily have restorative justice as their primary objective.⁵ By virtue of the range of initiatives, programmes and services that can potentially be described as being restorative, it is important to be conceptually clear as to what exactly is meant by restorative justice.

1 Strang, *Repair or Revenge: Victims and Restorative Justice*, 2002, p.45.

2 Quinn, "Restorative Justice: An Interview with Visiting Fellow Thomas Quinn", [1998] 235, *National Institute of Justice Journal*, pp. 10-11.

3 Barnett, "Restitution: A new paradigm of criminal justice", (1977), *Ethics: An International Journal of Social, Political, and Legal Philosophy*. 87:4, pp 279-301. See also; Wright, *Justice for Victims*, (1991) for a historical overview on the development of restorative justice as a concept.

4 Strang, *Restorative Justice Programs in Australia - A Report to the Criminology Research Council*, (March 2001).

5 Dignan, *Understanding Victims and Restorative Justice*, (2005) p. 2.

- 2.4 A widely accepted definition has been offered by Marshall, where he defines restorative justice as "*a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implication for the future*"⁶. This definition captures the essence of restorative justice as a process. Other definitions are more expansive and describe restorative justice with a focus on outcomes "*as every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime*"⁷.
- 2.5 It would appear that there is not any single definition of restorative justice that adequately captures, simultaneously, both the essential elements of the process and the desired outcomes of restorative justice. While restorative justice is defined in a number of ways, it nevertheless rests on the following principles⁸. Crime is primarily a conflict between individuals that results in injuries to victims, communities and the offenders themselves. The criminal justice process should aim to reconcile parties, while repairing the injuries caused by crime. Further, the criminal justice process should facilitate active participation by victims, offenders and their communities.
- 2.6 More recently Johnstone and Van Ness have identified three conceptions of restorative justice⁹. The encounter conception arises where restorative justice is regarded as synonymous with mediation or conferencing. The reparative concept is evident where the focus is on repairing the harm caused by an offence. The third conception is more visionary and is identified as the transformative conception. The focus here is the way we understand ourselves and relate to others. It is not so much a response to crime as a way to live one's life.

What is Restorative Justice?

- 2.7 Restorative justice has been described as being the opposite of retributive justice in terms of characteristics, values and outcomes. In many respects this is misleading. Not only do both share a common desire to vindicate some type of proportional and reciprocal action between the criminal act and the subsequent response to it,¹⁰ but measures using either approach frequently reflect common elements.

6 Marshall, *Restorative Justice: An Overview*, (1999) p. 5.

7 Bazemore and Walgrave, "Restorative Juvenile Justice: In Search of Fundamental and an Outline for Systemic Reform", in Bazemore and Walgrave (eds), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, (1999) p.48.

8 Van Ness, "New wine in old wineskins: four challenges of restorative justice", *Criminal Law Forum*, Vol. (4), p. 251-276, at p. 259.

9 Johnstone and Van Ness, *Handbook of Restorative Justice*, 2007, p 6-18

10 Brunk, "Spiritual roots of restorative justice: Restorative justice and the philosophical theories of criminal punishment", (2001) p.58.

- 2.8 While retributive justice may be vindicated by the imposition of punishment as a response to a person's wrongdoing when found guilty, restorative justice differs in that it seeks to acknowledge the harm done and address the needs of the victim. Further, restorative justice encourages offenders to take responsibility for their wrongdoing, helps them address the causes of their behaviour and gives them an opportunity to make right their wrongs¹¹.
- 2.9 Restorative justice is presented as a forward-looking, problem-solving approach to crime, which involves the parties themselves and the community generally in an active relationship with various agencies. Restorative justice brings victims and offenders into contact with each other and it gives victims an opportunity to get answers to questions that are of direct concern to them. It also gives them a chance to tell offenders the real impact and consequences of their wrongdoing. Accordingly, it can be a significant experience that may provide the victim with a degree of closure.
- 2.10 This process presents offenders with an opportunity to offer an apology to their victims and it also gives offenders a chance to make amends for their wrongdoing, either to the victim or to the community. Restorative justice is about restoring responsibility to offenders to take active steps to repair the harm caused. It requires the offender to participate in the process and it aims to make offenders aware of the consequences of their actions and how the harm caused affects others and themselves.
- 2.11 Restorative justice is not a single academic theory of crime or justice. Rather, it can be applied as a set of principles that allows victims, offenders and communities to have participatory roles in matters that are of direct concern to them. Restorative principles also cast crime in its social context and an essential element of restorative justice is the attention given to the context in which crime occurs. Further, it is a practice that requires flexibility and creativity to maximise its effectiveness¹².
- 2.12 Restorative justice is a multi-faceted discipline that offers parties affected by crime a participatory role in the resolution of its consequences. It may be used in the context of juveniles and adults who commit minor to serious crimes at various stages of the criminal justice process. It is also a process that may benefit victims, offenders, and the wider community in a number of ways.
- What does Restorative Justice Seek to Achieve?**
- 2.13 Victims of crime may be adversely affected physically, emotionally, psychologically and financially and the effects of crime on victims can

11 Zehr, *The Little Book of Restorative Justice*, (2002) p.59.

12 Marshall, *Restorative Justice: An Overview*, (1999) p.5

vary according to the offence¹³. A central aspect of restorative justice is the extent to which it can repair the harm caused as a result of a crime. However, defining "harm" is problematic, as it is a broad term which can cover material losses, physical and psychological injuries, social dysfunctions and the rupture of social bonds and relationships that can arise as a result of crime between the victim, offender and the community.

- 2.14 There is a variety of ways to define restorative justice and definitions can vary in terms of their particular focus. However, the purpose of restorative justice is unified in that it seeks to repair the harm and its associated consequences of a particular crime. In practice, a range of measures can be used in an effort to repair the harm caused to victims. These include oral or written apologies, reparation, restitution or compensation to the victim or the community.

What Format does Restorative Justice Take?

- 2.15 Restorative justice is not easily defined and it is not confined to any particular practice, as it takes many varied forms. These include informal mediation, victim offender mediation, victim offender conferencing, family group conferencing, restorative conferencing, restorative cautions, community conferencing, sentencing circles, community panels or courts, healing circles and other community-based initiatives¹⁴.
- 2.16 While these programmes vary in the extent to which they are restorative, they are unified in terms of the recognition of the need for engagement between victims, offenders and the community¹⁵ and it places emphasis on repairing the harm resulting from crime, including the harm that is caused to relationships as a result of crime¹⁶.

In what Contexts can Restorative Justice be used?

- 2.17 At present restorative justice is used in many countries for a wide range of incidents, from minor anti-social behaviour like graffiti-writing, to serious crime such as assault, robbery and property crimes. It can be used in the context of crimes against the community and crimes against individuals.
- 2.18 It is also used in other jurisdictions for both juvenile and adult offenders and at various stages of the criminal justice process, from pre-charge, pre-conviction and pre-sentence to post-sentence and post-release.

13 Norton, "The Place of Victims in the Criminal Justice System", Irish Probation Journal, VOL (4) 1 September 2007, pp.65-66.

14 See Chapter 3 of this Interim Report for a descriptive discussion on the various restorative models.

15 Bazemore and Umbreit, *Balanced and Restorative Justice: Program Summary: Balanced and Restorative Justice Project*, Washington, D.C: Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (1994).

16 Daly and Immarigeon, "The Past, Present and Future of Restorative Justice: Some Critical Reflections", *Contemporary Justice Review*, (1998) (1) 1, 21-45.

2.19 While restorative justice may be appropriate in a number of areas within the criminal justice process, it nevertheless has its limitations. One of the central components of restorative justice is the extent to which it depends upon the voluntary co-operation and participation of those who take part. Further, the appropriateness of restorative justice will largely depend on other factors, such as the seriousness of the offence, the circumstances of the offender and the wider interests of society. Furthermore, in terms of practicality, efficiency, resources and cost, restorative justice could only be used within the criminal justice process where it is considered necessary and beneficial having regard to the needs of the victim, the offender and the wider community. Therefore, restorative justice should not be expected to act as, or be equated with being, a mechanism that will replace the traditional criminal justice system.

How is Restorative Justice measured?

2.20 Research suggests that restorative justice reduces re-offending in

varying degrees, depending on the type of offence. One study found a significant reduction in the rate of re-offending among young violent offenders, but no significant differences for property offenders or adult drink-drivers¹⁷. Other research has also found that restorative justice seems to have more of an impact on re-offending when it is used for more serious offences¹⁸. The most recent research suggests that restorative justice reduces re-offending for offenders of both violent and property crimes and the research has also provided weight to the proposition that it may be an effective means of dealing with adult crime¹⁹.

2.21 Research has provided a convincing body of evidence which suggests that restorative justice helps the victim in a variety of ways. In particular, restorative justice has been shown to improve victims' satisfaction levels and their perceptions of fairness²⁰. It has also been shown to be a means of increasing victims' satisfaction levels, in terms of the processing of their case²¹. Other studies have revealed

17 Sherman, Strang and Woods, *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)*. Australian Federal Policing and Australian National University, Canberra, (2000).

18 Miers, D, *An International Review of restorative justice*. Home Office, Crime Reduction Research Series, Paper 10, (2001).

19 Strang, H & Sherman, L.W, *Restorative Justice: The Evidence*, (2007), London: Esmee Fairbairn Foundation & The Smith Institute. Available at: http://www.esmeefairbairn.org.uk/docs/RJ_full_report.pdf, last accessed 01/02/08.

20 See Fercello & Umbreit, "Client evaluation of family group conferencing in 12 sites in 1st Judicial District of Minnesota", Center for Restorative Justice & Mediation, School of Social Work, University of Minnesota, (1998), where an evaluation of victim satisfaction and perception of fairness was carried out on twelve group conferencing sites, reporting between 93% and 95% satisfaction levels in terms of the process and its outcome.

21 See; Umbreit, Coates, and Kalanji, *Victim meets Offender: The Impact of Restorative Justice in Mediation*, (1994), where 79% of mediated victims were satisfied with the processing of their case compared to 57% of victims within a Court sample.

that restorative justice can also reduce a victim's desire for revenge²² and reduce victims' post-traumatic stress levels²³.

2.22 Work carried out to date by the Commission indicates that restorative justice has the potential to improve the lives of those most affected by crime. The extent to which restorative justice can be applied in an Irish context at a wider level will be assessed by the Commission on research-based evidence and international best practice.

22 Sherman & Strang, *Restorative Justice: The Evidence*, (2007).

23 See <http://www.realjustice.org/library/angel.html> last accessed 20/02/08.

CHAPTER 3

Restorative Justice Participants and Models

- Introduction
- Restorative Justice and the Criminal Justice System
- Victim Participation and Restorative Justice
- Restorative Justice - The Offender's Perspective
- The Community and Restorative Justice

Introduction

- 3.1 The prosecution of criminal activity is the responsibility of the State and, apart from acting as informants or witnesses in particular cases, persons who are victims of crime have limited roles in the criminal justice process. In the Irish experience, victim participation is limited, given the public prosecution model of criminal justice and the requirement to safeguard the impartiality of the criminal trial.
- 3.2 The criminal justice system is formal in nature and the objective of the court process is to establish facts and punish those who plead or are found guilty. The State prosecutes in the public interest and those who offend are punished by virtue of their wrongdoing being a crime against society. Accordingly, the State does not prosecute on behalf of the individual victim but on behalf of society as a whole.
- 3.3 In recent years, victims of crime have been afforded increasing

recognition by the criminal justice system. The Criminal Justice Act 1993, Section 6 (1), makes provision for compensation orders for crime victims and Section 5 (3) provides for victim impact statements to be taken into consideration by the trial court before sentencing. Section 2 (1) of the Act also provides some recognition of the harm or damage done to victims and it facilitates the review of unduly-lenient sentences.

- 3.4 Legislation now provides for the giving of evidence by live video link. This facilitates witnesses, with the leave of the Court, in giving evidence in physical or sexual abuse cases or where they may be in fear of or subject to intimidation.
- 3.5 A comprehensive Victims Charter and guide to the criminal justice system was launched by the Department of Justice, Equality and Law Reform in 1999 and this clarifies and details the work of the relevant agencies in the criminal justice system and what victims might expect from them. The Commission for the Support of Victims of Crime was established in March 2005. It has a 3 year remit and is currently preparing a report on a future framework for victim support services.

Restorative Justice and the Criminal Justice System

- 3.6 In recent years, many countries when tackling crime have adopted new approaches in an effort to better meet the needs of victims, offenders and the community.

Restorative justice is one such approach which involves all the major stakeholders in a particular case and aims to encourage responsibility, restoration and reconciliation. In his presentation to the Commission, Kieran O'Dwyer identified four general models which are internationally used to deliver restorative justice. These are:

Victim Offender Mediation
Reparation Panels
Family Group Conferencing
Circle Sentencing.

- 3.7 Briefly, Victim Offender Mediation involves a process where victim and offender can encounter each other via trained facilitation with a view to resolving the consequences of the crime. The process focuses on meeting the needs of the victim, providing the offender with awareness and an understanding of the impact of his or her behaviour on the victim. This model provides a forum for victim and offender to meet in a safe and respectful environment. The objective of the meeting is to explore and discuss the effects of a crime and the manner in which healing can begin. The key focus is to repair the harm caused to the victim in the past, to look at the needs of the victim and offender in the present and to prevent re-offending. Restorative principles and practices are utilised at all times.
- 3.8 Restorative practices acknowledge that communities also are affected by crime and have a significant role to play. Reparation Panels involve participation by members of a community from different backgrounds and provide an opportunity to set and achieve community objectives. A panel can be used where the victim is unavailable or in the context of crime against the community. It also has the potential to address victim and offender needs.
- 3.9 In the Reparation Panel model a greater emphasis is placed on the community dimension of the crime. The community is represented on the Panel which encounters offenders and seeks to secure their compliance with a set of commitments which will reduce the likelihood of re-offending. Restorative principles see crime as a violation of people and relationships and, where relationships are broken, it is important that victims, offenders or community members engage with each other with a view to repairing the harm caused.
- 3.10 Family Group Conferencing is similar to victim offender mediation but involves a wider range of community interests in the dialogue process. This wider range of interests could include professional, educational or social service sectors. It places emphasis on accountability and the integration of offenders back into the community. The family seeks to resolve the problem by deciding together what needs to be done, with the help and advice of the professionals involved.
- 3.11 A family group conference can be used as a response to a family crisis within the welfare or justice systems. During the conference, family members or other persons significant to the parties involved come together with a facilitator to focus on the needs of the young person and meaningful direction required. The

process is seen as respectful of, rather than an intrusion into, the family's life, where the family is encouraged to use its own capabilities and strengths to resolve a problem.

- 3.12 Circle sentencing emerged within communities in Canada and tends to reflect cultural factors with a focus on determining sentences in criminal cases addressing workplace conflicts or promoting community dialogue in urban areas. The circle can include a judge, the prosecution and defence legal professionals together with police and community representatives. The process adopted usually reflects cultural, ethnic or faith-based practices that draw on restorative justice values. It can touch on identity, morals, ethics and practices and addresses behavioural life style issues. In the Aboriginal or First Nation settings where this is applied, community elders play a major role.
- 3.13 Restorative justice is not an exclusively victim-centred policy and parallel aims of the process are to rehabilitate offenders and reduce offending. The effectiveness of criminal sanctions can be measured against their ability to rehabilitate and deter those found guilty of wrongdoing. Punishment, in many instances, has been shown to be an ineffective response in bringing about constructive changes in offender behaviour, particularly from

the point of view of reducing re-offending.

- 3.14 Traditionally, one purpose of imprisonment has been to punish the offender. While increasing efforts have been made to aid offenders in terms of rehabilitation and their integration into society, there may be scope within the prison system for the adoption of restorative measures to underpin these efforts. Such an approach may offer the prospect of reducing re-offending rates post-release, in some cases.

Victim and Restorative Justice

- 3.15 The use of restorative justice as a process has been shown to enhance the experience of victims in the criminal justice system, particularly where fairness, respect and satisfaction levels are used as barometers of success²⁴. This is often contrasted with the level of dissatisfaction expressed by victims when involved in the traditional criminal justice system²⁵.
- 3.16 The literature demonstrates that restorative justice as a process increases victim satisfaction levels, especially where victims have the opportunity to tell their story and when they feel that their hurt is not being ignored²⁶. The majority of studies report a positive response among victims, in terms of their experience of the restorative justice

24 See Strang, *Repair or Revenge: Victims and Restorative Justice*, (2002), p.13.

25 Kelly, "Victims' Reaction to the Criminal Justice Response", paper delivered at 1982 Annual Meeting of the Law and Society Association, 6th June 1982, Toronto, Canada.

26 Forst and Herson, *The Criminal Justice Response to Victim Harm*, National Institute of Justice Research in Brief. Washington, DC, U.S Department of Justice, (1985).

process. The research also indicates that there is a high level of completion of restitution agreements and that there is a direct correlation between agreement completion and victim satisfaction.

3.17 While restorative justice is less formal than the traditional criminal justice system, it overcomes the helplessness and frustration often experienced by victims, particularly where they feel excluded and lack any participation and where they perceive the process as being unfair to and disrespectful of their needs. Research has shown that victims want their views to count and the process to be less formal²⁷.

3.18 Studies have shown that, as well as needing information, victims want to participate and be consulted about the processing and outcome of their particular case. Victims also require material and emotional restoration, in particular an apology²⁸. Further, it has been shown that the more contact a victim has with criminal justice authorities and the greater the availability of information given to them, the higher their level of satisfaction with the criminal justice process is likely to be²⁹.

3.19 Restorative justice provides victims with an opportunity to be heard and

it can place them in an environment where issues that are of direct concern to them, can be resolved. It is a process that has been shown to reduce victims' desire for revenge and retaliation, while also reducing the level of fear and victimisation they experience³⁰. Recent studies have also shown that restorative justice as a process can reduce symptoms of post-traumatic stress disorder³¹.

Restorative Justice - The Offender's Perspective

3.20 One of the main criteria whereby the success of restorative justice is gauged is by reference to the level of recidivism amongst offenders who participate in the process. While the evidence to date would suggest that restorative justice impacts positively on recidivism in many instances, the results indicate that a positive impact is not always achieved³².

3.21 Aside from impacting on recidivism, restorative justice allows offenders to face up to the harm and the wrongs they have caused. It gives the offender the opportunity to express remorse to the victim. Acknowledging the harm caused provides the offender with an appreciation that crime has

27 Strang, *Repair or Revenge: Victims and Restorative Justice*, (2002), p 8-10

28 Strang, *Restoring Victims: An International View*, paper presented at the Restoration for Victims of Crime Conference convened by the Australian Institute of Criminology, Melbourne, September 1999. Paper available at <http://www.aic.gov.au/conferences/rvc/strang.pdf>, last accessed 06/02/08.

29 Shapland, "Victims and the Criminal Justice System" in E. Fattah (ed.), *From Crime Policy to Victim Policy: Reorienting the Justice System*. (1986) p. 214.

30 Strang & Sherman, *Restorative Justice: The Evidence*, (2007) p.4.

31 Angel, C, *Crime Victims Meet Their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-Traumatic Stress Symptoms*, PhD dissertation (University of Pennsylvania), 2005.

32 Strang, H & Sherman, L.W, *Restorative Justice: The Evidence*, (2007).

negative implications on others. It provides the baseline whereby reparation can be brokered between the victim and the offender. Restorative justice can also connect or re-connect the offender with the wider community and further research will be needed on how best this potential could be achieved.

- 3.22 There are gaps in our knowledge base. It is not always clear if restorative justice is more effective than the traditional criminal justice system in reducing recidivism, as the research results to date are inconclusive. Recent research suggests that restorative justice may work best when it focuses on offences that have a personal victim who engages in the process with the offender. It is also suggested that restorative justice "can reduce crime more effectively with more-, rather than with less-serious crime". Furthermore it may work with violent crimes more consistently than with property crimes³³. The Commission is evaluating the available research and is considering in what situations restorative justice works best. Further analysis may provide guidance as to whether it is in the public interest to apply a restorative justice intervention rather than a traditional penalty for wrong-doing.

Community and Restorative Justice

- 3.23 The benefits of restorative justice are said to extend not only to the victim and the offender and their families, but also to the wider community. A

fundamental component of restorative justice is the extent to which the community has the capacity to integrate offenders. It has been suggested that the inclusion of community members in restorative justice processes can empower communities, in that it allows local citizens to represent their values and norms. Restorative justice has potential in terms of benefiting the community. A collaborative effort between community members and criminal justice agencies could produce an effective mechanism.

- 3.24 It is encouraging to note that guidelines have been established under the provisions of the Garda Síochána Act, 2005, for Joint Policing Committees. Under Section 36 (2) of this Act, the function of the Committees is to serve as a forum for consultation, discussion and recommendations on matters affecting the policing of a local authority's administrative area. In particular the Joint Policing Committee will keep under review the levels and patterns of crime, disorder and anti-social behaviour in that area and the factors underlying and contributing to crime levels. The Committee will also advise the local authority and An Garda Síochána on how they might best perform their functions, having regard to the need to do everything feasible to improve safety and quality of life for communities and to prevent crime, disorder and anti-social behaviour.
- 3.25 In an Irish context, the Nenagh Community Reparation Project and the Tallaght-based Restorative

33 Ibid.

Justice Services project provide an opportunity to explore the wider applicability of community participation. Further study will be necessary to assess the effectiveness of restorative justice in community contexts and the extent to which local communities are engaged with the management of such processes.

3.26 Restorative justice assumes a community responsibility for addressing criminal activity, while addressing the harm caused by the offender. However, socio-economic or cultural factors can directly influence the integration process. While community characteristics may help explain the connection between these factors and crime, or crime levels, within and across communities, the link between crime and community response needs consideration. At present there is a lack of insight into how community aspects influence restorative justice processes.

3.27 The National Crime Council published its report *Problem Solving Justice - The case for Community Courts in Ireland in May 2007*. In the context of the community, the Commission will examine the

potential for Community Courts to adopt a restorative justice approach. The types of offences typically within the remit of Community Courts are offences which might be considered less grave in offending terms, but nevertheless have adverse effects on the quality of life of people in the local community. Examples of such offences include public order offences such as drunk and disorderly conduct, assault, criminal damage, graffiti and petty theft. The Council's report detailed a non-exhaustive list of offences that may benefit from Community Courts and these are listed in Appendix IV.

3.28 Community Courts can take a problem-solving approach to offenders, using a range of health and social services. These include mental health treatment, drug and alcohol treatment, job training, housing and family services. All of these seek to address the problems underlying criminal behaviour in the community with a view to minimising repeat offending. Indeed, a particular characteristic of the Community Court would be its close involvement and consultation with the local community.

CHAPTER 4

Restorative Justice Abroad

- Growth of Restorative Justice in other Countries
- Diversity of Arrangements
- Common Law Jurisdictions
- Civil Law Jurisdictions
- International Instruments

Growth of Restorative Justice in Other Countries

- 4.1 Restorative justice has become a significant component of criminal justice systems throughout the world. Over eighty countries use some form of restorative justice in addressing crime and it is suggested that the actual figure could be closer to one hundred³⁴.
- 4.2 While restorative programmes are often localised and experimental, in a number of countries restorative measures constitute a significant aspect of various criminal justice systems. Globally, restorative justice is used at almost every part of the criminal justice system. As a result, restorative justice is being employed by police, prosecutors, courts, probation, prison and parole officers in various countries³⁵.

Diversity of Arrangements

- 4.3 In its terms of reference the Commission is asked to review contemporary developments in restorative justice in other jurisdictions. This requirement is an acknowledgement of the growing experience, knowledge and practice of restorative justice abroad.
- 4.4 In its report on restorative justice, the Oireachtas Joint Committee profiled a number of international examples of restorative justice practices and the existence of a convincing body of international evidence supporting the effectiveness of restorative justice approaches³⁶.
- 4.5 The Commission is currently exploring this subject and is grappling with the wide range of restorative justice arrangements in other countries. This proliferation of applications reflects a broad diversity of legal, cultural and social environments. It also manifests a range of funding arrangements and statutory and structural settings for delivery. It is not surprising, therefore, that practices and standards of service and delivery of restorative justice measures vary from programme to programme.

34 Van Ness, An Overview of Restorative Justice Around the World, Centre for Justice & Reconciliation at Prison Fellowship International. This paper was presented at the United Nations 11th Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand on April 22, 2005. Paper is available at <http://www.pficjr.org/programs/un/11thcongress/danspaper>, last accessed on 21/01/08.

35 *ibid*

36 Houses of the Oireachtas, Joint Committee on Justice, Equality, Defence and Women's Rights, Report on Restorative Justice, January 2007, p 17-22.

- 4.6 This diverse mix makes it hard to capture the essence of a uniformly effective model. It presents a difficult challenge to distil research findings on various programmes and produce valid comparisons of the effectiveness and impact of each restorative justice model. Indeed, in many instances, the time lapse since introducing measures has not been long enough to generate meaningful result data.
- 4.7 Fortunately, there are a number of international studies of research on restorative justice models in different countries³⁷. Notwithstanding some of the limitations, given their international nature, these studies are generally sensitive to the difficulties that arise when comparing and evaluating the different research conclusions that arise. This helps to confer greater validity on the comparative findings they reach.
- 4.8 The Commission has been building up its knowledge of restorative justice developments abroad through the wide range of published material and by means of participation in conferences, workshops and meetings with international experts.
- inclination in examining developments abroad is to look at jurisdictions with a similar common law base.
- 4.10 Our neighbouring jurisdictions in Northern Ireland, England and Wales and Scotland have provided many useful criminal justice precedents and models for this jurisdiction to consider. Contemporary developments in these jurisdictions, particularly as regards the youth justice area, are certainly worthy of close attention and mirror progress being made here in our own youth justice system and the harnessing of restorative justice practices in that cause.
- 4.11 Although restorative practices have been adopted on a widespread basis in the youth justice context, its application in an adult context has been more tentative. Nevertheless, there is openness in those jurisdictions to promoting wider discussion on extending restorative justice as a response to adult crime and a number of pilot projects have been exploring potential in this regard³⁸.
- 4.12 At the same time, other common law jurisdictions are making progress in the application of restorative justice approaches beyond the youth justice area. In some cases, restorative justice initiatives have

Common Law Jurisdictions

- 4.9 Given the common law basis of the Irish criminal justice system, the first

37 Miers and Willemsens, *Mapping Restorative Justice Developments in 25 European Countries*, European Forum for Victim Offender Mediation and Restorative Justice, (2004). Sherman and Strang, *Restorative Justice: The Evidence*, (2007). Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, (2007).

38 Shapland et al, *Implementing Restorative Justice Schemes (Crime Reduction Series)*, A Report on the First Year, Home Office Online Report 32/04, (2004). Shapland et al; *Restorative Justice in practice-Findings from the second phase of the evaluation of three schemes*, Findings 274, Home Office (2006). Shapland et al; *Restorative Justice: The views of victims and offenders*, the third report from the evaluation of three schemes, Ministry of justice Research Series 3/07, (2007).

drawn on traditional, Aboriginal or faith community experience in dealing with conflict or offending behaviour. In other cases, they emerged as a response to crime and an alternative to retributive justice, especially where there had been an over-emphasis on custodial sanctions and where the effectiveness of such sanctions in reducing crime was open to challenge.

- 4.13 New Zealand and Australia have both considerable experiences in providing a restorative justice option in combating crime. In particular, they have adopted restorative justice as a feature of their youth justice systems with variant models being applied in different jurisdictions³⁹.
- 4.14 The experience gained from these measures has prompted more work at adult offending level. In New Zealand, various conferencing approaches are being applied to some adult crime cases, including a limited number of serious offences for which custodial sentences of 1 to 7 years would be considered. In Australia, The Crime (Restorative Justice) Act, 2004 has been implemented in the Capital Territory, to provide a restorative conferencing scheme for adults.
- 4.15 A wide range of restorative justice measures has been adopted across many State jurisdictions in both Canada and the United States of America. In these countries many of the models adopted seem to be

initiatives with a strong local, grass-roots basis. This is reflected in the high number and local nature of the models in question.

- 4.16 In Canada, at least 12 distinct models can be identified reflecting not only a range of processes (conferencing, victim offender mediation, circles, etc.) but also a spread of targeted offenders and communities (youth, prisoner, adult, faith community, Aboriginal, etc.). In the United States of America, victim offender mediation appears to be the more common approach adopted.

Civil Law Jurisdictions

- 4.17 The European experience of restorative justice may be more recent but no less informative. Again, one is struck by the diversity of approaches taken. In common law jurisdictions, prosecutorial decisions are made having regard to the public interest. This can take effect by prosecutors exercising some discretion when deciding how a particular case should proceed. In the civil legal system, the discretion to opt for a restorative justice process is more dependent on a statutory base⁴⁰.
- 4.18 Because of the relatively recent adoption of restorative justice measures in many European countries, it may not be possible to establish the scale of delivery or impact. However, the experience of implementing these services on a

39 Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, (2007).

40 Miers and Willemsens, *Mapping Restorative Justice Developments in 25 European Countries*, European Forum for Victim Offender Mediation and Restorative Justice, (2004), p.158.

national basis should be of considerable interest and warrants ongoing study.

4.19 In Austria, restorative justice is now applied to both youth and adult crime on a nationwide basis. In 2002, about 1,500 youth justice cases and over 7,000 adult offender cases were referred for victim offender mediation by the state prosecutor and the court. In respect of 86% of youth cases and 71% of adult cases, no further action was taken in the criminal justice process. The remaining 14% of youth and 29% of adult cases progressed to trial⁴¹.

4.20 The situation in Belgium is somewhat more complex given the range of services and agencies involved, including the separate cultural community arrangements which apply. Nevertheless, victim offender mediation has been provided in youth justice cases since 1965. Furthermore, since 1995, post-sentence provision of restorative justice services has been available, albeit on a modest scale⁴².

4.21 A development of interest in the Czech Republic is the establishment of the Probation and Mediation Service, in 2001. This national service operates in all 74 court districts of the Republic and draws firmly on restorative justice principles⁴³.

4.22 In Finland, the duties and composition of the Advisory Board on Mediation in Criminal Cases was the subject of legislation by Government in 2006⁴⁴. The State Provinces are responsible for providing mediation services and seek to ensure all citizens have access to victim offender mediation services. Mediation services are delivered by some 100 full-time staff and 900 trained volunteers. The experience of placing mediation services on a nationwide footing as recently as 2006/2007 is of particular interest. Similar developments in Norway, where trained volunteers provide restorative justice services, are also of interest.

International Instruments

4.23 The importance of restorative justice is also evident from international instruments which promote its application by Member States. In 2001, the European Council adopted the Framework Decision *The standing of victims in criminal proceedings*. This measure calls on Member States to promote mediation in appropriate criminal cases and to take victim/offender mediation agreements into account.

4.24 The European Convention on the Compensation of Victims of Crime, 1983, contains minimum standards for compensation to crime victims.

41 *ibid*, p.19-20.

42 *ibid*, p.23.

43 *ibid*, pp. 37-39.

44 http://www.euforumrj.org/readingroom/Lisbon_seminar/Kinunen%20Aarne_Implementing%20RJ%20policy.pdf

Two related Council of Europe Recommendations followed, one in 1985⁴⁵ and the other in 1987⁴⁶. They seek to highlight the needs of victims in the criminal justice system and open the way to the adoption of restorative justice measures by Member States.

4.25 Of particular importance in promoting a restorative justice approach is Recommendation No R (99) 19, *Mediation in penal matters*, which profiles the potential value of mediation to both victim and offender. This Recommendation is reinforced by Recommendation R (2006) 8 *on assistance to crime victims*, which also promotes victim offender mediation and the adoption of clear standards in that area.

4.26 In 1985, the United Nation's *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* provides for improved access of victims to justice, fair treatment, restitution, compensation and assistance.

4.27 The United Nations also published a *Handbook on Restorative Justice* in 2006, providing further evidence of international recognition for this subject. This publication explains the key concepts and features of restorative justice, including its process values and goals, the use of restorative justice approaches and the principles and safeguards which apply. It outlines the principles and practices of implementation, the dynamics of restorative justice interventions, how such programmes operate and the importance of programme monitoring and evaluation.

45 Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, Council of Europe, Strasbourg (1985).

46 Council of Europe, Recommendation No. R (87) 21 of the Committee of Ministers to Member States on assistance to victims and the prevention of victimisation, Council of Europe, Strasbourg, (1987).

CHAPTER 5

Restorative Justice in Ireland

- Restorative Justice Principles/Practices in the Criminal Justice System
- The Garda Diversion Programme
- Court-Referred Family Conferences
- Non-Statutory Restorative Justice Measures
- An Garda Síochána Adult Cautioning Scheme
- Nenagh Community Reparation Project
- Restorative Justice Services Tallaght

Restorative Justice Principles/Practice in Criminal Justice System

5.1 Restorative justice is a way of responding to criminal behaviour by balancing the needs of the victim, the offender and the community. The core elements of the process are that the victim's perspective is considered and represented, offenders accept responsibility for their actions, the trauma experienced or the harm caused as a result of a crime is humanised, offenders apologise to the victims, offer some level of reparation and address the circumstances leading to offending behaviour.

The Garda Diversion Programme

5.2 Part 4 of the Children Act, 2001, placed the Garda Diversion Programme on a statutory basis. The scheme, established in 1963, is the most significant diversionary strategy for children in conflict with the law. In order to be accepted into the

programme the child must

- be under 18 years of age at the time of the commission of the offence
- accept responsibility for his or her behaviour
- consent to being cautioned and supervised if appropriate.

The objective of the programme is to divert any child who accepts responsibility for his or her offending behaviour from committing further offences. The child is not brought before the courts and the matter is dealt with by way of caution.

5.3 The caution may be informal or formal. If formal, the child is placed under the supervision of a Juvenile Liaison Officer for a period of 12 months. The decision to include a child in the programme is made by the Director of the Diversion Programme, who is a designated member of An Garda Síochána not below the rank of Superintendent.

5.4 In 2006, 20,016 children were accused of committing offences. The following is a breakdown of how the cases were dealt with:

- 76% (15,129) received a caution for their behaviour
- 14% (2,828) were considered unsuitable for inclusion in the programme and were recommended to be considered for prosecution
- 6% (1,280) required no further action.
- 4% (779) of decisions were still pending.

Restorative Cautions and Conferences

- 5.5 In certain instances, the Juvenile Liaison Officer can invite the victim of the child's behaviour to attend a formal caution (Section 26 Children Act). This is known as a **restorative caution** and the child and the victim are brought face to face in a safe and balanced environment to discuss the offending behaviour. There were 293 restorative cautions in 2006.
- 5.6 The victim is given the opportunity to meet the child, to tell his/her story and to express what impact the behaviour had. The child is given the opportunity to tell his/her story, to apologise to the victim and to make an effort towards reducing the level of harm done. Subsequently, a discussion will then take place with all parties, including the child, to identify what needs to be done to help prevent the child from committing further offences.
- 5.7 Where no single individual victim is apparent, but the behaviour impacts on the community or on people's lives, then a person may be invited to represent the interest of those who might have been affected by the offending behaviour. For instance, a member of the fire brigade or ambulance services may attend in relation to a case of dangerous or drunken driving. A family member may outline to drug abusers how their behaviour has impacted on the family or a local council worker may represent the community in a case of graffiti-writing.
- 5.8 A conference can be held in respect of a child who has committed an offence, where the child's welfare is an issue (Section 29, Children Act, 2001). The purpose of the conference is to establish why the child became involved in the behaviour, what could prevent such continuing behaviour, to formulate an action plan for the child, to mediate with the victim and to uphold the interests of that victim. The victim may be invited to attend the conference. This is known as a restorative conference and 14 restorative conferences were held in 2006.
- 5.9 Such restorative events (cautions and conferences) have been held for very serious offences such as robbery, burglary, arson, assault causing serious harm and possession of drugs with intent to supply. The process has also been used for less serious offences, where it was considered that the restorative process would be of particular benefit to the victim, the child or the community.
- 5.10 Key findings of an evaluation of the Garda programme of restorative justice, carried out by the Garda Research Unit in 2002-3, indicated that two thirds of those dealt with by restorative caution did not re-offend during the evaluation period and that 93% of victims were either satisfied or very satisfied with the process.

Court-Referred Family Conferences

- 5.11 Court-referred family conferences only take place where the court is hearing criminal charges against the child and considers it desirable that an action plan is formulated in the case. The conferences are

convened by the Probation Service as provided under Section 78 of the Children's Act 2001. Referral of a case is conditional on the child accepting responsibility for the criminal behaviour concerned and on the willingness of the child's parents or guardians to attend.

- 5.12 In the course of the family conference, an action plan is prepared and is presented to the Court. If the terms of the action plan are complied with, the Court may dismiss the charge. If they are not, then the Court may resume the criminal proceedings against the child.
- 5.13 This provision of the 2001 Act was brought into effect in July 2004 and the first request by a court to convene a conference was made in October 2004. From then until the end of 2007, a total of 133 conferences have been held at the courts request, i.e., an average of just 41 per year.
- 5.14 The experience of probation staff underlines the critical importance of detailed preparation in advance with the main participants in the proposed conference. Staff observe that it is not at all easy for a young person to have to explain his or her action to the family and face up to and apologise to his or her victim. Attending court and being dealt with in the traditional manner is far less personally demanding. It is evident that family involvement sees the offender taking some responsibility for ensuring that the harm is repaired and that no further offending takes place. It also heightens the young person's awareness of the pain and

hurt caused and thereby reduces the likelihood of re-offending.

- 5.15 Victims are strongly encouraged to, and usually do, attend or are represented at the conference. They receive answers to their questions, attain an element of closure and play an influential part in determining the objectives and content of the action plan. More detailed research is underway examining the process and outcomes of the conferences that have concluded.
- 5.16 While statutory provision has been made in respect of the application of restorative justice in the case of offenders less than 18 years of age, there is no corresponding legislative basis for such measures for adult offenders. However, there is scope for the prosecution service and the courts to apply discretion in a limited number of cases. This discretion takes the form of the Garda Adult Cautioning Scheme and the restorative justice pilot programmes based in Nenagh and Tallaght, which are overseen by the Courts and funded by the Probation Service.

An Garda Síochána Adult Cautioning Scheme

- 5.17 The Garda Adult Cautioning Scheme is approved by the Director of Public Prosecutions as an alternative to prosecution of a scheduled criminal offence before the Court. The scheme adopts a diversionary approach and is not grounded in restorative justice principles. Any decision to add a restorative justice

dimension to this scheme requires consideration and may also prompt an assessment as to whether legislation is required. The Schedule of Offences considered suitable under the scheme is set out in Appendix V.

- 5.18 The offence must be of a kind appropriate for consideration of a caution, the offender a person who is deemed both suitable for consideration and likely to consent to it and the views of any victim must, if reasonably possible, be sought. At present, there is no provision for negotiation, reparation or compensation in the adult cautioning scheme. Such cautions must be cited in court in the event of any other prosecution against that offender. All adult cautions are recorded on PULSE⁴⁷.
- 5.19 The scheme was introduced in February 2006 and 4,300 incidents were recorded where an adult caution was administered under the scheme in 2006. Provisional returns indicate that in 2007, adult cautions have been applied in respect of 6,668 incidents, of which 3,013 related to public order offences, 1,914 theft from shops, 866 drunkenness offences and 410 criminal damage. The remaining offences included other thefts and minor assaults.
- 5.20 The scheme may have potential in terms of restorative justice. Exploring this possibility will require an evaluation of restorative measures that can best meet both the victims

need for a reparative response and the offenders' need to address their criminal behaviour. There may also be potential for a restorative justice approach in cases of neighbour or community disputes.

Nenagh Community Reparation Project

- 5.21 The Nenagh Community Reparation Project, which is promoted and funded by the Probation Service, began on a pilot basis in 1999. The project was initiated by Judge Michael Reilly following positive observations made in Timaru, New Zealand, where a similar project was operating. The project is not an alternative to the criminal justice system but an additional option available to the court for persons who plead guilty or are found guilty of criminal offences. The restorative approach adopted involves victims, offenders, their families and community members responding to the hurt and harm caused and balancing the needs of the parties while protecting the safety of the community. The focus is primarily community reparation as opposed to mediation.
- 5.22 A significant feature of this project is its reliance on volunteers from the community. Serious as well as less-serious offences have been processed by the project and while in recent times the number of referrals has been low, this may be due to a lack of awareness of the project. The project appears to have the potential for more frequent local application.

⁴⁷ PULSE (police using leading systems effectively) refers to the electronic crime data recording system of An Garda Síochána, which was introduced in 1999.

5.23 Since its introduction in 1999 and up to end 2007, some 105 cases were dealt with by the project, having been referred by the court. Project records indicate that only 18% of those dealt with under the scheme have re-offended⁴⁸.

Restorative Justice Services (RJS), Tallaght

5.24 Restorative Justice Services is a voluntary not-for-profit organisation which was established in 2000. It is funded by the Probation Service and is managed by a partnership of stakeholders within the criminal justice system. These include Tallaght District Court, the Probation Service, An Garda Síochána, victim support and community sector volunteers.

5.25 Two restorative justice programmes are available, offender reparation and victim offender mediation. All cases are court-referred at pre-sentencing stage, at the discretion of the Judge. The Probation Service, An Garda Síochána, legal representatives and victim support interests may request the Court to consider the appropriateness of mediation or reparation in a particular case. The Court is in charge of the process at all times.

5.26 The Offender Reparation Programme provides offenders with an opportunity to accept responsibility for their behaviour, to look at its effects on others and the wider community, to address the

consequences of their actions, to make positive changes in their lifestyle and to make reparation to the community.

5.27 As part of the process, a programme of reflection, reparation and restoration is agreed upon between the offender and the reparation panel. The programme is documented by the panel and, upon completion, a report is made available to the Court. If the Judge is satisfied that the offender has satisfied the conditions of the programme, the case can be disposed of under Section 1 (1) of the Probation of Offenders Act, 1907.

5.28 According to its 2006⁴⁹ Annual Report, Restorative Justice Services dealt with 94 referrals to the Offender Reparation Programme in 2006 and 87 offenders successfully completed their contracts⁵⁰. Some 73% of offenders involved were over the age of 18 but under the age of 25. Given that the consumption of alcohol was a contributing factor in the vast majority of cases, it is noteworthy that some 85% of offenders undertook some form of alcohol awareness programme, arising from the panel's intervention.

5.29 Victim offender mediation provides an opportunity for victims and offenders to engage directly or indirectly in a process aimed at addressing the needs of the victim,

48 These figures were provided by representatives of the Nenagh Community Reparation Project, during a presentation to the Commission in July 2007.

49 In 2007, there were 81 referrals to the offender reparation programme; however figures for those who completed their contracts successfully are not yet available.

50 Restorative Justice Services, Annual Report, (2006) p.17.

while ensuring the offender is made fully aware of the impact of his/her behaviour. The intended outcome is that the offender apologises, makes reparation and agrees steps to help avoid further crime. Since its establishment, some 100 cases have been referred to Restorative Justice Services for victim offender mediation. These referrals have been made by a number of courts in the greater Dublin area, including the Dublin Metropolitan Court and in respect of District Court appeals, by the Circuit Courts in Dublin, Kildare and Wicklow.

CHAPTER 6

The Criminal Justice Process - Irish Data

- Introduction
- Crime Statistics of An Garda Síochána in 2006
- District Court Statistics for 2006
- Crime Statistics and the Circuit Criminal Court
- Crime Statistics and the Prison System

Introduction

- 6.1 As part of the Commission's terms of reference, it is necessary to consider the application of restorative justice in terms of persons brought before the courts on criminal charges. At this stage of the Commission's work, it is too early to estimate the range of offences or persons who might benefit from an application of restorative justice, as there are still many issues under consideration.
- 6.2 Crime data reveal the extent to which crimes are perpetrated and subsequently recorded and detected by An Garda Síochána. They reveal the number of offenders and offences coming before the courts and the extent to which the courts apply various disposal options in respect of the cases brought before them. In addition, crime data provide useful information on the type of offences that attract short to long-term sentences.
- 6.3 However, there is a lack of correlation between the statistics of the various criminal justice agencies and each agency has its unique counting rules. The absence of a

common data tracking system presents a difficulty in terms of tracking offenders through the criminal justice system. Until a system is put in place that can track persons from the time an offence is reported to An Garda Síochána through pre-court to court outcome, to probation or prison stage, we will not have the data that can best inform policy development.

- 6.4 The Commission is currently endeavouring to reach, as far as is practicable, informed conclusions on the extent to which restorative justice could be used as a problem-solving approach for certain offences. By the same token, the Commission is endeavouring to assess the extent to which restorative justice could be applied having regard to the characteristics and circumstances of the offender. With these considerations in mind, the Commission is conscious that restorative justice cannot realistically be expected to be a panacea that can resolve the existence of all crime, its underlying causes, or the future behaviour of all persons who fall foul of the law.
- 6.5 Crime data inform the Commission on crime trends and the prevalence of certain offences. The data present an opportunity for the Commission to identify areas and practices within the criminal justice system that might benefit from a restorative justice approach. It is envisaged that crime data, read in conjunction with domestic and international research-based evidence, will form the basis whereby the potential impact of

restorative justice can best be gauged. Further, the crime data may be instructive in gauging the potential pool of participants who might benefit from a restorative approach.

- 6.6 In future deliberations, the Commission will endeavour to categorise crimes by reference to whether or not they directly involve victims. Such an exercise would be beneficial, particularly in the context of identifying crimes against the community. It may also be useful to identify situations where restorative justice would be inappropriate, particularly in terms of application, efficacy, practicality and the seriousness of the crime, having regard to the public interest.
- 6.7 It may be useful to focus on the types of offences and the range of criminal sanctions currently available to the courts at case disposal. The Commission will pay particular attention to court disposals such as imprisonment, detention, suspended sentences, community service, fines, probation and peace bonds. However, the Commission is mindful that assessing crime data by reference to offences and disposal-types does not acknowledge the duty placed upon the court to take all other relevant surrounding circumstances into account at case disposal.

- 6.8 While an examination of these and other issues will be necessary in the course of the Commission's work, what follows is a preliminary look at crime data from the various criminal justice agencies. It is hoped that these data will provide a general overview of crime statistics currently available, from which further analysis can be carried out.

Crime Statistics of An Garda Síochána in 2006

- 6.9 Garda crime statistics reveal the number of offences recorded within a given year and in 2006 the total number of offences recorded by An Garda Síochána⁵¹ was in excess of 400,000. This total comprised headline (25%)⁵² and non-headline (75%) offences. While these data are useful in identifying the incidence of various offences,⁵³ the Commission will be concentrating on the number of offences that are detected by An Garda Síochána. In 2006, approximately 40% of headline offences were detected by An Garda Síochána and proceedings were commenced in 70% of all non-headline crime.
- 6.10 The Commission will assess the number of offences in which criminal charges were commenced and situations where charges were proved against offenders, as these

51 Garda crime data are still collected by An Garda Síochána; however they are published by the Central Statistics Office.

52 Since the advent of PULSE (Police Using Leading Systems Effectively), An Garda Síochána classifies headline offences into 10 categories. In all, there are 99 headline offence types under the various categories.

53 Non-headline offences refer to crimes that are less serious in nature. The data for non-headline crimes are based not on how many crimes were recorded but on how many resulted in proceedings.

data share a close relationship with the Commission's terms of reference. Further, these data may provide a basis from which the applicability of restorative justice can be assessed.

6.11 The Commission is reminded that, in the juvenile justice system, the Garda diversion programme deals with young offenders who accept responsibility for their wrongdoing by way of cautions and restorative conferences⁵⁴. In 2006, of the 20,016 young persons accused of committing offences, 15,129 young people received cautions and 293 cases resulted in restorative cautions. The programme has shown itself to be an effective means of reducing re-offending and the principal offences that the programme caters for are assault, drug possession, alcohol-related offences, public order offences, burglary, criminal damage, theft and road traffic offences.

6.12 The Garda adult cautioning scheme also deals with a number of offenders who commit offences under various acts of the Oireachtas⁵⁵. In 2006, An Garda Síochána administered 4,300 cautions at adult level. At present, this scheme does not have a restorative element and, while it may have potential in this regard, the Commission is conscious of the

challenge that such an expansion at adult level may present, as various other factors must be considered.

6.13 The highest volumes of recorded headline offences in 2006 were for thefts, burglaries and assault (see Figure 1, on next page). This appears to be a recurring trend⁵⁶. Fraud-related offences, drug-related offences, sexual offences, arson, robberies, homicides and "other offences" account for the remainder of headline offences, as recorded by An Garda Síochána. The extent to which restorative justice can be an appropriate or necessary response when dealing with the aftermath of such offences will be a matter for consideration by the Commission in its future deliberations. Therefore, the Commission will need to consider the appropriateness of restorative justice having regard to the seriousness of the crime, the public interest and the needs of the victim, community and the offender.

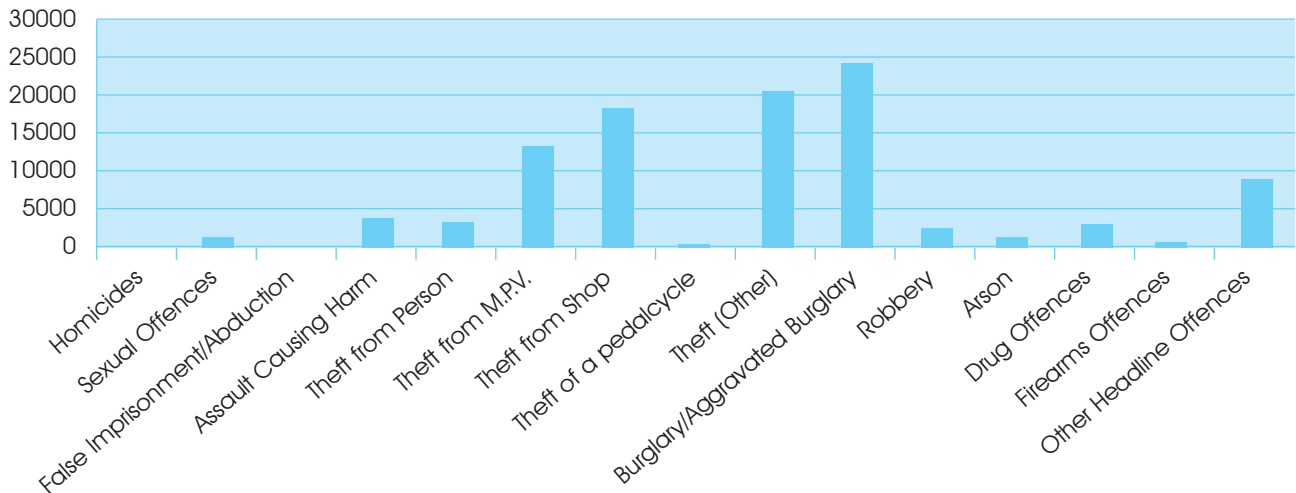
6.14 Crime data from An Garda Síochána provide an account of recorded crime that is recorded and detected. While restorative justice may have a contribution to make at the pre-conviction stage of the criminal justice process, the Commission does not envisage restorative justice applying in all such situations. In addition, the

54 See Chapter 5 "Restorative Justice in Ireland".

55 See Criminal Damage Act, 1991, Criminal Justice (Public Order) Act, 1994, Criminal Justice (Theft and Fraud Offences) Act, 2001, Intoxicating Liquor Act, 2003 and the Non-Fatal Offences Against the Person Act, 1997. See also Appendix V to this report for a list of all offences that are covered under this scheme.

56 In 2007 C.S.O figures indicate there were 58,657 theft offences, 23,507 burglaries and 4,778 assaults, recorded by An Garda Síochána. In 2006 58,089 theft offences, 24,773 burglaries, and 4,796 assaults were recorded by An Garda Síochána.

Figure 1: Headline Offences Recorded by An Garda Síochána in 2006



Commission is reminded that under its terms of reference, it is required to consider the application of the concept of restorative justice with regard to persons brought before the courts on criminal charges.

District Court Statistics for 2006

6.15 In 2006, the total criminal caseload in the District Court was 378,047. This total comprised summary offences⁵⁷

(87%) and indictable charges disposed of summarily⁵⁸ (13%). Aside from road traffic offences, the majority of summary cases coming before the District Court are for less serious crimes which carry a maximum sentence of up to one year⁵⁹ or a stated maximum fine. The District Court deals with a number of indictable offences summarily. While restorative justice may have an application in the District Court, any

Table 1: Case disposal in the District Court in 2006

	Summary Offences	Indictable Offences	Totals
Fines	95,913	6,802	102,715
Probation	17,216	7,267	24,483
Imprisonment/Detention	11,462	9,556	21,018
Community Service	1,389	1,103	2,492
Peace Bond	1,147	750	1,897

Source: Courts Service Annual Report 2006

⁵⁷ Summary offences refer to offences which are less serious in nature and are dealt with by a District Court Judge sitting without a jury.

⁵⁸ Indictable offences refer to more serious offences and may be tried before a Judge.

⁵⁹ The District Court cannot exceed a maximum sentence of 1 year in respect of one offence, as per the Criminal Justice Act, 1951, Section 4 (1). However, the Criminal Justice Act, 1984, Section 11 (1) states that the maximum term of imprisonment that can be imposed by the District Court in respect of any number of offences for which sentence is passed at the same time cannot exceed 2 years.

assessment as to scale must bear in mind that, in many instances, its relevance will be limited, particularly in terms of summary offences.

- 6.16 The District Court has a range of options available at case disposal and, in terms of practicality, efficacy, relevance and applicability, it may be instructive to concentrate on those cases that resulted in some form of court sanction as detailed in Table 1, when assessing the potential influence of restorative justice.
- 6.17 The District Court deals with a variety of summary offences and indictable offences disposed of summarily, such as road traffic offences, public

order, assault, larceny, drug, sexual and "other"⁶⁰ offences. The frequency with which the District Court uses the various sanctions open to it when dealing with these offences is represented in Table A, Appendix VI.

- 6.18 It is to be noted that Table A in Appendix VI represents the number of offences being disposed of by the District Court. The number of defendants coming before the District Court will necessarily be lower than the number of offences it deals with because the same defendant may be charged with many associated offences, or may have committed more than one offence.

Table 2: District Court Sanctions per Defendant

Disposals per Defendant	Road Traffic Act	Public Order/ Assault	Larceny	Drug Offences	Sexual Offences	Totals
Fines	46,340	6,112	2,342	2,144	69	57,007
Probation	2,742	4,263	2,534	1,193	53	10,785
Imprisonment Detention	2,768	3,234	2,636	701	54	9,393
Community Service	336	600	312	112	2	1,362
Peace Bond	175	647	276	60	8	1,166
Totals	52,361	14,856	8,100	4,210	186	79,713

Source: Courts Service Annual Report 2006

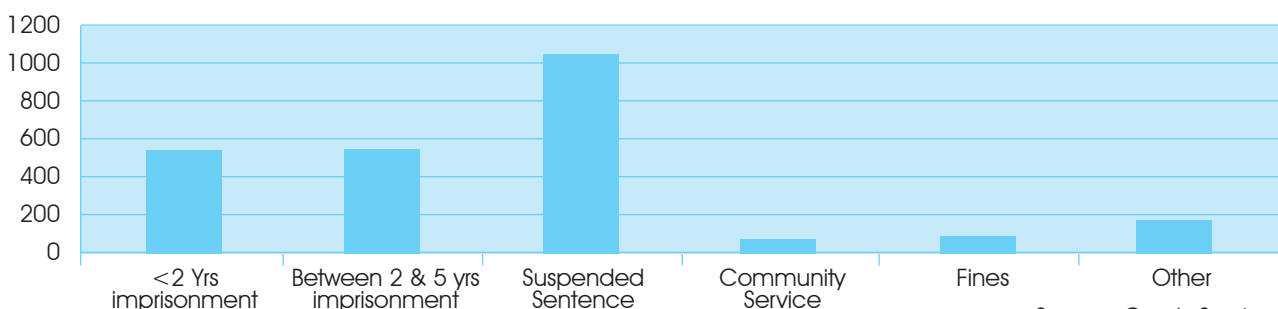
⁶⁰ The term 'other' in this context refers to offences such as criminal damage, breach of bail, and includes offences in regulatory matters initiated by agencies such as the Revenue Commissioners, Environmental Protection Agency, An Post, Health and Safety Authority and county councils

- 6.19 Accordingly, the Commission, in keeping with its terms of reference, will concentrate on the number of defendants coming before the District Court on criminal charges and, in particular, the Commission will focus on those offenders who received criminal sanctions in the District Court.
- 6.20 In 2006, the District Court imposed some form of criminal sanction in respect of 79,713 defendants, imposing fines on 71% of them. Approximately 14% of defendants received probation, 12% received imprisonment or detention, 1.70 % received community service and 1.46% were subject to peace bonds. These data are useful in identifying the types of offences and the number of defendants coming before the Court and also the frequency of various criminal sanctions, per type of offence (see Table 2, above).
- 6.21 These data highlight the extent to which the District Court uses the various disposal options available. The extent to which restorative justice will impact on the distribution of Court sanctions will be contingent on a number of factors. The Commission will endeavour to identify areas and practices within the District Court where restorative justice could potentially be used.

Crime Statistics and the Circuit Criminal Court

- 6.22 While restorative justice may be seen as primarily applicable in the District Court, where most charges are brought, we should not overlook the requirements of the Circuit Criminal Court when considering restorative justice's scope, as it could provide a useful option for that Court also in some cases.
- 6.23 In 2006, 6,272 criminal cases were dealt with by the Circuit Criminal Court. This consisted of approximately 63% District Court appeals and 37% sent forward for trial.
- 6.24 Approximately 79% of defendants sent forward for trial entered guilty pleas in the Circuit Criminal Court in 2006. (See Appendix VI, Table B, for a breakdown of cases for those defendants who entered a plea of guilty.) Of the 527 cases that came before the Circuit Criminal Court where the defendant pleaded not guilty, 153 resulted in conviction, 201 defendants were acquitted and, in 173 cases, a decision was made not to pursue proceedings in respect of the offence. (See Appendix VI, Table C, for a breakdown of those cases where defendants entered a plea of not guilty and were subsequently tried on criminal charges.)

Figure 2: Sanctions Imposed in the Circuit Criminal Court in 2006



Source: Courts Service
Annual Report 2006

were disposed of in the Circuit Criminal Court. The largest volumes of cases were for larceny (31%), assault (23%) and drug offences (17%).

6.25 In 2006, a total of 2,637 charges were disposed of in the Circuit Criminal Court. The largest volumes of cases were for larceny (31%), assault (23%) and drug offences (17%).

6.26 Approximately 48% of Circuit Criminal Court disposals resulted in imprisonment, 40% in suspended sentences, 4% in fines and 3% in community service. Approximately 44% of sentences were for periods of less than 2 years, 45% of sentences were for periods of 2 to 5 years and 7% of imprisonment terms were for periods of 5 to 10 years (see Figure 2 above and Table 3, below).

Table 3: Sentence Imposed in Circuit Court in 2006

	Larceny, Fraud, Robbery	Assault	Drug Offences	Other	Road Traffic Act Offences	Firearms Offences	Sexual Offences	Child Abuse	Man-slaughter	Total
Imprisonment	458	246	201	98	93	74	49	6	1	1226
Suspended Sentence	302	281	204	110	58	56	35	3	4	1053
Community Service	17	19	25	11	8	2	0	0	0	82
Fine	9	8	6	56	15	2	1	0	0	97
Other	41	47	8	27	40	3	10	3	0	179
Total	827	601	444	302	214	137	95	12	5	2637

Source: Courts Service Annual Report 2006

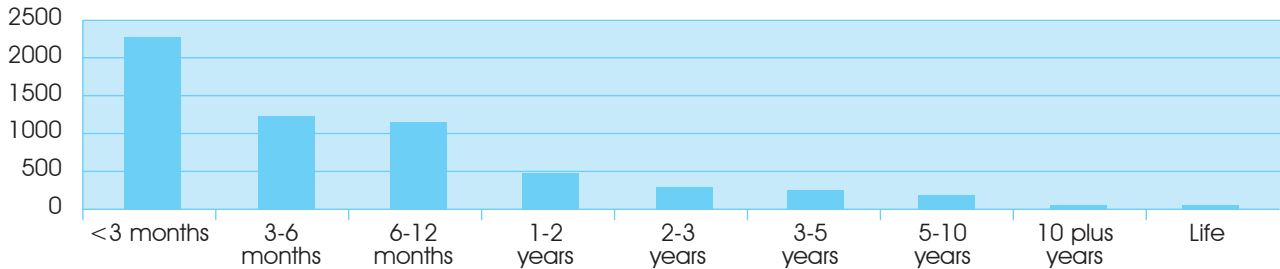
6.27 Whether or not restorative justice would be appropriate having regard to the types of offences coming before the Circuit Criminal Court will depend on a number of factors that are currently under consideration by the Commission. A closer look at the types of disposals open to the Circuit Criminal Court will also be required, before the Commission can assess the merits or otherwise of restorative justice as an additional disposal option in the Circuit Criminal Court.

Crime Statistics and the Prison System

6.28 A review of prison statistics demonstrates that the vast majority of offenders sentenced to imprisonment receive short sentences. In 2006, there were 5,802 committal sentences. 160 of those in custody were on remand or awaiting trial and were subsequently re-committed under sentence.

6.29 Of this total, 39% were sentenced to imprisonment for periods up to 3

Figure 3: Sentence Duration of Persons Imprisoned in 2006



Source: Irish Prison Service Annual Report 2006

Table 4: Offence by Sentence Length per Offender in 2006

	<3 Months	3-6 Months	6-12 Months	1-3 Years	3-5 Years	5 Years to Life	Total
Murder/Manslaughter	-	-	-	-	3	42	35
Sexual Offences	1	3	7	28	19	32	90
Other Offences Against the Person	76	152	167	189	48	23	655
Offences Against Property With/Without Violence ⁶¹	322	338	476	338	100	51	1,562
Drug Offences	73	64	79	70	53	56	395
Road Traffic Offences	765	354	244	80	7	2	1,452
Other Offences	1,016	309	161	43	20	10	1,550
Total	2,253	1,220	1,134	739	250	206	5,802

Source: Courts Service Annual Report 2006

months, 21% for periods between 3 and 6 months, 19% for periods between 6 and 12 months and 8% for periods of 1 to 2 years. The remaining 13% consist of those sentenced to imprisonment ranging from 2 years to life (see Figure 3, on next page).

6.30 Table 4 above outlines the terms of imprisonment imposed on offenders convicted of various offences. Of

the 5,802 committals by sentence, 655 of these people were convicted for offences against the person and 1,562 for offences against property, with or without violence. The remainder of the sentences were imposed for road traffic offences, drug offences, sexual offences, manslaughter, murder and "other" offences.

⁶¹ The vast majority of those serving periods of imprisonment for offences against property did not involve violence

- 6.31 The data highlight the extent to which short-term prison sentences are imposed. The majority of those committed were sentenced to short prison terms, with approximately 60% receiving a sentence of 6 months or less and 79% receiving a sentence of 12 months or less. Within this latter category, approximately 27% were serving prison sentences for offences against property without violence, 11% for other offences against the person, 7% for drug offences and 25% were for road traffic offences. In this context, it may be worth considering the potential impact restorative justice may have in reducing the number of people sentenced to short terms of imprisonment.
- 6.32 Such data prompt an evaluation of the extent to which the sanction of imprisonment is being used. Thus, it may be instructive to assess the suitability of non-custodial measures such as restorative justice, as an additional option for the courts in case disposal which might benefit victims, offenders and the wider community.
- 6.33 While restorative justice may have scope in terms of diverting people from prosecution or from serving a period of time in prison, it may also be worth considering its application within the prison system. In this context, it may be worthwhile to explore avenues where a victim, if he or she so chooses, can meet with the offender in a restorative setting. This might enable the victim to attain a measure of closure and it could also benefit the offender, in terms of understanding the consequences of his or her criminal behaviour.
- 6.34 Crime levels in this jurisdiction are low by international standards⁶² and the persistence of crime and the ongoing exposure of people to crime warrants constant vigilance. Although crime levels are low by reference to other countries, the extent to which imprisonment is used as a response to certain types of wrongdoing presents an opportunity to explore other means of dealing with persons who commit crimes.
- 6.35 Crime data demonstrate that many offences frequently attract custodial sanctions and, while restorative justice may not be appropriate in every case, its availability would provide the Judiciary with a wider range of options when dealing with offenders who come before it on criminal charges.

62 O'Donnell, "Interpreting Crime Trends", *Irish Criminal Law Journal* 12 (1) 2002. Barclay and Tavares, (2003) "International Comparisons of Criminal Justice Statistics 2001", Home Office Statistical Bulletin, Issue 12/03. See also: http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_DS_CRIME/PGE_DS_CRIME/TAB67748480/TOTAL_CRIME.PDF, for a breakdown of European crime data as recorded by the police for serious crime up to 2005. Last accessed 05/02/08.

CHAPTER 7

Issues to be addressed

- Introduction
- Research into Restorative Justice
- Criminal Justice Data
- Participation and Models
- Resource implications of Restorative Justice
- Training and Accreditation
- Structures and Restorative Justice
- Legislation

Introduction

- 7.1 Restorative justice is an umbrella term that describes a variety of means of bringing victims, offenders and the wider community together to collectively resolve the impact and consequences of crime. It presents an opportunity for victims to deal with the aftermath of a crime and it offers offenders a chance to repair the damage that has been caused as a result of their wrongdoing.
- 7.2 In a number of countries, restorative justice has been adopted as a means of dealing with both juveniles and adults who commit crime. It is also used as a means of dealing with both minor and more serious crimes at various points in the criminal justice system.
- 7.3 Restorative justice means many things to many people and it will be necessary to establish a clear understanding of restorative justice, in terms of what it can deliver in an Irish context. This will involve an assessment of the various restorative justice measures operating abroad

in terms of processes, values and outcomes.

- 7.4 Restorative justice is a global phenomenon that is responding to the needs of victims, offenders and the community in tangible ways. It is a particular brand of justice that recognises the limits of the traditional criminal justice system in terms of its ability to provide for collective resolution, dialogue, and participation, amongst victims, offenders and the community, when dealing with the aftermath of crime.
- 7.5 There are many issues which need to be addressed when considering whether or not to adopt a restorative justice approach. Some of these are discussed briefly, below. Others, which also require consideration, will include the following: What is meant by restoration? To whom should restoration apply? How far should restoration extend to victims, offenders and the community? Should restoration be concerned with merely restoring the victim to his or her original situation prior to the offence, or should restoration be transformative in terms of benefiting an offender's future behaviour? Could it encompass all of these concerns? These are matters which the Commission will be examining in the course of its work.

Research into Restorative Justice

- 7.6 The Commission is conscious that, under its terms of reference, it is to have regard to the needs of victims and to the effect restorative justice

can have on offenders, especially in terms of re-offending.

- 7.7 Domestically, the absence of adequate research into the pilot schemes in Nenagh and Tallaght means that the Commission does not have the definitive information it would need to determine their effectiveness under the criteria in our terms of reference. Accordingly, the Commission will have to concentrate more on international research-based evidence of these criteria to assess the effectiveness of the various restorative justice measures and which best practice can be adopted.
- 7.8 Restorative justice has been shown to have a positive effect on victims, offenders and the community in a variety of ways. Research has shown that it can increase victims' satisfaction levels with the criminal justice system and, in some instances, reduce re-offending rates. There would appear to be a strong body of evidence that suggests restorative justice impacts positively on victims.
- 7.9 However, the evidence to date on re-offending and the type of offence most appropriate for restorative justice is less convincing and this presents a challenge to the Commission in determining the type of offence and offender most appropriate for restorative justice.

Criminal Justice Data

- 7.10 Criminal justice data indicate the scale of crime recorded by An Garda Síochána, the numbers of offenders and offences coming before the Courts and the extent to

which the Courts apply various disposal options in respect of cases brought before them. The data provide basic information on the types of offences that attracted short to long-term sentences, even though other factors that may have operated in the determination of the penalty are unknown.

- 7.11 The Commission will, in its final report, endeavour to reach informed conclusions on the extent to which restorative justice could be used as a problem solving approach for certain offences and offenders. The crime data will be informative in this regard as it will be used as a basis to help quantify the potential pool of participants who might be facilitated in a restorative justice setting.

Participation and Models

- 7.12 The Commission's terms of reference have a particular focus on the delivery of restorative justice. They highlight the importance of looking at how delivery models work in this jurisdiction and abroad and require the Commission to consider which models would be most appropriate and cost-effective for Ireland. In considering which model or models of delivery should be provided, it is also necessary to reflect on the two key objectives of restorative justice - to repair harm and prevent recurrence.
- 7.13 A variety of restorative justice models has been adopted in many countries. The most common are victim offender mediation, conferencing, sentencing circles and reparation panels. Each model has its unique characteristics and

varies in terms of the level of participation required of the various parties. It will be necessary to examine in closer detail which model or combination of models might be most effective in an Irish context.

- 7.14 Whatever models of restorative justice are considered suitable to Irish circumstances, it is important that specific consideration is given to the question of who should have access to any particular restorative justice process and under what circumstances they may avail of it. Should it be voluntary for some parties, such as the victim or the community, while being compulsory for others, such as the offender, or should participation be optional for all the parties involved?
- 7.15 Further, the Commission will explore how flexible the arrangements should be to enable victims to participate. In considering the degree of access to restorative justice by victims, the Commission is disposed to considering the greatest latitude possible being available to victims to become involved.
- 7.16 When considering access by offenders to restorative justice, it may also be appropriate to provide a degree of flexibility to enable them to make a positive choice to engage. Such participation can benefit the offender in terms of improving his or her understanding and awareness of the impact a crime can have on others, while simultaneously addressing the needs of the victim. However, a more critical assessment is required to determine the conditions that should apply for offenders to have access to a formal restorative justice process.
- 7.17 Many offences do not have a discernable individual victim, for example, damage to public property or where public disturbance is caused. In such cases, the involvement of local community interests in the restorative justice response could be appropriate. In addition, in cases where a victim is unable to participate in a restorative justice event, the substitution of a community element or a representative of the individual victim concerned might be suitable options, where appropriate conditions and safeguards are met. Likewise, where a victim is unwilling to participate there may be scope, subject to consent, for a representative to speak on the victim's behalf.
- 7.18 Community involvement will, of course, be dependent on the model of restorative justice being adopted in particular circumstances, but suitable parameters of eligibility for community access to or representation at the process need to be considered. The type of model being applied in a specific case will determine the parties' involvement in the process.
- 7.19 The Commission is challenged to consider which model or models best meet these objectives in an Irish context. How important is it that offender and victim encounter each other in the model process? How strong is the reparative focus of the model? How important is an apology to the victim? How effective is the model's approach in restoring security and confidence to the

victim? To what extent can the models affect the behaviour of the offender?

- 7.20 Whichever model or models are recommended, they will need to respond to the types of offences envisaged in any wider application of restorative justice. Where a proposal focuses on minor offences being diverted from the conventional criminal justice process, the model will need to be able to deliver in volume, using a timely and efficient process. If more serious offences are envisaged, stricter conditions, sophisticated techniques and expertise will be required.
- 7.21 These and other related questions need to be examined in relation to access to and the activation of restorative justice for any particular offence. It is the Commission's intention to explore the various options that might be available, in the course of its further consultations.

Resource Implications of Restorative Justice

- 7.22 The resource requirements which arise in respect of such models do so on a number of fronts. There are the resources involved in delivering the restorative justice process, whether that means trained facilitators for victim offender mediation, reparation panels or restorative conferences, or whether a judicial process, such as sentencing circles, is envisaged.
- 7.23 Resources will also need to be considered in the context of the roles of the various criminal justice agencies. What support will

members of the Judiciary, the Gardaí or Probation Service require? Will diversion from the conventional criminal justice process yield potential savings through a reduction in legal costs, court proceedings or custodial sentences?

- 7.24 It will be necessary to consider whether there are enough victim support and community engagement teams, offender rehabilitation or restorative programme opportunities available to back up a wider application of restorative justice. The Commission will have to assess the extent to which the existing criminal justice or other agencies can provide the necessary services. From this, the cost implications of any additional resources will need to be assessed in accordance with the Commission's terms of reference.

Training and Accreditation

- 7.25 Perhaps one of the most important considerations in fixing resource inputs will be the quality of practices, standards and training which should apply. The credibility of any restorative justice measure is dependent on the application of, and on-going commitment to, appropriate standards. The sensitive human and legal considerations that arise in addressing the repercussions of an offence and in combating crime through restorative justice measures cannot be overlooked.
- 7.26 Failure to meet these considerations would seriously compromise the perceived legitimacy and effectiveness of any measure. Hence, there is a need to ensure

that those engaged in delivering restorative justice programmes are properly trained to an accredited standard for the level of competence which their particular intervention requires. There is also a need for adopting and reviewing, on an ongoing basis, best practice arrangements for each programme and the requisite standards that must underpin delivery. The quality and standards to apply must ensure protection of the victim from further victimisation while, at the same time, respecting the engagement of the offender and his or her efforts to repair harm caused and avoid further offending.

Structures and Restorative Justice

7.27 Another issue of importance is the organisational structure for delivering these services. Abroad, there is a plethora of organisations from country to country and, indeed, within jurisdictions, which are directly involved in the provision of restorative justice intervention. The question of what type of organisation should be the primary provider of a restorative justice service will be a major issue for the Commission's agenda.

7.28 The Commission needs to examine whether a single organisation should be the primary provider or if service provision should be distributed among a range of organisations based on location or offence, or offender categories. At present, An Garda Síochána has the primary provider role for young offenders diverted from the courts, whereas adult provision is in the hands of more locally-based services.

7.29 Whatever arrangements apply to providers, there are a number of other authorities and agencies which have key roles in restorative justice provision. Criminal justice agencies which have an in-depth involvement in the existing criminal justice system will, necessarily, be involved to varying degrees with a restorative justice procedure. These agencies include the Courts and Courts Service, An Garda Síochána, the Office of the Director of Public Prosecutions, the Probation Service and the Irish Prison Service.

7.30 Restorative justice could apply at a number of different stages of the criminal justice process. Accordingly, the Commission is considering the various stages where restorative justice might apply, e.g.

- **Pre-charge:** Diversion from prosecution before reaching court
- **Pre-conviction:** Diversion of those charged and brought before the court, prior to the determination of innocence or guilt
- **Pre-sentence:** Offenders take responsibility and engage in restorative justice process prior to penalty
- **Post-sentence:** Prison-based schemes.

Legislation

7.31 Any consideration of the implementation of restorative justice measures necessitates an exploration of the need or otherwise to ground it in legislation. There is considerable variation worldwide in the legal status of restorative justice processes, with some programmes enshrined in law and others having no formal legal status.

7.32 The introduction of restorative justice practices does not necessarily mean that such measures have to be grounded in specific legislation, as Courts or other criminal justice agencies may have some discretion under general legislation governing their powers to implement restorative programmes and ensure that appropriate safeguards are in place to protect all participants. The Commission will, therefore, pay particular attention to whether such safeguards warrant statutory and/or policy guidelines.

7.33 The challenge of legislation is to give effect, as closely as possible, to policy on the issue involved. Accordingly, any legislation on restorative justice will require painstaking consideration of policy and the limits and impact of legal action in any case covered by the law, especially where a person's

liberty, security or welfare may be concerned.

7.34 In pursuance of its terms of reference, the Commission will consult with professionals and interest groups working within the area of restorative justice on statutory provisions which should be considered. In addition, the Commission is committed to consultation with the Law Reform Commission which, under the Third Programme of Law Reform 2008-2014, will be considering the question of legislation for restorative justice.

7.35 The Commission will, therefore, seek to discover what statutory provisions would be most beneficial from the points of view of participants, the community and the criminal justice system generally, for the wider application of restorative justice.

CHAPTER 8

Interim Recommendations

- Introduction
- Case Tracking Data
- Evaluation of Restorative Justice
- Pilot Project Opportunities
- Restorative Justice at Prison Stage
- Conclusion

Introduction

8.1 The Commission's work to date has identified a number of issues on which early consideration should be given to assist the development of policy on restorative justice in the future.

Case Tracking Data

8.2 The absence of a data sequence which tracks criminal cases through the criminal justice system continues to present a difficulty, as previously documented⁶³. Until we can track our response to an offence from the time it is reported to An Garda Síochána through pre-court to court outcome, to probation or prison stage, we will not have the quality of information which will best serve our policy formulation needs.

8.3 Such information would greatly enhance the ability of the various services concerned to address the needs of victims, offenders and the community and achieve a cost effective outcome to a standard compatible with the principles of justice.

8.4 Information of this nature would be particularly helpful in considering the type of offence, offender or victim for which a restorative justice intervention might be most appropriate. It would also inform any decision on the stage or what stages of the criminal justice process a restorative justice intervention should apply.

8.5 The Commission understands that work has begun on linking the criminal data bases of agencies such as the Courts Service and An Garda Síochána. However, given the wider benefits to policy review and formulation across the criminal justice system, the development of a case tracking data collection capacity should be progressed as quickly as possible.

Evaluation of Restorative Justice

8.6 A second data collection gap arises in respect of the evaluation of the restorative justice measures. Most commonly, evaluation of criminal justice measures focuses on the outcome and, in particular, the success of the measures in leading to avoidance of further offending.

8.7 In the case of restorative justice, the absence or reduction of re-offending is important. Essential also is the extent to which others' needs are met, including the needs of the victim.

63 Connolly, *Drugs and Crime in Ireland*, Overview 3, (2006) Health Research Board, p.36

- 8.8 A particular problem in undertaking evaluation research on restorative justice measures is the absence of a valid comparator. True evaluation needs to be able to determine whether it was the measure being evaluated which achieved the outcome or whether that outcome would have been achieved anyway, had restorative justice been applied or not.
- 8.9 In some jurisdictions, comparative evaluation has been possible where a sample control group of offenders, with similar characteristics to those participating in restorative justice, has been created. Where the outcomes of this sample of offenders who have been processed through the conventional criminal justice system are compared with outcomes where restorative justice has been applied, a more reliable measure of the impact restorative justice is possible.
- 8.10 In the case of criminal justice outcomes, including restorative justice outcomes, a valid measure of the effect of avoiding or reducing further offending necessarily involves a medium-term timescale. Up to 3 years or more may be required to provide worthwhile data on the absence or reduction of re-offending.
- 8.11 Given the shorter timeframe within which it must report, it is not feasible for the Commission to engage in such an evaluation exercise. Nevertheless, the Commission is satisfied that existing restorative justice measures in this jurisdiction and any new measures introduced in the future should include, from the outset, a basis for evaluation both in terms of data collection and control group comparators, where possible. The Commission recommends that the relevant criminal justice agencies that organise or sponsor the restorative justice measures concerned, should ensure that appropriate arrangements of this nature are put in place.
- ### Pilot Project Opportunities
- 8.12 The Commission is also sensitive to the absence of wider experience of applying restorative justice measures in this jurisdiction, especially at adult level. In 2006 the Adult Caution Scheme was introduced and while it does not purport to adopt restorative principles, the experience An Garda Síochána has had in delivering the Garda Youth Diversion Programme could provide useful insights into the types of cases where a restorative dimension could be appropriate at adult level.
- 8.13 The Commission recommends that An Garda Síochána gives early consideration to the extension of the Adult Cautioning Scheme to include a restorative dimension, where considered appropriate. At present, An Garda Síochána is already supportive of adult restorative justice initiatives in the Nenagh and Tallaght districts, so the Commission is of the view that an adult restorative justice scheme be piloted in these districts on an experimental basis. Such pilots could build on existing local resources and experience in restorative practices.
- 8.14 Further, the existing projects in Nenagh and Tallaght do not appear to be operating at optimum

capacity. The Commission suggests that An Garda Síochána enters into discussions with the Probation Service, the funder of these projects, to explore how referrals of adults on restorative cautions could be included in the programme operated at these projects.

- 8.15 The Commission considers that restorative caution processes could be beneficially piloted in an inner city setting, where resources permit. Such a development would broaden our knowledge of restorative justice interventions, in terms of its application at adult level. It would also be useful to the extent it could inform policy decisions regarding the introduction of Community Courts.
- 8.16 One note of caution with regard to these pilot measures is the need for careful selection of cases for restorative justice diversion or referral. The Commission would particularly caution against diversion or referral in cases where no significant added value for offender, victim or community would arise and where the resource commitment involved would not be justified.

Restorative Justice at Prison Stage

- 8.17 The Commission, in the course of its review and consultations to date, is also aware that some considerable success has been claimed in other jurisdictions in respect of the application of restorative justice practices in the case of serious crime where offenders are serving custodial sentences.
- 8.18 Given the potential of such

measures to be of significant value, the Commission would recommend that due consideration should be given to piloting an appropriate restorative justice measure with a small number of suitable prisoners at a pre-release stage of their sentence and at the request of the victim and/or offender.

- 8.19 Any such development should be time-bound and should be limited to not more than 12 cases over a two year period. Selection of cases should be the subject of very careful scrutiny.
- 8.20 Voluntary victim participation should be a condition of case selection and the prison authorities should be satisfied that the offender's participation has the potential to result in a positive outcome, including a deeper understanding of the harm done by her/his crime and an increased likelihood of avoiding criminal behaviour in the future.
- 8.21 Particular attention should be given to ensuring that victim participation does not expose the victim to further victimisation, but does offer the victim the opportunity to outline his/her experience and get more answers than was possible through the conventional criminal justice process.

Conclusion

- 8.22 The Commission is aware that the wider application of restorative justice measures in this jurisdiction raises many complex and sensitive issues. It is impressed with the ranges of expertise and practice

which have been brought to its attention. This experience emphasises the need for more in-depth consideration of its remit, before substantive recommendations can be brought forward.

8.23 These interim recommendation are, nevertheless, put forward after due consideration in the light of the work done to date and in the expectation that such developments would significantly enhance the decision making process of policy makers when considering the Commission's final recommendation in due course.

APPENDICES

APPENDIX I	Recommendations of the Oireachtas Joint Committee
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APPENDIX I

Recommendations of the Oireachtas Joint Committee

Recommendation 1

Restorative Justice (RJ) should be developed as a more regular feature of the Irish criminal justice system.

programmes (including formal cautioning, family conferencing and community service) to include RJ elements for adult offenders.

Recommendation 2

Existing RJ programmes for juvenile offenders should be supported. In particular, the Committee recommends an increase in the number of Garda Juvenile Liaison Officers' to ensure the national coverage of the Garda Juvenile Diversion Programme.

Recommendation 7

Efforts should be made to foster awareness of RJ programmes amongst members of the Judiciary and other professionals in the criminal justice system. Members of the judiciary must play their role by engaging with the services that have been established.

Recommendation 3

RJ programmes (in Tallaght and Nenagh) for adult offenders should be given greater State support.

Recommendation 8

In order to increase awareness and maximise the benefit to victims, RJ services should collaborate with Victim Support agencies.

Recommendation 4

RJ practice for adult offenders should be provided for in legislation.

Recommendation 9

Increased funding for Restorative Justice should be supported by the State as an investment in more progressive methods of dealing with the effects of crime.

Recommendation 5

A cross-sectoral working group should be created by the Department of Justice, Equality and Law Reform to develop a national strategy for RJ that is based on international best-practice.

Recommendation 10

The Department of Justice, Equality and Law Reform should assess new ways of configuring and redeploying resources in the criminal justice area.

Recommendation 6

The working group should consider the expansion of existing criminal justice

APPENDIX II

LIST OF SUBMISSIONS RECEIVED BY THE COMMISSION

(Those who made presentations to the Commission are marked with *)

- | | |
|--|---|
| 1. Abbey Presbyterian Church | 14. IMPACT - Probation Officers Branch |
| 2. ACJRD Ltd. | 15. Mediators Institute of Ireland |
| 3. Catholic Prison Chaplains | 16. Mortell, James (Colonel, retd.) |
| 4. Children Acts Advisory Board | 17. National Prison Chaplains |
| 5. Church of Scientology | 18. Nenagh Community Reparation Project* |
| 6. Crime Victims Helpline | 19. O'Dwyer, Kieran* |
| 7. DCBA Ltd. | 20. Probation Service* |
| 8. Facing Forward* | 21. Restorative Justice Services, Tallaght* |
| 9. Farrell, Mary | 22. Ross, Míceál |
| 10. Fingleton, May | 23. Special Residential Services Board |
| 11. Fitzgibbon, John | 24. University College, Cork |
| 12. Garda Diversion Programme, National Director's Office* | 25. Weir, John |
| 13. HSE - Health Promotion Department.- RJ School Project | |

APPENDIX III

Conferences, Workshops and Lectures attended

- European Forum for Restorative Justice: Conference on Restorative Justice in Europe: Needs and Possibilities. Lisbon, 10th -12th May 07
- Facing Forward: Seminar on Restorative Justice and Serious Crime. Ms Kristel Buntinx, Belgium, Serious Crimes Mediator, at the Probation Service HQ, Dublin, 30th May 2007.
- Third Annual Irish Criminology Conference. UCD, 5th-6th Sept 2007.
- Northern Ireland Prison Service: Conference on Restorative Practice Working in Prisons. Bangor, Co. Down, 26th September 2007
- Association of Criminal Justice Research and Development (ACJRD): Conference on Community, Custody and Aftercare: The journey towards social inclusion. Limerick, 11th-12th October 2007
- ACJRD/ Copping On/ Netcare N I: Workshop on Restorative Justice: Looking Back to the Future. Keynote address by Julia Hennessey, Chief Policy Advisor on Restorative Justice in New Zealand, Law Society, Dublin, 16th October 2007
- Facing Forward: Seminar by Professor David Gustafson on Restorative Justice in British Columbia. Dublin, 7th November 2007
- 10th International Institute for Restorative Practices World Conference: Improving citizenship & restoring community. Budapest, 7th-9th November 2007
- Garda Youth Diversion Project: Conference on A Vision for the Future. Cavan, 19th-21st November 2007
- Restorative Justice Services & UCD Institute of Criminology: First Annual Restorative Justice Lecture. Crime and Reconciliation: Testing Restorative Justice. Keynote speaker Dr. Heather Strang, Director of Centre for Restorative Justice, Australian National University. Dublin, 22nd November 2007

APPENDIX IV

Non-Exhaustive List of Offences⁶⁴

- Drunk in Public: Section 4 - Criminal Justice (Public Order) Act, 1994
- Disorderly Conduct - Night Time: Section 5 - Criminal Justice (Public Order) Act, 1994.
- Disorderly Conduct: Section 5 - Criminal Justice (Public Order) Act, 1994.
- Threatening/Abusive/Insulting Behaviour: Section 6 - Criminal Justice (Public Order) Act, 1994.
- Refuse to Give Name: Section 24 (3) - Criminal Justice (Public Order) Act, 1994.
- Wilful Obstruction: Section 9 - Criminal Justice (Public Order) Act, 1994.
- Failure to Comply with the Direction of a Member of An Garda Síochána: Section 8, Criminal Justice (Public Order) Act, 1994.
- Assault: Section 2 - Non-Fatal Offences Against the Person Act, 1997.
- Criminal Damage: Section 2 - Criminal Damage Act, 1981.
- Soliciting/Loitering: Sections 7 and 8 - Criminal Law (Sexual Offences) Act, 1993.
- Drug Use: Section 3 - Misuse of Drugs Act, 1977.
- Theft: Section 4 - Theft and Fraud Offences Act, 2001.
- Handling Stolen Property: Section 17 - Theft and Fraud Offences Act, 2001. While this is not defined in legislation, only offences where the value of the property is less than €1,000 will be dealt with by the Community Court.
- Illegal Street Trading - Section 2 - Street Trading Act 1926; Section 3 - Casual Trading Act 1980;

⁶⁴ National Crime Council, Problem Solving Justice -The Case for Community Courts in Ireland. (April, 2007), p 6.

APPENDIX V

Garda Adult Cautioning Scheme

Schedule of Offences which apply

- Criminal Justice (Public Order) Act 1984, as amended,
- Criminal Justice (Theft and Fraud Offences) Act, 2001, as amended,
- Criminal Damage Act, 1991,
- Intoxicating Liquor Act, 2003,
- Misuse of Drugs Act, 1977-1984,
- Non-Fatal Offences Against the Person Act, 1997.

APPENDIX VI

Table A: District Court Disposals per Offence in 2006

Disposals Per Offence	Road Traffic Act	Public Order/Assault	Larceny	Drug Offences	Sexual Offences	Total
Fines	65,495	7,229	2,624	2418	71	77,837
Imprisonment Detention	5,134	4,934	5,452	888	68	16,476
Probation	4,570	5,816	3,888	1580	66	15,920
Community Service	515	757	537	136	2	1,947
Peace Bond	202	715	407	69	8	1,401
Totals	75,916	19,451	12,908	5,091	215	113,581

Source: Court Service 2006

Table B: Circuit Criminal Court Cases in 2006

Offences	Defendants	Guilty Pleas	Guilty Pleas as a %	Persons Tried
Road Traffic Acts	174	150	86%	24
Drugs	412	376	91%	36
Sexual	106	68	64%	38
Firearms	128	104	81%	24
Larceny	776	661	85%	115
Assault	632	451	71%	181
Child Abuse	7	6	86%	1
Manslaughter	5	1	20%	4
Other	326	222	68%	104
Total	2,566	2039	79%	527

Source: Court Service 2006

Table C: Circuit Criminal Court Outcome for those pleading not guilty in 2006

Offences	Persons Tried	Convicted	Acquitted	Nolle Prosequi ⁶⁵
Road Traffic Acts	24	8	10	6
Drugs	36	12	6	18
Sexual	38	9	15	14
Firearms	24	6	11	7
Larceny	115	24	41	50
Assault	181	59	83	39
Child Abuse	1	1	-	-
Manslaughter	4	1	3	-
Other	104	33	32	39
Total	527	153	201	173

Source: Court Service 2006

65 Nolle Prosequi is entered where a decision is made by the prosecutor not to take proceedings any further.

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