



AN ROINN DLÍ AGUS CIRT AGUS ATHCHÓIRITHE DLÍ
DEPARTMENT OF JUSTICE AND LAW REFORM

WHITE PAPER ON CRIME CONSULTATION PROCESS

Discussion Document No. 2

Criminal Sanctions

Overview of Written Submissions Received

August 2010

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Introduction

Background

In January 2009, the Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern T.D. announced the commencement of work on a process to develop a White Paper on Crime. The White Paper, due to be completed in 2011, will set out a policy framework for strategies to combat and prevent crime.

A key element in the consultation process is a series of discussion documents which give structure to the range of subjects being examined as part of the project. In February 2010, the Minister published the second discussion document, entitled '**Criminal Sanctions**'¹. Aimed at the general reader, the discussion document outlines the current range of sanctions in Ireland and looks at the aims of sanctions as well as current sentencing policy.

The discussion document invited views on how well existing sanctions are working and asked what scope there is for their further development. An invitation for written submissions was advertised in national newspapers and the discussion document was posted on the Department's website and also circulated electronically. In addition, hard copies of the document along with the press notice were sent to public libraries throughout the country.

The original closing date for written submissions by the end of May 2010 was extended to the end of July and then to mid August in response to requests from interested parties.

Responses to the consultation

By August 2010 the Department had received 52 submissions from 51 sources of which 24 were from organisations and 27 were from private individuals (See Appendix). One individual wished their submission to remain confidential. A further submission was made anonymously. In addition, some 20 submissions received in response to the earlier discussion document 'Crime Prevention and Community Safety' addressed issues relating to criminal sanctions and comments made in those submissions are reflected in this overview.

The organisations which made submissions included regional and national organisations, community and voluntary groups, advocacy groups and business associations.

While in general, the submissions addressed the questions raised in the discussion document, some submissions also addressed other crime-related issues, many of which are being dealt with in other stages of the White Paper on Crime process. The summary of submissions which follows is intended to reflect as many of the

¹ The first discussion document 'Crime Prevention and Community Safety' was published in July 2009 and an overview of submissions received in response to that document was published in February 2010.

contributions as possible but does not purport to be an exhaustive catalogue of all of the points made. Its structure reflects the structure of the discussion document.

Finally, it should be noted that the contents of this document do not necessarily reflect the views of the Department.

Overview of Submissions Received

General comments made in submissions

The submissions received generally welcomed the opportunity to contribute to a public consultation on criminal sanctions as part of the overall White Paper on Crime process.

The views expressed varied considerably as to the role sanctions should play in responding to crime and the appropriate future direction for Government policy in this field.

Many submissions stated that there was a need for **greater clarity and consistency in sentencing**. It was suggested that the reasons for a particular sentence in any given case should be set out clearly. Most submissions favoured some form of sentencing guidelines and their public availability, although the majority of submissions which referred to the question of mandatory sentencing were not in favour of it.

In considering the question of the principles or objectives which should underpin criminal sanctions policy there were opposing views.

The majority of submissions supported the principle of **penal moderation, greater use of non-custodial sanctions, reinforced by early intervention and prevention methods**. They considered that rehabilitation should be the main purpose of criminal sanctions. It was proposed that there should be greater use of Community Service Orders, that Orders should be served in offenders' own communities, and that their benefits should be made known to the public. Some submissions favoured a range of other alternative sanctions, such as restorative justice, adult cautioning, electronic tagging and the use of innovative court disposals such as drug court and community courts.

In contrast, another range of submissions criticised current sentencing policy as being too lenient and proposed longer sentences and greater use of imprisonment. These views tended to emphasise **incapacitation and punishment as the main purpose of criminal sanctions**. These submissions were in favour of 'zero tolerance' to crime, taking offenders 'out of circulation' and a stricter prison regime. A very small number of submissions proposed extreme forms of punishment, including more use of solitary confinement, minimal out-of-cell time and hard labour.

A further theme in some submissions related to the **negative impacts of imprisonment on offenders, their families, communities and wider society**. Most such submissions were of the view that the current prison system does not rehabilitate and that there is a need for coherent pre- and post-release programmes. There was criticism of plans to build a new prison at Thornton Hall and it was argued that the **introduction of more prison spaces may act as an impetus to fill these spaces**. Some submissions were concerned with women in prison as well as women who come in contact with the criminal justice system and considered that there was a **need for a gender-based and individual approach to women who come in contact with**

the law. A small number of submissions suggested prisoner segregation according to security levels, with maximum security for serious offenders such as gangland criminals and a less strict regime for the less serious and non-violent offenders.

Many submissions were concerned with the **role of the victim in the criminal justice system** and argued that the victims should have a greater role and be given greater priority during the course of investigation, prosecution and sentencing.

It was also submitted that **criminal sanction policy should reflect the rights contained in the Irish Constitution and the European Convention on Human Rights** and upheld by the European Court of Human Rights, including the presumption of innocence, the right to personal liberty and proportionate sentencing.

Some submissions were **critical of elements of the discussion document**. In particular, it was argued that the document over-emphasised incapacitation as the function of a criminal sanction and failed to adequately discuss the detrimental effects of imprisonment or failings in the quality of prison facilities. It was also suggested that the increase in prison numbers since the 1990s reflected political choices and a move to penal populism rather than an increase in crime, and that that the number of people in prison in Ireland is high when compared with the crime rate.

Finally, one submission was critical of the nature and structure of the White Paper on Crime process. It argued that the **process is overly controlled by the Department of Justice and Law Reform** and that it would be preferable to have the process managed externally and enable all interested parties, including the Department, to make submissions to an external party.

The Purpose of Criminal Sanctions

When addressing the purpose of criminal sanctions the discussion document examined the role sanctions should play as part of an overall response to crime. It asked how well the existing approach to sanctions and sentencing is working to prevent and reduce crime and whether sanctions could contribute further to crime prevention and public safety. The discussion document also asked how policy in this area should best be developed and implemented and whether additions to the existing range of sanctions would be beneficial. Other questions considered whether more information on sentencing practice should be available to practitioners and the wider public and how this information could be most effectively organised and disseminated.

Submissions addressing the purpose of criminal sanctions were split very broadly into two groups: those who believed that the primary purpose of sanctions should be rehabilitation and those who believed that their main purpose should be incapacitation.

Development of Policy on Criminal Sanctions

It was suggested that the Department of Justice and Law Reform needs to **confirm and communicate the overriding function of sanctions** and their role in the criminal justice system. It was argued that legislation setting out sentencing policies or principles is necessary to assist the judiciary in sentencing and to facilitate consistency in sentencing.

There was general consensus on the need for more **clarity and public communication on the purpose, benefit, and effectiveness of the various sanctions**. It was proposed that criminal justice professionals should be kept updated on the effectiveness and suitability of the various sanctions and that their opinions should also be taken into account in developing policies.

It was also submitted, however, that policy on sanctions must be formulated within the context of an overall criminal justice policy using an integrated, cross-agency/cross-departmental approach. In doing so, the system should review rather than react. Furthermore, **criminal justice policy should not be developed in isolation from wider social policy** including education, health and anti-poverty measures.

Some submissions were concerned that the response to crime needs to move beyond a political call to be tough on crime. It was held that policy should not be formulated in response to a particular crisis or media/public pressure. One submission criticised the discussion document for failing to address the **role of the media in shaping public debate on sanctions and criminal justice generally**. It also noted that media demands for tougher sanctions can give rise to 'unwise, incoherent or unconstitutional lawmaking' at odds with the public policy need.

Particular attention was drawn to the US experience where specific policies had led to an explosion in US prison numbers; the Irish criminal justice system should move from a punitive to a restorative approach as longer sentences will not decrease crime.

The Purpose of Sanctions

Some submissions wanted responses to offending to be delivered on an **individual basis** and considered that a humane and rights-based criminal justice system focused on the needs of the individual offender would be more effective in reducing crime and increasing community safety. It was argued that the rights of the offender should be balanced with the rights of the victim in the context of what is best for the common good and that the criminal justice system should be seen to be fair to all.

Points made in submissions in favour of **rehabilitation** as the primary function of criminal sanctions included:

- Sanctions should be based on their rehabilitative capacity.
- Sanctions should address the causes of crime, such as social exclusion and poverty.
- Sanctions should not be used as a way of dealing with social problems like addiction, mental health and exclusion.
- Recidivism might be reduced by addressing the social deficits and needs of offenders.

One submission said that the question of sanctions and rehabilitation cannot be seriously addressed without considering the ability of prisons to encourage and facilitate the development of offenders' attitudes and skills necessary for a crime-free life in the community. Post-prison supports were also viewed as necessary for re-integrating into the community. This submission held that there is evidence which suggests that Irish prisons are not fit for purpose and that this situation needs to be rectified urgently.

Other submissions considered that the main function of criminal sanctions should be **punishment, incapacitation or deterrence**. They suggested that longer sentences, and a higher rate of imprisonment would be more effective in reducing crime and protecting the public. These submissions considered the current system to be too lenient. Among the points made were that serious crime has increased dramatically, the appeals system is open to abuse and that as petty crime is a precursor to more serious crime it should be dealt with swiftly and firmly.

An alternative view opposed incapacitation as an objective of punishment and argued that if it is to be identified as such, detailed rules on its application would be required. Such rules would have to give due weight to the individual's right to liberty and the need to ensure that a sentence remains proportionate to the crime actually committed.

Criminal Sentencing Policy and Practice

The discussion document asked whether Irish sentencing policy requires greater structuring and how this should be achieved, as well as which principles should underpin sentencing policy. It considered how an understanding of sentencing principles could be promoted and the appropriate body to pursue this. It also examined sentencing guidelines and the role of victims in the sentencing process.

Principles

When addressing sentencing principles a majority of submissions favoured **penal moderation** and the use of imprisonment as a measure of last resort with action being taken to make this a reality. It was suggested that the principle that applies in youth justice of exhausting all other alternatives before imposing a sentence should be extended to the adult criminal justice system. Fairness in sentencing was seen as a necessary, underlying principle.

Other submissions proposed the principle that the '**punishment should fit the crime**', i.e. that sentences for serious crime should be of a term proportionate to the nature and severity of the crime. Other submissions again endorsed a principle of zero tolerance in sentencing with **repeat offenders incarcerated for longer periods** so as to take them out of circulation.

Current sentencing practice

Many submissions were concerned with current sentencing practice and the lack of **transparency, clarity and consistency** of sentencing giving rise to public disquiet. It was suggested that an offender's fate, whether imprisonment or referral to a programme or service is determined by the particular judge they come before. It was argued that sentencing could be transparent and consistent while retaining the independence of the judiciary.

One submission addressing the lack of public comprehension around sentencing practice suggested an educational programme run by or on behalf of the judiciary to raise awareness of the many factors affecting judicial decisions. Changes made to criminal sanctions should be communicated widely to enable potential offenders to be fully aware of new penalties and give the new penalties their full deterrent effect. It was also suggested that education on the criminal justice system and sanctions could begin in school through CPSE classes.

Specific queries and concerns arose with respect to current sentencing practice. One submission asked why a past clean record can be taken into account even for serious crimes. Some submission held that sentences for financial/white collar crimes are too lenient. One submission said that there appears to be a perception among the judiciary that financial irregularities and fraud are victimless crimes and that the perpetrators should not therefore receive a custodial sentence. Another submission was concerned that some groups within communities appear to be immune from 'adequate sanction'.

It was suggested that juries could be involved in sentencing decision-making for certain types of cases which might force the judiciary to take more responsibility and impose stricter sentences. It was suggested that the judge or a panel could look at past offending and add to a sentence if the person in question was a repeat offender. Other suggestions included the introduction of a requirement for judges to clarify the factors influencing their decisions, and a Courts Service database of sentences handed down by the courts to increase consistency of sentencing.

A small number of submissions referred to responses to specific criminal activity: one such response argued that there is no deterrent effect in the sanctions available for cigarette smuggling or illegal cigarette selling and as a result Ireland is seen as a 'soft touch' for illegal tobacco smuggling. It was proposed that some offenders e.g. illegal cigarette sellers should be investigated by the Dept. of Social Protection as the potential loss of social welfare benefits might be more of a deterrent than a fine.

Data and Research on Sentencing

A theme common to many submissions was the **need for data and research to inform development of policy, legislation and law enforcement**. Sentencing should be assessed over periods of time in order to measure effectiveness. One submission contended that the discussion document should have identified and invited comment relating to data and research deficits on the operation of sanctions in Ireland and on how they might be rectified. The website www.irishsentencing.ie was acknowledged as a valuable 'snapshot' resource on Irish sentencing, although limited in terms of available information. Suggestions for research topics included research on crime statistics, including detection rates and numbers of convictions, sentencing data, the operation of sentencing and the appropriateness of certain sanctions for particular crimes. A centralised system which automatically collects data on court cases, which is updated daily and able to generate monthly and annual statistics, as well as providing alerts on particular areas of concern was proposed. It was held that there is difficulty in conducting meaningful empirical research on imprisonment due to the absence of an offender tracking information system.

Sentencing Guidelines

When discussing the value of sentencing guidelines, submissions favoured guidelines as a means of addressing the perceived current incoherence in sentencing. A number of submissions said that **guidelines should be clear, consistent and coherent and based on research and data on what sentence is appropriate for different offences**. Some said that judges have a considerable degree of discretion and there is limited policy governing their approach. There was a view that all stakeholders in the criminal justice system should be involved in the formulation of sentencing guidelines which should be communicated to the public. It was argued that public confidence in the sentencing process and the criminal justice system may be damaged when disparate sentences are imposed. It was suggested that the lack of relevant information around sentencing in the public domain, sometimes compounded by media coverage, leads to poorly informed debate and inappropriate legislation.

Members of the public are unfamiliar with legislation and the courts process and publication of basic information enabling an understanding of the system is needed.

Suggestions for sentencing guidelines included a system of matrices like the US Sentencing Commission to provide consistency. The implementation of a national framework to structure judicial sentencing discretion based on the principle of proportionality was also suggested. It was seen as a means of promoting equity in Irish sentencing. In that regard reference was made to the recommendation by the Scottish Prisons Commission for a National Sentencing Council, similar to that in England and Wales. The Irish Sentencing Information System was seen as useful but with limitations. Concern was expressed that if the system is to be used in the long-term as a sentencing manual, any existing questionable sentencing practices could be re-enforced. A sentencing council providing advice and establishing principles regarding offender and offence characteristics would avoid this.

Court of Criminal Appeal

The establishment of a Court of Appeal with judges assigned on a permanent basis was supported as it would enable expertise in the appeals area to be established, which could aid in the development of sentencing principles and guideline judgements.

Short sentences

It was considered that the **current approach to short-term sentences and actual time served for minor crimes is not constructive or meaningful to victims, defendants or the community.** It increases the perception of a 'revolving door' justice system and is expensive to the taxpayer. Short sentences should not be used as a 'short, sharp shock' to the offender and greater use should be made of community sanctions. Some examples were given to illustrate this point. One submission stated that in a single day a shoplifter can be arrested and sentenced and in a position to return to shoplifting. Another example related to illegal sellers of cigarettes who can be arrested, fined under the Casual Trading Act, released and in a position to resume their illegal activity.

A number of submissions proposed that the use of short sentences might be reduced if sentencing judges at District Court level were obliged to provide **written explanations of sentence lengths.** One submission proposed that legislation provide that imprisonment should not normally be used unless a sentence of at least 12 months is required in a particular case.

Victims

Many submissions were concerned with the role of the victim in the criminal justice system and some suggested that the law seems to favour the offender and that the offender has more rights. It was suggested that the **victim should be included in the overall criminal justice process and be given higher priority in the system.** It was also suggested that while some victims support custodial sanctions, they find the

criminal justice system and court processes alienating. Victims should not be pressured into pressing charges and should be kept up-to-date on the progress of their case by Gardaí. It was stated that victims of crime can find the process between reporting the crime and having the offender sanctioned/ brought to justice, stressful and 'painfully slow'. Referring to victim impact statements, one submission said that while such statements give the victim a limited voice for certain types of crime, it is at a late stage in the process. It was pointed out that in cases where the offender pleads guilty, victims have no opportunity to get information directly from the offender on matters that might be important to the victim. Restorative justice which provides opportunities for dialogue was seen as the best means of addressing the interests of the victim.

One submission thought that more resources should be allocated to victim support groups. Finally, it was suggested that the Parole Board should be more accountable to victims and their families in its decision-making.

Restorative Justice

Submissions were generally in favour of restorative justice and referred to the low rates of recidivism for participants of restorative justice programmes. **Restorative justice was believed to have the potential to achieve a positive outcome for the victim, offender and society**, as it provides a means of restoring dignity and wellbeing to the victim. Restorative Justice helps victims to overcome their fear and enables the offender to make amends and take personal accountability for his/her actions. It was argued that restorative justice can be applied at all stages of the criminal justice process, including imprisonment. A restorative approach to crime would facilitate a partnership between the local community, victims of crime and criminal justice agencies and within structures such as community policing fora to ensure that, for example, non-custodial penalties are effective. It was believed that restoring a relationship between offenders and their victims and the community as a whole can lead to increased community satisfaction with sanctions and less re-offending.

One submission said that the criminal justice system could benefit from **more structured input from local community organisations to support the rehabilitation and re-training of offenders** with a view to reducing re-offending. It was also thought that there could be community involvement in the process of assessing risks and needs of offenders to enhance community satisfaction with the administration of justice and contribute to community safety. (Currently the Probation Service is responsible for pre-sanction reports.) A restorative justice approach to enable local communities to assist the criminal justice system in addressing non-compliance with non-custodial sanctions by using local knowledge and creativity was outlined. It was argued that restorative approaches such as community conferencing and victim offender mediation would assist in finding solutions to respond to non-compliance without reverting to a custodial sentence. It was stated that experience shows that offenders involved in a restorative process are more likely to comply with agreements or orders.

There was support for the administration of restorative justice in a timely manner, without delays and postponement. Some submissions emphasised the need for transparent rules and the need to ensure equity and to protect against abuse.

A number of submissions addressed the perception of restorative justice as a 'soft option' compared with a court appearance. It was argued that offenders often do not play a very active role in court whereas the direct restorative encounter with the victim can be difficult for them. From the victims' perspective as a result of restorative justice they do not incur the stress of a court trial and, in particular, the stress of cross-examination which can seem hostile and lead victims to feel that they are on trial.

The issue of funding a restorative justice system was discussed with particular reference to the current economic climate. It was considered that simultaneous funding of two systems (restorative and retributive) would be required initially and that the pay-off from restorative systems is more likely to be the avoidance of future costs rather than savings from a curtailment of retributive systems.

Other views expressed were that:

- The recommendations of the National Commission on Restorative Justice should be implemented and funded.
- The restorative justice principles of the Children Act 2001 should be examined for their potential application in the wider criminal justice context.
- The implementation of a restorative justice policy requires strong leadership and commitment: an appropriate body for this would be the Probation Service.
- Offenders should be educated on the impact of their crime and should be compelled to face their victims with a view to compensating them for the offence.
- If restorative processes were universal, victims could request specific compensation for items stolen or destroyed or suggest a particular charity as the recipient of the Court Poor Box.
- Restorative justice should be extended to more serious crimes.
- The Gardaí should have the powers to impose speedy sanctions to deal with low level crime.
- The judiciary could be given a managing role for restorative justice programmes.
- Nenagh Probation Project seen as an example of best practice in the area of restorative justice.
- 'Facing Forward' and 'Community Mediation Works' both in Co. Dublin were cited as examples of community mediation services.
- Communities should be kept informed of the management of offenders within their communities particularly those offenders who are likely to re-offend and who have committed crimes against women and older people or sexual assaults.

Remission, Suspended Sentences, Concurrent Sentences

The absence of a formal review system for one quarter remission was questioned and contrasted with the formal review requirement for one third remission. It was held that **consideration should be given to whether those with a history of offending or re-offending should be allowed remission**. It was suggested that remission or early release for prisoners who have committed serious crimes dilutes the sanction and that there should be no remission for crimes of violence. Another suggestion was that the period of imprisonment should be increased for bad behaviour rather than remission given for good behaviour.

Specific references were made to sex offenders and it was proposed that education and rehabilitation courses be made mandatory for them, with failure to participate resulting in elimination of any remission and any reduction in sentence by the court. It was also proposed that such failure to participate should be considered in any future criminal case.

Other views expressed were that:

- Sentences should not be suspended or shortened for any reason.
- Suspended sentences might be more acceptable if the decision were the outcome of a process involving dialogue between the victim, community and the offender rather than imposed without consulting those most affected or at risk.
- Suspended sentences should be rigorously enforced and serious warnings given to those receiving them.
- Suspended sentences in a case of domestic violence should be kept before the court and monitored.
- Legislation should be enacted against concurrent sentences.
- **Consecutive** instead of concurrent sentences should be imposed for two or more crimes.

There were a number of suggestions relating in particular to the **District Court**:

- Short sentences at District Court level need to be addressed as currently they are counterproductive and cause administrative difficulties.
- Review power of District Court judges to impose sentences, given nature of offences tried in the District Court.
- Proceedings in the District Court should be recorded to reduce the public reliance on media reporting for case information.

Mandatory sentences

Most submissions were not in favour of mandatory sentencing. Points made included that mandatory sentences should be avoided as they can have a corrosive effect on the system by **increasing the numbers imprisoned; they remove judicial discretion; undermine the principle of proportionality; and disregard the individual circumstances of the offender**. It was argued that mandatory sentencing raises constitutional issues because proportionality is an implicit constitutional right.

Some submissions did, however, favour **mandatory sentences for repeat offending and for serious crimes** such as assault, drug possession, sex offences and white collar crimes. There was some criticism of the approach by the judiciary to minimum mandatory sentences for drug dealing. It was argued that minimum mandatory sentences of 10 years for dealing drugs with a value of over €12,000 should not be ignored as they would lead to the prevention of further illegal activities, the removal of offenders from communities and act as a deterrent for future possible offenders.

A number of submissions considered the introduction of mandatory sentencing for particular offences. One submission suggested that mandatory sentences be introduced for tobacco smuggling thereby treating it on a par with drug smuggling, as profits from tobacco smuggling can be used to fund other criminal activity. Another submission held that more severe sanctions should be applied to tobacco smuggling as this criminal activity undermines health policies as well as diverting revenue from the Exchequer. It was proposed that sanctions be administered on two different levels, with fines or community service administered to individuals smuggling small amounts of tobacco, and stronger sanctions such as mandatory custodial sentences for those involved in larger scale tobacco smuggling, in order to provide the necessary deterrent.

Non Custodial Sanctions

The discussion document sought views on the extent to which non-custodial penalties meet the objectives of sanctions and how they can contribute to crime reduction and public protection. It asked what improvements could be made to increase the effectiveness of the existing range of such penalties and whether greater use could be made of these measures. It also asked how best to design non-custodial sanctions which do not automatically lead to a custodial sanction in the event of non-compliance and also what role communities should have in the operation of Community Service Orders. Other questions posed by the discussion document were the types of non-custodial sanctions which might be appropriate for less serious but prolific offenders; and what types of non-custodial sanctions are the most cost-effective.

Submissions were generally in favour of more use of non-custodial sanctions, especially for minor offences. There was support for a transparent and structured approach to the application of non-custodial sanctions. The following paragraphs outline the arguments presented.

There was support for **research into how sanctions are working in practice and their effectiveness in reducing offending**. It was suggested that the judiciary should be kept up-to-date on the potential of non-custodial sanctions. Some submissions held that a community-based response to crime as an alternative to imprisonment is needed to help address prison overcrowding and drugs problems. Others held that non-custodial sanctions could be more likely than imprisonment to achieve the aim of public protection, particularly for young or first time offenders. However, one submission was of the view that non-custodial sanctions are being introduced more as an instrument of public reassurance than as an appropriate, proportionate response to the seriousness of the offence and the situation of the offender.

An example of best practice in community sanctions cited in some submissions was the Bridge project. It was considered that Community correction strategies such as Bridge:

- provide effective supervision and control of offenders
- uphold the safety of a community
- keep offenders out of prison
- reduce the frequency and gravity of offending and reduce recidivism
- support desistance and increase the social capital of offenders
- strengthen desistance through supports such as a Probation Officer and a programme that addresses the offender's needs.

Rather than increase the range of sanctions it was suggested that there be more flexibility in the system in order to address non-compliance. A number of submissions proposed that non-custodial sanctions should be based on the individual offender and tailored to their needs, be age and gender appropriate and take account of issues like family circumstances (e.g. caring arrangements, employment education, addictions).

Community-based sanctions **should not be used as a step towards a custodial sanction** or be used to address social problems. It was suggested that non-custodial sanctions should not just be punitive but should also assist or improve offenders: pro-social programmes with prevention and intervention emphases are needed e.g. anger management courses.

One submission considered that embedding non-custodial sanctions in a restorative process is the most likely way to address offending behaviour. Engagement with the victim reminds the offender of the harm they have caused to a real person which can motivate the offender to amend his behaviour especially where there are support measures in place. Submissions referred to the need for programmes to address drug misuse and addictions, including gambling and alcohol. One submission referred to 'Reflect' a programme under the Carlow Drugs Initiative which allows offenders to explore the behaviour that led to their arrest and their substance use.

Submissions agreed that there should be a **short interval between the commission of the offence and the imposition of a non-custodial sanction**. Other proposals included: rewarding compliance with a non-custodial sanction and the loss of access to non-custodial sanctions for prolific offenders. As regards prolific offenders it was also suggested that where they are in receipt of State payments, those payments should be reduced for a specified period.

Many submissions dealt with the **awareness in the community of alternatives to imprisonment** and suggested that the perception of alternative sanctions could be improved if the public were better informed of available alternatives. Suggested information on the value of alternative sanctions included the types of sanctions available, the type of unpaid work carried out by offenders, as well as data relating to the unit cost of imprisonment versus non-custodial sanctions, and statistics on re-offending for those imprisoned compared with those afforded a non-custodial sanction.

Some submissions addressed the question of placing non-custodial sanctions on a statutory footing. It was suggested that if non-custodial sanctions were statutorily based the perception that such sanctions are not 'real' would be changed. District Court Judges would be more likely to make greater of statutory schemes; their widespread adoption would be encouraged; and legislation would establish the basis on which greater cooperation can take place between criminal justice agencies and local community structures in order to engage the offender, the victim and the community. It was argued that political will is needed to increase the use and effectiveness of the current range of non-custodial penalties and public opinion and the media need to be kept informed of the different possibilities available.

Community Service Orders

Some submissions were concerned with Community Service Orders (CSOs) and how the community can be involved in or benefit from such sanctions. It was suggested that CSOs **provide a means for society to benefit from service or work** that would otherwise not have been provided and, as such, they should be presented as a gain to

the community. One submission noted the potential for CSOs to fill the gaps brought about by recent reductions in local services and FÁS Community Employment Schemes if structured to allow continuous commitment of offenders over longer periods. Suggestions for public services that could be provided by community service included litter collection, helping the homeless and graffiti removal. Another suggestion was that those on the CSO should be required to wear day-glow jumpsuits. Submissions also suggested that CSOs should be **performed in the offender's own community** and may provide an opportunity for the offender to re-gain the trust of the community. It was suggested that a CSO can give a sense of self-worth to an offender and should be used as a method of up-skilling offenders and increasing their social capital.

Views differed on when a CSO should be applied. While some submissions favoured community service for minor offences, it was also held that CSOs should only be used when the alternative is prison and not an alternative non-custodial sanction such as a fine. In that regard it was suggested that imprisonment and CSOs as an alternative should only be possible where the number of unpaid fines or evaded non-custodial sanctions are sufficient to warrant a significant prison sentence.

Public Order/ Adult Cautioning

It was suggested that:

- persons charged with **public order offences should come immediately before the courts, and that non-custodial sanctions are appropriate for these types of offences;**
- the adult cautioning scheme enables less serious offences to be dealt with in a speedy and effective manner;
- the adult cautioning scheme, in conjunction with the Probation Act, could provide a mechanism for the offender to respond to the **offence** and reduce fines for first/ second offence; and
- the adult cautioning scheme can result in sanction or criminal record inflation as the availability of a formal caution procedure generates formal records which can ultimately influence the gravity of sanctions for later offending.

Other Suggestions

- The current range of sanctions is not wide enough.
- The flexibility of existing sanctions should be increased rather than extending the range of sanctions.
- **Problem Solving Justice and community courts should be considered.** Community courts can positively affect the quality of life of a community especially when dealing with anti-social behaviour. They could be used in large urban areas to assist in reducing re-offending, keeping offenders out of prison and reducing the costs to the criminal justice system.
- The White Paper process should include consideration of **civil and hybrid civil/criminal sanctions** to respond to criminal behaviour.

- **Electronic tagging** of prisoners on release could help the authorities to address the lack of space in prisons and allow the State to monitor and supervise the location of individuals, and may help reduce re-offending.
- Electronic monitoring could be used to ensure victim safety and enforce orders under the Domestic Violence Act 1996.
- The **Court Poor Box** should be structured rather than operated at the judiciary's discretion. Poor Box funds should be ring-fenced and perhaps donated to a charity linked to crime prevention measures.
- **Community courts** and **night courts** could deal with issues such as drunk and disorderly conduct, anti-social behaviour, the handling of stolen goods and assaults.
- Where a monetary fine, a compensation order or on the spot fine is imposed the amount should be deducted by means of attachment order from income or State benefits.
- Vehicles of persistent offenders should be seized and sold in cases of non-payment of vehicle insurance or tax.
- Require anyone guilty of dangerous driving to undergo a driving test in order to renew their licence.
- The **Drug Treatment Court** should be rolled out nationwide as it has the potential to bring together different agencies to address the offender's needs quickly in a holistic way.
- **Garda Diversion Programme** and Restorative Justice approaches could be used for adults at risk of becoming involved in crime.
- Alternative sanctions for non-payment for services or fines might include mandatory attendance at courses on financial advice, family welfare, etc.
- **Pre-trial diversion** could be a suitable alternative sanction for low level crime, i.e. where a defendant agrees to sanctions such as repair of the damage done, restitution and/or training in exchange for withdrawal of charges.
- Introduce **non-negotiable family intervention** in lieu of custodial sanctions in order to make families understand and accept their responsibilities and to eliminate offending behaviour. UK Family Intervention Project cited as a successful model in this regard.

Imprisonment

The discussion document asked to what extent imprisonment meets the objectives of sanctions and contributes to crime reduction and public protection, as well as how much use should be made of imprisonment. Should specific measures be introduced to either reduce or increase the prison population, and how could a cost-effective prison policy be achieved? The document asked whether imprisonment is the only realistic option for dealing with prolific but minor offenders; whether mechanisms should be put in place to curtail the number of short prison sentences; and how temporary release arrangements can be integrated with supervision and reintegration assistance while also addressing the needs of the victims of and/or witnesses to the particular crime. It also asked whether there is awareness that there are on-going effects from a criminal sanction (e.g. on access to certain employment, travel, contracts, adoption), even after the sanction has been complied with and how awareness could be increased.

Submissions advocated the need for change in the current prison system. Many were concerned with the **growing prison population, the negative impacts of imprisonment and the lack of rehabilitation in the current system** and believed that prison should be a measure of last resort, both in theory and in practice. One submission noted that imprisonment is the presumptive sentence for those convicted in the Circuit Court and that it is used with 'alarming frequency' in the District Court. Other submissions were in favour of longer harsher sentences. It was suggested in another submission that imprisonment is necessary in the fight against crime and in reducing re-offending. Some submissions agreed that imprisonment may act as a deterrent in some cases, but for certain persistent offenders, prison is viewed as an occupational hazard. Detection or fear of detection is considered more of a deterrent than fear of a long sentence.

Submissions concerned with the lack of rehabilitation in the current prison system suggested that prisons can have negative consequences and contribute to social exclusion, and can lead to further criminal behaviour due to prisoners associating with criminal peers and becoming involved in drugs and violence. The ability of major criminals to operate in prison as if they were not incarcerated was raised. One submission considered the impact of overcrowding on the prison staff and asked whether prison staff are trained to deal with the pressures caused by overcrowding.

A number of submissions noted that **prison impacts on offenders, their family and communities in many ways** through its stigma and de-socialisation, and there is a greater likelihood of the children with a parent in prison becoming involved in crime. It was argued that the adverse effects of prison should be defined in legislation as factors to be taken into account by a judge when imposing a sentence.

Rehabilitation

Submissions in favour of a more rehabilitative prison regime agreed that imprisonment can negatively impact on the desistance process, and should instead be

an agent of change in the offender's life, encouraging them to move towards taking part in society responsibly. It was submitted that as a result of the current prison system, offenders once released are likely to re-offend and return to prison. It was also submitted that the apparent rates of re-offending call into question the value of imprisonment as a sanction and show the need to address and change the use of imprisonment.

One submission said that rehabilitation is more likely to be achieved through restorative process because restorative justice makes a distinction between what offenders do and who they are as individuals: the deed is shamed, not the offender. It was pointed out that re-integration is more likely if the offender has had an opportunity to express remorse and/or apologise directly to the victim.

The development of a caring prison service with value-based education to enable inmates to more easily adapt to life outside prison on release was proposed. It was stated in one submission that if offenders feel they have been dealt with fairly they might make positive changes to their lives. Another submission argued that there is a **disconnection between some State agencies in relation to the provision of services to offenders, particularly on their release from prison**. Services cited in this respect included housing and health. The submission said that access to state services can be particularly problematic for former prisoners living outside of the large cities. It was suggested that clear, written procedures are communicated to the various State agencies so that access to services is expedient and consistent across the country.

It was argued that the reintegration of former prisoners could be assisted through an extension throughout the country and into all prisons of programmes such as the Linkage Service, the Prison GATE Service and the Mentoring Service (training, education and employment programmes provided by Business in the Community in partnership with the Irish Prison Service).

A number of submissions referred to the lack of a daily structure for prisoners. One submission thought that there should be **mandatory training/work schemes for prisoners to raise self-esteem, create future opportunities and allow prisoners to make a contribution**. It was suggested that where prisoners (excluding sex offenders) had achieved a level of trust, external programmes should be considered. Such programmes would provide gainful and meaningful employment and were not seen as a source of cheap labour or an alternative to existing workers.

It was proposed that an integrated community and voluntary sector or **criminal justice third sector**, through a dedicated agency set up in partnership with statutory and voluntary service providers could, *inter alia*, co-ordinate all service provision for offenders, compile information to inform criminal justice policy, identify gaps in service provision and develop programme cost comparisons and measures of effectiveness. It was proposed that this criminal justice third sector would map out State and community and voluntary sector services by county and link them to offenders' needs with the purpose of reducing re-offending.

Other suggestions included the implementation of the Whitaker Report recommendations and the appointment of a **Prisoner Ombudsman** to address prisoner human rights issues.

Composition of Prison Population and Earlier Intervention

Other submissions were concerned with early intervention. It was argued that a majority of prisoners are from families with criminal backgrounds or from deprived areas and that the prison population is mainly composed of males under the age of 40. **Well funded, effective, inter-agency, early intervention programmes would be more effective in reducing involvement in crime than imprisonment.** It was submitted that a fraction of the cost of imprisonment should be invested in prevention methods.

One submission said that the Irish prison population is a small, very static group coming from specific areas. It argued that any overhaul of the criminal justice system should entail focussing service delivery at that group with a view to delivering real efficiencies, protecting society and reducing offending and recidivism.

Prison Spaces and their Utilisation

The poor conditions of prison buildings were commented on in some submissions and it was suggested that **older prisons need to be refurbished to meet minimum international standards.**

Submissions in favour of smaller prisons argued that more prison spaces will not reduce offending or crime, and that smaller, rehabilitative prisons are needed as large prisons have detrimental effects on prisoners. It was also suggested that more prison spaces may lead to less willingness on the part of the judiciary to use alternative sanctions. It was felt that **building a new prison at Thornton Hall and doubling the available spaces for women in particular may create motivation within the system to fill available spaces.** These submissions also referred to the high security levels applied to most prisoners in Ireland with fewer than 6% of prisoners in open prisons, which are less costly to run. One submission suggested the introduction of staged imprisonment - enter prison at a restrictive level and through good behaviour work up to more freedom.

Other submissions were in favour of more prison spaces and suggested building more prisons, the opening up of the Curragh camp to house prisoners, and the **building of maximum security prisons for gangland criminals.** These submissions were also in favour of less early release, longer sentences in general, as well as longer sentences for repeat offenders.

There were suggestions for improving the effectiveness of the current system by separating prisoners based on the type of offence committed, i.e., separating major criminals from minor offenders and designated prisons for different categories of crime, with the regime reflecting severity of conviction. It was suggested that a **two-tier prison system** - serious criminals incarcerated in a separate prison with tough conditions, and those with minor convictions housed separately under a less restrictive regime, would be more effective and offer more protection for staff and prisoners.

Regimes

Many submissions described the current prison system as severe and saw life within prison as punitive, restrictive and unsafe with shared cells, slopping out and poor sanitary conditions, as well as excessive lock-up time and insufficient time out of cells. It was contended that under the current prison system, incarceration is of itself the actual sanction and that the objectives of criminal sanctions policy need to be achieved in a humane manner and in accordance with minimum international standards. An **Ombudsman for Prisons and Prisoners** was proposed as a means of addressing problems in Irish prisons.

Those submissions favouring a **more strict prison regime** suggested greater use of solitary confinement and reducing the cost of imprisonment by having prisoners 'repay their debt to society' by performing work duties or hard labour, including working in chain gangs repairing roads. It was suggested that the unit cost of imprisonment could be cut by reducing the standard of living, this would result in manpower cost savings as well as making the system more severe.

Prolific Offenders

Suggestions for dealing with prolific offenders included: reducing social welfare payments on release from prison, reinstatement of payments if offending stops, re-offenders forced to pay prosecution costs, probation denied to repeat offenders mandatory fixed jail sentences for re-offenders after a certain number of offences (including a warning system whereby if an offender re-offends within 5 years regardless of the type of offence they will be incarcerated). Another suggested approach for prolific offenders included both imprisonment and multi-agency post-release work where prolific and other priority offenders in a community are identified according to their level of offending which would determine the level and type of support afforded to them. This locally based multi-agency approach, would work with the offender in prison and upon release, addressing their substance use, housing and family needs. It would use resources across agencies in an effective and efficient way working with and supporting offenders willing to engage with them and, ultimately reduce offending. Finally, it was suggested that research into the reasoning and background of prolific offenders might contribute to the reduction of prolific offending.

Temporary Release

Some submissions suggested that temporary release should be granted only for very short periods and not as a preparation for early release, as early release reduces the length of term for serious crimes. Others considered that temporary release **should not be used as a mechanism to deal with overcrowding and should be supported by a post-release plan**. One submission argued that unless temporary release and parole are administered by judges in public in accordance with transparent rules, temporary release and parole and the sentencing process itself will be politicised and subject to abuse. It was submitted that the extent of the use of temporary release raises fundamental questions about sentencing policy because the release of an

offender to accommodate another prisoner puts into question the need for his imprisonment in the first place. It was also submitted that temporary release, particularly for those who are sentenced to short terms makes the sanction meaningless. One submission suggested that community groups or community-based projects could be involved in supporting persons on early release or supervision.

Expunging a Criminal Record

When addressing the ongoing effects of criminal sanctions (e.g. on employment, travel and adoption) it was suggested that the **Spent Convictions Bill should be enacted as a priority to help deal with the impact of a conviction**. One submission pointed to the need for information campaigns on the ongoing effects of a criminal conviction.

Women in Prison

A number of submissions were concerned with women in prison and how women are treated by the criminal justice system overall. It was considered that women have **specific rights and needs** and imprisonment has a profound impact on women and their families, as well as an economic and social impact on wider society.

Some submissions were concerned with the growing number of women committed to prison as well as the types of crimes for which they are being imprisoned. It was suggested that in many cases women are imprisoned for short terms for non- violent crimes.

The question of overcrowding in the Dóchas Centre and its impact on the staged imprisonment approach was raised, as was the poor quality of accommodation for women in Limerick prison.

Other issues raised included:

- lack of an open prison for women.
- lack of post-release supports such as hostels for temporary release.
- detention on remand and lack of separation of remand and convicted prisoners.
- detention of women in prison charged with immigration offences.
- the need for equality of treatment for women and men in prison.

Suggestions were made for **research into the different types of facilities, services and programmes available to women in the criminal justice system**, analysis of the needs of women offenders and their experience of imprisonment and evaluation of the current system. Proposals for new approaches included gender-based, women centred, individual, holistic approaches and recognition of the particular rights of women. It was considered that policy in relation to women in danger of coming in contact or actually in contact with the system should focus on prevention. It was argued that progressive reform of responses to women offenders by the criminal justice system is needed, as suggested in the UK in Baroness Corston's review of women with particular vulnerabilities in the criminal justice system.

Mental Health Services

Some submissions were concerned with the treatment of offenders with mental health needs. It was argued that this is a longstanding issue and serious consideration needs to be given to these offenders with additional resources being made available.

An example given of best practice in addressing mental health needs was the **Central Mental Hospital's court liaison initiative at Cloverhill Court which identifies those before the court for whom a referral to mental health services would be appropriate.**

The possibility of examining a civil law option of restraint, a form of medical intervention, for those suffering from a form of mental illness which causes them to be a serious threat to others was mooted.

Addiction

It was suggested that offenders with addictions should be **diverted to rehabilitative centres rather than be imprisoned.** An offender should not leave prison with addiction issues, so drug treatment during their sentence is essential. It was proposed that addictions should be treated in a holistic way, with more funding and support for drug rehabilitation programmes in the community and Local Drugs Task Forces. Other submissions questioned whether the drug problem in prisons is being addressed and stated that prisons' management are unable to keep prisons drug free.

Other Topics

Bail

Many submissions commented on bail and a wide range of views were expressed. On the one hand, it was argued that the current bail laws should be applied correctly rather than have a review undertaken. Some submissions opposed the practice of refusing bail and questioned justifications for such refusal. It was suggested that **offences committed while a person is on bail should be treated in the same way as offences committed by a person who is not on bail or who has completed a sentence for previous offences**. It was stated that charges for an offence where the accused is presumed innocent cannot be compared with a conviction. The lack of separation of remand from convicted prisoners was considered 'unjust' because the former are presumed innocent. They are subject to prison conditions and the length of imprisonment on remand is not subject to a maximum duration. The cost of holding large numbers of prisoners on remand and its impact on the prison system and public finances was referred to.

Other submissions supported a review of the law. Some argued that there **should be no bail for repeat offenders or for a person accused of a crime involving use of a weapon**. Bail should be refused for dangerous criminals convicted of serious crimes. It was suggested that the bail laws are complex and restrictive and it was also argued that in some cases the public has lost trust in the criminal justice system because the bail laws are lax. Re-offending while on bail was raised as a particular area of concern. The absence of an Irish Bail Supervision and Support Programme was noted. Finally, it was suggested that offenders on bail or remand should be required to surrender their passports.

It was also noted that electronic monitoring, although provided for in legislation, has not been availed of as an alternative to pre-trial detention. In addition to electronic monitoring, home confinement where an offender must remain at his or her residence during specified hours was suggested as an alternative to bail. Forms of home confinement outlined were (i) curfew which would restrict the offender during specified hours, usually at night, (ii) home detention under which the offender remains at home at all times except for approved leave for employment, education, medical care, court attendance, etc, and (iii) home incarceration under which the offender is restricted to his/her home at all times except for approved leave. Monitoring of this sanction would be undertaken by the Probation Service by telephone contact, unannounced home visits and/or electronic signalling devices.

Fines

Many submissions **supported the measures introduced in the Fines Act 2010** and the introduction of alternatives to imprisonment for non-payment of fines and debts. However, one submission suggested that the Act while introducing a community service order as a sanction had, in effect, created 'a stepping stone' between fines and imprisonment as failure to fulfil a community service order will result in a prison sentence. Some submissions suggested that certain offenders are not paying fines

because they are aware of the lack of prison space and lack of alternative sanctions. It was suggested that a fine could be deducted from income or social welfare rather than sending people to prison for non-payment. Fines should be reserved for very minor offences, set low and imposed on the spot by Gardaí. This would reduce the backlog and also lessen the cost of free legal aid. It was also proposed that fines could be imposed for failure to provide a clean sample - with the level of fine based on income. For certain offences, offenders should be required to pay punitive damages to their victim. Another suggestion was that Gardaí be provided with a financial incentive to collect fines.

With regard to fines for the sale of illegal cigarettes it was suggested that: fines for these offences are too lenient and do not provide a deterrent, higher fines are needed, along with custodial sentences and investigation into social welfare history, the Revenue Commissioners to provide a 'loss to the State' statement in prosecutions so fines in line with revenue lost can be applied, and amend penalties under Casual Trading Act 2005 to reflect value of illegal cigarettes.

Policing

A number of submissions were concerned with the topics of policing and anti-social behaviour both of which have been/will be covered in other White Paper on Crime discussion documents. Comments included:

- The need for more Gardaí on the streets.
- Garda office work should be kept to a minimum with civilian personnel dealing with applications (passports, licences) and queries in Garda stations.
- More community Gardaí could lead to an increased focus on more serious crime. One submission expressed 'uneasiness' with Garda community policing as it gives a 'mixed message' and suggested a wider use of community welfare officers instead.
- A Garda liaison officer should be allocated to each complainant for dealing with time delays in getting cases to court and passing on information.
- There should be a ban on groups behaving in an intimidating manner on the streets and checkpoints in rural areas at night.
- Damage to public property should be paid for by the offender.
- Drug addicts/dealers known to Gardaí should be moved from streets to rehabilitation centres through the local Superintendent without recourse to the courts.
- Where crime is most persistent and prevalent the community should police themselves, and be made to account for crime rate in their areas.

Domestic Violence

Some submissions were particularly concerned with the area of domestic violence and sanctions for domestic violence. Suggestions included:

- Sanctions for domestic violence crime should reflect the severity and ongoing nature of the crime and its impact on the victim.

- Guidelines for use in domestic violence cases should be developed and the judiciary trained to deal with such cases.
- Restorative justice should not be used in cases of domestic violence.

Witnesses

- Consideration should be given to the growing fear of reporting crime and intimidation of witnesses. One suggestion was witness protection including anonymous witnesses for trials.

Young People

- There should be more focus on parental legal responsibility.
- Parenting orders would help reinforce and support parental responsibility to prevent dysfunctionality within families where issues such as control, ability, and functionality are causing problems both within the family and within the wider community.
- Education providers, Gardaí and social services intervention in truancy needs to be coordinated and enforced so as to identify children in need from an early age. Parental responsibility is also relevant in this regard.
- Irish Youth Justice Service material should be disseminated in schools.
- Young people who come into contact with law at an early age often have learning difficulties, leading to exclusion. The money spent on keeping young people in prison would be better invested in training and education.
- Youth community sentences, diversions programmes, etc must be well structured and should include a mandatory offender behaviour programme, education and training and unpaid work as reparation to the victim/community and could also include a fine or a compensation order.
- Concern was raised over the fact that there are more young people aged under 21 in adult prisons than in St Patrick's Institution.
- Child curfews for individual, underage children whom the court deems to be engaged in anti-social and/or criminal behaviour.
- General local curfew schemes for underage children in sites deemed unsuitable and liable to encourage anti-social and criminal behaviour on certain occasions e.g. bonfires, lanes, parks.
- Sentences should be introduced for those who 'groom' young people and involve them in organised crime such as drug dealing or the sale of illegal tobacco.

Legal Aid

- Free legal aid should not be guaranteed and should be denied for certain types of offences.
- Legal aid should be provided on a loan basis with a transfer of ownership as a recoupment option or deducted from social welfare payments.

APPENDIX

Submissions received in response to *Criminal Sanctions*

Organisations

AdVic	Irish Heart Foundation
Association for Criminal Justice Research and Development	Irish Penal Reform Trust
Athlone Community Taskforce	Irish Tobacco Manufacturers' Advisory Committee
Business in the Community	Mountjoy Visiting Committee
Castlepollard Community Council	Muinitr na Tíre
Cooley & District Community Alert	Rape Crisis Network Ireland
Centre for Criminal Justice Studies, University of Limerick	Safer Ballymun
Crime Victims Helpline	Safer Blanchardstown
Dublin Central Joint Policing Committee	Table Observers
Dublin City Business Association	Women in Prison Reform Alliance
Dublin Rape Crisis Centre	Women's Aid
Facing Forward	

Individuals

Mr. B. de Burca	Mr. C. Dooner	Ms M. McCarron
Ms. C. Corcoran	Mr. D. Egan	Ms K. Mulkerrins
Ms A. Curran	Mr. M. Fitzgerald	Ms M. R. Murphy
Ms M. Butler	Cllr. T. Fortune	Mr. P. McNieve
Dr. M. Butler	Ms S. Hassett	Cllr. C. Perry
Mr. T. Coffey	Mr. V. Holmes	Mr. B. Sheehy
Mr. B. Coman	Mr. T. Horrigan	Dr. K. Warner
Dr. Y. Daly	Mr. J. Kelly	Cllr. Edie Wynne
Mr. D. Donovan	Mr. B. Leddy	