

Strategic Review of Penal Policy

Final Report

July 2014

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LETTER TO MINISTER FOR JUSTICE AND EQUALITY

Ms Frances Fitzgerald, TD
Minister for Justice and Equality
St. Stephen's Green
Dublin 2

31 July 2014

Dear Minister,

On behalf of the Working Group conducting a strategic review of penal policy, I have pleasure in enclosing the final report of the Group.

The Group was established by the Minister for Justice and Equality, Mr. Alan Shatter, T.D. to conduct a review of penal policy in line with the recommendation contained in the Thornton Hall Review Group Report that "... an all encompassing strategic review of penal policy should be carried out which will incorporate an examination and analysis of all aspects of penal policy including prevention, sentencing policies, alternatives to custody, accommodation and regimes, support for reintegration and rehabilitation [and] the issue of female offenders...".

In addition to numerous meetings between October 2012 and July 2014, members of the Review Group made visits to a number of Irish prisons and to the Probation Service, including visiting a community service project. The Governors and staff of the prisons as well as the management and staff of the IPS and the Probation Service are thanked for their constant assistance during the course of this Review.

Following a public invitation, the Group received a total of 30 written submissions. In addition, the Group met with a number of interest groups addressing the wide

range of issues which arise in the context of penal policy. A sincere thank you to all of those who took the time to contribute to this important Review.

Members of the Review Group also accepted invitations to and attended a number of conferences, seminars and discussions on matters relating to penal policy.

Focus groups were conducted seeking views from prisoners and former offenders on a range of matters relating to this Review. I would sincerely like to thank Etain Quigley, UCD, for carrying out this study on behalf of the Review Group and, in particular, I would like to thank the participants for their time and willingness to contribute to this study.

Thanks are also due to the members of the Group who sourced and circulated a wide range of papers and literature which assisted in informing the deliberations of the Review. Both I, and the members of the Review Group, would also like to thank the Secretary to the Review Group, Yvonne Furey, for her support.

As Chairman I would like to express my gratitude to the members of the Review Group for their commitment to what has been a very significant project. From the outset, the sincerity and professionalism demonstrated in securing recommendations which would facilitate the promotion of a penal system which would address the needs of offenders, victims, communities and society in general has been unwavering. Thanks also to Brian Purcell, Secretary General, Department of Justice and Equality for his commitment to the work of the Review Group.

I would like to thank the former Minister for Justice and Equality, Mr Alan Shatter, T.D., for his support for and commitment to this Review. I would also like to express my gratitude to the Minister for Justice and Equality, Ms Frances Fitzgerald, T.D., for her continuing support for this Review.

The recommendations contained in this Report necessarily reflect developments over the past 18 months in the areas of criminal justice and penal policy. This Report

seeks to build on those developments and ensure that the recommendations contained within are both practical and effective in achieving the overall goal of developing and sustaining a just, proportionate and humane penal system which will contribute to an overall goal of reducing offending.

Michael Whelan

Chairman

EXECUTIVE SUMMARY

1. The terms of reference for the Review Group include the role of penal policy in crime prevention; sentencing policies; alternatives to custody; custodial accommodation and regimes; reintegration and rehabilitation and any special issues relating to female offenders.

2. The primary goal of the review is crime prevention and securing a reduction in reoffending. To achieve this, the recommendations focus on how offending behaviour can be best addressed in a sustainable way. Promoting crime reduction through rehabilitation is serving the best interests of society.

3. This is not to say, however, that recognition of the harm caused by an offender is a secondary consideration. The criminal justice system is responsible for recognising that harm and, where proven, sanctioning the offender appropriately. Public admonishment of offending behaviour is an integral part of the justice system and is essential in upholding the rights of victims of crime. The need to punish offenders is therefore a critical element of our system of justice and that is upheld in the recommendations contained in this Report. However, in terms of the penal system, as opposed to the wider criminal justice system, the Review Group envisages a role which supports, in partnership with appropriate organisations, the rehabilitation and reintegration of offenders leading to desistance from crime.

4. Necessarily, these recommendations, if implemented, would require, at a minimum, a redirection of existing resources. Some may require the provision of additional resources. While conscious of the existing financial constraints, the Review Group nonetheless encourage every effort to ensure the necessary facilities and resources are available to implement these recommendations where possible.

Chapter 2: A New Penal Policy (*establishing a rationale for the future*)

5. This Chapter examines the manner in which Irish criminal and penal policy has evolved and concludes that there has been a lack of a coherent policy which has resulted in an inconsistent approach to addressing offending behaviour with some

offences being heavily sanctioned, while efforts to reduce the use of imprisonment for other offences is promoted.

6. The Review Group consider that the overarching purpose of criminal and penal policy should be to make Ireland a safer and fairer place. The purpose and management of criminal sanctions should be consistent with that purpose. The Review Group consider that the dual purposes of punishment and rehabilitation should be the primary considerations in the imposition and management of criminal sanctions (*recommendation 1*) as being in the interests of best serving Irish society protecting victims of crime and deterring future offending.

7. While imprisonment serves an important role in the punishment of serious offences, it can adversely affect a person's job prospects, family links, access to accommodation and social attitude, all of which have a negative effect on a person's rehabilitation and, ultimately, desistance from crime. Reducing reoffending behaviour and reliance on prison are key aims of the penal system and in pursuing those aims, law and practice in the area of penal policy should be just, proportionate and humane (*recommendation 2*).

8. Assisting an offender in adopting a rehabilitative approach to the management of their sanction is not exclusively the responsibility of the Irish Prison Service (IPS) or the Probation Service in their role as the 'manager' of a sentence, as the case may be. To place the sole emphasis on the IPS or Probation Service is to ignore the crucial role played by non-criminal justice agencies, including other Government Departments and agencies, in managing offenders and providing for their rehabilitation (*recommendation 3*).

9. Opportunities to divert young and minor offenders from the criminal justice system should be followed with the Youth Diversion Programme, Adult Caution Scheme and piloting of community courts all supported. The detrimental effect a criminal conviction can have on a person's future can be far-reaching, inhibiting work and travel opportunities (*recommendations 4, 5 & 6*).

Chapter 3: Victims of Crime

10. Recognising the harm and distress caused to victims of crime is a central function of the criminal justice and penal systems. The need for victims and their families to be heard and their rights protected must be supported and strengthened. In this respect the Review Group welcomes the EU Directive establishing minimum standards on the rights, supports and protection of victims of crime and recommends the full implementation of this measure (*recommendation 7*).

Chapter 4: Alternatives to Custody

11. This Chapter acknowledges that there has been a significant increase in the prisoner population and that increasing levels of imprisonment have led to concerns regarding the extent of overcrowding in Irish prisons and the consequential negative impact on the daily lives and, ultimately, on the rehabilitation of offenders subject to custodial sanctions as well as on the efficient administration of the prisons themselves. A multi-agency approach to the development of appropriate, alternative non-custodial sanctions is required (*recommendation 8*).

12. Community sanctions should be developed so as to be capable of addressing the higher risk offender and address the underlying causes of offending. Targeted supervisory sanctions tailored to the individual needs of a particular offender may provide an appropriate solution but requires the collaborative efforts of those responsible for the supervision of the offender and those responsible for service provision (*recommendation 9*).

13. The unnecessary use of imprisonment, such as for the non-payment of fines, must be seriously reduced (*recommendation 10*). Other alternatives to imprisonment such as community service or weekend sentencing should be pursued (*recommendations 11, 12 & 13*) and the use of restorative justice is promoted (*recommendation 14*).

Chapter 5: Custodial Accommodation and Regimes

14. While progress has been made the Review Group is concerned regarding the continuing poor conditions in parts of the prison estate and the need for the situation to be urgently addressed (*recommendation 15*). In particular, it is necessary to ensure that the present timeframe for ending the practice of ‘slopping out’ is met.

15. Maintaining prison safety must be a constant goal. Violence and rivalry among prisoners negatively impacts the administration of the prison, the safety of prisoners and prison staff, as well as access to services for certain prisoners. Addressing this problem is not solely a matter for the prison authorities and requires the intervention of a range of services, including those in the community (*recommendation 16*). Efforts must also be made to ensure that a prisoner who is subject to restricted regime, on the grounds of his or her protection, must be removed from that regime as soon as possible (*recommendation 17*).

16. The Review Group has been impressed with the contribution of open prisons, in preparing an offender for release and would call for an increased use of such prisons for appropriate offenders (*recommendation 18*).

17. In terms of sentence management, the Review Group welcomes the involvement of prisoners in the management of their own sentence through Integrated Sentence Management and the Incentivised Regimes Policy. However, the irregular application of these policies across the prison estate needs to be addressed (*recommendations 18 & 20*).

Chapter 6: Female Offenders

18. Managing female offenders often requires a different approach as female offenders can present unique and complex issues and vulnerabilities. This chapter recommends a new female centred approach be adopted (*recommendation 21*).

19. Also of concern, is the relatively high rate of remand and sentencing among female offenders and further research to determine any underlying reasons is required (*recommendation 22*). The lack of open prisons or a step down facility for female prisoners is a particular concern and should be addressed and gender appropriate community sanctions should be developed (*recommendations 23 & 24*).

20. While not exclusively a matter for female offenders, the impact on the family, in particular children, where a parent is imprisoned cannot be underestimated. The Review Group reiterate the importance of sentencing courts taking account of the impact that imprisonment has on the family of the offender and in this respect where a person is imprisoned the need to promote contact with his or her family (*recommendation 25*).

Chapter 7: Rehabilitation and Reintegration

21. The rehabilitation and reintegration of offenders resulting in the desistance from crime is the key to making Ireland a safer place.

22. In terms of offenders serving sentences of imprisonment, there must be access to the necessary services addressing any behavioural or other difficulties which have contributed to the offending behaviour. Releasing prisoners without appropriate preparation or supports must be addressed (*recommendation 26*). Open prison assists prisoners in adapting to a less restrictive regime prior to release. The use of open prison should be applied in an open and transparent manner (*recommendation 27*).

23. In relation to the forms of release from prison, earned remission must, if it is to be available, be applied consistently. Overall, however, the Review Group favoured the use of supervised temporary release as a means of supporting a prisoner following his or her release (*recommendations 28, 29 & 30*).

24. Given the important role played by the Parole Board in the release of long term prisoners, the Review Group recommend the establishment of a Parole Board on a statutory basis (*recommendation 31*).

Chapter 8: Sentencing Policy

25. This Chapter addresses the role of sentencing policy in relation to prisoner numbers, rehabilitation of offenders and promoting consistency in sentencing.

26. In line with the recommendations in the early part of this Report (chapter 2), the Review Group confirms that imprisonment should be regarded as a sanction of last resort reserved for the most serious of offenders and offences and to support this recommendation, any sentencing decision to imprison an offender should be set out in writing (*recommendations 32 & 33*). The Review Group is also concerned that the introduction and use of presumptive minimum sentences, in relation to certain drugs and firearms offences, has been in some instances disproportionate and should be reviewed (*recommendation 34*).

27. The Review Group recommends that a court should, where appropriate, include a rehabilitative element in a custodial sentence (*recommendation 35*).

28. Recommendations to address concerns regarding inconsistency in sentencing and to promote information on and awareness of sentencing are also included. The principles of supporting rehabilitation and reintegration as well as limiting the use of imprisonment as a sanction should be set out in statute (*recommendations 36, 37 & 38*).

Chapter 9: Achieving Change

29. The Review Group stressed the need to ensure that future penal policy adopts a coherent approach. Changing the culture in how penal policy is developed and offenders are managed both in the community and in the prison system is addressed. The importance of information gathering, through data management and research, appropriate impact assessment and adopting a collaborative approach

to policy formulation are recommended (*recommendations 39, 40 & 41*). A cross-sectoral council to advise on issues relating to penal policy is proposed (*recommendation 42*) as is a mechanism to review the implementation of the recommendations contained in this report (*recommendation 43*).

TERMS OF REFERENCE & MEMBERSHIP

The Report of the Thornton Hall Project Review Group published in July 2011 recommended that an all encompassing strategic review of penal policy should be carried out which will incorporate an examination and analysis of all aspects of penal policy including prevention, sentencing policies, alternatives to custody, accommodation and regimes, support for reintegration and rehabilitation and the issue of female prisoners.

Having regard to that recommendation, the Group shall carry out a strategic review of penal policy taking into account:

- relevant work already carried out in this jurisdiction and elsewhere,
- the rights of those convicted of crimes,
- the perspective of those who are victims of crime, and
- the interests of society in general; and

shall make recommendations as how a principled and sustainable penal system might be further enhanced taking into account resource implications, Constitutional imperatives and our international obligations.

In the context of that review, the Group shall include in particular an examination and analysis of:

- (i) the role of penal policy in crime prevention;
- (ii) sentencing policies;
- (iii) alternatives to custody;
- (iv) custodial accommodation and regimes;
- (v) reintegration and rehabilitation;
- (vi) any special issues relating to female offenders and prisoners.

MEMBERSHIP

Mr Michael Whelan, Chairman

Mr Tom Cooney, Adviser to Minister for Justice and Equality

Mr Michael Donnellan, Director General, Irish Prison Service

Mr Vivian Geiran, Director, Probation Service

Mr Liam Herrick, Executive Director, Irish Penal Reform Trust¹

Ms Maeve Lewis, Executive Director, One in Four

Mr James Martin, Assistant Secretary, Department of Justice and Equality

Ms Sunniva McDonagh, Barrister at Law

Ms Oonagh McPhillips, Principal Officer, Department of Justice and Equality

Mr Jim Mitchell, Principal Officer, Irish Prison Service

Mr Jack Nolan, Assistant Commissioner, An Garda Síochána

Dr Helen O'Neill, Consultant Forensic Psychiatrist

Dr Mary Rogan, Chairperson, Irish Penal Reform Trust (from 07.02.14)

The Hon. Mr. Justice Garrett Sheehan

¹ Replaced by Dr Mary Rogan from 7 February 2014

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LIST OF ACRONYMS

CSO	Central Statistics Office
CPO	Community Payback Order
ETB	Education and Training Board
EM	Electronic Monitoring
IRP	Incentivised Regimes Policy
ISM	Integrated Sentence Management
IPS	Irish Prison Service
ISIS	Irish Sentencing Information System
LRC	Law Reform Commission
NGO	Non-Government Organisation
POA	Prison Officers' Association

1. OVERVIEW & INTRODUCTION

1.1 *Background to Review*

In July 2011, the Thornton Hall Project Review Group reported to the Minister for Justice and Equality, Alan Shatter, TD. It did so in the context of a growing prison population in Ireland and the inescapable fact of substandard conditions in parts of the existing prison estate. The conclusions and recommendations of the Thornton Hall Report addressed primarily the prison estate. It also, however, made recommendations regarding earned release and home detention. However, the Report acknowledges that those recommendations of themselves simply address the medium term needs of the Prison system and would not, of their own, address the significant difficulties arising from overcrowding.

That Group advocated an approach which would reduce reliance on imprisonment. It did not accept that an ever increasing prison population is or should be inevitable. It did not accept that the only, or appropriate, response to increasing prisoner numbers is to build more prisons. Nor did it accept that ever increasing levels of unstructured early release was an appropriate solution.

In light of these conclusions, the Thornton Hall Project Review Group recommended that an all encompassing strategic review of penal policy should be carried out. In September 2012, the Minister for Justice and Equality announced the establishment of a working group to conduct that review, the terms of reference for which included an examination and analysis of all aspects of penal policy including crime prevention, sentencing policies, alternatives to custody, accommodation and regimes, support for reintegration and the issue of female prisoners. The need for a sustainable penal system cognisant of resource implications, constitutional imperatives and international obligations was emphasised.

In addition to receiving a number of written submissions, the Review Group had discussions with a range of interested persons and bodies (see Appendices 3 & 4), including representatives of crime victims. Members of the Review Group visited prisons in Mountjoy, including the Dóchas Centre, Wheatfield, Limerick, Cork and the

open prison in Shelton Abbey as well as the Central Mental Hospital, Dundrum. Visits to the Probation Service and a Community Service Project were also conducted. The views of offenders in prison and ex-prisoners in the community were also sought in the format of focus groups. The recommendations arising from those groups are set out in Appendix 1.

1.2 Context of Review by this Working Group

While a recommendation calling for this Review may have arisen in response to the many concerns regarding overcrowding and poor prison conditions, it is a Review focusing on a long term, sustainable, effective and humane penal system. In particular, imprisonment can dehumanise and stigmatise offenders negatively impacting on a prisoner's psychological well-being which in turn limits that person's ability to successfully rehabilitate and reintegrate into society.

In that context the Review Group considered what is the purpose of punishment generally, and the effectiveness and appropriateness of the various sanctions – custodial and non-custodial - at imposition, management or post-release stage. As the most serious sanction available with the most significant impact on an offender and his or her ability to rehabilitate and reintegrate, imprisonment is the subject of particular focus in this Report. In this respect, the Review concludes a preference to reduce reliance on imprisonment as a sanction and favoured a greater focus on the use of non-custodial sentencing options, where appropriate².

During the course of this Review, there have been a number of developments in the area of penal reform. These are further identified later in this Report. While further work is required, the Review Group would like to acknowledge the positive steps which have been taken in the past 24 months, in particular in addressing poor prison conditions, with slopping out now eliminated in Mountjoy although still a feature, for now, of prison life in Cork³ and Limerick prisons; the reduction in the number of

² See chapter 4.

³ The Review Group notes that construction work on a new prison to replace Cork prison commenced earlier this year and is scheduled for completion by the end of 2015.

prisoners on protection; cooperation between the Irish Prison Service (IPS) and the Probation Service particularly in the effective use of incentivised early release from prison via the Community Return Programme⁴.

However, serious concerns regarding our penal system remain. In particular, while the male prison population has seen a decline, the number of female prisoners has increased. The female prisons in the Dóchas Centre and Limerick are, at the time of writing, the most overcrowded prisons in the State. The Review Group is particularly concerned at the high rate of remand among female prisoners and the lack of gender appropriate community sanctions. Additionally, female prisoners lack adequate step down facilities to support their reintegration into the community. This Report acknowledges the positive developments but emphasises the areas where improvement, urgent and long term, is required.

⁴ The Community Return Scheme is a development of temporary release. Selected prisoners are granted renewable temporary release during which they perform unpaid community work. See further section 7.3.4.

2. A NEW PENAL POLICY (*establishing a rationale for the future*)

This Chapter outlines the events which have shaped and formed penal policy in Ireland. It suggests that penal policy has evolved as a result of piecemeal policies aimed at specific type of offences or offenders rather than a singular coherent policy with the sole aim of making Ireland a safer place. The Chapter seeks to envisage what Irish penal policy should be by identifying the purposes of criminal sanctions, by acknowledging sentencing principles and by establishing a foundation for future penal policy in Ireland.

2.1 Developments in penal policy

The Review Group was concerned that, at times, penal policy in Ireland lacked coherence. Developments in penal policy have often surfaced as a political response to emerging issues or crises while at other times penal policy has been driven more by a culture of ‘drift’ rather than a single cohesive approach to penal policy. For instance, in recent decades, penal policy in Ireland has mirrored developments in those jurisdictions which favour a more punitive approach. This is reflected in legislative changes which, in certain areas, adopted an increasingly punitive approach such as the introduction of presumptive minimum mandatory sentences. However, there have also been efforts to increase the use of non-custodial sanctions citing the positive rehabilitative impact of such sentences as well as the effective use of diversion from the criminal justice system for young offenders.

The main form of non-custodial sanction used by the courts is the application of a fine. However, at the time of writing, failure to pay that fine would result in imprisonment (although this situation is to be addressed in the recently enacted Fines (Payment and Recovery) Act 2014). In the case of other non-custodial sanctions, the Probation of Offenders Act 1907 (“1907 Act”) provided the statutory basis for the probation of offenders, specifically, dismissal of charge, conditional discharge and probation orders involving supervision. In February 2014, the Minister for Justice and Equality published the General Scheme of new legislation to replace

the 1907 Act and, in general, modernise the law governing community sanctions and the Probation Service⁵.

Other advances in the area of non-custodial sanctions include the introduction in 1983 of community service as an alternative sanction to imprisonment, which was expanded in 2011. Extending the use of this form of sanction was a particular focus of this Review (see chapter 4). In 2006, the Criminal Justice Act placed suspended and part suspended sentences (with or without probation supervision conditions) on a statutory basis and also introduced restriction on movement orders and provided for electronic monitoring.

However, as mentioned earlier, an increasing severity in the sanctioning of certain types of offences also emerged and it has, arguably, been a policy which has been influenced by reaction to national events and international precedents. Be it terrorism, drugs, gang related and organised crime or addressing repeat offenders, the approach of successive Governments has been one favouring punishment as a deterrent.

In 1996, the Constitution was amended to provide for the refusal of bail to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person. Under the Criminal Justice Act 1984 (as amended), a sentence for an offence committed while on bail should be consecutive to the sentence for the original offence and an offence committed while on bail would be an aggravating factor in the sentencing for that offence (as inserted by Bail Act 1997).

In the mid to late 1990s the focus turned to increasing the severity of penalties for certain offences. The Criminal Justice Act 1999 introduced a presumptive mandatory minimum sentence of 10 years for possession of drugs for sale or supply with a value

⁵ General Scheme of Criminal Justice (Community Sanctions) Bill available at <http://www.justice.ie/en/JELR/Pages/PB14000031>

of €13,000 or more. In 2006, similar mandatory minimum sentences were introduced for firearms offences (Criminal Justice Act 2006).

In 2007, presumptive mandatory minimum sentences were also introduced for convictions on indictment of a specified offence where that conviction is within 7 years of the commission of a similar specified offence (largely within the context of organised crime).

There has also rightly been an increasing focus on the rights of victims of crime. In 1993, the Criminal Justice Act introduced a number of victim focused provisions including victim impact statements, court ordered compensation for victims and prosecution appeal of unduly lenient sentences. It is clear however from victim support groups that the current situation regarding victims in the criminal justice system is still inadequate and, in particular, that inconsistency in sentencing or imposing what are considered to be lenient sentences fails victims. The issue of sentencing and consistency is addressed further in chapter 8. The rights of victims are considered under chapter 3 of this report and, in that regard, the Review Group notes and welcome the provisions of the EU Victims Directive⁶ the implementation of which will further enhance victims' rights.

In terms of the designation, management and operation of prisons, the Prisons Acts 1826 to 1980, the Prisons Act 2007 and the Prison Rules 2007 apply. One particularly significant historical reform was made under the Criminal Justice Act 1960 which introduced temporary release for prisoners⁷.

At the prison operational level, a review of committal figures over recent years indicate a significant increases in prisoner numbers from approximately 12,000 in 2008 to over 17,000 in 2010, 2011 and 2012. This arguably reflects the punitive

⁶ Directive 2012/28/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; OJ L 315, 14.11.2012 at p57.

⁷ "Prison Policy in Ireland", Rogan, Mary, 2011; Report of the Committee of Inquiry into the Penal System, 1985; "Sentencing Law and Practice", O'Malley, Tom, 21-08 to 21-14

approach which has been outlined above. Although 2013 saw a drop back in numbers to 15,735, the fact remains that committal levels are high.

Without diminishing society's expectation that crime is appropriately punished, the Review Group is concerned at the high level of committals to prison. Imprisonment is costly⁸ and more significantly its effectiveness as a means of aiding desistance from crime⁹ has not been proven.

Reducing an over-reliance on prison, both the number of committals and the duration of committals, is a key goal. There have already been some advances in promoting the use of non-custodial sanctions. On a legislative basis, the Fines (Payment and Recovery) Act 2014 aims to reduce to a minimum the number of people committed to prison each year for the non-payment of fines. In 2013 of the 15,735 total committals to prison¹⁰, approximately half (8,121) were committed as a consequence of the non-payment of a court ordered fine. The 2014 Act is intended to address this group insofar as it offers a number of alternatives to imprisonment as a means of satisfying a penalty involving a fine which is then not paid. While this is likely to remove an unnecessary administrative burden in reducing committals to prisons, it will not have a significant impact on the daily prison numbers as the number of persons in prison on any given day for the non-payment of a fine is low¹¹. For instance, on 30 November 2013, of the 4,099 persons in custody, only 8 were committed for the non-payment of a fine.

The continued and well-reported overcrowding within Irish prisons is a consequence of the overuse of imprisonment as a sanction. The increase in total committals year on year is set out in chapter 4 (Table 4A) and it is clear that there was a significant increase in the use of imprisonment between the years 2009 to 2011. The daily

⁸ The average cost of an available, staffed prison space during the calendar year 2013 was €65,542 (Source: IPS Website, July 2014)

⁹ Irish Prison Service Recidivism Study May 2013

¹⁰ References to "total committals" to prison are comprised of those committed under sentence, on remand, for the purpose of European Arrest Warrant extradition, under immigration law and for contempt of court.

¹¹ IPS Annual Report 2013.

average numbers of prisoners in custody shows an increase in committals from 3,881 in 2009 to 4,390 in 2011. 2012 saw a drop in committals and a further drop in 2013 where the daily average number of prisoners in custody was 4,158. The impact of temporary release on the numbers in custody has been raised. However, Table 2A shows that since 2010, the daily average number on temporary release has remained steady at approximately 14-15% of those subject to a sentence of imprisonment.

Table 2A: Daily average numbers in custody / on temporary release (TR) (2009-2013)

Year	In custody on sentence, plus TR	Temporary release (TR)	TR as % of 'in custody'
2009	4,416	535	12%
2010	5,022	732	14.5%
2011	5,175	785	15%
2012	5,095	777	15%
2013	4,857	699	14.5%

Source: IPS Annual Reports, 2009 – 2013

By the early 2000s, plans to replace Mountjoy prison were being developed. These were reviewed in 2011 and while recommending the development of a new prison at Thornton Hall on a reduced scale, that review also advocated an approach that aimed to reduce reliance on prison.

In terms of conditions in prison, the Irish Prison Service (IPS), in addition to refurbishing substandard accommodation, is actively pursuing integrated sentence management, adopting a system of enhanced regimes and working with the Probation Service in facilitating the use of Community Return as an alternative to unstructured temporary release. This is in line with the Programme for Government 2011-2016 and the commitment to ensure better co-ordination between the IPS and the Probation Service to create an integrated offender management programme which also features in the Joint IPS and the Probation Service Strategic Plan for 2013-2015.

Finally, the impact on criminal justice and penal policy of the Irish Youth Justice Service and the Garda Youth Diversion Programme must be acknowledged, in

particular the significant progress in diverting young people from prosecution and from reoffending.

2.2 *Identifying Irish penal policy*

Aside from the Children Act 2001 and the consequent establishment of the Irish Youth Justice Service for young offenders which has had a positive impact, the Review Group is concerned that in the past, penal policy has been without strategic objectives and long-term planning. In the 1990s and 2000s – the expansion of the penal estate was mooted as a solution to many of the difficulties in the Irish prison system, to the detriment and sometimes to the exclusion of other approaches. The Review Group considers that this lack of a coherent, identifiable penal policy does not serve the public, the community, victims of crime or the offender.

The Review Group believes that the penal policy-making process must be strengthened, and emphasises the importance of inter-agency cooperation in this respect. Improving the process by which penal policy is made is of fundamental importance to the future of the Irish penal system. Getting this process right is essential to responding to the challenges which face the system at present and which will occur in the future.

As a starting point, the Review Group identified that the purpose of penal policy and criminal sanctions is to make Ireland a safer and fairer place. The extent to which this purpose is being achieved is, however, open to debate. For instance, when it comes to imprisonment as a sanction, the Group noted that it is the most expensive of sanctions but, as a deterrent to committing crime, its effectiveness is questioned.

While imprisonment as a penalty immediately punishes and temporarily incapacitates the individual; its effectiveness in terms of rehabilitation and deterring repeat offending is questionable. The offender is punished, the harm to the victim is recognised and the need to sanction those who offend society's norms is satisfied. Obviously, these comments are also true for the other non-custodial forms of

criminal sanction but as the most serious sanction available, imprisonment as a sanction requires special consideration.

At an early point in discussions, the Review Group decided that establishing the purposes and principles of Irish penal policy was necessary in order to inform future actions in the area of penal policy from the sentencing stage to the completion of sanction, thereby developing a sustainable penal policy contributing to the overall aim of making Ireland a safer and fairer place.

2.3 *Identifying the purpose of criminal sanctions*

Much has been written about the purpose of criminal sanctions with the objectives commonly identified as punishment/retribution, incapacitation, deterrence, rehabilitation and reparation¹². These purposes are briefly summarised in table 2B below. They recognise the harm which criminal behaviour causes to individuals and, more generally, to society and seek to reduce further harm. In addition, a sanction must be imposed in accordance with the principles of criminal justice, specifically that a sentence is consistent and proportionate to both the offence and the offender – this is further discussed under section 2.4.

¹² “Sentencing Law and Practice”, O’Malley, Thomas, 2nd ed., 2006, Thomson Round Hall

Table 2B: The Purpose of Sanctions

Punishment/Retribution – to inflict some kind of loss on the offender and give formal public expression to the unacceptability of the behaviour to the community.

Incapacitation - to restrain the offender so as to limit their opportunities to commit further crime.

Deterrence – to impose a penalty to either deter the individual from committing further crimes or to deter others from imitating the criminal behaviour.

Rehabilitation – designed to include measures which might contribute to the person desisting from future offences and to assist in their reintegration into society.

Reparation – penalties can involve direct or indirect compensation for the harm caused to victims by the crime.

Source: White Paper on Crime, Criminal Sanctions Discussion Document, Dept of Justice and Equality, February 2010

As noted, these purposes share a common recognition of the harm caused by criminal behaviour. There is a range of possible sanctions available to our courts in addressing offending behaviour, from dismissal under the Probation Act, to fines, to Probation Supervision, suspended or part suspended custodial sentences and community service, to a term of imprisonment. The degree to which these sanctions serve the purposes set out above varies other than that all sanctions are imposed as a form of punishment. In all cases, the behaviour involved is one which society has sought to prohibit or control.

However, the Review Group considers that the purpose of punishment should be fulfilled by the fact of the sentence and not exacerbated in the serving of the sentence. With certain sanctions, there is minimal intrusion in the life of the offender such as where a case is dismissed under the Probation of Offenders Act or where a fine is imposed and paid. However, where the sanction involves a level of ongoing surveillance, supervision, intervention or control by the State, be it a sentence of imprisonment or one involving Probation supervision, the proper management of that sentence by the State and the engagement by the offender is essential in achieving rehabilitation. The Review Group considers that any penal

system which does not aspire to a reduction in offending behaviour as a key goal is failing in its purpose.

While accepting that certain sanctions, such as imprisonment, serve the purpose of incapacitation, the Group did not consider incapacitation to be the primary purpose in sanctioning criminal behaviour. Equally, sanctions are intended as deterrents against criminal behaviour. Again, however, this is not a purpose on which the Group would primarily base a future penal policy. Finally, as a purpose of sanctioning, reparation is important insofar as it demonstrates remorse for behaviour and harm to the victim of the offence. Therefore, while all sanctions serve, to a greater or lesser degree, the purposes outlined above, it is the view of the Group that, for the purpose of supporting future penal policy, criminal sanctions should be regarded primarily, if not exclusively, as serving the dual purposes of punishment and rehabilitation. This approach envisages a more holistic multi-agency approach to sentencing and sentence management.

Recommendation 1

The Review Group agrees that the purpose of penal policy and criminal sanctions is to make Ireland a safer and fairer place. With this in mind, the Review Group considers that any punishment within criminal sanctions should as far as reasonably feasible but subject to the principle of proportionality, also assist an offender's rehabilitation and reintegration. The Review Group therefore recommends that all of the key players involved in the administration of criminal justice and penal policy should take into account the aim of rehabilitation and reintegration of the offender when imposing and implementing criminal sanctions.

2.4 Identifying the principles of Irish penal policy

This Report examines sentencing policies in greater detail in chapter 8. However, insofar as sentencing forms part of the penal system, the Group noted the dominant principle of Irish sentencing law – proportionality.

Proportionality requires that a sentence must be proportionate to the gravity of the offence, the impact on the victim(s) and the personal circumstances of the offender. The requirement of proportionality arises out of the need for fairness and respect for human dignity. The principle of proportionality applies to both the legislative provision for penalties and the application of that penalty in individual cases.

The Review Group agrees that, in line with the principle of proportionality, there are offences for which imprisonment may be the only appropriate sentence.

However, the management of that sentence requires renewed focus. Imprisoning without providing the necessary services to reduce the risk of reoffending does not serve the needs of society, potential future victims or offenders. The Group also recognises that inflexible sentences, such as the presumptive mandatory sentences which apply to certain drugs and firearms offences, in focusing on the offence rather than the offender, may not be the optimum response from the offender and society's point of view. Equally, there are offenders for whom a community based response to their offending behaviour would be a more appropriate sanction and more likely to be effective in reducing the likelihood of reoffending.

If making Ireland a fairer and safer place is the stated goal, then the focus must be on reducing criminal behaviour and assisting offenders in desisting from crime. Research has identified factors that appear to promote desistance. These include: a need to be realistic (change takes time); informal approaches are often best (e.g. avoid labelling offenders where possible); use prisons sparingly (strong social ties aid in promoting desistance); build positive relationships (everyone, including offenders, is most likely to be influenced for the better by those they trust); respect individuality (one size does not fit all); social contexts and networks of support are important and promote redemption (reward good behaviour and confirm positive change).¹³

¹³ McNeill, F. and Weaver B. (2010) *Changing Lives? Desistance Research and Offender Management*, Report No. 03/2010, The Scottish Centre for Crime and Justice Research, Glasgow School of Social Work: Glasgow (at p. 6).

For many repeat offenders, addiction, homelessness and other social difficulties are all too common factors in their offending behaviour. Sanctioning offending behaviour must be effective and must fairly and appropriately address the needs of the offender. In that respect, community interventions should be supported as the first resort in applying a sanction, where appropriate.

In short, the Review Group envisages a penal system which achieves results in terms of reducing crime. By reducing the numbers being sent to prison and addressing offending behaviour and related needs in the community, a more effective penal system can emerge. A renewed focus on addressing the underlying reasons for behaviour and assisting in reintegration of the offender rather than solely punishing the offender, will deliver personal, societal and overall financial benefits.

In addition, the Review Group considers that all sanctions should uphold and respect the dignity of those affected by the penal system. Human dignity, a concept enshrined in our Constitution and under our obligations under international human rights norms, must be at the centre of the penal system's approach to offenders. The Review Group considers that human dignity is best respected by a system of sentencing based on proportionality, and by a sparing approach to the use of imprisonment.

The Review Group recognises the central importance of independent monitoring of prisons and robust structures for securing accountability for decisions taken which affect prisoners. The importance of this principle, recognised in the European Prison Rules, cannot be overstated. The Review Group believes that independent monitoring and accountability must be at the heart of penal policy and practice.

Recommendation 2

The Review Group recommends that our law and practice in the area of penal policy should be just, proportionate, humane and should aim to reduce

- reoffending behaviour, and
- reliance on prison as a sanction.

These principles should inform all aspects of penal policy from diversion through to sentencing, serving of sanction, rehabilitation and exit from sanction.

The need for wider involvement of non-criminal justice agencies, such as that suggested below in relation to youth diversion, in managing offenders arose during a number of discussions. If a safer community is the goal, then it is vital that rehabilitation and reintegration must be supported by the full range of relevant services. Offenders, especially those exiting custody, must be provided with all necessary services to promote their reintegration into the community. In addition to addressing the offending behaviour, which would primarily fall to the criminal justice agencies, many offenders require assistance in housing, education, addiction treatment and financial support. These supports are the responsibility of, among others, the Departments of Health, Education and Social Protection. There are also roles to be played by local authorities. The availability of suitable accommodation is particularly important in the rehabilitation of offenders.

While there is extensive and effective cooperation in the management of offenders by the IPS and the Probation Service, not all offenders would fall within the remit of these services. But all offenders should, as citizens, receive the necessary services in a coordinated manner to assist in their rehabilitation and reduce offending behaviour.

Financial and other resources must be redirected to achieve maximum benefit and where necessary redistributed within the existing system. The Review Group also recognises the important contribution of non-governmental organisations and communities in achieving this goal.

Recommendation 3

The Review Group recommends that there must be greater emphasis, if necessary through legislation, on promoting inter-agency cooperation in the management and rehabilitation of offenders. In addition to the criminal justice agencies, there is a need to recognise that a whole-of Government approach is required in

collaboration with relevant agencies and local authorities in addressing offending behaviour and assisting offenders in maintaining crime free lives.

2.5 *Diversion from the Criminal Justice System*

2.5.1 *Garda Youth Diversion Programme*

In addition to the need for a cohesive penal policy focusing on rehabilitation there must be a proactive approach to identifying and addressing offending behaviour at an early stage, and before “criminal careers” or patterns of offending became established. In this respect, the Group recognises the significant contribution which the Garda Youth Diversion Programme plays in diverting from prosecution, where appropriate, children who commit criminal offences. The programme which is established on a statutory basis under Part 4 of the Children Act 2001 received over 24,000 referrals in 2012, 80% of which were deemed suitable for diversion¹⁴. Since 2008, the operational costs of detaining young offenders have reduced by over 30%, the capital costs and space required in the new national detention facilities being built at Oberstown are approximately 50% of what was estimated in 2008 and youth crime has fallen¹⁵. The success – both in terms of the cost-effectiveness of this programme and more significantly the positive impact on young lives – was noted and welcomed by the Group. Given the level of referrals, concern was expressed that appropriate safeguards would be in place so that young people are not unnecessarily subject to diversion and that only those demonstrating clear offending behaviour would benefit from diversion.

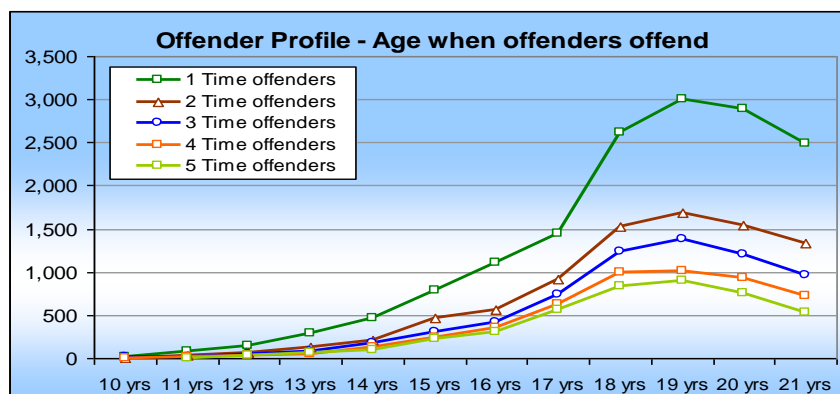
The programme is, however, limited to persons under 18 years of age whereas evidence indicates that 18-22 is the age at which criminal behaviour, statistically, peaks (see table 2C).

Table 2C: The Age/Crime Curve 2011

Courtesy of An Garda Síochána from Garda PULSE data

¹⁴ Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme 2012

¹⁵ Source: Irish Youth Justice Service



The Review Group considered whether the Youth Diversion Programme should be extended to those over 18 years old and concluded that it would require a reconsideration of the manner in which the programme is currently provided. If it were to be extended, the Review Group considers it appropriate to initially extend the programme to 18-21 year olds as this is a group which is already distinguished within the existing penal system, insofar as they are separated from the general population. However, it cannot be ignored that extending the Youth Diversion Programme to 18-21 year olds would have resource implications for An Garda Síochána and the Irish Youth Justice Service. Consideration of the role to be played by the Department of Children and Youth Affairs, who favour this extension, must be included.

In 2012, approximately 1,160 of 13,500 committals to custody were 18 to 21 year olds. A submission to the Review from the Irish Youth Justice Service proposes two possible actions for young adults based on the experience of youth projects:

- a 'formal' non-statutory diversion scheme, and
- a scheme for young adult offenders along the lines of the Juvenile Liaison Officer scheme.

The experience of the Probation Service in continuing Young Persons Probation Programmes with offenders up to 21 years of age, may be of relevance and the Probation Service may have a role in the potential future developments in this regard.

In any event, the Review Group, while favouring a greater focus on young offenders within the 18-21 year group, recognises that this would require a level of consultation and cooperation between Departments and agencies as well as An Garda Síochána, comparable to the existing Youth Diversion Programme. Undoubtedly this would require a level of commitment in terms of resources, finances and cooperation that is undetermined.

Recommendation 4

The Review Group recommends that a programme similar to the Youth Diversion Programme be introduced for young people above the age of 18 with an initial focus on 18-21 year olds. In this respect, the Review Group recommends that the relevant Departments and agencies, including An Garda Síochána should immediately consult in relation to the most appropriate and effective means of targeting this group within the context of current and future resources.

2.5.2 Adult Caution Scheme

The Garda Adult Cautioning Scheme was introduced on a non-legislative basis on 1 February 2006, with the agreement of the DPP. It provides an alternative to bringing before the District Court persons against whom there is evidence of the commission of offences of a less serious nature, and where prosecution is not required by the public interest and a caution would be an effective response. The views of the victim are, if reasonably possible, sought.

Two of the offences – sections 4 and 5 of the Criminal Justice (Public Order) Act 1994 - are also now fixed charge penalty offences following enactment of the Criminal Justice Act 2006 and the Intoxicating Liquor Act 2008.

According to Garda figures, since its introduction in 2006 to 5 June, 2013, there has been a total of 67,765 Adult Cautions recorded on PULSE.

The offences covered by the Scheme include offences contained in the Criminal Justice (Public Order) Act 1994, the Criminal Justice (Theft and Fraud Offences) Act 2001, the Intoxicating Liquor Act 2003, the Non-Fatal Offences Against the Person Act 1997 and the Criminal Damage Act 1991. A full list of the relevant legislation and offences covered by the Scheme is set out in Table 2D and it is clear that only the most minor of offences are included in the list. The Review Group considers that it is time to review the offences or circumstances in which a caution may be an appropriate alternative to prosecution. Such a review of the offences in question would be in line with the purpose and spirit of the Criminal Justice (Spent Convictions) Bill 2012 which when enacted will facilitate offenders with single, minor offences with putting those offences behind them in due course.

Recommendation 5

The Review Group recommends that the relevant agencies review the offences covered by the adult caution scheme with a view to including a wider range of offences.

Table 2D: Offences covered by the Adult Caution Scheme

Act	Offence
Dublin Police Act, 1842	Section 14(12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District Only)
Summary Jurisdiction (Ireland) Amendment Act, 1871	Section 8: Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)
Intoxicating Liquor Act, 1927	Section 17: Persons on licensed premises during prohibited hours
Licensing Act, 1872	Section 12: Public Drunkenness
Criminal Damage Act, 1991	Section 2: Damaging Property (where the value of the property damaged is less than €1,000) Section 3: Threat to damage property
Criminal Justice (Public Order) Act, 1994	Section 4: Intoxication in a public place Section 5: Disorderly Conduct in a public place Section 6: Threatening, abusive or insulting behaviour in a public place Section 8: Failure to comply with direction of a member of An Garda Síochána Section 9: Wilful Obstruction Section 11: Entering building etc with intent to commit an offence Section 22: Surrender and seizure of intoxicating liquor
Non-Fatal Offences Against the Person Act, 1997	Section 2: Assault (Assaults on a member of An Garda Síochána shall be forwarded to the Director of Public Prosecutions)
Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 4: Theft (where the value of the property concerned is less than €1,000) Section 8: Making off without payment (where the value of the payment is less than €1,000) Section 17: Handling stolen property (where the value of the property concerned is less than €1,000) Section 18: Possession of stolen property (where the value of the property concerned is less than €1,000)
Intoxicating Liquor Act, 2003	Section 6: Offences by a drunken person Section 8: Disorderly conduct

2.5.3 Use of Community Courts

Over a number of years, there have been calls for the introduction of a system of community courts such as in the 2007 National Crime Council Report: Problem Solving Justice: The Case for Community Courts in Ireland. More recently, in January

2014, the Oireachtas Committee on Justice, Defence and Equality held a hearing on the use of community courts at which calls for the use of such courts in this jurisdiction were made by, among others, the Inspector of Prisons Judge Michael Reilly, Dublin Lord Mayor and the Dublin City Business Association. Similar submissions were made to the Review Group both in writing and during consultations.

The low level crime targeted by these types of courts is primarily street crime such as shop lifting, drunkenness, minor drug possession, anti-social behaviour etc. While considered low-level, these types of behaviours can be high impact where centred in particular areas. They impact on a person's sense of safety as well as business within that area and consequently attract the name "quality of life offences".

Other jurisdictions have adopted community courts as a response to this type of crime. These 'problem solving' courts are seen to adopt a pragmatic approach to addressing low level crime and reduce reoffending. They are specific to the communities within which they operate, addressing the type of low level crime prevalent in that area¹⁶. They address offending through a mix of sanction and provision of appropriate services. The essential element, however, in the success of community courts is the speed at which they can respond to offending. To be effective, reaction to this type of low-level offending must be quick, with offenders accepting that their actions will attract such a response.

The Review Group endorses the conclusions of the Oireachtas Justice Committee hearings into community courts and, in particular, would support the establishment, initially on a pilot basis, of such a court for the Dublin City Centre area. However, in order to have a reasonable chance of success, such a court would require on-site access to adequate resources and collaboration between the necessary support services, such as housing, addiction treatment and education, from the outset.

¹⁶ It was noted by the Review Group that transplanting a model from another jurisdiction (or even another area within the same jurisdiction) without local adaption is unlikely to succeed (North Liverpool Community Justice Centre: Analysis of re-offending rates and efficiency of court processes (Ministry of Justice, July 2012))

Recommendation 6

The Review Group welcomes and supports proposals to pilot a community court and emphasises the need to ensure that such courts are adequately resourced.

3. VICTIMS OF CRIME

The recommendations put forward in this report are aimed at making Ireland a safer place by supporting a reduction in offending behaviour through sanctions which in addition to punishing the offender also offer to support the rehabilitation and reintegration of that person. While this approach is consistent with the interest of victims of crime, there must also be recognition of the harm and trauma caused to victims.

Victims of crime often describe their experience of the criminal justice system, and particularly criminal proceedings, as one in which they are a spectator rather than participant. In some instances, the criminal process can produce a sense of revictimisation.

The criminal process acts on behalf of society in the investigation and prosecution of crime while ensuring the due process rights of those suspected or accused of committing crime. Reconciling victims' rights with this process is a complex matter made more difficult on the one hand by demands seeking a more punitive system to calls on the other for increased use of non-punitive models such as restorative justice (see para. 4.1.4).

What is certain is that victims of crime have multiple requirements including a need to be recognised and to be heard, a need for protection and support, a need to be kept informed and, where appropriate, compensation.

As mentioned earlier in this Report, the Criminal Justice Act 1993 introduced a number of victim focused measures of which victim impact statements were designed to provide victims with a voice in criminal proceedings. The use of these statements is limited to victims of sexual and violent crime. The 1993 Act also introduced court ordered compensation and prosecution appeals of unduly lenient sentences.

In 2010, the Victims of Crime Office published a revised Victims Charter¹⁷ which outlines the roles and responsibilities of various state agencies towards victims. To that end, it includes the individual charters of the Garda Síochána, Courts Service, Director of Public Prosecutions, Irish Prison Service and Probation Service which detail what victims can expect from each service, the role of the service and what a victim can do where a particular service does not meet his or her expectations.

More recently, the Probation Service established a National Victim Services Team which will work in conjunction with that Service's Victim Service Coordinator. The team provides a single point of contact on a regional basis, and includes a prison based Probation contact person. The primary focus of the team is to respond effectively to victims queries.

Notwithstanding such operational commitments as set out in the Victims Charter, victim support groups continue to call for greater recognition of the victim in the criminal process.

A significant step in strengthening the rights of victims and their families is the 2012 EU Directive establishing minimum standards on the rights, supports and protection of victims of crime.¹⁸ The Directive recognises that "(c)rime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner..."¹⁹. Treating victims with respect and ensuring they are supported in order to make informed decisions is a common theme through the Directive. In promoting the rights of victims, this measure requires the introduction of a range of provisions addressing the needs of victims and importantly, will apply to all victims of crime and all aspects of the criminal process.

¹⁷ <http://www.victimsofcrimeoffice.ie/en/vco/Pages/Victims%20Charter>

¹⁸ Directive 2012/29/EU of the European Parliament and the of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57

¹⁹ Recital (9).

The Review Group consider that the implementation of this Directive will be a considerable step in supporting victims of crime and ensuring an appropriate role for victims in the criminal justice process.

In promoting a victim's ability to make informed decisions, the Directive emphasises the need to provide victims with information and support (chapter 2). This includes a requirement to provide victims with information, at the outset of the criminal process, relating to their case and the services and supports which are available to them. Victims of crime should also be informed of any decision not to proceed with an investigation, to end an investigation or not to prosecute the offender.

Where there are criminal proceedings, victims will be entitled to receive, on request, a copy of the judgment in their case and may also opt to receive information on the release of the offender. Importantly, however, it is the wish of the victim that will determine the extent to which information is received by him or her. In this respect, the Directive recognises that each victim is different and some victims may wish to limit their level of involvement both during and following the criminal process.

In terms of participation in the criminal proceedings, the Directive (chapter 3) addresses the right to be heard and the right to compensation from the offender. Victims will also be entitled to request and receive the reasons for any decision not to prosecute and will also be able to review that decision. This is a significant development on the current Irish policy where the giving of reasons not to prosecute only arises in cases involving death. As mentioned under section 4.1.4, the Directive promotes the appropriate use of restorative justice services which is in line with the existing delivery of such services in this State.

The need to ensure the protection of victims and their families (chapter 4) includes protection from secondary and repeat victimisation, avoidance of contact with the offender, protection during criminal investigations and proceedings. Again, the Directive recognises that not all victims have the same needs and in this respect an assessment to determine any specific protection needs of individual victims must be

carried out. Additional protections for child victims are also included such as using the audiovisual recording of evidence.

The Directive must be implemented before November 2015. The Review Group welcomes the provisions of this instrument and in particular the degree to which it will reinforce the need for victims to be recognised and respected within the criminal process.

Recommendation 7

The Review Group recommends that the role of the victim in the criminal justice system be fully acknowledged and looks forward to the full implementation of the EU Directive (2012/29/EU) establishing minimum standards on the rights, supports and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

4. ALTERNATIVES TO CUSTODY

A primary concern for the Review Group is the extent to which imprisonment is used as a criminal sanction. The rising prison populations and associated difficulties with prison overcrowding have been widely recognised and reported on including in the Thornton Hall Review Group Report on foot of which this Strategic Review has been established. In May 2013, the Inspector of Prisons, Judge Michael Reilly, published “An Assessment of the Irish Prison System” which identified a number of areas of concern including prison overcrowding. That report acknowledges the IPS commitment set out in a Three Year Strategic Plan 2012-2015 to “seek to align the capacity of our prisons in line with the guidelines laid down by the Inspector of Prisons in so far as this is compatible with the public safety and the integrity of the criminal justice system”²⁰. The Review Group is also happy to acknowledge this commitment by the IPS and, in particular, stresses the importance of promoting public protection while addressing offending behaviour in a manner supportive of encouraging desistance. Supporting both the IPS commitment and promoting desistance, the Review Group considers that there must be a renewed focus on pursuing alternatives to imprisonment as a criminal sanction.

The Review Group has identified rehabilitation and reintegration as a core principle and significant factor in reducing crime and considers that such aims are best achieved in a non-custodial environment as far as possible. However, a non-custodial environment presents its own challenges and ensuring the effective and appropriate treatment of offenders is not the responsibility of a single Department, agency or body. A holistic approach addressing a person’s offending and related needs be it behavioural, health, addiction treatment, educational, housing or other will require extensive levels of collaboration by a number of parties, at State and community level. Without that collaboration, however, the rehabilitation and reintegration of offenders is substantially undermined, creating potentially negative consequences for society.

²⁰ Strategic Action 1: Prison Numbers

Recommendation 8

The Review Group recommends the adoption of a strategy to reduce prisoner numbers to a safe level subject to the need to ensure proper protection of the public. This requires a focus on alternative approaches to the treatment of offenders. However, to achieve a reduction of prisoners in custody requires a level of collaboration and cooperation between all relevant Departments and agencies, including the IPS, Probation Service, An Garda Síochána, Irish Youth Justice Service, Department of Health and local authorities.

4.1 Increasing the use of community sanctions

In order, however, to support a recommendation to reduce prisoner numbers, there must be appropriate non-custodial sanctions available to sentencing judges. These sanctions must be seen to be effective, credible and command public confidence in managing both those who pose a general risk of re-offending and those presenting a real risk of harm and danger to the public. Community sanctions particularly support the rehabilitation of offenders in that while they sanction the offending behaviour, they also ensure that an offender can maintain links with family, community, employment and education as the case may be.

Community based sanctions fall under two broad categories – supervised sanctions and unsupervised sanctions. Unsupervised sanctions include dismissal under section 1(1) of the Probation of Offenders Act 1907, binding over to keep the peace, suspended sentences without supervision, fines and compensation orders. While unsupervised sanctions are appropriate in the vast majority of cases, and fines are the most used sanction of all, it is the supervised community sanction which is the focus of this Report and its role in supporting the rehabilitation and reintegration of offenders.

Sanctions supervised by the Probation Service are Probation Orders, Community Service Orders, Supervision during deferment of penalty, Post-Release Supervision Orders, Conditional Suspended or Part-Suspended Sentences, Supervised Temporary

Release and Community Return – further information on each of these sanctions can be found at Appendix 5 to this Report.

Recent policy reviews in other jurisdictions²¹ provide valuable analysis and evaluations of how development and expansion of community sanctions through new practices, multi-agency working and quality supervision can safely manage higher risk and higher tariff offenders in the community on orders from Courts and on early release from custody.

The range and effectiveness of targeted supervisory sanctions has developed considerably in recent decades, moving beyond traditionally rehabilitative measures to include unpaid work, psychological or substance misuse treatment, cognitive-behavioural and other programmes, and residency conditions, as well as other innovations.

Recommendation 9

The Review Group recommends the development and expansion of the use of community sanctions in particular those that address the underlying causes of offending.

An additional problem has been the use of inappropriate sanctions. The obvious example identified by the Review Group is the imprisonment of fine defaulters for short periods. This is well acknowledged, including by the Oireachtas Joint Committee on Justice, Defence and Equality which, in March 2013, published a report of the Sub-committee on Penal Reform. In 2013, there were 8,121 committals to prison for the non-payment of a court ordered fine. This represents approximately 53% of all committals in 2013 and 65% of those committed under sentence in 2013. While fine defaulters do not spend a significant period in prison,

²¹ “The Sentencing, Management and Treatment of ‘Dangerous’ Offenders: Final Report”; Padfield, Nicola; European Committee on Crime Problems (COE); 2010.

“New Directions in Community Supervision: Should We Target High Risk Offenders, High Risk Times, and High Risk Locations?”; Byrne, James M.; European Journal of Probation; 2012, Vol. 4, No. 2, pp 77-101.

processing of such offenders is an unnecessary burden on the administration of prisons and undermines the credibility of the criminal justice system. However, of greater concern is the practice of applying, by default, the most severe of sanctions – imprisonment – for what otherwise might be generally regarded as a relatively minor offence. The Review Group therefore welcomes the steps being taken in the Fines (Payment and Recovery) Act 2014 to address fine defaulters without recourse to custodial sanctions.

Recommendation 10

The Review Group supports the Fines (Payment and Recovery) Act 2014 and welcomes the potential positive impact that such legislation will have on fine defaulters and prison administration. The Review Group recommends the early and full implementation of this legislation.

4.1.1 Probation Supervision and Community Service

In terms of community sanctions, probation supervision, community service orders and suspended sentences with supervision conditions are the main penalties available. Sanctions implemented by the Probation Service aim to reduce risk of harm and re-offending, make good the harm done by crime and ensure that court orders are implemented in the community. Probation Service staff work with offenders to help them become ex-offenders²².

The Review Group also considered the potential of community service to be more widely used as an alternative to prison. Unlike other community sanctions, community service is regarded as a primarily punitive and reparative sanction rather than a primarily rehabilitative measure. It is not expected to target the offenders' behavioural risk factors to reduce the risk of re-offending and, in respect of such factors, a Probation Order may be regarded as the most appropriate means of addressing the multiple needs of higher risk offenders.²³ However, for lower risk

²² Already mentioned, and welcomed by the Review Group, is the planned modernisation of the law relating to the Probation Service and community sanctions through a new Criminal Justice (Community Sanctions) Bill, a General Scheme for which was published in February 2014.

²³ Probation Service Recidivism Study 2007-2011, at p.4.

offenders with a reduced need for supervision, the Review Group considers that there is no reason that a sanction imposing community service could not also require additional conditions, for instance, addiction treatment.

Nonetheless when dealing with offenders who would otherwise have received a custodial sentence, community service is a positive and cost effective alternative insofar as it allows an offender to avoid imprisonment while reparation is paid to the community. Also while not necessarily regarded as a sanction which focuses on rehabilitation, recidivism findings already demonstrate that community service is effective in reducing reoffending²⁴.

In 2011, the Criminal Justice (Community Service) (Amendment) Act introduced a requirement on judges considering the imposition of a sentence of imprisonment of up to one year to first consider imposing community service as an alternative. This provision was introduced with a view to encouraging the use of community service as an alternative to imprisonment for those offenders for whom community service is an appropriate sanction. Together with the use of same day assessment reports²⁵, there was an initial increase in the number of community service orders although the level of such orders is significantly less than in similar jurisdictions such as Scotland which operate Community Payback Orders²⁶. It is also the case that despite the initial increase, figures indicate a drop in the use of community service in 2013 (see table 4A below). Additionally, the extent to which community service has reduced the number of persons sentenced to imprisonment is open to debate and adopting an approach along the lines of Community Payback Orders in Scotland may divert offenders from Probation Orders to community service rather than from imprisonment.

²⁴ Probation Service Recidivism Study 2007-2011 & Probation Service Recidivism Study 2008-2013

²⁵ A same day assessment report is a report of an offenders suitability for community service and is returned to the court on the day it is sought. The report is prepared by a probation officer following an interview with the offender. In 2012, there were 963 same day assessment reports prepared by probation officers.

²⁶ For instance, in 12 months to March 2012, over 11,000 community payback orders (CPOs) were imposed in Scotland. A CPO includes community service but also includes other measures including orders to undergo treatment etc. Each CPO can incorporate from the menu of options and tailor fit an order to a particular offender. In comparison, in 2012, a little over 2,500 community service orders were made in Ireland.

Table 4A: Number of persons committed to prison, including for fines, and number of persons receiving community service 2009-2013

Year	Committals to prison ²⁷			Community Service ²⁸
	Total committals	Fines committals	Committals less fines	
2009	15,425	4,806	10,619	1,667
2010	17,719	6,683	11,036	1,972
2011	17,318	7,514	9,804	2,738
2012	17,026	8,304	8,722	2,569
2013	15,735	8,121	7,614	2,354

Source: IPS & Probation Service Annual Reports

Nonetheless, community service, as an alternative to imprisonment, is undeniably less disruptive and potentially less damaging to an offender. It also provides valuable opportunities for offenders to make reparation for their offending to their local community. In addition, community service benefits the communities in which the offenders' unpaid work is carried out, as well as offering unique community-offender interfaces, and promoting real community reintegration. Moreover, community service is an integral part of the recovery of fines under the Fines (Payment and Recovery) Act 2014 which, when implemented should significantly reduce the number committed to prison.

While community service is a sanction which is imposed only as an alternative to imprisonment, the Review Group also considers that it could form part of a sentencing outcome which necessarily involved a period of imprisonment in excess of one year. In other words, community service could be used in lieu of the final part of a sentence of imprisonment.

The Review Group considers that care must be taken, and all interventions evaluated, to ensure that non-custodial alternatives are true alternatives, and the phenomena of 'net-widening' and 'mesh-thinning' are avoided²⁹. The Review Group

²⁷ IPS Annual Reports 2009-2013

²⁸ Probation Service Annual Reports 2009-2013

²⁹ 'Net-widening' and 'mesh-thinning' arise where extending the use of non-custodial or community sanctions as a means of reducing the number of committals to prison causes less serious offenders to be treated more harshly

considers that, when appropriate, imprisonment should be perceived as the alternative sanction to non-custodial options, rather than the other way around.

Recommendation 11

The Review Group supports the increased focus on and promotion of community service as an alternative to imprisonment. The Review Group therefore recommends that the Probation Service examine the feasibility of introducing, on a pilot basis, an integrated community service where community service would be imposed with conditions, such as a mandatory restriction on movement order or addiction treatment, where appropriate.

Recommendation 12

The Review Group recommends the introduction, on a statutory basis, of a provision for community service in lieu of part of a sentence of imprisonment in excess of one year.

4.1.2 Weekend sentencing

While it is not a non-custodial sanction, the Review Group has included the consideration of weekend sentencing in this chapter. Like community service, weekend sentencing would only be imposed where a sanction of ‘full time’ imprisonment is being considered and where the circumstances of the offence require some period of custody to be imposed without the negative impact which imposing a regular sentence of imprisonment would have on both the offender and prison numbers.

The Review Group also acknowledges the benefits of weekend sentencing to an offender, in particular in maintaining employment, education and family links. However, it would involve an additional administrative burden and there would be some security issues which would need to be addressed. In terms of type of offences for which it would be appropriate, the Review Group identified relatively low level offending and low risk offenders. A further issue would be the availability

and location of prisons with open facilities only being currently available in the Leinster area and Cavan and with no such existing female facility.

Nonetheless, the Review Group considers that there is some merit in this type of sentencing receiving additional attention and consideration with a view to determining the extent to which weekend sentencing would be appropriate and feasible.

Recommendation 13

The Review Group recommends that the use of open prisons for weekend sentencing be considered.

4.1.3 Electronic monitoring

The Review Group also examined the potential to increase the use of electronic monitoring as part of a sanction. This mechanism is intended to enhance public protection without the need for detention while permitting the offender to maintain employment or education, as the case may be. Electronic monitoring is currently used on a limited basis in relation to the monitoring of restriction on movement as part of temporary release. There are proposals for some limited extension of this form of monitoring to convicted sex offenders through updated sexual offences legislation which is currently being drafted. However, the Review Group noted that evidence suggests that electronic monitoring is only useful as a rehabilitation measure when used for approximately up to 6 months³⁰ (and in combination with supervision by the Probation Service) and is also only suitable for certain offenders. Offenders who lead chaotic and transient lives would not be appropriate for this form of supervising measure. The Review Group noted that successful completion of orders involving monitoring is related to the quality of accompanying supervision and the length of the order. The better the supervision, and the shorter the order, the greater the likelihood of completion. As such, the Review Group considers that electronic monitoring may not be suitable for some offenders.

³⁰ Mortimer E., & May C., “Electronic monitoring in practice: the second year of the trials of curfew orders”, Home Office Research Study 177

The Review Group does not propose to recommend extending resources relating to electronic monitoring (EM) to non-custodial sanctions beyond that proposed to be introduced in relation to sex offenders.

4.1.4 Restorative Justice

In achieving the goal of rehabilitation and reintegration, there must be due regard for the victim of a particular offence. Restorative Justice, which defines itself as a “victim sensitive approach to criminal offending³¹”, was found by the Review Group to benefit both offenders and victims (while a word of caution was expressed as to whether restorative justice uses victims to rehabilitate offenders, it was acknowledged that participation by victims is strictly voluntary). As a means of getting an offender to confront his or her behaviour and the harm arising from that behaviour, restorative justice has been successful. The Review Group recognises that dedicated restorative justice projects are currently operating on a relatively limited and local level and that budget and other constraints limit the current scope for expansion into new areas.

As an approach to offending behaviour, and one which involves the victim, restorative justice is practiced in a number of countries. This is underlined by the EU Victims Directive which, when implemented, will entitle victims who choose to participate in restorative justice practices to have access to safe and competent services.³² The Directive also addresses the need to safeguard victims in the context of restorative justice services which would be consistent with the manner in which the restorative justice programmes already operate in Ireland.

Pending any legislative provision for restorative justice programmes, the Review Group recognises that practical and budget considerations necessarily constrain the extent to which such projects can currently be extended and in this regard,

³¹ National Commission on Restorative Justice, Final Report 2009

³² EU Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, supports and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, article 12 (OJ L 315/57, 14.11.2012)

acknowledge and welcome the expansion by the Probation Service of existing projects and programmes.

Recommendation 14

Recognising the positive impact which restorative justice can have for appropriate victims and offenders, the Review Group recommends the extension of the restorative justice programmes.

5. CUSTODIAL ACCOMMODATION AND REGIMES

This Chapter examines prison accommodation and regimes including the standard of prison accommodation; the appropriateness of the security classification of our prisons and the management of sentences within the prison environment.

Members of the Review Group visited a number of prisons during the course of this Review which gave rise to the opportunity to discuss issues relating to the prisons with both prison staff and prisoners themselves. In addition, focus group discussions were conducted with a number of prisoners and former offenders and a summary of the findings and recommendations arising from those discussions are attached at Appendix 1. However, insofar as those focus groups addressed 'life in prison', those discussions are also reflected in this chapter.

5.1 *Standard of prison accommodation*

As raised earlier in this report, the Review Group is particularly concerned with the standard of accommodation in parts of the prison estate. This is an issue which has been raised in the context of both domestic and international reviews and prison visits.

The impact of the standard and quality of prison accommodation on the rehabilitation of offenders should not be underestimated and has been regularly identified in a succession of reports by the Inspector of Prisons, Judge Michael Reilly. Members of the Review Group also visited a number of prisons during the course of this Review and in particular observed the poor level of accommodation in parts of Mountjoy prison, Cork prison and Limerick prison. While the facilities in the Dóchas Centre are of a generally high quality, the Review Group is very concerned at the level of overcrowding in that prison and, in particular, the impact which it has on the quality and delivery of services to the women in that institution³³. It is even more so the case in Limerick female prison where the level of overcrowding is greater than in the Dóchas Centre with significantly poorer infrastructure.

³³ On 31 March 2014, the Dóchas Centre was operating at 127% capacity. This is the highest across the prison estate followed by Limerick female prison at 111%.

A primary concern for the Review Group is that slopping out is still carried out in some Irish prisons. In April 2012, the IPS published a Three Year Strategic Plan for 2012 – 2015. Strategic Action 5 commits to implementing “a 40 month capital plan to provide in-cell sanitation in all cells and radically improve prison conditions in the older parts of the prison estate.”. The Review Group is pleased to note the progress in the last 12 months in relation to the implementation of this action. There is no longer slopping out in Mountjoy prison as the final wing where such practice continued has been shut for refurbishment. There is also commitment and progress in replacing substandard estate in Cork³⁴. The Review Group however notes that progress in Limerick and Portlaoise has been more limited but acknowledge the aspiration in the IPS 3 year Strategic Plan to eliminate slopping out by 2015³⁵.

While accepting that there are significant developments underway to address sub-standard prison accommodation, the Review Group is concerned that there is a substantial negative impact on prisoners serving sentences in prisons with poor standards of accommodation, be it infrastructural or as a result of overcrowding.

In terms of the impact of current and future renovations of the prisons, the effective operation of those prisons will depend on not exceeding the capacity of the prison. In this respect, the Review Group favours the adoption of the aspiration in the Prison Rules to use single cell occupancy throughout the prison estate, as a long term goal. In discussions during the prisoner focus groups, concerns regarding cell sharing were largely related to being required to share a cell with someone who is unwell and a consequent feeling of being responsible for that person, or in some instances at risk from that person.

It was suggested that, pending the refurbishment of problem accommodation, efforts should be made to transfer prisoners from substandard accommodation to other prisons with better facilities, capacity permitting. However, it was noted that

³⁴ For further update see IPS Annual Report 2013 at p. 38.

³⁵ Strategic Action 5

moving prisoners away from their home is often resisted as it can negatively impact on maintaining contact with family.

The Review Group is also conscious of the international standards to which Irish prisons should aspire. In particular, the Council of Europe has introduced instruments addressing many aspects of prison, including the European Prison Rules (2006) which emphasise the principles of normalisation, reintegration and rehabilitation. Part 1 of those Rules sets out 9 basic principles which should apply to prisoners and prisons and these are:

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
9. All prisons shall be subject to regular government inspection and independent monitoring.

Irish prisons are also subject to international oversight by the European Committee on the Prevention of Torture among others. The Review Group considers that the standard of accommodation to be provided to all prisoners should comply with international human rights standards, particularly those formulated by the Council of Europe, including the European Prison Rules.

The Review Group notes the commitment in the IPS Three Year Strategic Plan to comply with international obligations and best practice in particular through ensuring appropriate accommodation and providing for prisoner progression.

Recommendation 15

The Review Group welcomes the steps taken to improve the standard of accommodation in Mountjoy and Cork prisons and recommends that similar steps need to be taken (as a matter of urgency) in relation to Limerick prison, in particular the female accommodation in that prison, and Portlaoise prison.

5.1.1 Prisoners on protection

Undoubtedly, it is a responsibility of the IPS to maintain the safety of all prisoners. However, a significant problem identified by the Review Group is the number of prisoners under protection. While the identified causes are not necessarily definitive, for a number of prisoners, and in particular those who seek protection while in prison, the reasons can in many cases³⁶, be linked to organised or gang-related crime. This type of activity and the resultant need for prisoners to be placed on restricted regimes has impacted on the management of prisons, the safety of staff and prisoners and the successful rehabilitation of prisoners.

While prisoner safety is paramount, nonetheless being under protection creates a particular difficulty in relation to a prisoner's access to rehabilitative services such as addiction treatment, counselling or other services and also impacts negatively on access to education, training, exercise and social contact. Moreover, organised or

³⁶ Under restricted regime, a prisoner may be subject to various restrictions including duration of out of cell time or limitations on phone calls.

gang related feuding presents particular challenges for prison staff and for the safety of that staff.

In addition to the impact which being placed under protection has on individual prisoners, there is also a significant operational impact on the IPS who is primarily responsible for the protection of prisoners. Equally, there is an impact on the work of the Probation Service in the context of scheduling meetings so that particular individuals do not interact.

Both written submissions and presentations to the Review Group highlighted that issues between so-called 'gangs' within the community can be transferred into the prison environment creating a need to provide protection for certain prisoners. More recently steps have been taken by both the IPS and the Probation Service to develop strategies for dealing with offenders involved in organised or gang related crime. The IPS Three Year Strategic Plan commits to working with other stake holders to develop specific strategies for prisoners requiring protection.

In July 2013, the IPS established a group to examine measures to reduce the number of prisoners on restricted regimes including prisoners under protection. In conjunction, the IPS Statistics Unit commenced the collation of a quarterly Census of Restricted Regime Prisoners and the latest census was taken in January 2014³⁷.

Prisoners on the highest level of protection are subject to 22/23 hour lock up. In relation to this group, the Review Group very much welcomes the fact that, in 2013, the number in this group reduced from 211 to 50, representing a 75% reduction.

Other prisoners requiring protection are placed on what is called "restricted regime", such as limiting out-of-cell time. Employing restricted regime as a protection mechanism is permitted under rule 63 of the Prison Rules 2007 and of the 228³⁸ prisoners on restricted regime, 183 requested it.

³⁷ Census of Restricted Regime Prisoners January 2014, see http://www.irishprisons.ie/images/monthlyinfornote/form2_jan_14.pdf

³⁸ This is reduction of 35 from previous census.

This progress must be followed with continuing efforts to reduce the number of hours spent by prisoners on protection in their cells. In this regard, the European Prison Rules on out of cell time are relevant.

An inter-agency approach, involving An Garda Síochána, the IPS, the Probation Service and community leaders, focusing on this category of offender is required. This approach recognises that addressing gang related activity among prisoners is not a matter solely for the IPS and that the Probation Service are also required to engage with these offenders through periods of post-release supervision.

Recommendation 16

The Review Group recommends that an inter-agency approach is adopted in relation to those offenders who as a result of inter-gang rivalry or other disputes require protection while in prison. Such cooperation must also support the efforts, already underway, to reduce the numbers of prisoners on protection.

Recommendation 17

The Review Group recommends that prisoners should only be on restricted regimes for the shortest period consistent with their safety and have access to adequate training, education and recreational facilities.

5.1.2 Appropriateness of security level

While its use should be minimised, the Review Group recognises that there is a need to provide restricted regimes for certain prisoners who pose a risk and who themselves are the subject of a significant threat.

At the other end of the scale, the Review Group is concerned that there are persons imprisoned who do not require high levels of security as they are neither at risk to themselves or pose such risk to others within or outside the prison. Nonetheless, the nature of the offence in question requires that a custodial sentence be imposed. However, it is the view of the Review Group that it is not in the interests of the prisoner or the State to treat high and low risk prisoners in the same manner.

Therefore, the Review Group considers that prisoners should, to the greatest extent possible, only be detained at a security level appropriate to their personal circumstances.

This approach emphasises the ‘humane’ aspect of a long term penal policy which is being pursued. Lower security prisons permit greater out-of-cell time, or no ‘locked cell’ time in the case of an open prison. This is a particular advantage in the rehabilitation and reintegration of an offender as it resembles more closely a normal day to day existence. The cost factor was also considered. While currently there is little difference in the cost per space in a lower security prison compared to higher security, this is generally considered to be a result of the underutilisation of the lower security facility. A transfer of suitable offenders from higher security to lower security can reasonably be expected to produce financial savings.

The Review Group is conscious that the existing prison estate is effectively a high security estate. The current prison bed capacity is 4,175 of which 431 are on remand in Cloverhill. The low security prisons are the training unit in Mountjoy and the open prisons in Loughan House and Shelton Abbey. Excluding the remand offenders in Cloverhill, lower security facilities account for only 9.5% of the prison population³⁹. These prisons are also primarily used as a pre-release step to allow offenders adapt to a lower security surrounding before release. The Review Group has already identified the potential which can be explored in using lower security facilities in relation to weekend sentencing⁴⁰. Given that these prisons are, at the time of writing, operating at between 85 and 90% capacity, the Review Group acknowledges that there is limited potential in using existing accommodation to ensure lower levels of security are applied to appropriate offenders. The Review Group therefore proposes that consideration should be given to the development of additional lower security facilities. While addressed later in this report, the lack of any open prison facilities for female offenders is a particular concern.

³⁹ IPS prison figures 31 March 2014

⁴⁰ Recommendation 13

As with a number of the recommendations in this Report, the Review Group is particularly conscious of the severe financial climate within which the State is operating. Nonetheless, the potential savings which can be achieved by moving from a regime which focuses on high security committals to one which operates at a lower security level must be considered with initial financial layouts ultimately recoupable.

Recommendation 18

The Review Group recommends the increased use of such open prisons. The Review Group is concerned at the lack of an open prison or equivalent for female offenders and recommends that such an appropriate open facility be introduced. Emphasising the need to provide accommodation appropriate to the security requirements of prisoners, the Review Group recommends that, subject to funding, an additional open prison be considered for the Dublin area.

5.2 Sentence management within prison

5.2.1 Integrated Sentence Management

Integrated sentence management (ISM) was introduced in 2008 and is a system of collaboration between prisoners and prison based services aimed at coordinating services in custody so as to best prepare the prisoner for eventual release and reintegration. It generally applies to prisoners sentenced to 12 months or more although in some prisons those serving shorter sentences are included. The prisoner and an ISM coordinator (i.e., an assigned member of prison staff) draw up a personal plan for the prisoner with a view to their engagement in available services. Goals are set for the prisoner and periodically reviewed. Approximately one year prior to release, the focus switches to establishing the needs of the prisoner on release with a view to facilitating the reintegration of that prisoner into the community.

The Review Group is very supportive of efforts to engage prisoners in the management of their sentence. ISM encourages a more productive use of time spent in custody and in particular seeks to prepare a prisoner for release. The Review Group welcomes the joint commitment by the IPS and Probation Service to extend sentence management to post imprisonment and in particular the

commitment to address the accommodation needs of prisoners in partnership with local authorities and the Departments of Social Protection, Environment and Health.

The Review Group notes that recent recidivism studies conducted by the Central Statistics Office (CSO) on behalf of both the IPS and Probation Service give valuable insight into repeat offending in Ireland. Other studies also highlight the links between various social problems prominent among offenders including addiction, emotional and personal difficulties, poor educational achievement, unemployment and lack of housing with repeat offending. This was borne out throughout the discussions and consultations held by the Review Group. The recidivism reports confirm the commitment undertaken by the IPS and Probation Service for greater cooperation between the criminal justice system and state agencies. In the context of those in custody, ISM can provide a useful first step in addressing offending behaviour and enables prisoners to be a part of that process.

There was general agreement among the participants of the prisoner focus groups that sentence management and progressive sentence planning were positive but not all participants had full knowledge of ISM with some having no experience of a sentence plan. There was, however, a willingness to participate in ISM but also a view that it should be more consistently applied.

Since 2008, almost 6,000 prisoners have been offered participation in ISM. At the end of May 2014, over 2,600 prisoners were taking part in ISM and 1,358 prisoners had sentence plans in place. ISM is now available in all 14 prisons and 23 ISM officers have been appointed. It is understood that the intention is that all eligible prisoners on committal are seen by an ISM officer and made aware of ISM within 72 hours of committal. It does appear that opportunities for prisoners to participate in ISM has improved and implementation is more consistent across the prison estate. While welcoming these developments in the use of ISM, the Review Group is nevertheless conscious that not all prisoners have been afforded the opportunity to participate in ISM. While this should be addressed as soon as possible, there is also

an awareness that ISM should never be a 'tick box' exercise but is intended to encourage meaningful change.

Recommendation 19

The Review Group recommends greater involvement of prisoners in the management of their sentences. The Review Group welcomes the joint IPS and Probation Service commitment to enhancing sentence management from pre to post imprisonment. The Review Group recognises that integrated sentence management (ISM) is the appropriate tool for the management of sentences of more than 12 months and should be extended to all eligible prisoners.

5.2.2 Incentivised Regimes Policy

In addition to ISM, an Incentivised Regimes Policy (IRP) was introduced by the IPS in 2012⁴¹. This Policy effectively acknowledges a prisoner's positive behaviour and level of engagement in services by offering incentives for good behaviour and positive engagement. Similar programmes are commonly used in other jurisdictions. In addition to promoting a safer prison environment, this Policy encourages prisoners to earn and maintain certain privileges. IRP should never simply be a managerial tool, but (together with integrated sentence management), is intended to assist offenders in addressing their behaviour.

This Policy operates based on three levels of privilege, being: (1) basic, (2) standard and (3) enhanced, with newly admitted prisoners being admitted on standard. Basic carries the least privileges and enhanced the greatest. Progression is dependent on personal behaviour and engagement in structured activities. The level or otherwise of a prisoner's behaviour or engagement is recorded and reviewed. The Review Group considers that the use of Incentivised Regimes is an important tool in encouraging the engagement by prisoners in services. It also allows a prisoner to take responsibility for their own behaviour and the consequences of that behaviour.

⁴¹ See <http://www.irishprisons.ie/images/pdf/incentivisedregimespolicy.pdf>

However, during the prisoner focus groups, it was evident that there was a lack of awareness by some prisoners of the Policy and an uneven application across prisons.

Recommendation 20

The Review Group is of the view that engagement in education, training and treatment services is crucial to the rehabilitation and reintegration of an offender. In this respect, the Group welcomes the Incentivised Regime Policy (IRP) and its role in encouraging both good behaviour and engagement by offenders. The Group stresses the need for a transparent and open application of the policy which would ensure that all prisoners are kept informed of the various programmes available to them.

6. FEMALE OFFENDERS

Women who offend are a relatively small number of the overall number of convicted offenders. However, this figure is increasing and can be seen in the number of female offenders serving sentences in prison and on community programmes (see tables 6A and 6B) despite a general reduction in convictions among female offenders (see table 6C). The increasing level of female committals to prison is also in contrast to the reduction since 2011 of the level of committals among male offenders (see table 6D).

Table 6A: Committal of female offenders 2009-2013

Year	Committals	Daily average	Temporary Release	Remand/trial
2009	1,459	132	78	Not available
2010	1,701	157	98	35
2011	1,902	160	98	32
2012	2,151	152	109	31
2013	2,326	156	109	32

Source: IPS Annual Reports 2009 – 2013

Table 6B: Supervision of female offenders in the community 2011-2013

Supervision (female offenders)	2011	2012	2013
Probation Orders	378	325	341
Orders for Supervision during Deferment of Penalty	74	281	281
Community Service Orders	210	229	204
Fully Suspended Sentence with Supervision	55	77	104
Part Suspended Sentence Supervision Orders	14	31	28
Other Orders	13	9	20
Total	744	958	978

Source: Probation Service Annual Report 2013

Table 6C: Convictions of female offenders 2005-2012

Year	Total Female Convictions
2005	9,563
2006	11,075
2007	12,468
2008	12,537
2009	11,466
2010	11,419
2011	11,300
2012	10,056

Source: CSO

Table 6D: Committals to prison 2009-2013 of male offenders

Year	Total	Male	Female
2009	15,425	10,880	1,459
2010	17,179	12,057	1,701
2011	17,318	12,050	1,902
2012	17,026	11,709	2,151
2013	15,735	10,729	2,326

Source: IPS Annual Report 2013

The Review Group also notes a higher use of remand in the case of female offenders in comparison to male offenders⁴². The reasons for this are unclear and this is an issue which the Review Group considers requires further examination. However, what is clear is that women's prisons are now the most overcrowded prisons in the State⁴³. In addition to the concerns relating to overcrowding, increasing levels of female offending and disproportionate use of remand for female offenders, the Review Group are concerned at the under use of alternative community programmes for women. The Review Group is also critical of the lack of open prison facilities for women.

Female offenders also present a unique challenge insofar as they present complex issues and vulnerabilities. There is evidence of higher than normal mental health problems among female offenders, higher levels of addiction and homelessness and

⁴² Currently approximately 14% of the male prison population is on remand compared to 18.7% of the female prison population.

⁴³ On 31st March 2014, the Dóchas Centre was operating at 127% capacity and Limerick female prison was operating at 111% capacity (129% Inspector of Prisons capacity) and were the two most overcrowded prisons in the State.

other significant vulnerabilities. A further consideration is the role of women in the family and the reality that they are often the primary care giver. This is not just a role in relation to their own off-spring but may also relate to their role in respect of their parents or other dependent relatives. Criminal sanctions imposed on women, in particular imprisonment, can have a detrimental effect on the lives of their dependents.

In terms of non-custodial sanctions, on any day the Probation Service is working with around 1,300 female offenders in the community (16% of the total under supervision) and approximately 1 in 7 of new referrals to the Probation Service are female offenders. In the prison system, approximately 18% of the prison population is female.

6.1 Responding to female offenders

In addition to the foregoing, the following matters have been identified as of particular importance with respect to female prisoners:

1. Sensitivity and the upholding of dignity in search procedures.
2. Appropriate sanitation facilities and privacy therein.
3. Separate facilities for convicted and remand prisoners.
4. Gender-specific healthcare for all women.
5. Sensitivity and alertness to instances of sexual and other forms of abuse experienced by women coming into prison.

In this respect, the Review Group welcomes the publication in March 2014, of the Probation Service and IPS 3 year Joint Strategy “An Effective Response to Women Who Offend” which sets out how both Services will cooperate, with relevant partners, “to provide more tailored women centric interventions, to reduce offending among this group, improve opportunities for reintegration as well as positive outcomes more generally.”⁴⁴ The Review Group welcomes this statement which is consistent with the goal identified by this Review of reducing crime and

⁴⁴<http://www.justice.ie/en/JELR/Joint%20Womens%20Strategy%20March%202014.pdf/Files/Joint%20Womens%20Strategy%20March%202014.pdf>

supporting rehabilitation and reintegration. This strategy is recognition that special attention needs to be paid to the particular circumstances of women who offend.

That Strategy recognises that while most women offenders pose a low risk to society, they often generally have a high level of need. The Strategy also recognises the particularly negative impact that sanctions can impose on a woman, her family and children, particularly if the woman is imprisoned. In addition to being deprived the company and guardianship of a mother, the children of women prisoners show increased likelihood of becoming offenders themselves⁴⁵

The Strategy identifies four processes for addressing the needs of women offenders:

- Develop and implement a gender informed approach to working with women offenders in custody and the community, informed by evidence and best practice;
- Improve outcomes for women offenders through strengthened strategic alliances, including establishing a steering committee comprising the IPS and Probation Service and extending representation to other key players and NGOs in the areas of mental health, addiction services, accommodation, education, training etc. ;
- Develop a range of options which provide an effective alternative to custody, enhance reintegration and reduce reoffending;
- Actively promote awareness and confidence amongst key stakeholders of the significant role of community sanctions in the reduction of reoffending by women.

Specific actions to be taken by the Services are also set out in the Strategy. The Review Group acknowledges the significant work undertaken by the Probation Service and IPS in developing this Strategy and looks forward to the implementation of the various actions. This Strategy is the first concrete effort by the State to address the specific issues faced by women offenders.

⁴⁵ Silvestri, M. (2006) 'Gender and Crime: A Human Rights Perspective', in F. Heidensohn, (ed), *Gender and Justice*. U.K.: Willan Publishing, pp. 222-242.

The Review Group endorses the efforts of the Probation Service and Irish Prison Service in developing an inter-agency approach to women who offend. Through the implementation of the actions identified in the Probation Service/IPS Strategy, gender specific issues and responses will emerge. In particular, the Review Group notes the action identified in the Strategy for developing, in conjunction with the CSO, gender specific recidivism data as well as other relevant research. The development of gender specific programmes and policies must be led by research and experience. Without this information, appropriate approaches to female offending and the management of female offenders will remain under-developed.

Recommendation 21

To ensure that gender appropriate strategies are adopted to the management of female offending and female offenders, the Review Group recommends that further research into and evaluation of the particular needs and circumstances of female offenders be conducted by the criminal justice agencies. This work should support the processes identified in the Joint IPS/Probation Service Strategy relating to women offenders.

6.2 Remand and committal of female offenders

A matter of concern for the Review Group is the disproportionate increase in the number of women committed to prison in comparison to men. This is in terms of committal on sentence and committal on remand. In 2013, the daily average number of prisoners in custody indicates that 13% of the male prison population were in custody on remand compared to 20% of the female prison population.⁴⁶ Anecdotally, there is a sense that some women are complicit in their committal to prison, either through an inability to raise bail or not seeking bail and perhaps preferring the support offered by the prison system. Nevertheless, in line with the previous recommendation, the Review Group considers that research into the reasons behind the remand of female offenders should be prioritised.

⁴⁶ IPS Annual Report 2013

The number of women committed to prison annually under a sentence of imprisonment is also continuing to increase in contrast to, the previously mentioned, reductions in the level of male imprisonment (table 6D) and a general reduction in the convictions of female offenders (table 6C). The high level of committals among female offenders for non-payment of fines was also noted⁴⁷. This particular difficulty should be addressed through the Fines (Recovery and Payment) Act 2014. While that legislation should address committals, it is not expected to address the longer term prison overcrowding problem, as on any given day the population of female prisons is not significantly impacted by those imprisoned for the non-payment of fines. As has been mentioned, anecdotally, there is some sense that some female offenders may prefer their committal to other forms of community sanction and viewing it as a respite from an otherwise chaotic lifestyle⁴⁸. For some offenders, imprisonment can be seen as an opportunity to avail of a range of supports which they have difficulty in obtaining in the community. If this is the case, then efforts to secure community based services must be made.

Undoubtedly, the lack of appropriate community based programmes for female offenders impacts on the level of committals. For instance, there are only a small number of women currently on community service.⁴⁹ This form of sanction may not be considered as providing the additional support often required by female offenders. In this respect, the aforementioned Joint IPS/Probation Service commitment to develop female centred options which “provide an effective alternative to custody, enhance reintegration and reduce reoffending”⁵⁰, is welcome. In addition, the recommendations contained in this report concerning reducing reliance on imprisonment as a sanction, focusing on rehabilitation and reintegration of offenders and imprisonment to become a sanction of last resort, apply equally to female offenders. Ensuring that these recommendations do so apply to female

⁴⁷ In 2013, female committals for the non-payment of a court ordered fine numbered 1,894 which represents 23% of total committals of for non-payment of fines (IPS Annual Report 2013).

⁴⁸ This is reflected in the Interim Report on the Dóchas Centre, Inspector of Prisons, October 2013 and in findings arising from prisoner focus groups carried out for the present review.

⁴⁹ In 2013, of the 2,354 community services orders, only 204 were applied to female offenders.

⁵⁰ at p.6.

offenders requires that the real reasons for the increasing level of female committals is determined, particularly in a context where numbers of male committals are falling.

Recommendation 22

The Review Group recommends that a review of remand of female offenders be conducted in order to determine the reasons for the high level of female offenders subjected to committal remand.

The Review Group further recommends that research be undertaken into the reasons behind the growth in the use of imprisonment for women and the development of further appropriate non-custodial alternatives to imprisonment.

6.3 Prison conditions

This Report notes that the two female prisons, Dóchas Centre and Limerick, are now the most overcrowded prisons in the State. Prison overcrowding impacts the level of services which can be offered in prisons and of itself creates barriers to rehabilitation and reintegration. In the case of the Dóchas Centre, overcrowding has been identified as leading to arguments between women, inadequate services and regimes, lack of privacy and general tension⁵¹.

Undoubtedly similar difficulties arise in Limerick female prison. However, in the case of that prison, the issue is further exacerbated by the inadequate physical condition of this prison.

In the case of both prisons, steps are being taken to address the concerns which have been highlighted with a final report from the Inspector of Prisons in relation to the Dóchas Centre expected at the time of writing. A major redevelopment of Limerick prison, to include, new accommodation for female offenders has made little

⁵¹ Interim Report on the Dóchas Centre by the Inspector of Prisons, Judge Michael Reilly, October 2013, published December 2013, at para 2.14, available at <http://www.justice.ie/en/JELR/Pages/PB13000406>

progress and the Review Group is particularly concerned at the level of facilities and services available there.

The Review Group is anxious, given the level of overcrowding existing in the female prisons, that international norms applying to prisons and prisoners rights are observed. In relation to female offenders, the Review Group draws attention to the UN Bangkok Rules on women offenders and prisoners. These Rules focus on the unnecessary imprisonment of women and also address the specific needs of women who are in prison.

However, while prison conditions and services undoubtedly require improvement and must be addressed, a particular concern for the Review Group has been the lack of open prison/step down facilities for female offenders. This issue has been addressed earlier in this report (at para. 5.1.2) and the Review Group notes the IPS commitment to exploring the development of an open centre/open conditions for women assessed as low risk of re-offending⁵². The Review Group accepts that this is a longer term goal and, in the interim, strongly support the multi-agency efforts adopted to provide female offenders with community based services. In this respect, the Review Group notes a commitment by the IPS the Probation Service, Dublin City Council, City of Dublin ETB and the HSE and a number of community and voluntary organisations, to establish a women's centre as a step down facility from prison and as an alternative to prison. This women's centre will address the residential, community and health care needs of female offenders on their release from prison as well as women on Court ordered Probation Supervision. The Review Group also notes the proposal by the Inspector of Prison in his interim report on the Dóchas Centre that such a centre could also be used by the Courts as a place where female offenders "might be diverted rather than committed to the 'last resort' – prison." (para. 2.29).. Securing funding will continue to be a challenge and it is recognised that open facilities will only achieve savings where resources are re-directed and ultimately there is a reduction in the use of prison.

⁵² "An Effective Response to Women Who Offend", Joint Probation Service – IPS Strategy 2014-2016.

Recommendation 23

The Review Group, noting that, in light of the nature of their offending, female offenders often require less stringent security conditions, recommends a greater focus on step down facilities, supported accommodation, and the use of more community based open conditions for female offenders.

6.4 Female appropriate community sanctions

In terms of financial resources the objective of reducing the number of women going into prison would require the diversion of resources from existing services. While overall a financial gain can be obtained from reducing the number of women going to prison, this gain will be a longer term realisation. The Probation Service/IPS Strategy for women offenders is a significant step in promoting non-custodial options. The IPS is committed to exploring options for an open-centre for low risk female offenders. This is further recommended by the Review Group which is concerned at the lack of open facilities for female offenders. In particular, however, the Review Group welcomes the commitment by the Probation Service to develop women specific alternatives to custody, building on existing partnerships which would support the rehabilitation and reintegration of female offenders. In this regard, the general comments of the Inspector of Prisons in the Interim Report on the Dóchas Centre regarding perceptions that women can only engage in certain work activities should be noted (see para. 3.13).

Additionally, the Review Group noted the positive experience in other jurisdictions which use a 'one stop shop' approach providing the necessary range of services to female offenders. In this respect, the Review Group particularly welcomes the cooperation between the Probation Service, IPS and significant partners including Dublin City Council, Dublin Regional Homeless Executive, City of Dublin ETB, HSE and NGOs.

Recommendation 24

The Review Group recommends that gender appropriate community sanctions and programmes should continue to be developed.

6.5 Maintaining family relationships

A key issue for women in detention is the care and welfare of dependent relatives, particularly children. Within their families, female offenders are frequently the primary care givers and the impact on their dependents is significant where that care giver is imprisoned. Young children can be expected to be removed from their home – either to be homed with relatives or taken into care where alternative arrangements within the family cannot be made.

It is recognised that this is not an issue of concern limited to female offenders. Both male and female offenders have described the negative impact that imprisonment, in particular, has on their dependents⁵³.

Maintaining contact with children and other relatives is very important for all parties and this must be facilitated and encouraged to minimise the negative impact which imprisonment has on the family of the offender. The imprisonment of a parent has a stigmatising effect on children, particularly in cases which attract significant media attention, and can lead to behavioural and other problems creating future challenges.

The rights of children as set out in the UN Convention on the Rights of the Child have a bearing in terms of a child's relationship with a parent who has been imprisoned. Article 3 of the Convention requires that "(i)n all actions concerning children, undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

⁵³ For further see, "Picking up the Pieces: The Rights and Needs of Children and Families Affected by Imprisonment", IPRT, 2012

In line with a commitment to the principle contained in article 3, and given the negative impact which imprisonment has on the dependents of the offender, in particular any children, the Review Group acknowledges the consideration which should be given by a court to the impact of imprisonment on the family of an offender particularly when sentencing an offender who is the primary care giver.

Where a parent is imprisoned a criticism of the current prison visiting arrangements is the lack of physical contact with children. The Review Group is cognisant of the security concerns which require a strict approach to managing visits within prisons. Undoubtedly, prison visits are used by some offenders to obtain contraband from outside. Consequently, visits are generally managed in a 'no contact' environment, although provisions for applying for visits permitting contact are available. Denying children contact with their parents is detrimental to the child and the relationship between the child and the parent.

Recommendation 25

The Review Group recommends that all criminal justice agencies work to promote contact between offenders and their children and other family members, where such contact is appropriate. In particular, the Irish Prison Service should work to ensure that conditions for visits, as well as decisions regarding the denial of visits, are sensitive to the needs of children.

7. REHABILITATION AND REINTEGRATION

7.1 *Supporting offenders and reducing reoffending*

In line with the purpose of making Ireland a fairer and safer place, reducing reoffending behaviour has been identified as a key goal of the criminal justice and penal systems. In achieving this goal, the Review Group has recommended that the rehabilitation and reintegration of the offender must be accommodated, to the extent it is possible and appropriate, by the criminal sanction imposed on him or her (see section 8.1.3).

In this respect, the recidivism studies published by the CSO in conjunction with the IPS and Probation Service in 2013 provide valuable information. The Probation Service Recidivism study examined reoffending, within a 3 year period, by persons placed on probation or community service orders in 2008. In relation to this category, a reoffending rate of 41% was found. The IPS study examined the reoffending and reconviction of persons released on completion of a custodial sentence in 2007. Again, the study addressed a period of 3 years following release and found a recidivism rate of 62%.

While punishing the individual is reasonable and appropriate, in the long term punishment, of itself, is not proven to encourage desistance among individuals who display the risk factors related to offending. These factors include alcohol and drug addiction, lack of education, family difficulties, family upbringing, mental health issues or lack of housing or employment, all of which can create a lack of stability and opportunity in a person's life and feature in the lives of many offenders. While many offenders do grow out of offending, there are those who persist in offending over many years. In discussions with the Review Group, certain proponents of penal policy reform highlighted the relative lack of support offered to some offenders, in particular prisoners when released back into the community, as a cause of reoffending. The Review Group agrees.

Both prison and community supervision can offer an opportunity for a willing participant to engage in appropriate rehabilitation, treatment and educational

programmes. These programmes, such as the IPS Building Better Lives Programme for sexual and violent offenders and the Probation Service's Choice and Challenge programme, seek to bring an offender to a point of understanding the causes of past behaviour and to equip the person to avoid similar behaviour in future. In the community, restorative justice programmes assist offenders involved in more minor crime to face up to the consequences of their actions. There are also a variety of anger management courses and drug and alcohol treatment courses available to offenders along with educational and training supports. During prison visits as part of this Review, members of the Review Group were impressed with the quality of programmes and services available to prisoners although there is concern at the extent to which they are available to some prisoners in some prisons and also at the manner in which overcrowding and poor infrastructure impacted access to such activities.

Supporting active engagement by offenders is a challenge and policies such as integrated sentence management and incentivised regimes (see section 5.2) are examples of such support. More importantly though the services must be available and the Review Group is concerned at the level of existing resources, the inconsistent availability of programmes and services across the prison estate and the negative impact of overcrowding on the provision of programmes and services where they are available.

Incentives to promote engagement with rehabilitative programmes and services are notably lacking in relation to persons convicted of sex offences. The Building Better Lives Programme is specifically aimed at sexual and violent offenders and offenders should be incentivised to participate in such programmes.

In their respective roles managing offenders, it is reasonable to expect the IPS and the Probation Service to take a proactive approach in addressing offending behaviour. The Review Group welcomes and supports the level of cooperation between both Services in this regard such as the research on recidivism and the

commitment to the actions set out in the IPS and Probation Service Joint Strategic Plan.

Nonetheless, given the variety of underlying problems which can indicate likelihood to reoffend, the Review Group do not consider that it is appropriate to expect the solution to rest entirely with the IPS and the Probation Service or, indeed, with the wider criminal justice system. Such a multitude of social and physical problems and needs must have a multi-layered solution and requiring the involvement of agencies at State, community and voluntary level both from within the criminal justice system and outside it.

A particularly important factor in the successful reintegration of offenders, including desisting from crime, is the level of support available on release from prison. In this respect, the Review Group would like to highlight a particular obstacle to the potential for a person to desist from reoffending. Homelessness creates an enormous level of chaos in a person's life. It exposes persons to risk and negative influences. The Review Group is acutely aware that homelessness is currently a growing problem in Ireland and is much wider than the needs of homeless offenders. The Review Group strongly supports recent calls and efforts to adopt an inter-agency approach to homelessness and welcomes the Government's approval of the Implementation Plan on the State's Response to Homelessness, May 2014 – December 2016⁵⁴ which seeks to deliver 2,700 housing units to homeless people by the end of 2016.

However, in the context of this Review, the negative impact of homelessness cannot be underestimated. Releasing a person from prison who has no accommodation or, at best, inadequate temporary accommodation serves neither a rehabilitative purpose nor supports reintegration. For those under community supervision, homelessness impedes a person from maintaining contact with community supervision or treatment programmes, as the case may be.

⁵⁴ <http://www.environ.ie/en/PublicationsDocuments/FileDownload,38053,en.pdf>

Recommendation 26

The Review Group recommends that all offenders must have the opportunity to avail of any necessary services or programmes to aid their rehabilitation and reintegration. A renewed focus on how best to approach the rehabilitation and reintegration of offenders is required. In particular, the importance of providing appropriate social services such as accommodation, education and training and addiction treatment or counselling must be acknowledged. In this regard, the Review Group recommends an increased focus on the provision of suitable accommodation, including step down facilities to ease the reintegration of offenders.

7.2 Vulnerable offenders

It must be acknowledged that there are categories of offenders who present a significant challenge in terms of their rehabilitation and reintegration into the community. Offenders with mental health issues are particularly vulnerable.

The Vision for Change policy⁵⁵ specifies that *“every person with serious mental health problems coming into contact with the forensic system should be afforded the right of mental health services in the non-forensic mental health services unless there are cogent and legal reasons why this should not be done”*.

In this respect, it is accepted that offending behaviour may arise as the result of disengagement with or lack of availability or access to mental health treatment. In other jurisdictions, policies and systems are in place to ensure that missed appointments would trigger assertive outreach in the community by mental health services. This ensures earlier intervention with the aim of avoiding relapse and recidivism linked to such relapses.

Notwithstanding such community interventions, people with mental health issues are over-represented in prisons in Ireland and internationally. One of the key

⁵⁵ Report of the Expert Group on Mental Health Policy, “A Vision for Change”, 2006

objectives of the Department of Health and the HSE is the welcome developments in collaboration with the Department of Justice and Equality and the IPS and other statutory and voluntary agencies to improve services for the management of persons who experience mental health problems while in prison and on release.

Separately, the Review Group notes the recommendation contained in the Thornton Hall Project Review Group to establish an interdepartmental group to examine the issues that arise in relation to persons with mental illness who come in contact with the criminal justice system. That Group, which has since been established, has commenced its work and has agreed to adopt an “all stages” approach to the diversion of persons with mental illness from the criminal justice system. This would involve examining the diversion of a person with mental health problems into appropriate treatment and services from the first interaction with the Gardaí through to court appearances, ensuring that those in custody receive the necessary treatment at the appropriate level of security and that facilities are provided for follow through treatment and services for prisoners on their discharge into the community. This “all stages” approach recognises that the continuity of care required would apply equally in prison and community with an initial focus on diversion from the criminal justice system, where appropriate.

Issues relating to mental health care for prisoners arose recently again following the publication of the Report of the Commission of Investigation into the death of Gary Douch⁵⁶. The recommendations of the Commission of Investigation which relate to prisoners and mental health were referred to the Interdepartmental Group mentioned above, which has been requested to consider the recommendations in a cohesive way and to report back to the Minister for Justice and Equality and to Minister of State Kathleen Lynch. Addressing offenders with mental health problems is extremely challenging and is a matter with which the criminal justice system has struggled. The work therefore of the Interdepartmental Review is very significant and this Review support and acknowledge the urgency of that work.

⁵⁶ <http://www.justice.ie/en/JELR/Pages/PB14000112>

7.3 Release from Custody

In addition to the availability of assistance and treatment for prisoners during the period of detention or following release, the Review Group also considered the impact which the form of release may have on rehabilitation and reintegration.

In considering release from custody, the Review Group examined the forms of release: temporary release, remission and parole. In particular, the Review Group agrees that there should be a greater focus on a structured release be it temporary release or release on remission or parole. A system of unprepared and unassisted release of a prisoner into the community is inconsistent with the principles of rehabilitation and reintegration identified by the Review Group as central principles of penal policy.

This is particularly important for vulnerable prisoners for whom release from prison without appropriate supports places them at significant risk of reoffending. The contrast between recidivism rates of persons serving sentences under probation /community supervision (41% within 3 years) and those who have served prison sentences (62% within 3 years) indicates that the additional supports available in the community assist an offender in addressing his or her offending behaviour.

Vulnerable prisoners who may have addressed offending behaviour while in prison, for instance underlying addiction problems, may be cut off or distanced from these supports on release (unless subject to post-release supervision) and would therefore be more likely to return to that problematic lifestyle on exiting prison. In this respect, the Review Group endorses the recommendations made by the Inspector of Prisons, Judge Michael Reilly, in his Reports into the circumstances surrounding the deaths of prisoners on temporary release⁵⁷. Prior to release from prison on temporary release, vulnerable prisoners should be linked with any relevant external agencies which can assist in supporting them in the community.

⁵⁷ A report by the Inspector of Prisons Judge Michael Reilly into the circumstances surrounding the death of prisoner L on 29th October 2012 while on temporary release (pub. 26 November 2013) & A report by the Inspector of Prisons Judge Michael Reilly into the circumstances surrounding the death of prisoner A on 27th January 2013 while on temporary release (pub. 15 November 2013).

Another group of prisoners who require greater attention in terms of their release are those prisoners approaching release from a long sentence. The Review Group heard concerns about the institutionalisation of long term prisoners and the difficulty which they face in successfully reintegrating back into the community on release. In particular, this group of prisoners should have the opportunity to avail of a less restricted regime prior to release. This would assist an offender in preparing to return to the community.

It is the view of the Review Group that ensuring adequate supports for the reintegration of prisoners is primarily the responsibility of both the IPS and the Probation Service. This is not to say that these agencies are to be tasked with ensuring the provision of necessary services to a prisoner on his or her release, such as housing, addiction treatment, education or other training. They are however responsible for ensuring that prisoners have access to such services and that the appropriate service providers, be it local authorities, social welfare, HSE or other, are aware of their role and responsibilities in relation to the management of offenders.

On a more general point, the Review Group considered the difficulties which can accompany the release of high profile prisoners. The Review Group understands that there may be a public interest in these type of offenders but is conscious that the criminal process and importantly, the successful rehabilitation and reintegration of the person in question, is not supported by negative public attention. Any concerns regarding the behaviour of an offender within the community is a matter for the Garda Síochána and, where applicable, a supervising Probation Officer. Without undermining the important role that the media play and the integrity which that role requires, the Review Group is concerned at the nature of some instances of reporting and the negative impact such can have on the person released from prison, and his or her family. The Review Group acknowledges and supports the work of the Office of the Press Ombudsman in addressing those instances where there have been complaints regarding media intrusion on an individual's right to privacy.

The Review Group is concerned and would like noted that on occasion negative reporting relating to individual offenders can create difficulties for that offender on completion of his or her sentence and may negatively impact on the rehabilitation and reintegration of an offender as well as on the formation of penal policy.

7.3.1 Use of open prison/step down

As has been already outlined under section 5.1.2, Ireland has a limited use of open prisons and the Review Group has recommended an increased use of open prisons, and in particular the introduction of such a facility for female offenders.

Open prison can assist, in particular, long term prisoners in providing a period of readjustment in a less controlled environment prior to release. This can support a prisoner in adjusting to new independence and responsibility. A concern, however, has been the manner in which open prison is available to prisoners. Some prisoners are unclear as to when or if he⁵⁸ would be eligible for transfer to an open prison facility or on what basis such transfers occurred. While the availability of spaces in open prisons are limited and acknowledging that this low-security form of prison may be more suitable to some prisoners than others, the Review Group nonetheless considers that the use of open prison should be subject to a clear and transparent policy and uniformly applied.

Recommendation 27

The Review Group recommends that there should be a consistent and transparent approach to the use of open prisons prior to release.

7.3.2 Review of remission

The Review Group considered the question of remission in some detail, in particular arising from the recommendation of the Oireachtas Joint Committee on Justice,

⁵⁸ There is currently no open prison facility available for female offenders. This is the subject of a recommendation under section 6.3 of this report.

Defence and Equality⁵⁹ to increase standard remission from the existing one-quarter to one-third and to introduce an incentivised remission scheme of up to one half⁶⁰. A number of issues were considered by the Review Group in the context of remission including the evident reduction in prisoner numbers if remission were to be increased. In this respect, it was noted that in comparison to other jurisdictions, Ireland operates lower levels of automatic and enhanced remission.

Also considered was whether a change in the level of remission would be reflected in sentencing decisions. Would a decision imposing a period of imprisonment in the context of a system which operates at one-quarter remission be altered by an increase in automatic remission to one-third?

Without achieving consensus, and while some members supported the recommendation of the Oireachtas Committee to increase remission, the Review Group, overall, favours retention of the current system of remission. Remission is unconditional release. As unconditional release, a prisoner released on foot of remission is released without supervision (unless imposed as part of the original sentence). Equally, an offender released on remission does not have the deterrent of being returned summarily to prison should he or she fail to meet any conditions of release, with some flexibility.

The Review Group favours a more structured approach to release involving a pre-release system of assessment. It was considered that the aim of rehabilitation and reintegration of offenders sentenced to prison is better served by a structured, monitored release.

⁵⁹ Report on Penal Reform, March 2013. An increase in standard remission to one-third was also recommended by the Whitaker Report into the Penal System (1985) and was also the subject of separate submissions made to the Review Group.

⁶⁰ Currently, there is a programme of earned remission of up to one-third of sentence “where a prisoner has shown further good conduct by engaging in authorised structured activity and the Minister is satisfied that, as a result, the prisoner is likely to re-offend and will be better able to reintegrate into the community” (Prison Rules 2007, Rule 59).

While not recommending a change in automatic remission, the Review Group also considered the situation concerning earned remission. Under Rule 59 of the Prison Rules 2007, the Minister may grant remission in excess of one quarter and up to one third where a prisoner has shown good conduct by engaging in authorised structured activities and that as a result the prisoner is less likely to reoffend and will be better able to reintegrate into the community. It is understood that the provision of earned remission has been used only to a very limited extent. It is understood that persons who may be considered for one third earned remission are often, given their level of engagement in prison and perceived lower risk, released on temporary release. Nonetheless, given that remission affords unconditional release and that it is provided for under the Prison Rules, the Review Group considers that the basis for applying earned remission should be clearly set out and the application of any such policy should be fairly and transparently applied. Some members also considered that where a prisoner is eligible for earned release, this form of release should be used instead of temporary release.

Recommendation 28

The Review Group overall recommends the greater use of structured temporary release. The Group recommends that there should be a consistent and transparent application of provisions, based on fair procedures, permitting offenders to earn remission of up to one third of the sentence imposed if such discretionary remission is to be retained.

7.3.3 Temporary release

Temporary release is based in statute⁶¹ and allows the Minister to release a prisoner for such temporary period and subject to such conditions as may be specified. To date, the Review Group noted that short term temporary release has been used to cater for diverse issues such as family funerals, assessment of ability to reintegrate and preparation for release.

⁶¹ Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003.

The operation of temporary release, other than the short term releases described above, can be examined by reference to those serving under 8 years less, those serving more than 8 years who are under the Parole Board process and those for whom temporary release is not available.

- Prisoners serving up to eight years imprisonment

For longer periods of release, the practice is to give reviewable temporary release which may require a prisoner to sign on weekly or monthly or at some other interval at the prison from which they were released. Where there are concerns about the prisoner's behaviour, the temporary release may be rescinded avoiding the need for formal inquiries or findings in order to return a prisoner to prison.

- Prisoners serving eight years imprisonment or more

A decision to grant temporary release to a prisoner serving a sentence of more than 8 years imprisonment is made by the Minister. In the main, this group of prisoners are first considered by the Parole Board and a recommendation is forwarded to the Minister. There are, however, difficulties in relation to the engagement of some prisoners with the Parole Board and this is considered further at section 7.3.5.

- Prohibition on temporary release

The Review Group considered those offences for which temporary release is prohibited other than for "a grave reason of humanitarian nature". These offences are where a person is sentenced to the presumptive minimum or mandatory sentence for certain drugs and firearms offences (see further at 8.1.2). Temporary release is also not granted to any person convicted of capital murder⁶².

Given the seriousness with which society rightly regards crimes of capital murder, the Review Group does not recommend any change in the prohibition of temporary release, as a form of early release, relating to this category of offender. The Review Group, however, considers that it would be appropriate to re-examine and remove

⁶² Section 5, Criminal Justice Act 1990

the prohibition on temporary release in relation to drugs and firearms offences and that such an approach would be consistent with the recommendations put forward in this report in relation to presumptive mandatory sentences.

While temporary release on foot of parole is addressed separately in this report, there should be clarity as to the manner in which temporary release may be sought and also the circumstances under which it is granted, regardless of which of the above categories applies. Given that temporary release has been used as a mechanism for managing prisoner numbers, it would not suggest that an open and transparent policy of temporary release currently applies.

Recommendation 29

The Review Group recommends a new focus on the management of temporary release with equity and monitoring of the application of temporary release. In particular, the Review Group recommends that the prohibition on temporary release for those offenders who receive the presumptive mandatory sentence for a drugs or firearms offence should be removed.

7.3.4 Community Return Programme & Community Support Scheme

The Review Group considered recent developments in relation to release from prison, specifically the roll out of the Community Return Programme and the Community Support Scheme. Both programmes are designed to offer offenders support on their release to assist their reintegration and address, in part, the programme for Government commitment to “ensure better co-ordination between the IPS and the Probation Service to create an integrated offender management programme”. Community return is a development of temporary release and sees carefully selected prisoners “granted reviewable temporary release conditional on them performing unpaid supervised community work⁶³”. Offenders who fail to attend or are late to work on two occasions are returned to custody. The Scheme, which is operating at a 90% compliance rate, was significantly expanded in 2013 with

⁶³ Probation Service Annual Report 2013, pg. 11

396 prisoners released under community return compared to 299 in 2012. As of 1 July 2014, there are 91 offenders availing of this scheme.

The Community Support Scheme is designed for short term sentenced prisoners serving sentences of between 3 and 12 months – helping with issues such as housing, medical care, substance abuse, training needs etc. The aim is to increase support to prisoners – prior to their release from prison, upon their release and then for a period after their release in order to help break the cycle of reoffending. At the time of writing, there were approximately 70 offenders availing of this Scheme.

Recommendation 30

The Review Group recommends the continuation and the expansion of the Community Return Programme and Community Support Scheme.

7.3.5 Parole Board

It has been a long-standing commitment to establish the Parole Board on a statutory basis. This was affirmed by the Minister for Justice and Equality, Mr Alan Shatter, T.D., in 2011 and repeated by the Minister at the inaugural Parole Board Conference in 2013.

The primary concern of a Parole Board is the safety of the general public and it operates under the obligation to be satisfied that the prisoner has addressed his or her offending behaviour and that any threat to the safety of the community is minimised.

Establishing a Parole Board on a statutory basis will ensure greater transparency and clarity at an operational level. There are, however, a number of questions which must be addressed in establishing a statutory Parole Board including what role a statutory Parole Board should play, what powers it should have and how it would fit into the overall criminal justice system. To ensure independence and facilitate a decision-making, as opposed to recommendation-making, process the membership and staff support for such a Board will have to be reconsidered. The models in

neighbouring jurisdictions, in particular that in Northern Ireland, are worth examining in this regard.

Having considered the existing role and operation of the Parole Board, the Review Group recommends the establishment of an independent Parole Board. This would provide that the Parole Board would make final decisions in relation to the grant or refusal of parole to a prisoner. This would be a departure from the current situation where the Parole Board makes a recommendation to the Minister which the Minister can accept or not⁶⁴.

To facilitate an even transition to a statutory system of parole, the Review Group considers that parole reviews under any new structure should be initially limited to life sentence prisoners with a subsequent extension of the Board's remit to other long term prisoners. Ultimately, the Parole Board should take responsibility for the review of all sentences of more than 5 years (currently, the Parole Board review cases involving sentences of greater than 8 years). For prisoners sentenced to less than 5 years, the IPS should retain its current role in determining the granting of temporary release.

The Review Group would also expect that legislation establishing a Parole Board would set out the minimum period to be served before parole can be considered. This is particularly relevant in relation to life sentences. The Review Group is conscious that the Law Reform Commission (LRC) has recommended that legislation should be introduced to provide that a judge may recommend a minimum term to be served by an offender sentenced to life for murder⁶⁵. However, the extent to which it is necessary to make such provision in legislation is debatable. It is the view of the Review Group that a sentencing judge may, in any event, make such a recommendation. This recommendation may guide the Parole Board at a future

⁶⁴ In 2011, the Parole Board made 89 recommendations to the Minister of which 85 were accepted in full. Of the remaining 4 recommendations, 1 was accepted in part, 1 was not accepted, 1 did not record a decision as the prisoner had been released on remission and 1 case was classified pending/deferred at the end of the year (see Parole Board Annual Report 2012).

⁶⁵ LRC Report on Mandatory Sentences, LRC 108-2013.

review of that prisoner's detention. At a minimum, however, a statutory period to be served before parole may be considered should be established.

In addition to recommending the establishment of a statutory independent Parole Board, the Review Group considers that the necessary legislation should be prioritised. Establishing in legislation a minimum period which must be served before a life sentence prisoner can be considered for parole would address some of the concerns raised in the LRC report referred to above. Such legislation would be a clear indication by Government and the Oireachtas of the minimum period to be served by life sentence prisoners. It would be formed on the basis of public and political debate and should more accurately reflect appropriate expectation be it of the offender or society. For instance, under the existing administrative arrangements, a life sentence prisoner can expect to be eligible for parole review at 8 years. In reality, however, the average period served on life sentence before release is 17.5 years. Few commentators acknowledge the difference between right to review by the parole board and actual release from prison. Any decision to establish a standard minimum period to be served prior to consideration for the purpose of parole should be determined in consultation with the members of the Parole Board and appropriate experts in the area of criminal justice and penal policy having regard to the principle of proportionality.

The members of the Review Group further recommends that there should be appropriate provision for the legal representation of a person for whom parole is being considered. The Review Group is conscious that the implementation of this recommendation may give rise to the provision of legal aid to persons being considered for parole and, as with a number of recommendations in this Report, will give rise to what may be significant financial resource implications. Nonetheless, where parole will be a statutory basis for release, the availability of legal representation is a necessary element of ensuring fair procedures are met.

Recommendation 31

The Review Group recommends that a Parole Board should be established on a statutory footing with the power to make decisions.

8. SENTENCING POLICY

This chapter examines two aspects of sentencing policy. The first focuses on how sentencing policy generally should reflect the aim of reserving imprisonment for only the more serious offences. The second addresses consistency in sentencing including access to sentencing information and the need for sentencing guidelines. Finally, the proposal for community courts is considered with a recommendation that a pilot project should be conducted in Dublin city.

8.1 *Sentencing policy and prisoner numbers*

The Review Group is concerned at the extent to which imprisonment is used as a criminal sanction. While prison numbers have seen a decline since 2012, the increases in prisoner numbers between 2009 and 2011 continue to have a significant impact on the efficient and effective management of prisons and prisoners. As has already been identified, overcrowded prisons fail to adequately address the rehabilitative needs of prisoners. Additionally, imprisoning offenders without considering the appropriateness of a non-custodial sanction should cease. Imprisonment as a sanction should be appropriate to the offender and the offence and imprisonment should serve the rehabilitative needs of those offenders. This Report recommends the adoption of a strategy to reduce prisoner numbers to a safe level subject to the need to ensure proper protection of the public (see chapter 4).

In order to ensure that there is a focus on using non-custodial sanctions, where appropriate, the Review Group considers that a general policy statement on the use of imprisonment is required. Imprisonment, as a sanction, should be reserved for the most serious of crimes and offenders. In all other circumstances, non-custodial sanctions should be explored. Imprisonment should be considered a sanction of last resort.

Recommendation 32

In order to use prisons most justly and effectively, we should break with the idea that prison is the only real form of punishment. The Group recommends that imprisonment be regarded as a sanction of last resort and that this principle be

incorporated in statute. The Group further recommends that non-custodial sanctions should become the default position in dealing with less serious offenders.

8.1.1 Requirement to provide written reasons for imposing custodial sentences

In order to understand the current use of imprisonment and, where appropriate, to encourage a more select use of imprisonment as a sanction, the Review Group considers that it is essential that information on the reasons for sentences involving a term of imprisonment should be publicly available.

It is well accepted that there is an obligation on all courts to give reasons for their decisions in accordance with both constitutional and human rights requirements and the principle that justice must be seen to be done.⁶⁶ However, the obligation has thus far not been explicitly extended to requiring written reasons for sentencing.

In 2003, two reports examined and made recommendations in relation to the duty on judges of the District Court to provide reasons for any decision imposing a custodial sentence, specifically the extent and form of any decision. In February 2003, the LRC recommended that a District Court judge should be required to give concise, written reasons for any decision to impose a custodial sentence⁶⁷. In May 2003, the Working Group on the Jurisdiction of the Courts (“Fennelly Report”) reported and, having considered the LRC recommendations, a majority concluded that the implementation of an obligation to give written reasons for custodial sentences was not possible given the then workload of the District Court and the lack of recording equipment in all courts⁶⁸.

⁶⁶ O’Malley, “Sentencing Law & Practice”, 2006 at 30-12.

⁶⁷ LRC Report on Penalties for Minor Offences, February 2003, LRC 69-2003, Ch. 3 at 3.17.

⁶⁸ “Report on the Criminal Jurisdiction of the Courts”, Working Group on the Jurisdiction of the Courts, Courts Service, 2003, pp. 91-97 at 391-392. The minority report included in the Fennelly Report supported the recommendation of the LRC and the grounds on which it was based and while recognising the administrative burden which providing written decisions may place on the District Courts considered that an individual’s right to liberty warranted particular protection.

In terms of numbers involved, the 2012 Courts Service Annual Report indicates that, approximately 4.5% of all cases disposed of before the District Court resulted in an order of imprisonment covering approximately 18,500 offences (the 2012 report does not indicate the number of defendants involved in those 18,500 offences but a similar number of offences in 2011 involved 12,500 defendants).⁶⁹

While recognising the concerns expressed in the Fennelly Report and acknowledged in the LRC Report, the Review Group considers that it is nonetheless appropriate that the reasons for a decision to impose a custodial sentence should be recorded, preferably in writing. It is the view of the Review Group that this need not necessarily involve a significant additional burden on the court. The obligation to provide reasons already exists; this recommendation simply requires that those reasons are recorded in writing.

Unlike the LRC Report and the Fennelly Report, the Review Group has not limited its recommendation to the District Court. While the higher courts regularly provide written judgments, it is considered necessary that there should be an obligation to do so in all cases where a custodial sentence is imposed.

In addition to ensuring that sentencing judges focus on the reasons for imposing a custodial sentence, the requirement to provide written reasons for such decisions will also assist in promoting consistency in sentencing and will bring clarity and transparency not just to the courts but also to victims, offenders, legal practitioners and the public.

The Review Group noted the benefit that such information can have for victims of crime. In this respect, the “Victims Directive”, when implemented, will place an onus on member states to provide, if requested, victims with a copy of the final judgment in their case⁷⁰.

⁶⁹ The Fines (Payment and Recovery) Act 2014 will address the imprisonment of fine defaulters and will have an impact on the number of cases involved.

⁷⁰ Directive 2012/29/EU, article 6.

Recommendation 33

The Review Group recommends that, in all cases where a custodial sentence is imposed by a court, the court should set out its reasons in writing for so doing. The Group further recommends that this requirement be incorporated in statute.

8.1.2 Review of presumptive minimum sentences

There is concern as to the impact of presumptive minimum mandatory sentences on prisoner numbers as well as questions as to the extent to which these sentences have contributed to reducing crime.

Excluding the mandatory life sentence for murder, which the Review Group does not propose should be altered, the primary offences carrying presumptive minimum penalties arise under the Misuse of Drugs Act 1977 (as amended) and various Firearms Acts (as amended) – see table 8A.

Table 8A: Presumptive minimum sentences

Offence	Sentence	Provision
<i>Presumptive minimum sentences - DRUGS</i>		
Possession of drugs with value of €13,000 or more	life with 10 year minimum (some discretion)	s.15A Misuse of Drugs Act 1977
Importation of controlled drugs in excess of certain value	life with 10 year minimum (some discretion)	s.15B Misuse of Drugs Act 1977
Subsequent drugs offences under s. 15A or s. 15B	10 year minimum (without discretion)	
<i>Presumptive minimum sentences - FIREARMS</i>		
Possession of firearms with intent to endanger life	life with 10 year minimum (some discretion)	s.15 Firearms Act 1925
Subsequent firearm offences	life with 10 year minimum (some discretion)	s.15 Firearms Act 1925
Possession of firearm while taking vehicle without authority	14 years with 5 year minimum (some discretion)	s. 26 Firearms Act 1964
Prohibition of use of firearms to resist arrest or aid escape	life with 10 year minimum (some discretion)	s. 27 Firearms Act 1964
Possession of firearm or ammunition in suspicious circumstances	14 years with 5 year minimum (some discretion)	s. 27A Firearms Act 1964
Carrying firearm with criminal intent	14 years with 5 year minimum (some discretion)	s. 27B Firearms Act 1964
Shortening barrel of shotgun or rifle	10 years with 5 year minimum (some discretion)	s. 12A Firearms and Offensive Weapons Act 1990

In June 2013, the LRC published a Report on Mandatory Sentences⁷¹ which recommends that the presumptive minimum regimes applicable to drugs offences under the Misuse of Drugs Act 1977 and to firearms offences under Firearms legislation should be repealed. It further recommends that the use of presumptive minimum sentencing regimes should not be extended to other offences. The LRC also recommends that a more structured, guidance-based sentencing system would provide an appropriate alternative to these provisions.

⁷¹ LRC 108-2013

The LRC also made similar recommendations in relation to the presumptive sentencing regime applicable to serious repeat offenders under section 25 of the Criminal Justice Act 2007 and the mandatory minimum regimes which apply to repeat drugs and firearms offences.

Both the Misuse of Drugs and the Firearms legislation provide that the presumptive minimum sentences shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the commission of the offence, or the person convicted of the offence, which would make the minimum sentence unjust in all the circumstances. In so doing, the court may have regard to any matters it considers appropriate including any guilty plea, the stage at which such plea was entered, the circumstances of a plea and whether or not the person materially assisted in the investigation of the offence. A conclusion which has been reached is that the amendment to the Misuse of Drugs legislation has certainly been successful in encouraging guilty pleas and this was reaffirmed by the LRC in the course of its consultations on mandatory sentencing⁷².

It is recognised that these offences and the sentences attached to them have been introduced on foot of concerns regarding the impact that these types of offences have on society in general and individual communities in particular. There have also been calls for an extension of presumptive minimum mandatory sentencing such as applying this regime to a wider range of drug offences. However, this type of sentencing must be examined against the aims of sentencing and effectiveness in reducing crime.

The Review Group notes the LRC conclusions which questioned the compatibility of these types of offences with the primary principles of justice - consistency and proportionality. In particular, the LRC expressed concern regarding the application of this type of sentencing on less serious offenders⁷³.

⁷² LRC at 4.35

⁷³ LRC at 4.52 – 4.54

In terms of the offenders targeted, the Review Group share the view of the LRC that in relation to drugs offences, it is the less serious offenders, such as the so-called “drug mules”, who are most likely to be the recipients of these type of sentences. The description of the offences, as they exist, are criticised for their failure to identify true culpability between the high-level offenders who successfully shield themselves from prosecution and the less serious offenders who may have been coerced or tricked into carrying out the offences. While not to the same degree, similar concerns arise in relation to firearms offences.

However, in the context of this Review and the overall aim of reducing prisoner numbers to a safe level consistent with the proper protection of the public together with the general aim of reducing crime, the Review Group questions the effectiveness of this form of sentencing. Examining the offences in question, the Review Group noted that in terms of the importation of drugs, possession of drugs and possession of a firearm, all three offences peaked around 2008 and have shown decline since (see recorded crime offences: table 8B).

Table 8B : Recorded Offences: Importation of drugs, possession of drugs for sale or supply, possession of a firearm

	Importation of drugs	Possession of drugs for sale or supply (includes offences of less than €13,000 value)	Possession of a firearm
2004	36	2196	374
2005	36	2659	436
2006	43	3017	424
2007	54	3602	424
2008	67	4301	457
2009	46	4029	421
2010	29	4159	415
2011	41	3874	294
2012	30	3509	246

Source: CSO

Although there has been a general reduction in crime across nearly all categories in recent years, it is not possible to credit presumptive minimum sentences with

reducing these crimes. In this respect the Review Group endorses the LRC comments that “while it is possible that offending rates might be higher in the absence of these provisions,...recorded levels of drug crime have increased greatly during the period in which these presumptive sentences have been in force.”⁷⁴

The Review Group is conscious, however, that recommending change in this area will likely give rise to significant public concern that serious crime is not being taken seriously enough. The Review Group agrees that the very nature of drugs and firearms offences and the extent to which offences involving drugs and firearms are linked to organised crime cannot be ignored.

However, the Review Group does not support the extension of this type of penalty to other offences. In this respect, the Review Group welcomes a number of recent significant judgments of the Court of Criminal Appeal which provide guidance in relation to determining appropriate sentencing decisions and the Group would like to see further development of this approach (see further at 8.2.2 below).

The Review Group also considers that the nature of the offences involved could be reviewed to determine if it is set at an appropriately serious level. For instance, the presumptive minimum sentence applies for the possession of drugs worth over €13,000. As observed in the LRC Report, this figure has not been adjusted since its introduction, excluding a slight increase following the introduction of the euro⁷⁵. The Review Group recommends that consideration is given to increasing this value to a level proportionate with the level of sentencing involved.

Additionally, as has been referred to earlier in this report (see 7.3.3), any prohibition on the temporary release of prisoners who are subject to presumptive minimum sentencing should be removed.

⁷⁴ LRC at 4.198

⁷⁵ LRC at 4.16

Recommendation 34

The Review Group recommends that no further mandatory sentences or presumptive minimum sentences should be introduced. In addition, the continuation of existing presumptive minimum sentences and the threshold for their application in drugs and other offences should be reviewed in the context of the recent judgments of the Court of Criminal Appeal⁷⁶ with a view to determining if this type of sentencing satisfies the need for proportionality in sentencing and fulfils the objective of reducing crime. As an initial step to comply with the principle of proportionality, the Review Group recommends an increase in the value of drugs, currently €13,000, possession of which triggers the presumptive minimum sentence of 10 years to a level commensurate with that sentence.

The Review Group further recommends that the prohibition on temporary release for persons sentenced to the presumptive minimum sentence should be repealed.

8.1.3 Sentencing and rehabilitation

In achieving the overall goal of reducing crime, this Report has highlighted the two-fold need for appropriate sentencing and encouraging the rehabilitation and reintegration of offenders. In pursuing these aims, this Report has recognised central roles for diversion, encouraging the use of non-custodial sanctions and the management of sentences.

This Report has identified punishment and rehabilitation as the primary purposes of sentencing. While every sentence, of itself, is punishment, the Review Group considers that there is scope for greater consideration of how an individual sentence can or should support the rehabilitation, and ultimately the reintegration, of offenders.

As mentioned, this report already recognised the role that Integrated Sentence Management and the Incentivised Prison Regimes (see section 5.2) can play in

⁷⁶ DPP and Ryan (CCA 144/2011); DPP and Z (CCA288/11); DPP and Adam Fitzgibbon (CCA 2/2012) All Judgments dated 18 March 2014.

supporting a prisoner in his or her rehabilitation and reintegration. However, the Group considers that additional incentives using existing mechanisms should be built into sentences. For instance, a court may suspend in whole or in part a term of imprisonment “subject to the person entering into a recognisance to comply with the conditions of...the order”.⁷⁷ This is a regularly used provision in sentencing.

The Review Group would particularly support the imposition of conditions directed at any underlying issues displayed by an offender such as drug and alcohol addiction. A requirement to attend appropriate counselling or treatment and demonstrated compliance and progress in that regard should warrant a comparable return in sentence reduction. For instance, the suspension of part of a sentence could be dependent on meeting specific rehabilitative goals during the period of imprisonment.

Recommendation 35

The Review Group recommends that when a court imposes a custodial sentence that court should where possible incorporate an incentive towards rehabilitation in the sentence.

8.2 Consistency in Sentencing

8.2.1 Access to sentencing information

A particular criticism of sentencing in Ireland relates to a perceived inconsistency in sentencing which is regularly the subject of media reports. While the Review Group would question the extent to which there is evidence of inconsistency outside of individually highlighted cases, the Group is aware that a lack of public awareness, and perhaps understanding, of general sentencing practice does not assist in dispelling such perceptions. While sentencing decisions are complex, there should be greater efforts to increase public understanding of the sentencing process. Sentencing is subject to significant variables insofar as both the offence, its impact on the victim and the individual circumstances of the offender must be taken into

⁷⁷ S. 99, Criminal Justice Act 2006.

account. While guided by sentencing precedents and statements on behalf of the prosecution and defence, the final decision as to sentence is with the sentencing judge.

In any event, the right to appeal by the prosecution or defence against unduly lenient or harsh sentences is an important safeguard in individual cases. In this respect, the Court of Criminal Appeal has a primary role in identifying and clarifying appropriate sentencing. Recent judgments have highlighted this role and this is examined further in section 8.2.2 below⁷⁸.

It is the view of the Review Group that the availability of sentencing information would provide the greatest assistance in addressing any actual inconsistency which may occur by providing sentencing judges with appropriate information. It would further assist in addressing public concerns regarding inconsistency in sentencing where precedents and other relevant information were readily available.

The earlier recommendation regarding the provision of written decisions where a custodial sentence is imposed would be of assistance in this regard. However, for operational reasons this recommendation is limited to custodial sentences whereas the sentencing information required relates to all sentencing decisions.

Some years ago, the Irish Sentencing Information System project (ISIS) was established by the Board of the Courts Service with a view to planning for and providing information on sentencing decisions. It aimed to design and develop a computerised information system, on sentences and other penalties imposed for offences in criminal proceedings, which may inform judges when considering the sentence to be imposed in an individual case. The sentencing information system enables a judge, by entering relevant criteria, to access information on the range of sentences and other penalties which have been imposed for particular types of offences in previous cases. Importantly, this information is open and free to all,

⁷⁸ The Review Group notes that the Court of Criminal Appeal will be replaced by a permanent Court of Appeal under the Court of Appeal Act 2014.

permitting judges, practitioners, researchers and the public generally to obtain information on sentencing decisions⁷⁹. In addition, in 2013, ISIS published a number of reports on sentencing. These were reports on rape sentencing followed by reports on robbery and manslaughter sentences. In May 2014, a further report was published analysing sentencing for the offence of possession of drugs for sale or supply. The Review Group welcomes these studies and supports further studies regarding the consistency of and influences on sentencing as well as the recidivism rates and outcomes of various sentencing options.

Under the Garda Síochána Act 2005, the CSO has responsibility for collating and publishing crime statistics. A unit within the CSO dedicated to this purpose brought a new consistency to the recording of these statistics. More recently, the CSO has also assisted the IPS and the Probation Service in producing studies on recidivism among offenders and these studies have allowed, for the first time, individual (anonymised) offenders to be tracked through sentencing and completion of sentence. These types of studies assist the IPS and the Probation Service, as the case may be, in developing more effective interventions in order to encourage and support desistance. The Review Group welcomes the role taken by the CSO in relation to supporting these types of studies and support the wider involvement by the CSO in the preparation of information across the criminal justice system.

Recommendation 36

The Review Group is strongly of the view that the availability of information on sentencing and precedents needs to be improved. In this regard the Review Group supports the valuable work commenced by the Judiciary through the Irish Sentencing Information System (ISIS). The Group also recommends that the Central Statistics Office, in consultation with the Courts Service and the Judiciary, be requested to produce information on sentencing outcomes with a view to providing public information and informing policy development.

⁷⁹ www.irishsentencing.ie

8.2.2 Sentencing guidelines

A more structured and transparent approach to sentencing would further promote consistency in sentencing. A particular area of debate in recent years has been whether there is a need for sentencing guidelines and, if so, to what extent. Calls have ranged from those for a greater role for the judiciary in providing clarity of sentencing decisions to the introduction of statutory sentencing guidelines. Whatever the approach, for the purpose of transparency and the promotion of consistency, a more structured approach to sentencing is required.

The majority of the Review Group supports the view that the primary role of developing sentencing guidelines is the responsibility of the judiciary and not in detailed statutory based guidelines. While a statutory framework undoubtedly supports consistency in sentencing, it does so at the potential cost, of judicial discretion. The resource implications of developing and maintaining dynamic guidelines, the associated costs and the length of time and consultation which would be required were also factors which the Review Group considered were not in favour of the introduction of a Sentencing Council. In addition, the recommendations included in this report, such as imprisonment to be regarded as a sanction of last resort and recognising that the dual purpose of sentencing is punishment and rehabilitation as well as more operational recommendations such as that relating to written decisions in respect of a custodial sentences, if implemented, should all support a more consistent approach to sentencing policy.

Moreover, the Review Group preferred to adopt an approach whereby the judiciary would take the lead role in developing a more structured approach to sentencing. In this respect, the Group noted some specific recent judgments from the Court of Criminal Appeal⁸⁰. These judgments address consistency in sentencing acknowledging that due to the myriad of factors that can be considered in individual cases, a direct comparison between one case and another is rarely feasible. Nonetheless, every effort to promote consistency in sentencing should be made.

⁸⁰ DPP v Z [CCA] 18.03.14; DPP v Adam Fitzgibbon [CCA] 18.03.14; DDP v Kieran Ryan [CCA] 18.03.14.

The judgment in DPP v Ryan found that it is appropriate for the Court of Criminal Appeal to provide guidance on sentencing. The Court concluded that without prejudice to “exceptional or unusual cases”, a sentencing judge can place an offence at an appropriate place on the spectrum of like offences (i.e., lower, middle or upper) or identify an appropriate sentence having regard to the range of sentences for like offences, following which an adjustment to reflect any individual circumstances of the accused could be made⁸¹. The judgment in DPP v Fitzgibbon provided additional direction with regard to appropriate factors to be considered in sentencing.

The judgment in DPP v Z emphasised the role of prosecuting counsel in suggesting to a sentencing judge the sentence or range of sentences which may be considered appropriate. In this respect, information sources such as ISIS and appellate decisions were cited as assisting counsel in this respect. The Court concluded that appropriate assistance from prosecuting counsel “can only be conducive to creating greater consistency and must also lead to a reduction in the number of appeals”. The Review Group strongly welcomes these judgments and considers that these precedents, together with the move to establish a permanent Court of Appeal under the Court of will lead to greater consistency in sentencing

In this respect, the Group recommends that any concerns regarding consistency in sentencing should be the subject of a further review in three years time.

Recommendation 37

The Review Group recommends that a more structured approach be taken to sentencing. The Judiciary should take the lead role in this area. The Group welcomes the recent judgments of the Court of Criminal Appeal⁸² which for the first time has given guidance on appropriate sentence ranges. The Group anticipates that this development, combined with the forthcoming introduction of

⁸¹ DPP v. Kieran Ryan at 3.1

⁸² *ibid.*

a permanent Court of Appeal, will over time bring about much greater consistency in sentencing.

Recommendation 38

The Review Group recommends that the main principles and purposes of sentencing as set out in the recommendations above (recommendations 1, 2, 32) be set out in statute. Some members of the Group were of the view that the development of detailed principles and guidelines in the application of these principles was a matter primarily for the judiciary while others favoured more comprehensive and detailed legislation identifying for example relevant aggravating and mitigating factors to be considered in sentencing. The Group recommends that the approach favoured at this time should be reviewed after a period of three years.

9. ACHIEVING CHANGE

In the event that the recommendations contained in this Report are accepted, the Review Group considered how reform can be achieved, in particular improving future penal policy making by increasing our capacity for research, coordination and culture change.

9.1 *Better penal policy for a safer, fairer society*

The Review Group considers that the structures for formulating penal policy could be strengthened considerably and believes that improving the process by which penal policy is developed will have long-lasting benefits for society.

It has been argued that the history of penal policymaking in Ireland is one in which periods of hyperactivity are interspersed with periods of neglect⁸³. As this report has noted, at times our penal policy has been based less on long-term and planned strategies, than on reactive approaches and particular events. These periods could undo progressive moves in penal policy with remarkable speed. In this regard, the Review Group noted the experience of the mid 1990s in particular. This was a time which sowed the seeds for a form of policymaking which made the provision of extra prison spaces a political priority, and which overturned earlier Government policy which sought to limit penal expansion and improve regimes. As such, the Review Group is concerned that penal policy has been allowed to evolve without a set of coherent objectives. Future development of criminal justice and penal policy must be coordinated and coherent with a joint aim of reducing crime and facilitating the rehabilitation and reintegration of offenders thereby achieving the best outcomes for society, for victims of crime and for offenders.

The Review Group noted that, in the past, policymaking was not always open to research or to the contributions of reform seeking groups or individuals. Arguably, policymaking failed to accommodate opposing view points. The capacity for the criminal justice agencies, and others, to engage in research to examine the

⁸³ Rogan, 2011; O'Donnell, 2008; Kilcommmins et al, 2004.

consequences and impact of policy change was limited. The Review Group was concerned that, at times, decisions to change policy, for example through the introduction of presumptive minimum sentencing, were taken without a robust analysis of what the effect of those changes on prisoner numbers and resources would be. In addition, the response to crime has been criticised for being largely viewed through the prism of the criminal justice agencies, to the exclusion of other ways of thinking about crime.

The Review Group feels strongly that penal policymaking should be about the promotion of the most just and effective solutions to the problem of crime, and to improve national wellbeing. In this respect, the role of the media in creating opportunities for informed and considered debate on crime and penal issues is critical.

The Review Group noted that the experience of many jurisdictions is that penal policy is best created in an environment which prioritises inter-agency cooperation, is based on evidence, involves appropriate deliberation and the input of experts, which is conducted in a responsible and measured way, and which keeps the long-term purposes of the criminal justice system in its focus. In particular, there must be a renewed focus on how social, educational, health and other policies can contribute to the prevention of crime and reoffending.

9.2. Inter-agency cooperation: creating the conditions for good policy making

The Review Group has been impressed with the level of cooperation and collaboration between the IPS and the Probation Service in recent years and notes the expansion of this cooperation during the course of this Review. This commitment to cooperation is clearly set out in their Joint Strategic Plan 2013-2015 to create an integrated offender management programme and, more recently, the Joint Probation Service – Irish Prison Service Strategy 2014 – 2016 “An Effective Response to Women Who Offend”. Operationally, the Community Return Programme is a good example of successful cooperation between the IPS and the Probation Service. In terms of data management, collaboration between these

agencies has extended to a commitment to coordinate publication of their annual reports and to conduct collaborative research, such as that on recidivism. This type of collaboration ensures that there is a more complete picture of the management of offenders whether in prison or in the community. As an example of operational cooperation leading to efficiencies in the administration of justice and use of Garda resources, the Criminal Justice Interoperability Project (CJIP) deserves recognition. CJIP supports courts summons applications and other court documentation, such as outcomes, bail, warrants etc., between the courts and An Garda Síochána. However, the Review Group would like to see the level of cooperation in relation to the collation of information extending to include other criminal justice agencies and other areas of operation.

Individually, the IPS and the Probation Service have also committed to working closer with other Departments, agencies and community groups. The IPS continues to work closely with the HSE, Office of the Inspector of Prisons and with groups such as the Irish Red Cross. Given its role in the community, the Probation Service enjoys significant partnership with a range of statutory agencies and community based organisations.

The Review Group also acknowledges the recent Government commitment to address homelessness and, in the context of this Review, welcome the commitment to address the needs of vulnerable persons existing institutional settings, such as prison. That commitment sets out the actions required and attaches responsibility to relevant agencies. The Review Group would like to see the relevant agencies continuing to explore and take advantage of the expertise and experience available among community based groups in addressing the needs of offenders and, in particular, assisting in their reintegration.

In the course of its work, the Review Group had many questions about the nature of the Irish prison population, the profile of prisoners, the influences on sentencing, and sentencing trends which were very difficult, and sometimes impossible, to answer. The Review Group is concerned that without this kind of information, penal

policymaking cannot be effective. In the absence of good systems for collecting and analysing data, policymakers cannot plan adequately for the future, or understand the consequences of changes in policy. The growing community of criminological researchers in Ireland have also experienced difficulties in gaining access to data. As O'Donnell et al. state, the hurdles to research 'make it difficult to assemble and accumulate the basic knowledge about crime and justice issues that is required to put things into perspective for concerned citizens and to guide decisions by policy-makers' (2009. 124). In addition to the important tasks of planning and evaluating policy, misconceptions about crime, sentencing, and what happens in our penal system, as well as misplaced fear, can and must be challenged with evidence.

As noted under section 8.2.1, the Review Group was concerned at the limited information available on sentencing trends and consistency in decision-making, considering that this absence undermines public confidence in the penal system. The Review Group encourages the continuation of efforts to remedy this via the Irish Sentencing Information System and also the expansion of the role of the CSO in collating and publishing crime statistics.

While there is much to be learned from experiences abroad, the Review Group also considers that it is essential for policymakers to draw on understandings of Irish penal practice in order to generate policy, rather than relying on research and policies created elsewhere. The Review Group considers that the CSO has a key role to play in this regard, noting the strides made by it in the recent past. All the criminal justice agencies must establish a culture of openness to research and evaluation, and to data sharing and to building that capacity.

Proper and effective data management will ensure that an appropriate evidence informed approach to penal policy formulation can be implemented. For instance, all new criminal offences and/or sanctions should be properly assessed in terms of their effectiveness as a deterrent to criminal behaviour and the impact on the criminal justice and penal systems.

In supporting greater collaboration between criminal justice agencies in the collection of data, the Review Group is conscious of the need to ensure that the data is available to appropriate researchers and stakeholders and that it is also available in a coherent and timely manner.

Recommendation 39

The Review Group recommends an increased focus on effective data management. The Department of Justice and the criminal justice agencies should develop a shared agreement outlining how data is to be collected, managed and published by all criminal justice agencies and access to this data should be provided to researchers, within appropriate limits.

Recommendation 40

The Review Group strongly recommends that all future policy decisions in the area of criminal justice should be pre-assessed with a view to determining, where possible, impacts on prisoner numbers and numbers to be subject to other forms of sanction.

Recommendation 41

The Review Group recognises that crime is a question of social as well as penal policy and recommends that all Government Departments and agencies consider the question of crime prevention when formulating policy. In this regard, the Review Group recommends that the Department of Justice and Equality joins with all Government Departments and agencies to facilitate and support research in order to assist in the formulation of penal policy.

While these recommendations will undoubtedly assist in promoting an evidence informed approach to penal policy, the Review Group also considers that future penal policy would benefit from additional oversight and consultation. An advisory Council that would consult with relevant bodies - both public and private – on specific issues relating to penal policy could ensure that there is a consistent approach to penal policy focusing on reducing imprisonment as a sanction and the

rehabilitation and reintegration of offenders. It should be clearly set out that this Council would not have an inspection remit, as such is appropriately conducted by other bodies. Having regard to the various bodies involved, one of the issues that a Consultative Council could consider examining is the issue of accountability in the penal system.

Recommendation 42

The Review Group recommends that the Minister for Justice and Equality establish a Consultative Council to advise on issues relating to penal policy. This Committee should consult with relevant partners – at Government, local authority and non-governmental level, as appropriate – on issues as they arise or are referred to them.

In terms of inter-agency cooperation, a proposal which was considered was amalgamating the Probation Service and IPS into one organisation thereby improving cost efficiency and effectiveness (in terms of sharing responsibility for the management and rehabilitation of offenders).

In this respect it is necessary to acknowledge the complementary but nonetheless distinct roles that these agencies play in the management of offenders. The mission of the IPS is to provide safe and secure custody, dignity of care and rehabilitation of prisoners. As a single service with a community sanctions focus and identity, the Probation Service is concerned with ensuring efficient interventions and management of offenders from pre-sanction, through a range of sanctions in the community and in custody, to post-sanction.

There is no evidence that amalgamating these services would produce savings or be any more successful in the management and rehabilitation of offenders over the current organisational set up. Separate agencies ensure that the unique value of each is maintained and neither agency can subsume the ethos of the other. While sharing a primary goal of maintaining public safety, each agency has its own distinct focus, ethos and organisational priorities. Appropriate and effective cooperation

between the agencies can achieve the same level of successful intervention while maintaining identity, individual ethos, strength and focus. This approach underpins the current Probation Service/IPS partnership approach and joint Strategic Plan

The Review Group acknowledges the critical and unique roles played by the IPS and the Probation Service in the management and rehabilitation of offenders. While there have been proposals to merge the Probation and Prison Services – in order to facilitate better integration of the services, the Group recommends that the Probation Service and the IPS remain as separate agencies as at present but that the current level of interagency cooperation between the two bodies be encouraged and further developed.

9.3 Changing culture

The Review Group considers that a cultural change is needed in how penal policy is made, and how research is viewed. The recommendations contained in this Report are intended to assist that process. Over the past 18 months, there have been a number of positive developments in the management of offenders which would reflect the recommendations in this report, such as increasing the use of the Community Return scheme, improved prison facilities, increases in operational efficiencies and commissioning of research such as the recidivism studies. All of these developments reflect a desire to develop an efficient and effective penal policy with the purpose of reducing offending. In addition, this cultural change must also be felt within the Irish prison system.

From discussions with the Prison Officers Association (POA), the Review Group welcome that organisation's desire to contribute to a modern Irish prison system.

Undoubtedly, prisons can be a very difficult environment in which to work. For many years, prison officers had a somewhat limited role, with the emphasis being on the security and custodial elements of their work. Prison officers are of enormous importance in ensuring safe and humane/human rights based regimes are implemented, and also in supporting rehabilitation and reintegration. They must be assisted and facilitated in this work. It is essential that those officers who are

motivated to pursue particular aspects of rehabilitative work be supported to do so; the Review Group noted examples of good practice during its work in this regard. In fact such engagement by prison staff should be facilitated generally. Where there are concerns regarding engagement of staff in penal reform, the Review Group would expect the IPS and prison management to effectively engage with prison staff. Providing appropriate staff support is essential in this regard and again, the Review Group would acknowledge the work of the Inspector of Prisons in promoting engagement between prison staff and management. Furthermore, the Review Group is of the view that changing cultures within the prison system also requires a commitment to independent oversight of penal practices and strong systems for achieving accountability.

9.4 Implementing the recommendations contained in this Report

The Review Group is also concerned to ensure that the recommendations contained in this report should be implemented in an efficient manner and with appropriate oversight. There is concern that the implementation of previous reports in this and other areas has been slow, or non-existent. To this end, a group should be established which would report every six months to the Minister for Justice and Equality in relation to the implementation of this Report. This could be conducted in conjunction with the IPS and Probation Service in relation to the implementation of the strategic plans concerning prisons and probation.

Recommendation 43

The Review Group recommends the Minister establish a mechanism to ensure the implementation of actions arising from this report which would report to the Minister on a six monthly basis on such implementation. These reports should be published.

However, the Review Group would again like to record the significant progress which has already been made in the area of penal policy over the last 18 months. Both crime figures and rates of imprisonment are dropping. The IPS and the Probation

Service have adopted a joint approach to penal policy and are cooperating at a new level. While significant progress remains to be made, data gathering and information sharing are improved and the CSO has brought a new consistency and coordination to the collation and presentation of relevant crime data.

The Review Group considers that the penal system is capable of contributing significantly to national wellbeing, financial responsibility, justice, and fairness and it is not in keeping with these principles that imprisonment be used where it is not necessary.

The Review Group considers that Irish penal policy can be renewed to better serve the Irish people. The comparatively small size of the population dealt with under the criminal justice system means that much can be achieved. The Review Group believes that Ireland, a country with a tradition of compassion, community, commitment to human rights, and scholarship can create a penal policy which is recognised internationally for its just and effective practices.

Appendix 1: Offender Focus Group Recommendations

Methodology

The IPS assisted in arranging access to and sampling of prisoners for the purpose of the focus groups. One male and one female prison as well as an ex-prisoner, all male, support project took part. Access to participants was unsupervised. Participants were selected through a random sample from the Prisoner Record Information System. Those who indicated an interest in participating were given information on the focus groups and a 24 period to consider participation. Eight women and 10 men ultimately participated in the discussions. Among the ex-prisoners, 13 men participated in the group. It is acknowledged that the total number of participants in the study is very small. Prior to holding the focus groups, a pilot study was conducted which consisted of three ex-offenders.

Information sheets were provided to all participants which outlined who was conducting the research; why it was being conducted; what would be expected of participants; how the discussion would proceed; voluntariness; confidentiality and data utilisation. Information sheets were distributed by prison staff who assisted where literacy difficulties arose.

Those who volunteered were given an information session immediately prior to the focus group discussion and were given an opportunity to ask questions and raise any concerns. Consent forms were signed and topic guides were utilised.

Summary of findings

The offender focus groups examined the following areas:

- Safety in prison
- Health in prison
- Services in Prison
- Personal relations/Interactions
- Incentivised Prison Regime, Sentence Management and Parole
- Family relations and autonomy
- Information Dissemination
- Non-Custodial Sentences
- Experiences of Release
- Re-offending

1. Safety in Prison

Overall those who participated in the study felt safe in prison but there were some concerns that some prisons were safer than others as well as an acknowledgement that incidents of fighting and violence on the outside can become an issue inside the prison. While segregation of offenders was supported, participants also suggested that dispute resolution in relation to those arguing or fighting should be explored as a means of resolving animosity within the prison environment. The segregation of

sex offenders should be maintained. A protocol in relation to the reporting of incidents of bullying within the prison environment should be clearly defined and should be strictly and consistently adhered to.

2. Health in prison

The level of access to health services and medication in prison was a concern for participants and in particular there were complaints at what was considered poor explanations for altering medication. Better link up procedures with community medical services are required to ensure that there is no delay in relation to prisoners receiving their medication when entering the prison system. Those prisoners who have shared cells with persons who have physical or mental health issues expressed a sense of responsibility for that individual which was considered inappropriate. In this respect, the biggest concern among participants in the study is persons with mental health issues entering the prison system and the need for appropriate procedures to be in place to take care of the needs of such prisoners.

3. Services in Prison

Participants agreed that drug treatment does not work on persons unwilling to cooperate with a programme. However, for those who are seeking to address drug addiction, access to drug treatment and counselling services was a concern and that appropriate services should be expanded and that supports received in prison should be continued in the community following release. To assist those who are drug free, there were recommendations to expand the number of drug free landing spaces.

In terms of access to education, the majority of participants had positive experience of engaging with the prison school and in addition to learning new skills or obtaining qualifications; it provided an opportunity to avoid the otherwise mundane daily prison routine. However, there was some concern regarding the capacity available in the school or on training courses and additional places should be made available. The quality of parts of the school curriculum was also questioned and the recommendation was made to offer courses and qualifications which would enhance employment opportunities.

On a day to day basis participants sought greater access to the prison gym and prison shop.

In terms of welfare supports, some participants expressed concerns regarding reductions in the Chaplain Service.

4. Personal relations/Interactions

Participants were particularly concerned at being required to share cells with persons who are unwell. Experience of relations with prison officers varied but where there were difficulties, it was reflected in a sense of a lack of respect by some prison officers towards prisoners and their privacy. Some participants suggested that the role of the prison officer should be clarified and that all staff, not just prison officers, should treat prisoners with respect and dignity.

5. Incentivised Prison Regime, Sentence Management and Parole

There was a general positive feedback to the principles of incentivised prison regime and integrated sentence management. However, there was concern that these programmes are not implemented in a widespread or consistent manner. There was also a lack of information regarding these programmes and there should be improved information to prisoners on committal. More rigorous documentation in relation to progress by prisoners should be maintained to ensure that there was a fair and consistent application of the regime. In relation to the Incentivised Prison Regime, some participants felt the level of incentives offered should be improved offering real goals to work toward including family hall visits, progression to open prison and enhanced remission should be available. In relation to parole, there was poor knowledge of parole processes and procedures, including who it applied to and how it operated, which could be addressed through information dissemination.

6. Family relations and autonomy

The maintenance of quality family relations proved problematic for all participants and was particularly acute among long term prisoners and personal relationships were often a casualty of a prison sentence. Maintaining quality relationships with children was a significant concern, with screened visits being a particular concern, although during non-screened visits some participants expressed reservations about touching or holding their children for fear of raising suspicions that contraband was being passed. The manner in which family visits are conducted was considered to be detrimental to children and more could be done to support family relations. For instance, there should be greater access to occasional family leave for long term prisoners who have proven that they are trustworthy, such as through the Incentivised Prison Regime.

Moving cell regularly was also a matter of complaint particularly for long term prisoners and it prevents a prisoner from settling into a personal space.

There were also some complaints about prison officers not respecting the privacy of prisoners and while accepting that some monitoring of communications is necessary, the information arising from such should remain confidential.

A further concern among all participants is that certain prisoners are treated unfairly and that disciplinary proceedings were unjustly operated within the prison system.

7. Information Dissemination

All participants complained of getting minimal information upon committal and, generally, other prisoners were their source of information which led to different understandings of various policies, procedures and programmes. This was particularly the case in relation to the operation of the Incentivised Prison Regime, Integrated Sentence Management and available health services. The participants also reported not being included in discussions and negotiations relating to decisions being made about their time in prison.

8. Non-custodial sentences

Most prisoners were negative in terms of their experience working with the Probation Service complaining that the Service is overly focused on monitoring and supervision. There was particular feeling of pressure to remember appointments and the relationship and interaction between the Probation Officer and the participant had a direct impact on their feelings towards the probation process. Complaints regarding the Probation Service relate to the consequences which may arise if there is a failure to appropriately cooperate. Positive feedback on the Probation Service was linked to the ability of Probation Officers to link an offender with appropriate services.

Community service was described in positive terms, in particular the opportunity it gave participants to develop a daily routine and to that extent assisted in not reoffending.

Electronic monitoring was considered both a stigma which may negatively impact on job opportunities but also a positive if used to assist day release reintegration programmes.

9. Experiences of release

All participants reported good support services in relation to preparation for release from prison but that such preparation commenced too close to the release date. Those prisoners who obtained enhanced status on the Incentivised Prison Regime should be offered open prison or day release prison to release. Establishing internships would also assist in progressing any training obtained while in prison.

Accommodation and drug addiction were the two biggest obstacles faced by offenders on release from prison. Those without accommodation are reliant on obtaining hostel accommodation which often exposes people to drugs and creates difficulties in staying drug free. Establishing drug free accommodation was recommended, although the difficulty in obtaining employment while living in a hostel was also highlighted.

10. Reoffending

All participants did not consider that prison assists in reducing reoffending, with the detachment from society contributing to the likelihood of further offending. Alternatives to prison sanctions should be explored where possible. All participants expressed a desire to not be involved in criminal behaviour following release with the main obstacle to desisting from crime being lack of employment opportunity. Evidence from those on community service orders would suggest that the routine of work encouraged them in not reoffending. Better training and better use of time spent in prison would assist in promoting and maintaining desistance. All participants felt that offenders should be given the opportunity to redeem themselves and the expunging of criminal records, after a specific period of time, would provide a goal for an offender to work towards.

Appendix 2: Public Notice

Call for Submissions

STRATEGIC REVIEW OF PENAL POLICY

A Working Group to conduct a strategic review of penal policy has been established by the Minister for Justice, Equality and Defence, Mr. Alan Shatter, T.D.

The Working Group would welcome submissions (in writing or by e-mail) from any interested person, organisation or group to assist it with its task. In particular, views are sought from those who have had contact with the criminal justice system, including victims of crime, offenders and practitioners. The terms of reference of the Group are available online at www.justice.ie or a hard copy may be ordered from the address below or by calling 01 476 8652.

Closing date for written submissions is Thursday, 28 February 2013.

Working Group on Penal Policy
Department of Justice and Equality
Montague Court – 3rd floor
7-11 Montague Street
Dublin 2

E-mail: penalpolicyreview@justice.ie

Appendix 3: List of written submissions received

Mr Desmond Kirwan	Ethics Consultancy & Training International
Mr James Moran	Mr Alan Garvey
Mr Gerry Nugent	Mr Emmet McDonagh
Mr Richard O'Regan	Mr Jeremiah Sheehan
Dr Kevin Warner	Dr Robert Conlon Moore
Irish Youth Justice Service	TRUST
RCNI	Ms Jane Mulcahy
Dr Pauline Conroy	Mental Health Reform
Mr Thomas Heavey	The Cornmarket Project
Quality Matters Ltd.	Jesuit Centre for Faith and Justice
Depaul Ireland	Mr Gerry Carey
Mr Turlough O'Donnell, SC	Mr Brendan Nix, SC
Mr David O'Donovan	Psychiatric Court Services Ltd.
Parole Board	Mr Michael Fox
ACJRD	POA

Appendix 4: Presentations to Working Group

AdVIC

Mr John Costello, Chairman, Parole Board

Dublin Rape Crisis Centre

Cllr. Mannix Flynn

Garda Community Relations & Community Policing Branch

Prof John Horgan, Press Ombudsman

Irish Youth Justice Service

Fr. Peter Mc Verry, Peter McVerry Trust

Mr Doncha O’Sullivan, Crime Division, Department of Justice and Equality

Prison Officers’ Association

Rape Crisis Network Ireland (RCNI)

Judge Michael Reilly, Inspector of Prisons

Governor Edward Whelan

Governor Martin Mullen

Governor Ethel Gavin

Governor Mary O’Connor

Victims of Crime Office, Dept of Justice and Equality

Appendix 5: Community Based Sanctions - Sanctions Supervised by the Probation Service

PROBATION ORDERS (Probation of Offenders Act 1907 and Children Act 2001, as amended)

Offenders give an undertaking to the Court that they will be of good behaviour, avoid further crime, adhere to the conditions of the order and to follow the directions of a supervising Probation Officer, for a specified period of time, up to three years. The supervising Probation Officer ensures that the Court order is managed, helps the probationer to identify and address issues which may have contributed to their offending, and to take appropriate steps to avoid offending again, to reduce risk of harm to the public, and to make good the harm caused by the crime. Where a Court orders Probation supervision for a young person, such matters are dealt with under the Children Act, 2001 (as amended), which also provides for a wide and specific range of options in such cases. Section 115 of the Children Act identifies ten specific probation supervision orders. In practice, the requirements of these orders are often subsumed as specific conditions (for example engagement with a mentor or attendance at a training and vocational facility) to address identified risk and need factors within a Probation Order (as per Section 2 of 1907 Act). Family Conferencing, which is based in Restorative Practice, aims to divert the young person, who has accepted responsibility for their offending, from the Court, conviction and custody, as well as from committing further offences.

COMMUNITY SERVICE ORDERS Criminal Justice (Community Service) Act 1983 (as amended)

Instead of a prison sentence, convicted offenders over 16 years of age may, instead, be given the opportunity by the Court to perform unpaid work in the community. The Community Service legislation allows a Judge to sentence an offender to between 40 and 240 hours work. Any Order made must be completed within a year. Community Service is a direct alternative to a prison sentence and an Order will only be made by the Judge where a custodial sentence has first been considered.

SUPERVISION DURING DEFERMENT OF PENALTY

This is a judicial practice whereby the Court does not proceed to determine the appropriate penalty but instead adjourns the case for decision at a further date, on condition that the offender complies with the supervision of a Probation Officer for a specified period of time and avoids reoffending. The focus of the Probation Officer's intervention is similar to that employed in the management of a Probation Order.

POST RELEASE SUPERVISION ORDER

Under the Sex Offenders Act, 2001, Judges can sentence sex offenders to a period of Probation supervision following their release from a prison sentence. During supervision, the Probation Officer focuses on the offence committed and its implications for public safety, helping the offender to see the past offending

behaviour as a problem, identify offence-related risk factors, and develop strategies and supports to ensure there is no repeat offending.

CONDITIONAL SUSPENDED OR PART-SUSPENDED SENTENCES

Under the Criminal Justice Act, 2006 (s.99), Judges can deal with a case by way of a suspended or part-suspended sentence with conditions of probation supervision. This means the Judge may:

- Impose a prison sentence of a specified duration; and
- Suspend all or part of the sentence for a period of time, conditional on the offender remaining under the supervision of a Probation Officer for the specified time for which the custodial sentence is suspended. (Additional specific conditions may also be imposed).

Section 151 of the Children Act makes provision for the imposition of a Detention and Supervision Order in respect of a child aged 16-18 years. This facilitates the Probation Service to intervene with a child and their family to ensure the planned reintegration of the young person on release from detention.

The nature of the supervision in all post-custodial supervision orders is similar to that in Probation Orders and Supervision During Deferment of Penalty.

SUPERVISED TEMPORARY RELEASE

The Probation Service supervises prisoners in the community, on temporary release from custody, as provided for in the Criminal Justice Act, 1960 and the Criminal Justice (Temporary Release of Prisoners) Act, 2003. Temporary Release is granted in such cases, for a defined period of time, with specific conditions aimed at facilitating reintegration in the community and avoiding further offending. Life sentence prisoners on temporary release in the community are obliged to co-operate and comply with Probation Service supervision, and in the normal course, remain subject to supervision for the remainder of their lives.

COMMUNITY RETURN

The Community Return Programme is an incentivised scheme which provides for earned temporary release for prisoners serving between one and eight years, who have served at least half of their prison sentence. Those offenders who are assessed as suitable may be allowed early temporary release with a condition that they perform supervised unpaid community work (like Community Service). Probation Officers assess offenders' suitability and motivation to complete the community work, and manage their supervision.

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