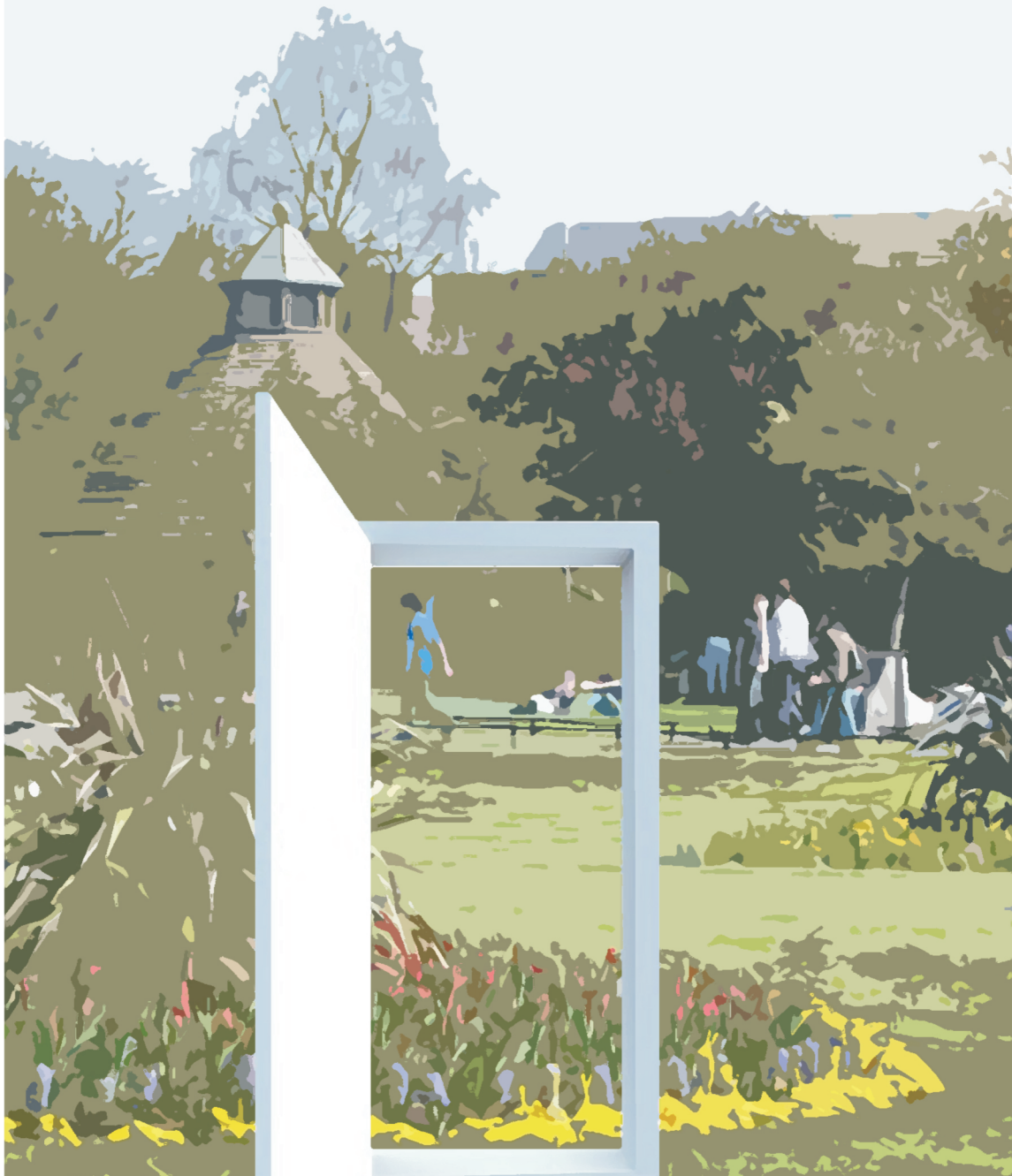


FIFTEENTH ANNUAL CONFERENCE

Exit from Custody

Through-care, Resettlement & Related Issues



acjrd

Venue: Camden Court Hotel, Dublin 2 Date: Friday 12th October 2012

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Welcome Address

Maura Butler, Chairperson ACJRD Ltd

You are all very welcome to our 15th Annual Conference!

As many public service delegates present are ordinarily in a role that restricts open subjective discussion of their views in a public forum, ACJRD's conference tradition of invoking the Chatham House Rules applies to today's conference speakers, workshop co-ordinators and participating members of the audience.

As you most probably know, The Chatham House Rules state:

"When a meeting or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed".

The ACJRD Council members selected today's conference theme ***Exit from Custody – Through-care, Resettlement & Related Issues*** on foot of the outcomes of the Thornton Hall Review Group and current Government policy, as outlined by the Minister for Justice, Equality and Law Reform, Mr Alan Shatter T.D.

The Review Group discussed alternative forms of detention that include a form of community-based detention:

- **home detention,**
- **periodic imprisonment,**
- **intermittent or part-time or weekend custody and**
- **earned Temporary Release into Community Service.**

Home detention was described in that Review as confinement of offenders to their homes during specified times for the duration of the sentence under strict supervision and conditions and may involve electronic monitoring; **Periodic imprisonment** requires the imprisonment of the offender for certain days of the week; **Intermittent or part-time or weekend custody** permits the offender to spend the remainder of his or her time at home, at work or in the community and **Earned Temporary Release into Community Service** aims to reduce the time that prisoners, who pose no threat to the community, spend in prison, in return for supervised community service that aims for offender reintegration.

Today's conference will hear from policy makers, agencies and professional & voluntary practitioners from many disciplines.

We are most grateful for the generosity of the DPP who will momentarily launch today's conference, and the generosity of our plenary speakers and workshop co-ordinators, all of whom have agreed to take time out from very busy schedules to share their expertise, vision, hopes, challenges and concerns with us today.

Perspectives will be shared by:

- senior personnel in our Criminal Justice Agencies who are working in partnership,
- those who provide support systems to prepare the prisoner exiting prison,



- those speaking for the community that is asked to accept the offender who wishes to be reintegrated,
- those who have cognisance of offenders who struggle with challenges to resettlement that include: homelessness, employability, community wariness, close monitoring by agencies and recidivistic tendencies.

As is the format of all our conferences, we will be enriched by contributions from practitioners from other jurisdictions that include Canada, Northern Ireland, England and Scotland as they discuss their experience on the implementation of community based detention.

We thank them most particularly for travelling to be with us today.

It now gives me enormous pleasure to ask our **Director of Public Prosecutions, Ms**

Claire Loftus, to launch today's conference. Claire was appointed DPP some eleven months ago on November 7th 2011. She was educated in University College Dublin, and qualified as a solicitor in 1992. Prior to her role as the DPP she had criminal litigation experience as the Chief Prosecution Solicitor from 2001 to 2009 and thereafter, as the Head of the Directing Division in the Office of the DPP. She is only the third DPP in the history of the State, the first solicitor and the first woman in the position. I have had the honour of working with Claire for many years in the execution of the duties of my day job and I am now delighted on behalf of our patron The Hon. Mr Justice Michael Moriarty, the ACJRD Council, staff, membership and all of today's delegates to ask our DPP to formally launch the 15th Annual Conference of ACJRD *Exit from Custody – Through-care, Resettlement & Related Issues*.

“Prisoner resettlement – Broadening the responsibility”

Michael Donnellan, Director General of the Irish Prison Service

Ladies and Gentlemen, I am very pleased to have been invited to address the 15th Annual Conference of the Association for Criminal Justice Research and Development.

Introduction

The focus of this conference is on through-care and resettlement, issues which I attached great importance to as the former Director of the Probation Service and which have an even greater importance for me in my current role as Director General of the Irish Prison Service.

The purpose of the ACJRD is to promote reform, development and effective operation of the criminal justice system. The Association plays a very important role in facilitating discussion and debate about key issues affecting us all and I would like to pay tribute to its Chairperson Maura Butler for her unstinting work on behalf of the ACJRD.

As the end of my first year as Director General of the Irish Prison Service fast approaches, I am now more convinced than ever that central to the effective operation of our criminal justice system must be **the objective of reconnecting offenders back to their community.**

I, therefore, very much welcome the focus of today's conference and the bringing together of a wide cross section of those within the criminal justice system and those with an interest in the area to have a specific conversation around the issue of offenders exit from custody. It is important not to underestimate the various challenges associated with that and some of them are indeed very tough challenges.

Through focusing on the ways in which we can improve co-operation within the criminal justice system and between state agencies we can certainly create the conditions which are needed to bring about better outcomes for offenders. In so doing we can also go some way towards achieving our collective objective of improving public safety.

So how do we create those conditions?

In the first instance we need to widen our discussion and broaden the responsibility for achieving successful rehabilitation much further than it is currently cast. Rehabilitation and resettlement are not just about the Prison or Probation Service – it is much broader than that. In my view, without a very real and meaningful commitment from the individual offender and an equal commitment from the community and service providers, the effective through-care and resettlement of prisoners cannot be fully achieved.

Pathways to Offending

For me, any conversation on offenders' exit from custody and return to their community has to begin with a discussion of the factors which lead to people entering the criminal justice system in the first place.

To set the scene for you, in 2011 14,845 offenders engaged with the Probation Service and 17,318 people were committed to our prisons. Of those committed to prison, 12,342 were committed under sentence with 8,070 receiving sentences of less than 3 months.

For the majority of those incarcerated and indeed for those sentenced to sanctions in the community, similar criminogenic needs and risks exist, many of which are often inter-related and mutually reinforcing. Unemployment, substance abuse, anti-social attitude and companions, poor educational achievement, family problems, and lack of accommodation are prominent among them.

Given the complex range of problems many prisoners have, is it reasonable to expect the Irish Prison Service alone to achieve the successful reintegration of prisoners? Is it any more reasonable to expect the criminal justice system to provide solutions to such a multitude of social problems?

If we are to really succeed in reconnecting offenders back to their communities, then I would argue that we must devise a model which involves a multiplicity of state, community and voluntary agencies working in partnership on behalf of communities to bring about real change in the individual lives of offenders.

If this can be achieved, the challenge then becomes how we can work together with individual offenders to reconnect them back with society.

What can the Irish Prison Service do to create the conditions necessary for resettlement?

In April of this year, the Irish Prison Service published a 3 year Strategic Plan which sets out an ambitious roadmap of what we will aim to achieve over the coming three years with a view to giving reality to our vision of *"a safer community through excellence in a prison service built on respect for human dignity"*.

In order to deliver on this vision, my aim is to re-engineer our prison system to give further effect to the principles of normalisation, progression and reintegration. Central to this is the new Incentivised Regimes Policy which will be in place in all prisons by the end of the year.

This policy is the vehicle through which the Irish Prison Service intends to achieve enhanced prisoner rehabilitation, through greater involvement in sentence planning and structured activities. The particular needs of each individual prisoner are central to this endeavour.

The objective of this new policy is to provide tangible incentives to prisoners to participate in education, work, training and other structured activities and to reinforce incentives for good behaviour. Through engaging with the services available within the prison and through positive behaviour, prisoners can progress to an enhanced level - the benefits of which include an enhanced daily regime, enhanced facilities and increased contact with family and friends.

This new Incentivised Regimes Policy goes hand in hand with the new form of sentence management - Integrated Sentence Management (ISM) - that the Irish Prison Service has been gradually introducing over the last number of years. ISM essentially involves the individual prisoner taking greater personal responsibility for his or her own development through active engagement with services in the prisons.

Prisoners taking part in ISM have an initial assessment carried out in order to identify their needs in areas such as offending behaviour and education. From this a Personal Integration Plan is developed comprising actions for the prisoner to complete during his/her time in custody.

ISM bridges the gap between prison and the community and an individualised Community Integration Plan is developed for the prisoner to prepare for his/her release. Critical issues such as accommodation, employment or education are addressed to help the prisoner resettle into the community on release therefore reducing the risk of re-offending and ensuring safer communities.

While progress has been slower than anticipated in terms of rolling out ISM across all prisons, I am confident that this can be achieved in the short term through the on-going transformation and modernisation process which is taking place within the Prison Service under the Croke Park Agreement and which is delivering unprecedented efficiency across the prison estate.

Through working in partnership with staff associations and with strong leadership and commitment, I am confident that on-going reductions in our budgets and staffing levels will not unduly interfere with our core task of creating the conditions necessary for successful resettlement.

However, while invaluable work can be done at prison level to break the cycle of offending, how can the Irish Prison Service capitalise on the gains made in custody in order to reconnect offenders back with their communities?

What can we achieve in partnership with other agencies within the criminal justice system to further improve the conditions necessary for resettlement?

One of the ways the Irish Prison Service is further improving the conditions necessary for resettlement is through greater strategic joined up thinking and coordination with

other agencies across the system, particularly the Probation Service.

There is a growing realisation within the Service that unless we can adopt a multiagency approach to effectively plan the release of offenders and to then oversee their transition into the community, we will not succeed in our mission to improve public safety by reducing reoffending.

The recent success of the Community Return Programme bears testimony to the positive benefits which can be derived for prisoners by enhanced co-operation and co-ordination between both Services. The Community Return Programme is an incentivised scheme for earned temporary release under which offenders who pose no threat to the community are offered early temporary release in return for supervised community service and, thereby, give something back to the community.

The Irish Prison Service's new Strategic Plan contains a strong commitment to work in close cooperation with the Probation Service in order to successfully achieve the national roll out of this Programme and, to this end; we have co-located staff to jointly manage the project.

This is a new departure for both Services and one which we very much intend to capitalise and build on in order to improve prisoner outcomes.

To complement our individual Strategic Plans, both Services are currently finalizing a joint Strategic Plan for the coming 3 years. Our joint strategic objective is *"to develop a multi-agency approach to offender management from pre to post imprisonment in order to reduce re-offending and improve prisoner outcomes"*.

Among the strategic actions we plan to take as part of our joint strategy are the development of specific reintegration initiatives in Cork and Limerick and the development of specific strategies for women and young offenders. We also hope to pilot a Social Impact Investment to support an outcomes-based contract with a community based organisation with the aim of reducing recidivism. This initiative will focus on working with short term sentenced prisoners in a meaningful way, helping with issues such as housing, medical care, substance abuse and training needs, immediately on their release from prison and for a period thereafter in order to break the cycle of reoffending.

I have no doubt that through greater collaborative working between the Irish Prison Service and the Probation Service the fruits of our combined efforts to address the cycles of sustained offending behaviour will be far greater than working independently. Through enhancing case management and through care arrangements and by increasing the availability of structured release programmes in the community, we believe we can improve resettlement and reintegration outcomes for prisoners.

Will this be sufficient to effectively bridge the gap between custody and community? I will leave that question with you for the present.

What role can the wider State sector and the community and voluntary sector play in creating and maintaining links with the community?

As I mentioned earlier, many offenders have similar criminogenic needs and risks and I posed the question as to whether it was reasonable to expect the criminal justice

system to provide solutions to such a multitude of social problems.

The answer to this question is very clearly no.

While the Prison Service, the Probation Service and other agencies within the criminal justice system can make every effort to create the conditions necessary for successful reintegration and resettlement on release, the reality remains that the progress made by prisoners in tackling their offending behaviour while in custody can all but be lost without the necessary individualised supports being in place at community level post release.

We need to bring together all of the partners who have a responsibility to develop and deliver responses that work – not just those agencies working within the criminal justice system. This is essential if we are to adequately deal with the complex range of problems that prisoners present with. There is a wealth of community and voluntary groups working with offenders and other vulnerable groups. We need to harness the excellent work they do so that we all work in partnership with a common objective.

In the UK, an Integrated Offender Management framework has been developed in order to develop broad partnership working and innovative solutions to improve offenders access to services. Integrated Offender Management provides a strategic umbrella to bring together representatives from criminal justice agencies, the local authority, health services and the voluntary sector to address locally determined offending priorities through target interventions. This innovative framework is predicated on the basis that breaking the reoffending cycle requires a holistic and coordinated response that

addresses the full range of health and social care needs of offenders.

It is clear to all of us working within the criminal justice system that the responsibility for meeting many of the social care needs of prisoners rests outside the prison walls and effective resettlement and through-care can only be achieved by directly involving those who are responsible for service delivery at a local level - be that addiction services, mental health, housing, employment, training or education. Community resources need to have strong links with prisons so that work can start early, building motivation and planning for release.

As part of the joint Prison Service and Probation Service Strategy, it is our intention to pilot a specific reintegration initiative in Cork to increase the availability of support and structured release in the community. This will involve the appointment of a prisoner advocacy worker for Cork prison who will serve as the link between the prison and the community for short term sentenced prisoners, and builds on our Cork specific strategy which was published earlier this year (Unlocking Community Alternatives - a Cork Approach).

However, despite the obvious positive benefits such an initiative will bring for prisoners, the reality is that this new departure is still effectively the criminal justice system working from within to try to break down the barriers prisoners face on the outside in accessing the full range of supports in the community which are vital for resettlement.

The challenge for the criminal justice system is how to identify and implement an effective model which will deliver a multi-agency response with primary

responsibility being vested in local communities. Prevention and early intervention must be a core element of any comprehensive and serious attempt to create safer communities and there are strong indications that this approach will indeed shape service provision into the future. The first full Minister at cabinet for children, the establishment of a dedicated child and family support agency, and the intention to connect the full spectrum of related services, from early intervention to child protection and state care, are to be welcomed.

One of the strategic aims of the Prison Service over the next three years is to take the lead in enhancing communication, co-operation and collaboration with other agencies and bodies, including those in the community and non-statutory sector.

The delivery of such a multi-agency response will undoubtedly be a great challenge for all of us, particularly during a period of economic austerity, however, if we are serious about improving outcomes for those in our care, it is a challenge we must grasp and face down with a comprehensive approach which aims to tackle, minimise and prevent the diverse factors impacting on criminal behaviour.

What is the role of the offender in this process?

The Irish Prison Service released 2,632 offenders from custody in 2007 who had served a sentence of 12 months or less. A study of these releases was undertaken by the Central Statistics office which indicated that of those released, **49% reoffended within 12 months**. Further analysis has been carried out by the CSO - which will be published in due course - for all releases in 2007 and a similar reoffending rate has been recorded across all sentence lengths.



Most notably, the highest proportion of re-offending took place within the first six months of an offender being released.

The question the criminal justice system often concerns itself with is *“what leads people to re-offend?”* The converse of that, of course, is *“what makes those who do not reoffend break the cycle of offending or desist?”*

As many of you know, there are many factors which come into play before an offender can create a new non-criminal identity for themselves. Key to this is both a change in behaviour and a change in lifestyle. Offenders who have successfully achieved desistence point to turning points such as a stable relationship, a stable job or residential relocation which provided them with a more structured life and provided them the opportunity for identity transformation.

This is not a process which takes place overnight and the path to desistence can be a long and arduous road.

What is certain, however, is that the more tailored the response to meet the individual specific needs of each offender the greater

the likelihood is of successful resettlement and reconnection back to society.

Strategy for Future Success

The recently appointed Penal Policy Review Group has been tasked by Minister Shatter to make recommendations as to how a principled and sustainable penal system might be further enhanced and to carry out an examination and analysis of 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.

To me, this review offers real potential for the criminal justice system to come up with tangible and measurable short to medium term strategies which place the responsibility and the solutions for offending behaviour in a much wider societal context.

I am keenly aware that I appear to have posed more questions than I have answered today. However, as I said at the outset, for me today's conference is just the start of the conversation which now needs to take place about the changes Ireland must make in order to radically improve the resettlement of offenders.

“Resettlement issues and the Parole Board”

John Costello, Chairman of Parole Board

Parole Board: Introduction:

The Parole Board was established by the Minister for Justice, Equality and Law Reform to review the cases of prisoners with longer term sentences and to provide advice in relation to the administration of those sentences. The Board commenced its operations in 2001.

As a general principle, it is only the cases of prisoners who are serving sentences of eight years or more that are reviewed by the Parole Board and these must first be referred to the Board by the Minister for Justice. In the normal course, the Board will review cases of prisoners sentenced to eight years imprisonment or more, but less than 14 years, once half that sentence has been served. In cases of prisoners sentenced to 14 fourteen years or more, or to a life sentence the Board will review the case after seven years has been served. However, it should be noted, section 5 of the Criminal Justice Act 1999 precludes the Board from reviewing prisoners convicted of certain drug offences, many of whom receive an automatic sentence of 10 years. I believe the Parole Board should review these prisoners.

The cases of 65 prisoners were referred to the Board for review during 2011 and all were invited to participate in the process. 45 prisoners accepted the invitation while 20 declined. The total caseload for 2011 was 205 – that is a combination of new cases and cases at second or subsequent review stage. Second or subsequent reviews generally take place on an annual basis in the case of prisoners serving less than ten years and normally within two/three years in other cases. However, fourth, fifth and

subsequent reviews may take place on an annual basis in appropriate cases.

Sentence Management and Temporary Release and Remission:

Primarily, we are an advisory board only. It means that when we have finished our deliberation in any case we make a detailed recommendation to the Minister for Justice. In that recommendation, we indicate the steps that should be taken by the prisoner to improve him or herself to lessen the risk of re-offending and to enhance their prospects of release at the earliest opportunity. Our principle role is not just to recommend temporary release of prisoners but it is to manage their sentence and indicate what courses they should or should not do, the attitudes they should adopt, what psychiatric or psychological services should be provided for them and, in general, how they can best manage serving their sentence so that their prospects of a release as soon as possible are maximised. Our role, therefore, is primarily in sentence management and secondly in advising on temporary release when appropriate, but one is absolutely bound up in the other. A co-operative prisoner who does the courses recommended to him and who does what he can to rehabilitate himself is thus maximising his prospects of release.

I want to recognise the enormous contribution made by the 3,488 staff in the Irish Prison Service who served 17,318 prisoners in 2011, of whom 4,313 were in custody last November.

As at November 30th, 2011, some 291 prisoners (7.9%) were serving life sentences and another 290 (7.8%) were serving determinate sentences of ten years

or more. Accordingly, the numbers of prisoners reviewed by the Parole Board are only a small percentage of the total number of persons in custody. In relation to remission, prisoners have an automatic right to remission of one quarter of their sentence. However, part of this remission may be cancelled as disciplinary punishment.

However, there is one very important distinction between prisoners released on remission and prisoners released on temporary release (TR) or parole, as it is commonly known. When a prisoner leaves prison having served his sentence and availing of all the remission that he is entitled to, he walks out the prison doors a free man but with no supervision whatsoever. If, where, a prisoner is granted temporary release then whilst on that temporary release, whatever the charge against him may be, he is subject to the supervision of the probation authorities while he is on such release. This can, in theory, last for the rest of his life if he is granted parole from a life sentence.

This is extremely important because when prisoners leave prison, if they are not given the back-up of supervision, it is very easy for them to resume whatever activity got them into trouble in the first place. The workers in the Probation Service are dedicated, and, in my opinion, they are extremely good at their work. If they are looking after a prisoner they will take care of that prisoner and do everything in their power to ensure that that prisoner does not offend again. Thus, a prisoner qualifying for parole or TR has the benefit of the supervision of an efficient Probation Service and a person released on remission does not have any such benefit. The importance of this cannot be over emphasised.

The Minister for Justice, Equality and Defence has also stated that he is examining the possibility of allowing the Board to consider granting parole to those who are sentenced to terms of five years or more, with the possibility of it requiring those granted parole, to undertake service for a period following their release. I welcome these comments of the Minister. However, reducing eligibility to five years will significantly increase the number of cases coming before the Parole Board. The logistics of managing this will need to be thought through, both in terms of the capacity of the Parole Board to manage its increase and the capacity of the relevant services (particularly the Probation Service and the Psychology Service) to meet the demand for reports.

Professor Ian O'Donnell has recently stated: "There are more prisoners serving long sentences today than ever before but, in its essentials, the parole process has not changed for decades and parole eligibility is severely limited.

One statistic will illustrate this. In Finland, parole is possible after fourteen days, while in Ireland the earliest review takes place after 1,460 days (the halfway point of an eight year sentence).

Why not make parole a possibility for anyone sentenced to four years or more rather than eight years as at present?"

Having met with senior members of the Irish Prison Service Psychology Service, they have indicated that there is only a limited benefit to an individual prisoner if he or she is reviewed by the Parole Board before they have completed their relevant therapeutic and rehabilitation programmes recommended. The Psychology Service believes that they cannot prepare a

thorough and detailed report on an individual prisoner, for the Parole Board, until after the relevant courses have been completed by that prisoner.

Michael Donnellan, The Irish Prison Service Director General, has recently stated: "To prevent re-offending, the Prison Service intends to ensure that sentence management (pre and post imprisonment) includes enhanced sentence planning and prison rehabilitation programmes such as education, work placement and resettlement. Over the next three years it will introduce plans for tangible incentives for prisoners to participate in structured activities." I welcome these comments.

However, I recently met with prisoners who were residing in the accommodation provided by PACE. The prisoners mentioned that quite often they do not know what is expected of them by the various agencies while they are in prison. They stated that they could be given more information as to how they can improve themselves while in prison. In addition, a number mentioned that they do not understand the parole process. It was felt that each prisoner, who was subject to review by the Parole Board, should have an advocate who could answer any queries or concerns which they might have about the parole process. Maybe such an advocate could be a member of the Prison Service or could even be provided from a panel of criminal practitioners who would assist prisoners on pro bono basis.

Another problem which emerged while I was talking to these prisoners was in relation to psychological services they received from the Prison Service. Quite often a prisoner might have established a good relationship with a particular psychologist and, if the prisoner or the

psychologist was moved to another prison, then the prisoner would lose the substantial part of the benefit received when attending that psychologist. It was felt that there should be a structured handover from one psychologist to another psychologist in such circumstances.

Workload of the Parole Board:

Despite the best endeavours of our hard working secretariat, there are always arrears of cases where prisoners have not been reviewed on time. As at April 19th last, there were seven outstanding cases for review from 2010 and 27 outstanding cases for review from 2011. I am conscious that in Northern Ireland relevant legislation has imposed time limits on the Parole Commissioners for the review of each prisoner.

Accordingly, the priority of the Board in 2012 is to ensure that all prisoners will have their cases reviewed on time from 2013 onwards. If it is not possible to review a prisoner on time, then the prisoner will be written to by the Parole Board and will be informed when his review date will take place.

Parole Board on a Statutory Footing?

The Irish Penal Reform Trust has stated the following: "The Parole Board should be granted independence and placed on a statutory footing, thereby removing parole decisions (and in order to reflect the principle of progression decisions to transfer prisoners from closed to open prisons or to permit long-term prisoners to avail of day-to-day release so as to engage with work or reintegration projects in the community as a prelude to eventual release on license) from political control."

Minister Alan Shatter, quite independently, has stated that he wishes to introduce



legislation to place the Parole Board on a statutory basis. I would welcome this development.

At present, a lawyer can write to the Parole Board and make submissions on behalf of any prisoner being reviewed by the Parole Board. However, no legal representation is permitted when a prisoner is reviewed by two members of the Parole Board.

If the Parole Board is placed on a statutory footing, then I believe prisoners may advocate for independent legal representation. In addition, I believe that there should be an appeals process from a decision of the Parole Board to an Appeals Tribunal if the Parole Board is placed on a statutory footing.

Sex Offenders:

The IPS Psychology Service has developed the Building Better Lives Programme (BBL) which is a therapeutic programme for men who acknowledge that they have committed a sexual offence and who have a desire to build a better life for themselves. The programme is structured in three modules.

The Inspector of Prisons, Judge Michael Reilly, has stated as follows: "In order to have the Building Better Lives Programme operate at its most effective it should be extended into the community in order that those prisoners who have participated in all modules would receive on-going assistance and monitoring to enable them to maintain better lives post their release and going forward. It should be possible to harness the goodwill of people in the community who, after receiving appropriate training, could, under the guidance of the Psychology Service in the prison and working with the Probation Service, assist in the reintegration of such prisoners into the community and after their release."

I support these sentiments entirely.

Dr Esther Lonergan, the senior psychologist working with Sex Offenders within the IPS, has stated that there need to be more incentives for prisoners to participate in programmes such as the Building Better Lives Programme. For example, she states, that there are no early release programmes for successful completion of a sex offender programme or other person incentive. In addition, once a prisoner has fully served their sentence, there is no provision whereby geographical restrictions can be imposed on that person unless it has been included by the sentencing court in a post release Supervision Order. These are obviously issues which need to be examined.

I recently met a number of prisoners in Arbour Hill who were participating in the Building Better Lives Programme. They were very enthusiastic about the programme and said that they all benefited substantially because of this programme. However, they were critical of other prisoners who did not participate in the programme. They believed it was unfair that other prisoners who took no part in rehabilitation programmes would obtain the same remission of their sentence as prisoners who participated in all the therapeutic programmes available. They were firmly of the view that there should be earned remission of a sentence and not automatic remission as presently exists.

I also met with Dr. Esther Lonergan and Paul Murphy, Head of Psychology, in the Irish Prison Service in June. In addition, Dr. Lonergan gave a presentation to the Parole Board on the various programmes for sex offenders. Both of them were concerned that the Parole Board were reviewing sex

offenders, in the past, who had not participated in or completed the Building Better Lives Programme. They said that unless such a therapeutic programme was undertaken by a sex offender, it would be very difficult for the Psychology Service to make any proper assessment of that prisoner for the benefit of the Parole Board.

In an article in *The Irish Examiner* dated Monday, February 27th last, it stated that: "Two-thirds of convicted sex offenders due to be released from prison this year have not engaged with prison psychologists, which could have helped lower the risk of re-offending. Latest figures show there are 319 convicted sex offenders in custody, with 114 due for release in 2012. However, according to figures supplied to *The Irish Examiner* by the Prison Service just 39 (34%) have engaged with prison psychologists in relation to their offending behaviour."

The article continued: "A spokesman for the Prison Service said more offenders may take part in the programme during the year. He said 124 sex offenders were released during 2011, of whom 49 (40%) had engaged with prison psychologists. An additional five took part in other interventions."

This is obviously a major concern if substantial numbers of sex offenders have not engaged with the therapeutic services prior to their release back into the community.

Life Sentence Prisoners:

It is the policy of the Parole Board to review these prisoners after seven years. However, public statements by the Parole Board in the past, and by various Ministers for Justice, indicated that anything between 12 to 14 years is the least a life sentence

prisoner can expect to service prior to being considered for release.

In practice, however, many prisoners serving life sentences only begin to co-operate with the therapeutic services in the prison, when their review is taking place by the Parole Board. Accordingly, the challenge for the Board is to incentivise these prisoners, to participate in a meaningful way, in all the necessary rehabilitation courses, where possible, even though these prisoners may not be released until many years later. Perhaps there could be some incentives given to those prisoners who participate in an engaged manner with the Parole Board.

I recently interviewed a prisoner who had been sentenced to life imprisonment and who had been in prison for well over 15 years. It was quite obvious that he had become institutionalised and did not want to leave prison. This is a problem for certain long-term prisoners.

However, in a completely different case, the Parole Board has recommended to the Minister, that a prisoner who has served 12 years of a life sentence should be considered for parole. The person was an exceptional prisoner who participated in the community in a valuable way, most days, and returned to prison every evening.

From my experience on the Parole Board to date, I believe that for most prisoners serving a life sentence, there is, quite often, clear evidence to show that if a prisoner is not released into the community, after serving many years in prison, it may become too late to successfully reintegrate him into the community at a later date.

In addition, in an article by Diarmuid Griffin and Professor Ian O'Donnell, in the *British*

Journal of Criminology, in January 2012, entitled: "The life sentence and parole", they state as follows: "Little is known about the experience of life sentence prisoners in Ireland. During a visit by the ECPT (2011) a number of complaints were received from life sentence prisoners regarding the lack of a structured sentence plan making it difficult to know what the Parole Board required of them when they became eligible for release. It is plausible to suggest that the lack of certainty, legal or otherwise, experienced by life sentenced prisoners in Ireland contributes to the pain of indeterminacy, and the discretion afforded to decision makers in the application of vague and shifting criteria serves as an aggregating factor. The avenues available to a life sentence prisoner to challenge the decision or process are extremely limited in Ireland. In England and Wales, life sentence prisoners are entitled to an oral hearing before the Parole Board; a legal representative can make submissions on the parole dossier, request an independent report where there was a conflict in assessment, call witnesses to the hearing and contest the evidence presented. Similar provisions simply do not exist in Ireland."

Press/Media Intrusion:

The Irish Prison Chaplains' Report for 2010 states as follows: "Over the years, reports from prison chaplains have highlighted serious concerns about a certain kind of media coverage that is both distasteful and irresponsible. In the past year we have seen media waiting at a hospital for a prisoner to arrive for an outpatient appointment. We have seen the most appalling sabotage of another man's post release placement. We regularly see details of individuals and incidents covered in the papers. Families struggling to cope with the death of a loved one in custody are often faced with the added burden of the dehumanisation of the

deceased by the media. This is sometimes done before all relatives have been informed of the death.

Apart from the sensationalising of certain cases, there is now a growing tendency to fabricate stories. Vulnerable prisoners are often targeted as subjects for stories that have no foundation in reality. We have serious concerns in relation to the sources of some of this coverage. How can internal matters relating to individual prisoners serving their time be made available with no recognition of the rights of the individual and their family? The question as to who is making the information available needs to be addressed and appropriate action taken."

If prisoners who have served their sentence are released back into the community I believe it is going to make the rehabilitation all the more difficult if press or media do not give them any privacy. I believe the power of the media in this regard does need to be examined.

I welcome the comment of Minister Alan Shatter recently when he discussed the possibility of introducing a Privacy Bill in the Oireachtas at some stage in the future.

Remission:

Minister Alan Shatter also stated in his speech on April 30th last that: "One of the issues I am currently considering is the area of remission as it is my view that a review of this particular subject is long overdue."

The Irish Penal Reform Trust in a position paper on reform relating to remission, temporary release and parole earlier this year has stated: "The Prison Act 2007 provides for 33% remission to be available to prisoners who engage with rehabilitation services. To date it seems that there is no practical mechanism for prisoners to access this enhanced remission regime. IPRT

recommends that standard remission should be increased for all categories of prisoner, which favours a graduated approach like the one operating in the UK. Standard remission levels should be increased from 25% to 33% for all prisoners independent of good behaviour and engagement with services. A system of incentives could also be implemented for certain categories of offenders or with reference to certain rehabilitation services which would require the establishment of a transparent administrative scheme to allow such prisoners to allow for enhanced remission."

Professor Ian O'Donnell has also mentioned the potential of this facility to reduce sentences and mentioned that this provision has not been exploited.

He says that employing enhanced remission more widely would serve several purposes. It would incentivise prisoners to take part in programmes that lower the threat they pose, reduce prison overcrowding, usher a more structured approach to release and save money.

In relation to these comments by Professor O'Donnell, if more prisoners are released into the community either because of greater remission or because of more temporary release, and if this results in a saving of money to the Irish Prison Service, I would like to propose that such saving in money should be transferred to the Irish Probation Service to help prisoners released from the Prison Service to be reintegrated into the community.

I would also like to suggest that the Parole Board should be able to have jurisdiction to increase a prisoner's remission from 25% to 33% where a prisoner has engaged with the

services as appropriate and has been of good behaviour.

Temporary Release:

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

I agree with these sentiments.

The Jesuit Centre for Faith and Justice, in a report, the Irish Prison System (March 2012) has stated that: "Where prisoners serve their sentences in a co-operative and well behaved manner, they should have a real prospect of moving progressively to less secure locations including open prisons. They should have the prospect of additional early release on a conditional basis."

The other advantage of temporary release is that the prisoner is subject to the supervision of the probation authorities on such release. This can, in theory, last for the rest of a person's life if granted parole from

a life sentence. However, with remission, there is no supervision whatsoever.

If a prisoner re-offends, while on temporary release, then he is normally brought back to prison because of this new offence while committed on temporary release. However, if the Parole Board has made a decision recommending permanent temporary release for a prisoner, then the Parole Board is never informed when that prisoner is ultimately returned to the Prison Service because of a re-offence. In practice, such a prisoner could remain in prison indefinitely without the Parole Board either being informed or being enabled to review the situation of this prisoner at some stage in the future.

I also believe that alternatives should be examined for minor offences committed on temporary release rather than readmitting a prisoner to prison automatically.

From discussions with prisoners residing with PACE, I have been informed that a number of prisoners have been on daily or weekend temporary release for two or more years and have not been informed as to when they will be released back into the community permanently. Again, the Parole Board has no involvement in this category of prisoner, once the Parole Board has made a final decision recommending temporary release or parole for that prisoner and the Minister has agreed with this recommendation. In practice, the Parole Board recommends full temporary release or parole subject to the Prison Service managing an escalating period or periods of temporary release over a period of time, usually twelve months at most. However, it does appear that there are practical problems emerging when prisoners are on daily or weekend temporary release for two years or more.

The Criminal Justice (Temporary Release of Prisoners) Act 2003 states the factors which should be considered when assessing a person for temporary release. There is no guidance as to whether any particular factors are to be treated as more important than others. In addition, other factors not mentioned could be taken into account in the review process. For example, I believe that temporary release could be justified on the grounds of compassion or medical grounds in certain circumstance.

Reintegration of Prisoners:

Minister Alan Shatter in a speech to the Irish Penal Reform Trust in September 16th, 2011, stated: "I have long held the view that the reintegration of offenders into society must be at the core of the prison system."

In addition, Mr Justice Geoghegan, of the Supreme Court, in a speech to the Prison Chaplains of Ireland, said that "it would be an ideal that what everyone should aim for was the full rehabilitation of a prisoner so that he or she could resume the position as a member of the public and as a good citizen. If they were fully rehabilitated then the system had worked ideally for them." I agree with those sentiments.

However, a major problem with reintegration of prisoners in the community is the problem of homelessness. In a report by the Irish Penal Reform Trust in 2010 it is stated: "Homelessness and the provision of suitable accommodation was by far the most frequently mentioned difficulty facing prisoners and the service provider supporting them on release."

The Director of PACE, Lisa Cuthbert, has stated that prisoners released back into homelessness or unsuitable accommodation are much more likely to re-offend. Figures



for 2010 indicate that 939 prisoners accessed the Homeless Persons Unit of the HSE. This is another major issue which has to be examined in the light of greater numbers of prisoners being released back into the community.

In addition, Michael Donnellan has stated recently that he is “wary of prisoners falling back into their old ways after making progress during prison rehabilitation programmes. The progress prisoners make in prison can all be lost following their release without the necessary supports including accommodation, housing and addiction needs.”

In addition, I would like to suggest that a specific individual from the Probation Service should be assigned to a particular prisoner whenever he or she is released from prison. Perhaps a social worker could be assigned to each prisoner on their release from prison. However, I understand that because of a shortage of resources this may not be possible in all cases.

I also believe that an important topic, electronic tagging, could be examined to ascertain whether it could play a part in helping prisoners to reintegrate into society.

Another issue I am concerned about is medical treatment. If prisoners require medical treatment on their release back into the community, I believe there should be a mechanism for directing prisoners to receive the appropriate medical treatment they require on their permanent release from prison.

Mandatory Sentences:

On January 19th last, the Law Reform Commission published a consultation paper on mandatory sentences. In its consultation

paper, the Commission noted that the only completely mandatory sentence in Ireland was the life sentence for murder. Judges have no discretion here and must impose a life sentence, and do not even have the power to suggest any specific minimum sentence, unlike the position in Northern Ireland where the sentencing judge can recommend a minimum life tariff.

The main recommendations in the consultation paper were:

- a) The Commission supports the recommendations that the proposed Judicial Council be empowered to develop and publish suitable guidance or guidelines on sentencing, it also provisionally recommends that these would have regard to decisions of the Court of Criminal Appeal, to the sentencing principles discussed in the Consultation Paper, and to information in databases such as the Court Services’ Irish Sentencing Information System.
- b) The Commission provisionally recommends that while the use of the entirely mandatory sentence may be applied to the offence of murder, it should be amended to provide that on the date of sentencing, the Court should be empowered to indicate or recommend that a minimum specific term should be served by the defendant having regard to the particular circumstances of the offence and of the offender.
- c) The Commission provisionally recommends that the presumptive sentencing regime, as it applies in the case of certain drugs and firearms offences, should not be extended to any other offences but should be reviewed because, while it has succeeded in one objective, namely increased severity of



sentences for certain drugs and firearms offences, it has not been established that it has achieved another general aim of the Criminal Justice System, namely reduced levels of criminality.

The Irish Penal Reform Trust, in a position paper on mandatory sentencing in November 2009 states as follows: "Perhaps the strongest objection to mandatory sentencing is that it is a blunt sentencing tool which applies the same sentence to all offenders who have committed the same crime. As a result such sentences carry with them much potential for injustice. As Zimring puts it "we lack the capacity to define into formal law the nuances of a situation, intent, and social harm that condition the seriousness of particular criminal acts."

I personally would agree with the recommendations of the Law Reform Commission in its consultation paper. I believe it would also assist the Parole Board in reviewing life sentence prisoners, if the Court indicated or recommended a minimum specific term which should be served by an individual prisoner.

However, I would be very strongly of the view that sentence guidelines for judges would be essential in order to achieve consistency of sentencing in these situations.

Recent Initiatives:

Firstly, I would like to welcome the initiative recently announced for the Community Release Scheme. I also welcome

the introduction of a new Incentivised Regime Policy and the continuing the roll out of the Integrated Sentence Management Programme. I am also delighted that a Community Integrated Plan will be developed, nine months prior to the release of any prisoner back into the community.

In addition, I am glad that the Irish Prison Service intends to work in partnership with the Parole Board to increase the number of long-term or life sentenced prisoners being reviewed on an annual basis. I also want to welcome the new three year strategic plan for the Irish Prison Service which was announced on April 30th last. All these initiatives are most welcome developments and all associated with these initiatives should be warmly commended.

Conclusion:

Before every Parole Board Meeting, the Boards Members have to read a few hundred pages of reports and background information on the prisoners being reviewed. All of this information is provided by the Irish Prison Services, Governors of Prisons, Medical Personnel, Psychologists, Probation Officers, the Gardaí, Prison Review Committees and other service providers and Prison Chaplains from time to time. Our Board could not function without this huge amount of professional assistance and I want to formally recognise and convey my sincere thanks to all these service providers for the enormous assistance they give to prisoners, their families and the community at large.

“Prisons and Probation in partnership: Creating conditions for change”

Vivian Geiran, Director, the Probation Service

Ladies and Gentlemen, many thanks for the invitation to address this conference, which is organised by the ACJRD and congratulations on yet another excellent conference. My remarks this morning will be addressed to the issue of Prisons and Probation in partnership: creating conditions for change.

The three Keywords I want to focus on in my presentation are *Partnership*, *Creating*, and *Change*.

Partnership and Change are central to everything we do and particularly if we are to be effective in achieving our goals. But likewise, neither partnership nor change will happen unless we cultivate and create the right conditions for it to develop and grow.

We all know that change, particularly meaningful and lasting change, is never easy to achieve. But nevertheless it is possible.

Last weekend when I went to pay for my parking ticket on leaving Dundrum Town Centre, the ticket machine reminded me that - “change is possible.” Incidentally, when I stopped to take a photograph of this display on the machine as I paid for my ticket, my daughter thought that I had definitely lost the plot!

So, change – as the ticket machine says - is possible, but we should never assume that it will take anything but all our effort and energy to achieve. And that is true whether we are talking about individual change or organisational change. Councillor Mannix Flynn raised the question of despair versus

hope earlier. I was reminded of a certain mobile phone company’s billboard advertising campaign, promoting the Dublin Gaelic Football team, earlier this year. The punch-line of the advertisement in question was – “We are about the things you don’t see.” And that is true of the work of organisations like the Probation Service. Much of what we do every day is invisible. But all over the justice system, individual probation officers, prison officers, teachers, project workers and so on, help to create little miracles of success every day. We do need to surface and examine the ways in which we are successful in what we do. But we also need to face our failures, the areas where we could be more successful.

The three Strategic Goals of the Probation Service are:

1. To reduce reoffending and victimisation through promoting and managing Community Sanctions,
2. To build and develop strategic alliances and partnerships, and
3. To enhance our organisational capability, excellence and innovation.

The Probation and Prison Services perform very similar functions, but do them in completely different ways bringing totally different sets of skills and experience to bear. Together, we manage Court-ordered prison sentences and Court-ordered probation-supervised Sanctions in the Community on a total of around 13,000 people daily.

On any one day, around 4,500 of those individuals are in custody. The other 8,500 are on Probation-supervised sanctions in the Community.

There is a clear overlap between our respective client groups. Both the Prison Service and the Probation Service are focused on reducing reoffending and offender rehabilitation. And clearly there is a need to further develop the continuum of care and sentence management starting from the community, into prison, and back into the community again.

It has long been recognised that there are a range of issues facing prisoners on their exit from custody. While some prisoners can make the return to their family and community relatively easily, a significant percentage could be said to become “lost in transition.”

Those leaving custody, particularly at the end of a sentence, face a range of issues that place them at risk of returning to prison. These include a general risk of reoffending associated with their lifestyle choices; accommodation issues; drug and alcohol misuse, and mental health issues; employment training and education deficits, a lack of community and family supports, and the general stigma associated with having been a former prisoner.

Three days ago, John Gunn wrote for ‘The Guardian’ about his experiences since being released on 22nd August this year from a prison in England, having served thirty-two years in custody for killing a friend. I have to say, I am not familiar with the background details of this case. Nevertheless, John summarised his post-release experience with great clarity. He stated, with some understatement I expect, that:

“the process of leaving prison can be a difficult one. I have to weave myself back into a personal life, a social existence, and find economic meaning... Ex-prisoners are often left with the merest toehold in society, and this has serious consequences for both society and the individuals who will become the future victims of crime. The first hurdle that has to be navigated are the frozen wastelands that comprise the state bureaucracy...”

and so he continues his description of his new life ‘on the outside.’

Unfortunately, these issues face prisoners serving short as well as long prison sentences and in some respects may affect the former more than the latter, as indicated by International research evidence.

The Probation Service now has specific targets and initiatives to address this range of issues. These may be broadly divided into *in-service* and *cross-agency* areas of focus. In-service, we are prioritising resources in order to be most effective, as well as working to be more efficient and thereby reduce costs. We are also making progress in building further on the quality of our interventions and targeting specific initiatives at certain categories of prisoner - I will speak a little more about this later - and prioritising interagency work. As far as cross agency cooperation is concerned, we are working to contribute to: real end-to-end Criminal Justice System co-ordination; helping reduce prison overcrowding; helping the Courts through increased availability and promotion of supervised Community Sanctions; and targeting more serious and prolific offenders for interventions aimed at reducing their risk of reoffending.

The Probation Service and the Irish Prison Service have a number of shared priorities. These include cooperation and Integrated Sentence and Offender Management, Post Custody Probation Supervision, Parole and Supervised Temporary Release, the further development of the Community Return Programme, targeted local initiatives (e.g. those referred to by Michael Donnellan earlier, in Cork and Limerick), women-focused programmes and specific responses and interventions for young people and young adults. All of these priorities are being, and have to be, addressed on a partnership basis.

Let me say a little about Community Return, a new programme launched around this time last year. This is a scheme whereby carefully selected prisoners can be granted Temporary Release with a condition to do community service work for a set number of weeks, which is calculated on the length of sentence remaining. Put simply, it involves the substitution of community service for jail time. Since the programme pilot began in October 2011, 288 individuals have been released to date under the initiative. As of today, there are 83 individuals currently on the Community Return programme. That is in addition to other forms of early release (supervised as well as unsupervised), parole programmes and post-custody supervision orders, including part-suspended sentences. Community Return has been hugely successful – in terms of the very high level of compliance by prisoners, as well as in what the programme brings to enhancing the outcome of structured resettlement during early release. Participants tell us consistently that as well as valuing the opportunity for early release from prison, the structured work programmes they are required to undertake while on post-

custody Probation supervision brings valued structure to their lives on the outside, offers them valued opportunities to do constructive work that also helps them give something back to their local communities, and assist them in staying out of further trouble.

How can we further advance these priorities together? I have indicated some of the ways that we are working to do this. Michael already mentioned our joint strategy, which is currently in development. In addition, the various prison in-reach and out-reach services, which enable and facilitate prisoner resettlement, have proven to be highly successful and continue to be supported and developed. The Homeless Persons Unit In-reach Service, which started some years ago as a partnership involving Prisons, Probation, the HSE, local authorities and voluntary organisations, as well as the Department of Social Protection, is one I particularly want to single out for praise; and I commend those staff, as well as those in similar in-reach initiatives around the country, for their incredible achievements in facilitating prisoner resettlement in very practical and lasting ways.

We will also continue to join with our statutory partners, as well as engaging the community and voluntary sector in the provision of appropriate services for ex-prisoners. All of this is being and will continue to be done inline with evidence led approaches to interventions and programmes, while we build our own data and research capacity, to inform future programmes.

There are a range of measures which can and should be taken to facilitate successful prisoner resettlement. These include:

- timely assessment of risk and need,
- consistent aftercare planning,
- comprehensive referral systems to appropriate services,
- timely access to practical help and support,
- maintaining engagement with and motivation of the prisoner,
- continuing to manage risk before and after transition back to the community,
- finding innovative ways to engage hard to reach groups, and
- monitoring and evaluating the way we do things in order to further improve our programmes.

All of this involves responding to particular *categories* of offender, to the specific *needs* of local communities; but ultimately each “case” is an individual person, and while an individual may fit into a particular category of behaviour that facilitates our planning and organisation, at the end of the day each individual will require their own individual response, plan and programme.

It is essential at the same time to ensure that our organisations are adequately structured and managed to produce the desired results. Providing strong leadership, fostering an appropriate organisational culture, incorporating strategic planning and monitoring and evaluation – getting our organisations focused and fine-tuned to achieve results – are all essential parts of the effectiveness jigsaw.

As I said at the outset, whether we are speaking about individual change or organisational change, the task is not an easy one. There are undoubtedly challenges in interagency work. But they can be overcome and they justify taking the time and energy to address. Some of the measures we have identified which can help in this include having clear shared goals, a

commitment by the relevant individual agencies – from the very top level – to participate in the joint enterprise, and not only a recognition, but also an appreciation, of the value our respective *differences* bring to what we do when we come together.

There will also be a need to have buy-in from a wide range of stakeholders, as well as clear communication lines and strategy, particularly as this relates to how problems or challenges will be resolved. In Probation, we have found that the more we share information and training for operational staff on a cross-agency basis the better things work. For the implementation and development of our Community Return Programme with the Irish Prison Service we have established a co-located unit of two people – one manager from the Irish Prison Service and one of our managers – located in our Haymarket, Dublin office, to manage and develop the Community Return Programme.

Underlying all of this, is the need to have a fundamental commitment and a willingness to deal with and overcome whatever challenges may arise, in an honest and open way.

For people who have spent time in prison, the path to stability can be long and challenging. Beyond the employment barriers and the stigma related to a criminal conviction, many may not have a stable home or family support system when they are released. They may also have a range of other difficulties and issues, which place them at increased risk of reoffending. The organisations working with these prisoners and ex-prisoners, specifically Prisons and Probation, have a huge role to play in helping them to resettle in their communities and avoid further reoffending.



Organisations like the Irish Prison Service and the Probation Service have co-existing and sometimes competing priorities. However, this is nothing new. Criminal justice agencies, like the Prison Service and ourselves, have always had to balance competing needs, risks, and demands and we have become quite expert in many respects in dealing with these challenges. I had mentioned it earlier on, but it bears repeating here: if we are to be successful in improving prisoner resettlement and social inclusion, as well as reducing reoffending, on an interagency basis, we have to recognise that our real strength lies in the differences between us, with regard to what we do and the way we do it, and in harnessing those differences into a coordinated response, which in turn is twice as strong. The Irish Prison Service and the Probation Service together, and in

conjunction with our other Justice partners – including in particular An Garda Síochána, the Courts Service, Irish Youth Justice Service, as well as our wider circle of public service and community and voluntary partners, can make and are making the changes necessary to be really effective. While we have always striven to work on a collaborative, interagency way, we are more committed than ever now to lead in this area and to create the conditions for lasting change.

We are constantly learning, and that is one of the many benefits of events like today's conference – the opportunity to listen, to share our experience and to learn from yours. Ultimately, we all share the same objective - a safer and a fairer Ireland.

Thank you very much.

The role of incarceration in prolonging young people's homelessness"

Dr. Mary-Louise Corr, Edinburgh Napier University (and Dr. Paula Mayock, Trinity College Dublin)

Introduction

The relationship between homelessness and offending is well established in the international literature. Research has focussed primarily on the direction of this relationship, with two dominant arguments emerging: that homelessness is criminogenic and thus 'causes' or facilitates criminal justice contact; and that contact with criminal justice agencies and periods of incarceration in particular, put individuals at risk of housing instability. The first argument – that homelessness leads to crime and subsequently to incarceration – tends to draw on evidence from two types of research. For example, a number of studies have examined the extent to which individuals in contact with the criminal justice system have experienced homelessness (e.g. Seymour & Costello, 2005), demonstrating that experiences of homelessness precede periods of incarceration. Another body of research has examined the extent and nature of offending among homeless populations, documenting relatively high levels of offending among the homeless compared to samples of non-homeless individuals and/or relative to the period prior to their becoming homeless. The findings of these studies suggest that homelessness can lead to offending and incarceration (Hagan & McCarthy, 1997; Snow, Baker and Anderson, 1989).

Three concepts have been prominent within the literature seeking to explain the direction of the relationship between homelessness and offending. In the first of these it is proposed that because of the regulation of public spaces, street life is 'criminalised'. Thus, behaviour which would normally be condoned behind closed doors

– such as the consumption of alcohol, sleeping, or relief of bodily functions – becomes threatening or abusive when carried out in public spaces (Snow, Baker and Anderson, 1989). A second explanation has focussed on the proposition that many homeless people engage in criminal activity in order to survive on the streets (Ballintyne, 1999; Carlen, 1996). Finally, there is an argument that high rates of offending among homeless individuals is associated with a process of acculturation to a homeless subculture through their disengagement with mainstream society and their embeddedness in criminal street networks (Hagan & McCarthy 1997).

More recently, research has focussed on the claim that incarceration in some way leads to homelessness through the identification of a history of imprisonment among a significant proportion of homeless populations (O'Leary et al., 2003) or an increase in housing instability following incarceration (Linehan et al., 2005). Explanations have emphasised the general readjustment problems that people experience following their release from prison, particularly among those who lose accommodation during imprisonment, as well as the lack of the necessary support required to access secure housing, something which can be exacerbated by short notice of release (O'Loinsigh, 2004).

The notion that the relationship between crime, incarceration and homelessness can be viewed as a linear one has been challenged by a number of authors who have drawn attention to the cyclical nature of the relationship, with 'causality mov[ing]

both ways' (Gowan, 2002: 525). As Seymour states,

The multiplicity and complexity of risk factors relating to crime and homelessness highlights the importance of not adopting one causation model. The most accurate assumption to be made is that crime potentially is both a cause and an effect of homelessness (Seymour, 2004: 4).

Nevertheless, when examining the dynamic connection between incarceration and homelessness among a group of homeless men, Gowan found that the entry point to this cycle was far more likely to be incarceration than homelessness (2002: 525).

The Study

This paper draws on data from a six-year longitudinal, biographical study of homeless youth in Ireland which set out to generate an in-depth understanding of the *process* of youth homelessness and to document, record and understand temporal changes in homeless young people's living situations. The research was conducted in three waves: the first between September 2004 and January 2005 when life history interviews were conducted with 40 homeless young people (23 males and 17 females). To be eligible for participation, all participants had to be:

- 1) Homeless or in insecure accommodation;
- 2) Between 12 and 22 years and;
- 3) Living in the Dublin metropolitan area for the past six months.

We commenced all of our interviews with an invitation to young people to tell us their 'life story'. Several key topic areas were then prompted during interview: early childhood experiences; events and circumstances leading to the initial

homeless experience; the experience of homelessness; contact with family and friends; alcohol and drug consumption; health-related behaviour; engagement with youth and/or homeless services. Phase II of the study involved a tracking process in order to regain contact with the young people approximately a year after their Phase I interview and information was attained on 37 of the original 40 participants with follow up interviews conducted with 30 young people (16 males and 14 females). A similar tracking process took place at Phase III which was conducted between August 2009 and December 2010; at that point we attained information on the living situations of 32 young people and interviews were conducted with 28 of them. During the follow up interviews at both Phases II and III young people were asked to 'update' their life history narrative by detailing significant events since the time of their initial interview.

Young People's Homeless Pathways

While almost each participant told a unique story of leaving home, it was possible to identify three broad pathways or routes 'into' homelessness. Interestingly in terms of the focus of this paper, criminal activity or periods of detention were not identified as a discrete pathway into homelessness. Rather, young people's paths to homelessness were associated with: (1) a history of state care; (2) household instability and family conflict; and (3) the young person's 'problem' behaviour and negative peer associations. However, for some, experiences of 'getting in trouble' with the police led to tension or conflict at home and acted as a trigger for early homeless experiences (see Mayock and O'Sullivan, 2007, for a detailed examination of young people's pathways into homelessness).

Young people were living in a range of accommodation types at Phase I, although almost two-thirds (n=25) were residing in a number of under-18's emergency homeless hostels at this juncture. The remaining participants lived in a variety of settings: longer-term residential hostels, adult hostels, bed and breakfast accommodation, the street, prison, supported housing, and in the family home (having experienced homelessness during the previous six months). By Phases II and III of the study, participants reported a variety of housing transitions and while some had achieved greater stability of housing (that is, they had exited homelessness), others remained homeless. The living situations of those young people who had exited homelessness differed and were categorised as *independent* or *dependent* exits (Mayock et al., 2008; Mayock et al., 2011a), a distinction made on the basis of the extent to which respondents were independent from State-subsidised housing or intervention. Therefore, those who had exited independently had moved to the family home or into private rented accommodation and those who made dependent exits had moved into state subsidised transitional or supported housing (agency-managed housing to support young people's move

towards independent living) or to state care.

Figure 1(p 22) outlines the number of young people who made these transitions over the course of the study. By Phase II of the study, 17 young people had exited homelessness, with seven having made independent exits and ten reporting dependent exits. Thirteen young people remained homeless at this stage. By Phase III, the picture remained remarkably similar, despite a time lapse of approximately three years. Of the 28 young people re-interviewed, 15 had exited homelessness and 13 remained homeless. Significantly, more young people had made an independent exit (12) at this stage compared to a dependent exit (3). Overall, females were more successful in exiting homelessness than their male counterparts. Most who reported a homeless exit at Phase II had maintained housing stability, a finding which points to the importance of *early exits from homelessness*. Put differently, the longer a young person remained homeless, the less likely they were to have achieved greater stability of housing by Phase III (see Mayock et al., 2011a; Mayock et al., 2011b; Mayock et al., 2012 for detailed discussions of young people's exits from homelessness and their continued homelessness).

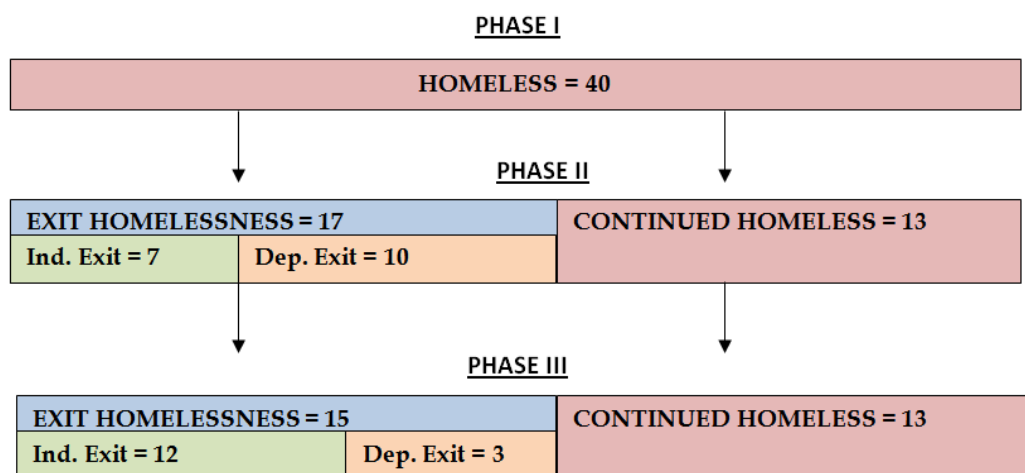


Figure 1

Homelessness, Offending and Incarceration.

At the time of their Phase I interviews, a significant proportion of the participants reported involvement in criminal activity and some reported regular offending. At that juncture, three quarters of the forty young people interviewed reported 'trouble' or had been cautioned by the police, just under three-quarters had been charged with a criminal offence and almost half had been incarcerated at some time. Of the 23 young men interviewed, 20 had been charged with at least one criminal offence and 19 had appeared, or were due to appear, in court. Fourteen of the young men had served a custodial sentence and three were incarcerated at the time of interview. Of the 17 young women, eight had been charged with a criminal offence and two were enrolled in a Garda Youth Diversion Programme. While in most cases their offending was more irregular and less serious than their male counterparts, four of the more persistent female offenders had served a custodial sentence by Phase I.

It is important to note that, even by Phase I, a considerable number of the study's young people already had lengthy homeless histories, with almost half having been homeless for two years or more. For a large number, criminal activity took on more relevance and was more frequent after they first experienced homelessness. Paul, for example, identified a transition in his offending when he made the move from the suburbs into the city centre homeless 'scene'.

Just got new mates, different lifestyle altogether ... I only got arrested twice out in (home neighbourhood). Then when I came in here; it's mad in here, like. Out in (suburban locality) I never done that shit before and

then I come into town an' there's all this.
(Paul, 19, P.I).

Accounts of survivalism were also apparent with some young people engaging in crime as a subsistence strategy and as a way of generating income. For those like Julian (age 21, P.I), who needed 'clothes on your back' and 'food in your stomach', the financial benefits of 'robbing cars, muggings' far outweighed the gains that might have been derived from conventional subsistence strategies. Such narratives draw attention to an increase in criminal activity among many of participants after they became homeless. Whilst this may be interpreted as evidence that homelessness leads to crime and incarceration, the longitudinal nature of our data reveals a far more complex picture.

In terms of general trends in young people's offending and criminal justice contact as their housing/homeless careers progressed, young people who had made positive housing transitions reported a decrease in criminal activity while those who remained homeless at Phases II and III reported more persistent or increased criminal involvement and sustained criminal justice contact. For example, all of the 15 young people who had exited homelessness by Phase III reported decreased levels of criminal activity, none of them engaged in offending at that time, and four had never been involved in criminal activity. In contrast, all 13 of those who remained homeless had been involved in crime and 11 had maintained high levels of offending at Phase III. Twelve of those who remained homeless at Phase III had been in prison at some time, with five incarcerated at the time of interview, and had spent multiple and increasingly longer periods incarcerated.

Focussing on those who remained homeless by Phase III, their accounts of engagement in criminal activity echoed those that they offered at earlier stages of study, suggesting that crime was motivated by a need to 'survive' and was viewed as part and parcel of a homeless lifestyle. However, while continued homelessness appears to at least partly account for young people's involvement in criminal activity, young people's Phase II and III accounts, in particular, indicate that incarceration served to maintain homelessness. Specifically, when incarceration was something that was repeated in these young people's lives, they were more likely to remain homeless. Fergal, for example, listed all the places he had been detained since the time of his Phase II interview, estimating that he'd been "locked up" on sixteen separate occasions.

I just, I've been locked up an awful lot since then (P.II Interview) about 16 times since I last seen you. You know, Cloverhill, St. Pat's, Mountjoy, Wheatfield. Yeah, that's it. And the Midlands one. (Fergal, age 23, P.III)

Christian similarly asserted during his Phase II interview that he "couldn't stay out of prison" (age 19, P.II) while, by Phase III, he summed up his experiences during the intervening years as "just prison" (age 22, P.III). For these young men and those with similar accounts, periods of incarceration were both preceded and followed by periods spent living in the most unstable living situations, a cycle that became increasingly difficult to break with the passing of time. Indeed, some who had spent repeated periods in prison appeared to have grown accustomed to this cycle and, as they constantly moved between temporary living situations, came to view prison as simply an alternative place to stay. The impact of this cycle of movement in and out of prison was most apparent in their

attempts to exit homelessness and to maintain family and social supports. In attempting to exit homelessness at various junctures to private rented accommodation or transitional housing, periods of incarceration, however short, meant that these exits could not be sustained. This was often because places in transitional housing were lost at the point of their re-entry to prison or young people could not maintain rental payments during a period of incarceration.¹

Others reported dwindling family support over the course of their homeless careers, and particularly during periods of incarceration, as well as a breakdown in intimate relationships. These young people typically had few social supports upon which to draw at the point of release.

However, of greatest concern to this group of young people were issues of resettlement on release from prison, with all agreeing that being released to the streets carried significant risks as well as diminishing their ability to achieve stability of housing. Fergal, for example, highlighted the risk of returning to drug scenes.

You're getting out to the streets again ... You're not getting out to anything. They're not like letting me out into a flat ... They're letting you stray back out of the gate and fuck off after that ... Come back to the streets and drugs. (Fergal, 23, P.III)

Others identified the practical difficulties they faced on leaving prison, particularly in terms of accessing money on release. Familiar with the reality of leaving the prison system, Brendan had maintained

¹ Although the initiative led by the Irish Prison Service to secure payment of 13 weeks' rent in private accommodation following committal to prison is welcome in this regard.

contact with an emergency homeless service which had agreed to “hold [his] money” for him while in prison. While a crucial support for Brendan at that time, returning to this service also marked his return to drug use and eventually to crime. Money, too, was an issue raised by Paul when discussing the event of his release, particularly in terms of his ability to access secure accommodation; his solution was to try to sell drugs while in prison as a way to generate income

... the only way I can think about for helping me for getting out really is sell drugs while I'm in prison to make money for getting out... at least I'll have money, I can get my clothes... and get a flat. (Paul, age 24, P.III)

A majority of the young people who remained homeless were repeatedly incarcerated and they expressed genuine worries informed by their previous experiences of leaving prison and being released back onto the streets. Without a stable place to live, they typically returned to homeless street scenes and their former social networks; most also returned to drug use. Faced with constrained opportunities on the streets, they also returned to offending and awaited their next period of incarceration.

Young people were aware of the cyclical nature of their movement in and out of prison and homelessness and many expressed frustration at the apparent inevitability of their experiences. Fergal characterised his ongoing movement

between homelessness and prison as a “life cycle”.

Why is this a life cycle for me? Why is it the life cycle for all of us? I'm going to have to do different things to break that life cycle, no one else. I know it's a life cycle. (Fergal, 23, P.III)

Conclusion

Much of the literature to date has depicted the relationship between homelessness, crime and incarceration as a linear one, with either homelessness proposed as leading to crime and incarceration or, alternatively, incarceration leading to homelessness. Only more recently has a more complex association between homelessness and incarceration gained recognition based on an exploration of the recurring nature of this relationship. The findings of this qualitative longitudinal study suggest that for some but not all, young people, criminal activity increases during periods of homelessness. However, there is also strong evidence that incarceration reinforces and exacerbates housing instability and thus prolongs the ‘state’ of homelessness. The relationship between homelessness, offending and incarceration was therefore cyclical and self-perpetuating. Additional dynamic layers of complexity, which may perhaps be unique to homeless youth, were also identified. For the young people in our study, the entry point into this cycle was homelessness, a finding which contrasts with previous research on adult populations (Gowan, 2002).



Figure 2

Those young people who remained homeless had spent up to or exceeding a decade, in many cases, without a stable place to live. During this time, they had entered into many systems of intervention, including homeless services targeting

youth, places of detention and adult homeless services. Many also had a history of State care. These experiences suggest that these young people were trapped in an institutional circuit which they struggled to exit. Those working with homeless young people must therefore be focused on working to find ways for young people to exit homelessness at the earliest possible juncture. Existing research in fact demonstrates that a longer duration of homelessness diminishes the likelihood of successful homeless exits (Chamberlain & MacKenzie, 1994; Mallett et al., 2010).

The findings presented here also raise a number of questions for criminal justice professionals in particular. Given the disruption to attempts at achieving stability of housing resulting from even relatively short periods of incarceration, the use of non-custodial sanctions, where possible, is crucial. There is also a need to consider utility and consequences of short-term custodial sentences. Where custody is required, the options available to homeless youth on release from prison need to be considered. There have, of course, been developments in this area in recent years in terms of the in-reach service provided by Focus Ireland and the Homeless Persons Unit; however, ensuring access to

affordable, suitable housing both prior to and/or on release from prison is central to the process of promoting the social reintegration of young people leaving prison. Indeed, the findings of our study support a 'housing first' rather than a 'housing ready' mode of intervention, in that stable accommodation is a prerequisite for addressing other issues. Without secure housing, it is unlikely that other facilitators to resettlement after imprisonment - such as re-engagement with education/training,

addressing drug consumption and accessing employment - can be achieved.

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Workshop Summaries

1. “Seeking a Balance between Community Safety and Reintegration: The Canadian Experience of Release from Custody”

Presenter: *Prof. Denis Bracken, Professor of Social Work, University of Manitoba.*

Chair: *Gerry McNally*

Rapporteur: *Ciaran McNamara*

Denis C. Bracken, of the University of Manitoba, is in Ireland on an academic sabbatical and has recently taken up a position in the Institute of Criminology in UCD. In his introduction to the workshop Denis presented an outline of the transition from custody to community and early release in the Canadian criminal justice system. Focus was on the federal system rather than the province based local prison system which manages shorter term sentences.

Under the Custody and Conditional Release Act 1992 (CCR Act) (a Federal Act), conditional release in federal cases can be granted where (i) the offender will not, by re-offending, present an undue risk to society before the expiration of their sentence and (ii) release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen. Supervised release in federal cases is supervised by the Correctional Service parole officers.

Successful completion of conditional release is measured not by longer term recidivism but by the offender getting to the end of their release period without suspension or revocation.

Canada has three types of conditional release –

1. Day parole consists of release with conditions to a half-way house or other community setting under the supervision of a parole officer.

2. Full parole is release into the community under the supervision of a parole officer. This is available after one-third of the sentence or seven years, whichever is least. If a life sentence is passed down then application for parole can only occur after 25 years have been served.

3. Statutory release - all inmates in Federal custody receive 1/3rd credit for remission of their sentence. If they do not receive parole, they can be released after 2/3rd of their sentence during which time they will be supervised by a parole officer. Inmates can be held for the full term of their sentence if the Parole Board believes that during supervised release, they are likely to commit a violent offence. Once released after serving their full term sentence however, they will not be supervised.

There is provision for re-imprisoning the offender by way of suspension and/or revocation of supervised release.

Suspension may occur when an offender breaches a condition of parole or statutory release or the supervisor is satisfied that it is necessary and reasonable to suspend the release in order to prevent a breach of any condition thereof or to protect society.

Revocation may occur if the offender is convicted of a new offence or where the Board is satisfied that the continued release of an offender would constitute an undue risk to society by reason of the offender re-



offending before the expiration of the sentence.

Generally, the numbers of offenders on conditional release has remained quite static year on year over the last decade but because the prison population is rising, in percentage terms the numbers on conditional release are falling.

In addition to conditional release there is the possibility of Post Custody Probation Supervision. Sentencing judges have the power to impose a term of probation not to exceed 3 years in addition to a sentence of custody which is of two years or less. The effect of this is to provide a period of supervision following release from custody in a provincial prison

Conditional Release

The recidivism and breakdown figures tend to be more negative for aboriginal offenders who are seen as a higher category of risk and for whom there are not strong enough positive community supports.

There is a slight upward trend in all categories of conditional release for those successfully completing their release.

A shift in Canadian penal policy can be seen from recent amendments to the CCR Act – The phrase *'The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases'* was taken from one of the guidelines for the parole board, and elevated to a superior status by amending the legislation so as to make it **the** primary consideration.

The 'faint hope clause' has been removed – it was a provision that permitted those sentenced to life for murder to make an application for parole consideration and possible release after 15 rather than 25

years – it was felt that this possibility was seen as being too soft on crime and illustrates the direction in which the Canadian criminal justice system is moving.

Discussion

The following specifics were outlined when the talk was opened to the floor -

- The voluntary sector became involved in release supervision in Canada during the 1920s and 1930s, e.g. the Salvation Army supervised those released under a 'ticket of leave'; the John Howard Society began parole supervision in the 1950s and is still involved but on an increasingly peripheral basis.
- Canadian prisons are overcrowded and currently there is an extensive prison building programme at the Federal level; In Manitoba one of the main problems is that prisoners are being held on remand – between 60% and 70% of the prison population is made up of persons awaiting trial
- There are female specific prison programmes but the number of women in prison is rising - in Manitoba a newly built women's prison was over-full within one month of opening. The efficacy of the female orientated preventative programmes is questionable although women are more likely than males to get supervised parole release.
- It's probably too early to tell what effects the elimination of the 'faint hope clause' will be. Prior to the change there had only been 146 applications, 83 got permission to apply early and were released. Recidivism was less than 1% and those on life sentences who are

released on supervised parole are generally model citizens.

- In considering release, risk assessment and criminogenic factors provide a good focus or tool but it is important not to fixate too much on them as the community focus can be lost – a large emphasis on the risk factors might become dominant to the detriment of the holistic approach. Risk assessment must not be the only factor to be considered.
- Federally, there is extensive preparation in custody for release. There is community involvement / assessment which can comprise talking to an offender's family and neighbours. In isolated rural communities the community often doesn't want the offender back and this may affect aboriginal offenders disproportionately.
- In a Provincial context and Provincial prisons there is less preparation and post custody supervision– the John Howard Society helps but there is no legal mandate for an offender to keep in contact with them. In general there has been a reduction in the number of programmes in prisons due to a perceived public outcry, i.e. politicians may find it difficult to finance the programmes when public funds are scarce.
- In Canada one can qualify through good behaviour and serve the remainder of one's sentence in an 'Annex' which is a minimum security holding within a prison to which one can graduate.
- Denis Bracken presented a sobering summary of transition from custody to community and early release in Canada, a jurisdiction that has often been cited as

a source of innovation, creative solutions and innovation in the management of offenders.

- While Canada remains prosperous and has avoided many of the chill winds of economic crises that have impacted elsewhere there has been an increased caution, emphasis on public safety and reduced risk taking in the release and resettlement of prisoners.
- Historically there have been many positive initiatives in the criminal justice system including the involvement of NGOs and community interests in working with offenders. More recently NGO funding is being severely cut and joint initiatives ended. The Canadian prison population is growing.

2. "Reform of the Law on Remission, Temporary Release and Parole"

Presenters: *Liam Herrick, Executive Director & Michelle Martyn, Research and Policy Officer, Irish Penal Reform Trust*

Chair: *Patricia Flynn*

Rapporteur: *Thomas Mahon*

Contextual Background

In 2011, the Thornton Hall Review Group was commissioned by the Minister for Justice to examine if the construction of the proposed super-prison, Thornton Hall, should go ahead. In its submission to the Thornton Hall Review Group, the Irish Penal Reform Trust (IPRT) recommended a shift away from penal expansionism and highlighted a number of approaches in which the size of the prison population could be reduced. One of IPRT's recommendations included releasing earlier a number of prisoners in a secure and

structured manner through some reform of the current early release system. IPRT welcomed the Thornton Hall Review Group's view that imprisonment should be used as a final resort and the acknowledgement that penal expansionism would not resolve the overcrowding problem that continues to prevail. Some of the key recommendations from the Thornton Hall Review Group report included: the use of alternatives to custody, an incentivised scheme for earned Temporary Release and the establishment of a Strategic Review Group on Penal Policy.

The Early Release System in Ireland

Currently, there are three mechanisms for Early Release in Ireland: remission, temporary release/parole and the power to commute or remit a sentence.

(i) Remission

A prisoner who is sentenced to an imprisonment of at least one month is eligible to earn remission of 25% under the *Prison Rules 2007*, s59 (1). In addition, under Rule 59(2) of the *Prison Rules 2007*, prisoners are allowed to earn up to one-third remission (referred to as 'Enhanced Remission'), if he/she 'engages in authorised structured activity' and can demonstrate that he/she is less likely to re-offend and be able to reintegrate into society. However, there appears to be no effective mechanism in place where prisoners can access this system of enhanced remission.

(ii) Temporary Release/Parole

Secondly, under the *Criminal Justice Act 1960* as amended by the *Criminal Justice Act (Temporary Release of Prisoners) 2003*, the Minister for Justice may direct a person serving a sentence of imprisonment to be released from prison for a temporary period, subject to certain conditions. There

are various forms of Temporary Release (TR) such as release on compassionate grounds (for example, bereavement of a loved one), day-to-day release (e.g. for work) and full temporary release which is used for the purposes of ending the imprisonment period. There have been a number of criticisms of the TR system including its lack of structure and planning. While as outlined in the Thornton Hall Review Group Report in 2011, the Irish Prison Services considers the average percentage of persons on temporary release at approximately 5%, the current percentage of those on temporary release according to the Annual Prison Report 2011 is 17%.

Furthermore, the Parole Board was established by the Minister for Justice to assess the release of those serving long-term sentences (currently those serving eight years or more) and life-sentenced prisoners.

(iii) Power to commute or remit sentence

Finally, Article 13.6 declares 'The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may also be conferred by law on other authorities'. This power allows the executive branch of government and/or the Minister for Justice to commute or remit any punishment imposed by the courts.

European Human Rights Norms

In order to put the recommendations into context, an examination of the current European Human Rights norms took place. The State has a number of obligations under Articles 5, 6 and 7 of the European Convention of Human Rights (ECHR) and its accompanying case law. European human

rights norms are also set out in the European Prison Rules 2006 which states that the system of prison leave should be an integral part of the general prison regime (Art 103) and temporary release should form part of a structured gradual release process for long-term prisoners (Art 107).

IPRT highlighted that one of the most common concerns among prisoners is that reasons are not given as to why temporary release may have been denied. According to the Recommendation on Prison Leave (1982), prisoners should be informed to the “greatest extent possible on refusal of temporary release” and have a right to appeal. Such measures would go a long way in increasing transparency and predictability.

Another common concern that has been addressed at a European level is the independence of the decision-making process leading up to a prisoner’s release. The Recommendation on Conditional Release (Parole) (2003) states that all decision-making processes should be fair, have open procedures (Art 32) and be open to an independent appeal process (Art 33). Key factors to be considered when measuring independence include: whether there can be an oral hearing, how members are appointed and who is funding the Parole Board.

The speediness of parole hearings is also a central issue and this right is protected by Article 5(4) of the European Convention on Human Rights. In *Falkner v Parole Board* [2010] and *Sturnham v Parole Board* [2011] the English Courts found that a prisoner is entitled to compensation, regardless of the parole outcome, where there has been an unreasonable delay.

Currently, there is no right to legal representation in parole hearings in Ireland. This right exists in other jurisdictions such as New Zealand and England & Wales. For example, in *Thynne v United Kingdom* (1991), the European Court of Human Rights found that the UK did not meet the requirements of due process where the applicant was denied legal representation.

In relation to the revocation of release, the *European Rules on Community Sanctions and Measures* 1992 and the *Recommendation on Conditional Release* (2003) set out that a prisoner should have an opportunity to make a representation to a competent body where all relevant circumstances should be taken into account including prior behaviour while on licence.

IPRT Proposals for Reform

IPRT proposes reform in the form of a Single Early Release Act (the Remission, Temporary Release and Parole Act), which would provide transparency and clarity to prisoners and the general public. IPRT recommends a graduated system of early release as part of an incentivised regime. In preparation for full release, there should be fair procedures and independent decision-making, as well as transparent criteria for release, where detailed reasons for refusals should be disclosed to the individual and remedies should be available to challenge refusals.

(i) Remission Reform

IPRT proposes that remission be reformed so that for sentences under five years, there would be standard remission at the half-way point and for sentences over five years, there would be standard remission at the two-thirds point of the sentence. (five years is used by various criminal justice agencies as the cut-off point to categorise ‘serious crime’.) There should also be a fully



operational enhanced remission scheme where prisoners who engage with services can earn up to 50% off their sentence.

(ii) Temporary Release Reforms

IPRT outlines a number of principles that they argue should underpin the temporary release system which includes:

- setting out clear criteria as to how a prisoner can earn such release;
- that decisions be made in an open and transparent manner;
- full reasons should be provided for refusal and that decisions be open to appeal;
- a system of earned early release should be provided for in the legislation and also include other forms of earned early release without community sanctions but with community supervision by Probation Service.

(iii.) Parole Reform

IPRT also calls for the operational independence of the Parole Board. It was stated that the Parole Board should be put on a statutory footing to remove political influence from the decision-making process.

In relation to the speediness of Parole Hearings, IPRT believes that parole review should occur within six months of the prisoner's eligibility date and should automatically be scheduled by law. If a prisoner does not secure his/her release, follow-up reviews should be scheduled every year for prisoners serving less than ten years, and every two years for those serving over ten years.

As noted above, the right to legal representation exists in other common-law jurisdictions. IPRT believes that such representation is particularly important for

life- sentenced prisoners who have no release date to look forward to.

IPRT recommends that the focus of the Parole Board should be on the individual's risk to society and for the Board not to engage in a "re-sentencing" process. IPRT also emphasised the importance of having professional expertise on the Board, including an increase in the number of psychiatrists and psychologists.

It was also recommended that the remit of the Board be expanded to those serving sentences of five years or more and that increasing the resources of the Board should be a priority.

IPRT recommend that the terms of revocation should be reasonable and proportionate. Furthermore, if an individual's licence is revoked, he/she should be entitled to a Parole Hearing. IPRT also recommended that violation of conditions in the absence of committing a criminal offence should not mean a prisoner is automatically returned to prison.

(iv.) Using the power to commute or remit sentence

The final point made in the presentation was that as a possible response to the current overcrowding problem that exists in Irish prisons, the Minister for Justice should consider making use of the right of pardon to commute or remit punishment in order to bring the population within safe custody limits.

3. “Making Change Happen in the Criminal Justice System.”

Presenter: *Dr. Michael Maguire, Police Ombudsman for Northern Ireland*

Chairperson: *Jim Mitchell, Head of the Legal and Professional Standards Office, Irish Prison Service*

Rapporteur: *Patrick Collins*

In discussing making change happen in the criminal justice system, Dr. Maguire used the example of Northern Ireland. Prior to being appointed as the Police Ombudsman, Dr. Maguire was Chief Inspector of Criminal Justice in Northern Ireland. Unlike in England and Wales which has separate inspectorates for the component parts of the of the criminal justice system, i.e. the police service, the, prison service and the courts, the Criminal Justice Inspectorate has the advantage of being able to assess the whole system collectively and subsequently identify weakness in the overall system where change may be needed. These issues were discussed in greater detail during the workshop.

The devolution of policing and Justice has had a profound impact on the criminal justice system. Devolution gave local administrations responsibility for their own budgets and this led to higher levels of scrutiny from both the Northern Ireland Assembly and the Chief Justice Inspectorate. Expert panels were set up to review services and oversight panels to monitor implementation.

Dr. Maguire discussed a number of areas which helped facilitate a change agenda within the criminal justice system, including changing the narrative around public protection, a new focus on connectivity across the system, changing the culture from one that was located in the past, a

greater focus on outcome based inspections and monitoring delivery,.

Changing the culture is pivotal to the change agenda. The Northern Ireland Prison Service had the same regime, attitude and staff as it had at the height of the troubles, 80% of prison staff were white, middle aged and of Protestant religion, whilst the majority of its prisoners were young, white and Catholic. On a prima facie basis, the Northern Ireland Prison Service was successful; it was in budget and perceived to be achieving its objectives. Yet, the service cost over £100,000 a year to house each prisoner - treble the cost of the national UK average. Maghaberry Prison was rated as one of the lowest performing prisons in the UK in 2009.

Dr. Maguire discussed the importance of outcomes in making change. He focused again on the prisoner relationship with staff. He gave the example of an outcome based approach to prisons inspections. Historically the “outcomes” were based on measures such as budgetary matters, did the prisons come in under budget, were the various services in prison fully utilised? The inspections looked at issues such as utilisation of services across the prisons, time out of cell, attendance at education classes and other areas that impacted on prisoner daily lives and their attempt at rehabilitation.

Dr. Maguire also discussed the issue of connectivity within the criminal justice system. Each sector of the criminal justice system is intertwined. To tackle reform of the Prison Service, one must tackle the length of time an offender takes to go through the criminal justice system from arrest to prosecution to sentencing. For example, if the numbers of prisoners on remand were reduced there would be a

significant impact on the level of overcrowding in prisons. He also discussed the relationship between the Public Prosecutions Service (PPS) and the Police Service in relation to the reduction in avoidable delay across the criminal justice system.

Discussion

What was Dr. Maguire's role in bringing about change? . He stated that changing the dynamic of the debate within Northern Ireland was one of the most important components of his work as Chief Inspector. He reiterated the importance of the devolution process which occurred and how this had a major impact on making change happen. Also, he placed an emphasis on how changing the dynamic of prison staff within Northern Ireland, political support for change and new people in key agencies, all contributed to this new dynamic.

Time Frame of change?

The devolution of Northern Ireland was a major catalyst of change. Dr. Maguire estimated that the length of time for a change in the dynamics of the prison service was five years.

Key drivers for change?

Dr. Maguire stated that having a strong Minister for Justice who was not afraid to break away from the old guard was a very important mechanism for change. There was a "top of the tree" cut in relation to senior management, there was a structured plan which involved more engagement between Criminal Justice Agencies and which also led to a significant level of transparency for the public and finally, proposals set out by the Chief Inspectorate were placed into legislation thus signifying a full circle of change. Dr. Maguire in concluding the workshop stated that there

were valid changes made but that Northern Ireland is undoubtedly still in the process.

4. "Shannon Trust Reading Plan – Assisting the 'Exit' Strategy"

Presenter: *Sam White, Shannon Trust*

Chairperson: *Jane Farrell*

Rapporteur: *Aedamair Gallagher*

The Shannon Trust is a charitable organisation founded in the UK and successfully operating in almost all UK prisons. Their mission is: "To promote peer-delivered reading support to those with poor reading skills in custody, in an attempt to reduce re-offending. By teaching people in prison to read, we believe we are better equipping them for the challenges of working and living in their communities as positive contributors".

For the past eighteen months, the Trust has been running a pilot scheme in five Irish prisons – Wheatfield, Limerick, Mountjoy, Shelton Abbey and the Midlands - with the intention to expand across the entire Irish Prison Service.

The Shannon Trust Reading Plan is a peer-mentored one-to-one programme whereby prisoners who can read, teach those who cannot. The programme benefits both mentor and mentee.

For the mentee:

- It is a complementary alternative for those who do not wish to engage in the formal education system. Some prisoners do not want to engage with authority and may be far more responsive in an informal peer support environment.
- There is no coercion to participate; it is at the discretion of the mentee alone.

- There is no specific time frame in which the mentee must complete the programme. Four to six months is the norm but the mentee can progress at his or her own pace.
- Upon completion the mentee is awarded a completion certificate, giving the prisoner a sense of achievement and recognition of their time and effort. It may also encourage them to engage in further learning opportunities.
- Upon release the prisoner will be far better equipped to positively enhance their home life and employability - the certificates will form part of their CV.

For the mentor:

- The mentor develops skills in communication, empathy and motivation.
- A sense of empowerment increases their self-esteem and confidence through being trusted.
- Upon completion the mentor is awarded a commendation certificate – a “thank you” for their time and effort.
- Their participation can encourage them to pursue further study and qualifications in mentoring and learner support.
- Upon release the prisoner will have enhanced their employability.

Prison establishments also benefit from the programme:

- Positive relationships are built between prisoners and between staff and prisoners.
- The programme contributes to purposeful activity within the prison.
- Prisoner attitudes and behaviour are positively enhanced.

Identifying a Mentor

A facilitator is appointed full-time in every participating prison to assist in the

coordination of the programme. Posters are erected in strategic positions around the prison to encourage prisoners to engage. Where a potential mentor approaches the facilitator, an assessment is carried out to assess his or her suitability. Empathy and a hearing ear are essential traits in a suitable mentor. Once selected, the mentor is given basic training in preparation for their role.

Identifying a Mentee

Prisoners seeking to participate in the programme may approach the facilitator and if suitable, are then matched with a suitable mentor. Often however, prisoners with poor literacy skills are shy and apprehensive and will go to great lengths to disguise their difficulties. In such cases such a person may be encouraged by a mentor, a peer they trust, or the facilitator to participate, but the ultimate decision to take part always rests with the mentee.

The Reading Plan

Learning sessions take place five days a week, twenty minutes per session in a location that suits both mentor and mentee. An informal setting is a major contributing factor to the success of the programme and requires the support of prison personnel to facilitate this as best as possible.

Upon completion of the ‘Toe by Toe’ reading manual, certificates are issued to both mentor and mentee. Two certificates are issued to the mentee – the first on completion of the first 23 pages of the manual, and a final certificate is awarded on full completion. The mentor receives a commendation award for their participation.

Sam White is the project coordinator of the Shannon Trust Reading Plan and its implementation into Irish prisons. His

experience of the programme in the UK has been one of huge success. He encountered prisoners who struggled daily with their inability to read – from filling out forms, to reading the prison lunch menu and, most poignant of all, the inability to read letters from home. The introduction of the Reading Plan has assisted them enormously. They can now access the library, read books and newspapers, consider further learning, progress to the formal education system and reconnect with family and friends. It is of huge assistance to a successful exit strategy. As one prison officer commented, “the change I see in the guys is overwhelming. I see smiles. I see shyness disappear. I see withdrawn men change to confident men”.

Discussion:

An attender at the workshop commended the programme and encouraged extending its remit into other areas such as homeless shelters.

Another attender questioned whether there was a strategy in place to increase the number of participants, to which Sam replied that numbers are not necessarily important; the more participating the better, but as long as one person is benefiting, then the programme is fulfilling its purpose. The programme is based on voluntary participation and the Trust does not wish to coerce prisoners into getting involved.

Another workshop attender queried the location in which lessons can take place, to which Sam replied “anywhere”. To date, lessons have occurred in the library, the canteen, the cells and even outside. Sam assured the conference that location is not a barrier. In fact, the more visible the lessons the better, as other prisoners are then made

aware of the programme’s existence which may encourage them to get involved.

An attender shared their experience of the programme’s success in Irish Prisons. Mentors are empowered and get great satisfaction out of helping someone, whereas a mentee can avail of the one-to-one support he or she needs. Prison personnel are very supportive and do their very best to facilitate the lessons in a location of the prisoners’ choosing. For example, it is not the norm for prisoners to be in and out of one-another’s cells, but for the purpose of the programme it is enabled. Lessons can take place in such a discreet manner as we are all very aware of the stigma that is attached to illiteracy.

Concerns were raised amongst the attenders as to the impact an unplanned release has on the programme. Sam stated that in cases where a mentor is released there is usually another mentor prepared to step in, however this is not always ideal as the mentor and mentee may not be suited to one another. In cases where the mentee is released, the prisoner is entitled to take the ‘Toe by Toe’ reading manual home. Many attenders supported the idea of introducing released prisoners to external literacy support services who could assist them in completing the manual. Sam did state that discussions are taking place with NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders) to facilitate something like this, but there is nothing in place as of yet.

Concerns were also raised as to a mentor’s capability to work with a mentee with severe learning difficulties such as dyslexia. Sam assured the conference that dyslexia and other such difficulties are identified at induction so the facilitator and mentor will be made aware of it. And in fact, ‘Toe by

Toe' is a reading manual which contains a "highly structured synthetic phonics approach to decoding words"² and is based on experiences of teaching children with dyslexia to read.

The discussion concluded with Sam White's intention to establish the Reading Plan across the entire Irish Prison Service which was enthusiastically supported by all workshop attendees.

5. "Challenges to Reintegration: Ex-Offender Homelessness & Employability"

Presenters: Fr. Charlie Hoey, *Care after Prison Project* & Bríd O'Brien, *Irish National Organisation of the Unemployed (INOUE)*

Chairperson: Doncha O'Sullivan

Rapporteur: Aedamair Gallagher

Fr. Charlie Hoey and Bríd O'Brien led a group discussion on the challenges facing ex-prisoners upon their release in attaining employment, furthering their education and securing housing.

In an ideal situation an ex-prisoner would return to a loving, supportive environment upon release, however this is rarely, if ever, the case. The reality is that home is not always an option. A return to their community of origin has the potential to bring about further criminal involvement and for some a return to the chaotic lifestyle they led on entering prison.

However, reintegration into the wider community is not always a happy or easy alternative. The stigma attached with being a former prisoner poses a major barrier to progress.

Barriers to Employment

Fr Hoey shared a story of an ex-prisoner who was adamant that he would not return to prison. He enrolled in a college course and took up employment in a shop. He chose not to disclose to his employer the fact that he had been in prison. However when the employer did eventually find out, the employer was entitled to dismiss him for non-disclosure of a criminal record. This man was evidently eligible for the job, but for the fact that he had been in prison.

Media Intrusion

Media and public interest poses similar difficulties. Fr Hoey related the story of a former prisoner who was the subject of a very high-profile sexual offence case. His release generated a public frenzy, further fuelled by the media. His every movement was monitored and broadcast to the public, to the extent that he was forced out of every community he attempted to settle in. As a result, he has now gone off radar and it is believed he has left the country. In Fr. Hoey's opinion there was a major failure here in that no adequate preparations were made for this prisoner's release. It can be argued that the media reported his movements in the interest of public safety, but their relentless pursuit of him has only resulted in a disservice to society as now this ex-prisoner is nowhere to be found and is held accountable to no-one. Ideally, if a community were to accept him in such a way as to prevent him from going under the radar, the risk of threat is reduced.

Drug Addiction

Ideally, prisoners participating in drug rehabilitation programmes should be able to avail of immediate access to residential treatment centres, drug-free accommodation or other such drug support units upon release. At present the minimum waiting time for admission into a drug

² <http://www.shannontrust.org.uk/what-why.asp>

support unit is approximately 6 – 8 weeks which, in Fr. Hoey's opinion is far too long, particularly for those with chronic addiction problems.

Employment

Bríd O'Brien resumed the discussion on employment and described the changes that are taking place or proposed to the social protection, employment, further education and training supports and services. In particular to roll-out a 'one-stop-shop' under the auspices of the Department of Social Protection entitled "Intreo" which will provide, initially to people in receipt of a Jobseekers payment, social welfare, education, training and employment supports and services. The Further Education and Training sectors are also being revamped with a proposed new national agency SOLAS and a re-structuring of the VEC and FAS Training Centres to create the Local Education and Training Boards. Bríd also described the Government's Action Plan for Jobs 2012 with its target of an additional 100,000 jobs by 2016; and the Government's 'Pathways to Work' document which talks about reducing long-term unemployment even though the document lacks detail on the actual steps to be taken.

Overall the major challenge facing all of these changes is the lack of jobs: it is hard to envisage 'activating' anyone if there is nothing ultimately into which to activate them. This challenge is even starker when looked at from an equality perspective and in particular when looked at from the marginalization experienced by many ex-prisoners. Well designed integrated services could play an important role in addressing such exclusion; however it is less than clear if such issues are even being considered. Many of these issues are being discussed in the current climate from the perspective of

cost savings. It is in the system's ultimate interest to get this right and ensure the needs of ex-prisoners are met: it would be far more cost effective than the costly cycle of recurring sentences.

Training and Up-Skill Programmes

Availing of the various training and up-skill opportunities in prison is extremely advantageous to prisoners' employment prospects upon release. Bríd championed the development of links between prisons, external employment support services and employers.

Employers in particular should be encouraged to engage with prison training programmes and to provide employment and placement opportunities where possible. It was noted in discussion that perhaps the Australian approach could be adopted, whereby some employers are obliged to recruit a certain percentage of ex-offenders.

Further group discussion ensued, with one attender providing an insight into the work of Training and Employment Officers (TEOs) across the Irish Prison Service. Their commitment to securing employment and training opportunities for prisoners was highly commended and it was noted that employers, in general, are very responsive and supportive of such initiatives.

Employment Equality

Bríd submitted the importance of equality in employment support services which invoked concerns amongst attendees as to how principles of equality are applied in practice. The fact that an ex-prisoner can be lawfully discriminated against for holding a criminal record, with no regard as to the context or severity of the crime, is a prime example of inequality. It was opined that perhaps expungement could be introduced,

where appropriate, to remedy such injustices, or at the very least, a criminal record should only be an issue where the job and offence are related. The absence of a social inclusion officer in employment support services, and agencies such as FÁS and the VEC, was also highlighted and recommended as something to be re-established under the Further Education and Training sector reforms.

Many former prisoners have become self-employed as an alternative means to overcoming common employment barriers. For example, many pursue careers as tradesmen or taxi drivers. But they too face difficulties and often encounter what one workshop attendee referred to as the “Joe Duffy Brigade” - members of the public inciting fear and intolerance in their communities which effectively leads to boycotting of the services provided by ex-offenders.

Barriers to Education

Concerns were raised amongst attendees as to the apparent disconnect between the Department of Social Protection and the Irish Prison Service when it comes to newly released prisoners. It was noted that prisoners who are keen to engage in further education upon release are not immediately eligible for financial assistance such as the ‘Back to Education Allowance’, as the Department requires that you are in receipt of social welfare payments for three months prior to application. This is problematic, particularly where a prisoner is released just before September – the usual start date of the majority of college courses. This prisoner is not eligible for ‘Back to Education Allowance’ as he or she was not in receipt of social welfare payments whilst in prison, thus he or she must postpone further learning until the following year. The danger here is that a year of idleness

increases the risk of regression, a loss of interest in education and the likelihood of re-offending.

Barriers to Housing

It is near impossible to make any headway in life without a home or stable accommodation. Ex-prisoners are far too often marginalized where access to adequate housing is concerned. It is vital that county councils and social housing associations cooperate with prison services to ensure that ex-prisoners are not discriminated against and that there are no barriers preventing them from securing a place on the housing waiting list.

In the private rented sector, landlords are often unwilling to engage with criminal record holders as they are perceived as unsavoury, unreliable tenants. As a result, ex-offenders are often found in bedsits, living in appalling conditions and paying extortionate rents. It was submitted in discussion, however, that some private housing associations are actively engaged in supporting people out of homelessness. Such associations have generated the support of many landlords who are very willing to accommodate those who are at risk. It is especially reassuring to a landlord where it is evident that a tenant is making a concerted effort to improve their lifestyle by availing of the necessary support services in employment, education and drug addiction.

Mental health

Discussion turned to mental health as another barrier to progress. The significant number of prisoners with intellectual disabilities and the lack of resources to facilitate them was duly noted. Emphasis was placed on the importance of drug rehabilitation, as in many cases, intellectual disabilities are drug induced. Thus with

drug rehabilitation, a fairer assessment can be made; the root of a prisoner's behavioural problems can be identified; and the right treatment can be administered to assist in the prisoner's development.

Closing remarks

Fr. Hoey concluded the discussion by emphasizing the positivity within the prison service and commended the work that is on-going in communities in support of prisoners. He stressed that the reintegration of prisoners is not the sole responsibility of the prisons but that it is the collective responsibility of the wider community. Prisons are part of the community, they do not, nor should they exist in isolation. We must begin to question and attempt to understand why prisoners are the way they are – were they let down by their communities in childhood? How and why? Our understanding can then inform us as to how we can become a more restorative society and take preventative measures in our own communities.

6. “Young men returning to the community after a period of imprisonment”

Presenter: *Dr. Nicola Hughes*

Chairperson: *Dr. Kieran O Dwyer*

Rapporteur: *Patrick Collins*

Dr. Hughes presented her PhD study on the self-reported experiences of 60 young male offenders aged 16-20. She interviewed them just prior to their release from St. Patrick's Institution, which is located adjacent to Mountjoy Prison in Dublin. The average age of the young men was 18, just over half (52%) were from the Dublin Area, 15% were members of the Traveller community. There were several offences which were the main causes of imprisonment for the young

offenders, with violent offences and property offences accounting for 23% and 47% respectively. Dr. Hughes also noted that 88% of the young men had spent time on remand in the past.

The initial experience of imprisonment was hard for the young men, with many experiencing feelings of fear and anxiety. One young man was quoted as saying “To be honest with you it's a scary place, not the officers or anything, you have to watch your back every time like... I was looking at fellas getting cut up in front of me”. Dr. Hughes noted however, that prison is a “unique rite of passage” and she provided statistics that over 28% of the young men had a father imprisoned, and 42% had a brother and 43% an uncle in prison. Dr. Hughes quoted Petersilia (2003) who believes that serving a prison sentence has in some communities become acceptable and an almost inevitable phase of growing up, and she questions what this means for re-entry and for the communities where these young people live.

Drug and alcohol use was a factor in their offending and they believed it would act as a hindrance to desistance. The young men also reported that boredom and having nothing to do were factors in their offending and having nothing to do would make it hard for them to desist after their release.

Dr. Hughes stated that the young men were highly motivated to change in the period prior to their release date. When questioned on self-assessed reoffending, 17% said that they would reoffend, 53% said they would not and 30% were unsure whether they would reoffend or not. In relation to re-imprisonment, 17% said they would be reimprisoned, 55% said they would not be reimprisoned, and 22% were unsure.

When these young men are released from custody they invariably return to the areas where they lived and these areas are characterised by high levels of deprivation. She provided a map of Ireland which located the most deprived areas and which was home to the majority of Ireland's prisoners. Dr. Hughes noted that the men often return to the situations and associations which got them imprisoned in the first instance. The impact on the community to which these young men return can be significant.

A key finding of the study was that six months after their release, 17% were reimprisoned, 12 months after their release 36% were reimprisoned and after 18 months 45% were reimprisoned. Dr. Hughes made the point that an important determinant of desistance is the desire of the individual to change. Those least motivated to change their ways and the least optimistic about the future were most likely to reoffend. The cycle of crime for these vulnerable young men is a problem not just for the criminal justice system but for society as a whole.

Petersilia, J. (2003), *When Prisoners Come Home. Parole and Prisoner Re-entry*. New York: Oxford University Press.

Discussion

The question of role models for these young men was discussed. As noted by Dr. Hughes in her presentation, there was often a history of imprisonment in the young men's families. Mentor programmes were discussed and how they can encourage desistance, yet, one speaker noted that certain programmes only last for six months and it can be very difficult to build a relationship with the individual over such a short period.

It was commented that the meaning of "outcomes" for NGOs and other agencies which help young offenders needed to be addressed, as these agencies, although working for a common goal, often competed with one another for funding to validate their existence. In one example it was noted that a young offender who is with one agency or in one specific residence is told only to stay with them and other agencies are "warned off" approaching him as the initial agency must prove to their funders that they are achieving their own individual goal as an organisation rather than the individual goal of the offender.

Temporary release for young offenders was widely accepted as a very positive measure by the Prison Service as it was associated with radically reduced offending. Unplanned release worked against this aim.

The impact of education for these young offenders was also discussed. In the general school setting these young men can become frustrated due to low literacy levels or attention deficits and therefore begin to become a "problem" which may lead to suspension or expulsion. Prison education needs to take account of this and places more emphasis on other school activities such as woodwork, art and home economics. This led to a discussion on the viability of organising apprenticeship schemes for these young men when they return from a period of imprisonment. Yet due to the economic climate and the reduction in budget this may not be a realistic option for young offenders.

The issue of "labelling" or negative stigma attached to young offenders was discussed and it was commented that the Spent Convictions Bill 2012 should be passed so that an offender can escape the criminal label after a crime-free period of time. This

bill, if passed, would remove a very real barrier to a wide range of employment opportunities and provide a new start for these young men. Early intervention and alternatives to prison were identified as crucial to reduce the number of young people going to prison.

7. “The Community’s entitlement to know; the offender’s entitlement to privacy – issues for 21st Century News Media”

Presenter: *Dr. Carol Coulter, Legal Affairs Editor, The Irish Times*

Chair: *Eugene Corcoran*

Rapporteur: *Thomas Mahon*

Dr Coulter began the workshop by sharing the following comments from Conor Brady, Former Editor of the Irish Times, who had originally prepared a presentation for this workshop.

For those engaged in traditional news media – print, TV, radio – the contending rights of the individual to privacy, on the one hand and of the public to know, on the other, are a constant issue to be dealt with. It has been said that “news” is information that somebody, somewhere, doesn’t want to get out into the public domain; everything else being advertising. While this may be simplistic, there is an inherent conflict around a lot of what is put out by the news media. The issue of offenders’ rights versus the community’s right to know what’s happened to persons released is just one of many of these conflicted areas.

Being on the receiving end of media scrutiny is never a pleasant experience. Indeed, for someone just out of prison who is trying to find his place back in the world, the experience can be terrifying. Equally, however, a victim or a community could be

terrified by the knowledge that a criminal who has hurt them is free again.

Privacy is a difficult area for media practitioners. It arises in a myriad of ways for every editor and programme maker. It can occur at the simplest level – covering funerals or a bad road smash, for example.

Is it right or permissible for the news media to narrate or document the non-public lives of public people? For example, is it acceptable to take pictures of Anglo Irish Bank’s top people when they go to a rugby match? If a controversial public figure has a daughter getting married, is there a genuine public interest in covering the event?

Brady’s instinct is that in these cases one must be cautious and conservative. Editors and programme makers should start from the premise that coverage is not appropriate and then move forward only when a genuine public interest can be demonstrated.

In relation to the specific issue of freed offenders and the media, Brady believes that the Irish news media are fairly “hands off” in this area.

He is in no doubt that media attention, or the fear of it, must significantly add to the stress that is imposed on an individual when they are released. However, it’s also impossible not to sympathise with people who fear the arrival back into their community of people who have a history of violence or of criminal sexual deviancy.

What should be the role of news media here? The news media are supposed to be the means by which people know what’s going on around them. People should be informed of what their politicians are doing, what’s happening across public life, what



the police are doing and what is happening in the courts. Indeed, the Constitution, with some exceptions, recognises and provides for this.

The question is whether the offender, having paid his or her debt to society, has an absolute entitlement to privacy. Brady thinks the answer is generally yes. However, he would hesitate to say this rule is absolute. Certain crimes, by their nature, are more public than others and a danger may still persist.

In reality, whatever news media do or don't do in this area is now increasingly irrelevant. The mobile phone and social media allow information to travel through a community at a speed and efficiency that leaves print and even broadcasting far behind. However, traditional news media, if no longer the fastest or the most immediate way of transmitting news may be extremely influential in conditioning public thinking.

It is important to note that there is a rich field of opportunity here for professionals and for authorities to engage, over time, with these media to educate public opinion.

What should constitute good media practice? In the overwhelming majority of cases, the release and the whereabouts of released offenders should have no place in media coverage and in reality, this is so.

Dr. Coulter then delivered her own presentation:

Coulter highlighted that the courts have already addressed this issue. In 2009 in Northern Ireland, in Belfast High Court, Mr Justice Stephens ruled that an un-pixelated photograph of sex murderer Kenneth Callaghan, from which he could be identified, could not be published.

Mr Callaghan had served 21 years of a life sentence and was due for supervised release. It was held that the publication of such a photograph would disrupt his supervision and support regime, thus increasing the risk to the public by increasing his chances of re-offending.

While on day release in February 2008, photographs were taken of Callaghan in a cafe by a photographer for the newspaper group. Counsel argued that the newspaper group wished to publish the photographs so that members of the public could identify the former prisoner and that it was entitled to publish the photographs under the right to freedom of expression as enshrined in the European Convention on Human Rights.

The Court concluded that the plaintiff did not have an expectation of privacy as far as the police, the Prison Service and the Probation Service were concerned, but did have a "residuum of privacy" and he had not consented to it being intruded upon. It was stated that the restriction on the use of un-pixelated photographs was a proportionate response and necessary in a democratic society.

However, a different position was adopted by the High Court in Dublin in relation to the publication of photographs of Michael Murray, who pleaded guilty in 1996 to charges of sexual assault, false imprisonment and rape. He was sentenced to 18 years' imprisonment, with the final year suspended. He was released in July 2009, having received the statutory remission for good behaviour.

Upon his release, numerous photos were taken of him and published in various newspapers. He sought an injunction against the newspapers preventing the

publication of further photographs. These photos caused him to lose his job and forced him to move to a number of different addresses. The Court found that there was a public interest in the members of the public being able to identify persons convicted of violent crimes and their whereabouts.

These judgments show that the courts are acutely aware of the need to balance the question of public safety and the right to freedom of expression against the right of an individual, including one convicted of very serious offences to privacy.

If the individual can demonstrate that he is no longer a threat to the public and is sincerely engaging with the appropriate authorities in seeking to reintegrate into society, including accepting monitoring and supervision, the courts are likely to look sympathetically on their efforts and restrict the invasion of their privacy.

But should it have to go before a court? Could there be a better way to find a balance. Conor Brady believes useful dialogue could and should take place between the authorities and those engaged in coverage of these areas in the news media. Conor stated that editors, journalists and programme makers are not always as unreasonable as one may think, although Carol felt that this might be too optimistic a view of some of the news media, especially in the light of the revelations at the Leveson Inquiry in the UK.

8. “Electronic Monitoring and Release from Prison – Compulsory and Voluntary Models”

Presenter: *Prof. Mike Nellis, Emeritus Professor in Criminal Justice at the University of Strathclyde*

Chair: *Finbarr O’Leary*

Rapporteur: *Ciaran McNamara*

Electronic Monitoring is a growth industry worldwide for various reasons - it allows for a reduction in costs and numbers in prisons, it allows for more robust supervision, it is perceived as a distinctively “modern” solution and as being efficient and cost-effective from a managerial point of view. For example, probation or police officers (often via a private sector monitoring centre) can monitor an offender without having to be physically proximate to them - it extends their reach and influence beyond face- to-face control. Rates of offending tend to be suppressed for the duration of the Electronic Monitoring and therefore it is easy for policy makers to justify it as a short term, cheaper-than-prison solution, though it cannot by itself affect attitudes and behaviour by itself in the longer term. It can be thought of as a ‘Swiss army knife’ approach as it is a very versatile system, usable in a variety of ways at pre-trial, sentencing and post-release stages of the penal system.

Electronic Monitoring is an example of ‘penal informatics’, using location-data as a way of influencing or controlling a person’s behaviour - rather than, as in the traditional probation way, using personal knowledge of an offender’s psychology and social situation. It has flourished in part because of the wider “surveillance culture” that has become the norm since 9/11, and it can be understood as an “affordance” of information and communication technology more generally, customised for penal purposes.

There are several different types of Electronic Monitoring technology. For example, voice recognition technology can be tied to a specific location – the subject

'checks in' to an area using the unique biometric parameters of their voice to establish that they are within the prescribed area. This concept is similar to that of 'kiosk reporting' which also allows an offender to check in at certain places, and may require fingerprint verification of a person's identity.

Another type of Electronic Monitoring is GPS tracking which makes use of satellites to establish the movements of the subject. Electronic Monitoring can also be used within prisons, as in Sweden and Finland, where it is used to police offenders in areas within and around open prisons. France and Spain use an approach whereby the victim of domestic violence is protected by an exclusion zone or can know how far away the offender is from them.

The intrusiveness of Electronic Monitoring is not absolute, rather it changes with the duration for which it is imposed and how it is used, e.g. area exclusion. Therefore the "punitiveness" of Electronic Monitoring is not "fixed". The ethics of Electronic Monitoring pose various interesting questions. For example third party rights such as those of an offender's family will likely be affected by Electronic Monitoring but they may not always be taken into consideration.

Home Detention Curfews (HDC) in England and Wales can last for between two weeks and four years. An offender can avail of early release under the scheme and be released up to 135 days early on condition of using Electronic Monitoring. The prisoners themselves apply for it and the Prison Governor decides whether to grant the request or not. However those on HDC are given one chance only while on the scheme. Evidence shows that breaches tend to take place early during the course of the scheme, normally within the first month of

release, but offenders who get through this period are less likely to breach their conditions of release.

One shortcoming of HDC is that in itself it does not support the offender but merely monitors them. There are arguments to the effect that imposing many conditions on Electronic Monitored release is ineffective because the lack of supports means the offender will simply end up in prison again. Others argue that imposing conditions on Electronic Monitored release will force the hand of the authorities in the community to provide the necessary support services.

In England & Wales the 'recall' rate of offenders on Electronic Monitoring is 11% while in Scotland it is 25%. The difference might possibly be explained by the fact that recall is governed by a central office for England & Wales which has built up expertise over time. In Scotland individual prisons decide on recall and as a result there are no specialists making the decisions.

The dangers of Electronic Monitoring are that the use of technology will continue to creep evermore into society and that in criminal justice too much reliance may be placed on what is after all, an impersonal scheme. Some offenders may prefer elements of impersonality in the way they are controlled - but the work of the probation service is still vital. Dystopian scenarios involving chip implants are easy to imagine (if not yet feasible) and the questions now are what limits should be placed on the use of what has become a normal, relatively cheap, easy-to-customise technology, which "modernising" governments can all too easily run alongside, or use instead of traditional probation services.

The talk was opened to the floor and the following issues were discussed:

Are there Human rights issues with Electronic Monitoring?

- The general thinking is that Electronic Monitoring is compliant with human rights. It has not been challenged under the European Convention of Human Rights (ECHR) although it should be recalled that the use of GPS Electronic Monitoring is still relatively small scale, e.g. in France only 50 sex offenders are subject to Electronic Monitoring at any one time. The Council of Europe has some regulations on Electronic Monitoring and is working on updating them.

- One should judge best practice in Electronically Monitored home detention from the systems in Germany and Scandinavian countries. Most States will think carefully about Electronic Monitoring before formally introducing it and so they are able to pre-empt challenges to the validity of the systems.

- On the other hand some east European countries have considered using Electronic Monitoring as an alternative method for 24 hour lockdown because their prisons are of such a poor standard. This type of use of Electronic Monitoring could lead to challenges under the ECHR.

- While Electronic Monitoring can be used on mentally ill offenders generally it is not, although the Dutch have used post-custodial Electronic Monitoring on some treated psychopathic offenders.

Are there adverse medical effects from using Electronic Monitoring?

- Arguments to this effect surface periodically but there is not at present any evidence supporting this point of view in respect of wearable devices. Implant chips are thought to pose an increased cancer risk and such techniques are not currently used on offenders. The mooted use of implants in the USA was thwarted in part because of an unusual alliance (albeit for different reasons) between civil liberties groups and the Christian Right, the latter seeing implants as the 'mark of the Beast' as mentioned in the Book of Revelations.

How much is Electronic Monitoring used as an alternative to custody?

- The prison population in England & Wales in the mid-1990s was 45,000 and is about 87,000 now. It would appear that there is no connection between the two because the prison population has risen despite increased uses of Electronic Monitoring. As a sentence it tends to be used as an alternative to fines and not prison. HDC does shave some days off prison sentences, but only creates places that are filled up by new admissions

- In Sweden Electronic Monitoring is used as an execution of custodial sentence but it is used in conjunction with employment and intensive community supports. This allows offenders to do better than either prisoners or offenders who had intensive supervision alone – the recidivism rate was lowest when Electronic Monitoring was added into the programme. It involves quite rigid monitoring and curfews and is a good example of increasingly sensible use of Electronic Monitoring.



CONFERENCE ATTENDEES

NAME	ORGANISATION
Catherine Adejuyigbe	DePaul Ireland
Emma Barry	Tivoli Training Centre
Conor Boksberger	Focus Ireland
Prof. Denis Bracken	University Manitoba
Padraic Brennan	Respond! Housing Association
Maura Butler	Law Society of Ireland
Gerard Byrne	Galway City Council
John Carmody	Bedford Row Family Project
Eoin Carroll	Jesuit Centre for Faith and Justice
Joyce Clarke	Irish Prison Service
Barbara Corcoran	DePaul Ireland
Eugene Corcoran	
Dr. Mary-Louise Corr	University of Manchester
John Costello	Parole Board
Dr. Carol Coulter	Irish Times
Lisa Cuthbert	PACE
Frances Daly	Irish Prison Service
Larry DeClair	Bedford Row Family Project
Michael Donnellan	Irish Prison Service
Bernie Donnelly	Dochas Women's Visiting Committee
Aisling Dunne	Irish Prison Service
Ronan Faherty	Chief State Solicitors Office
Jane Farrell	Office of the DPP
Irene Farrelly	Dochas Centre
Fr. PJ Fegan	St Joseph's School
Gerard Mannix Flynn	Far Cry Productions
Patricia Flynn	
Paul Flynn	Irish Prison Service
Nadette Foley	Facing Forward
Aedamair Gallagher	
Brian Gallwey	Dublin City Council Offices
Alma Gavin	The Probation Service
Vivian Geiran	The Probation Service
Lisa Glassett	Tallaght Probation Project
Margaret Griffin	The Probation Service
Mary Kate Halpin	Office of the DPP
Jennifer Hannon	Palls Project
Liam Herrick	Irish Penal Reform Trust
Fr. Charlie Hoey	Care After Prison Project
Brian Hogan	Oberstown Boys' School
Dr. Nicola Hughes	



Paul Hughes	PACE
Bob Jordan	Threshold
Joanna Joyce	Irish Council for Prisoners Overseas
Patricia Kelleher	Irish Prison Service
Helen Kelly	Dochas Don Oige
Samantha Kennedy	PACE
Eamonn Keogh	St Joseph's School
Claire Loftus	Director of Public Prosecutions
Edmund Lynch	
Philomena Lyons	Office of the DPP
Dr. Michael Maguire	Police Ombudsman for Northern Ireland
Catherine Maher	Focus Ireland
Thomas Mahon	Office of the DPP
Michelle Martyn	
Gerry McNally	The Probation Service
Ciaran McNamara	Office of the DPP
Jim Mitchell	Irish Prison Service
Mary Moore	The Probation Service
Fr. Paul Murphy	Capuchin Friary
Prof. Mike Nellis	University of Strathclyde
Eithne NiMhurchadha	
Derek Nicholls	The Probation Service
Bríd O'Brien	Irish National Organisation Unemployed
Michael O'Brien	The Pacific Institute
Mary O'Carolan	Bray Area Partnership
Deirdre O'Connor	Galway Simon Community
Mary O'Connor	Irish Prison Service
Liz O'Donoghue	The Probation Service
Liam O'Donovan	Dunlaoghaire Rathdown Co Council
Tony O'Donovan	Irish Youth Justice Service
Kieran O'Dwyer	
Siobhan O'Dwyer	Youth Advocate Programmes Ireland
Catherine O'Flaherty	Dochas Education Unit
Lisa O'Higgins	Amnesty International (Ireland)
Catri O'Kane	Simon Communities of Ireland
Carolyn O'Laoire	Befriender in Dochas Centre
Finbarr O'Leary	Revenue
Diarmuid O'Neill	
Doncha O'Sullivan	Department of Justice & Equality
Pat O'Sullivan	Irish Prison Service
Yvonne Phillips	Garda Síochána Inspectorate
Etain Quigley	University College Dublin
Martin Quigley	Progression Routes Initiative
Marian Quinn	Childhood Development Initiative



Michelle Richardson	Arbour Hill Prison
Paddy Richardson	Business In The Community
Dr. Mary Rogan	Dublin Institute of Technology
Frances Russell	Irish Prison Service
Rosalinde Schut	Jobcare
Karl Shanahan	Palls Project
Michelle Shannon	Dept. of Children & Youth Affairs
Catherine Sheridan	Department of Justice & Equality
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Aisling Somers	Tivoli Training Centre
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Barbara Tyrell	Irish Prison Service
Mary Walker	University College Cork
Mary Walker	Dublin City University
Edward Whelan	Irish Prison Service
Sam White	The Shannon Trust
Sr. Imelda Wickham	Wheatfield Prison
Claire Williams	Galway Simon Community



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