

Parole in Ireland

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- Initially implemented in a crude form in the Australian colonies but developed in its modern format in Ireland
- Despite developing here the word “Parole” does not appear anywhere in modern Irish legislation (yet!)
- Sect. 2 of the Criminal Justice Act 1960 empowers the Minister for Justice to allow the temporary release of prisoners from all institutions for whatever period the Minister sees fit

- Currently no statutory framework setting out the role and function of the Irish Parole Board

- Early release is an Executive matter to which the person in custody has no right (Ryan v. Gov. Limerick Prison [1988] IR 198)
- Separation of Powers means Courts have exercised extreme caution in encroaching on this territory
- Courts will general only intervene where there is evidence of injustice or ultra vires activity
- “.. Executive not to exercise them in a capricious, arbitrary or unjust way.” per Murray v. Ireland [1991]ILRM 465

- In 2000 Parole Board established on interim administrative basis, with intention to be put on a statutory footing. This has not happened to date and Parole Board remains advisory only

Function Structure and Operation of the Irish Parole Board

- Temporary Release v Remission
- Remission= complete ending of prisoner's sentence at a reduced point in time
- Does not apply to life sentence, those in prison as a debtor or contempt of Court
- System based on Sect 38 (1) of Rules for the Government of Prisons Act 1947, since revoked and replaced by the Prison Rules 2007

- Remission given at rate of 25% almost as a matter of course
- Now seen as a right which may be lost in whole or in part through bad behaviour in prison rather than a right to be earned and may even be considered a constitutional right Ryan v. Gov. Midlands Prison [2014] IEHC 338
- Enhanced remission of up to 33% possible under Prison Rules 2007 for “engagement in authorised structured activity to such an extent as to satisfy the Minister that, as a result, they are less likely to re-offend and will be better able to re-integrate into society” but there doesn’t appear to be any system for measuring such engagement. Also words “as a result” introduce further complications

- Temporary Release
- Available before prisoners qualify for standard remission
- Can range from a few hours to a few days and can include compassionate reasons such as illness or death of a relative etc.
- Community Return Scheme, Christmas release, early release etc

Eligibility to be considered for Parole

- Parole Board only considers prisoners serving determinative sentences of eight years or longer or those serving life sentences (includes those serving cumulative sentences of eight years or longer)
- Some offences eg certain firearms offences, certain drug offences, treason, murder under Sect. 3 of the Criminal Justice Act, 1990, murder or attempted murder of foreign diplomats etc are not eligible for temporary release and hence are not considered by the Parole Board

- Numbers engaging with Parole Board varies from year to year but generally about 340 at various stages of offences

Parole Process

- Stage 1 Referral
- Prisoners don't apply for parole, instead Irish Prison Service ascertains who will become eligible for review in the following calendar year (determinate sentences when they have reached the half point stage or seven years whichever is sooner and life sentenced prisoners at the seven years stage)

- Stage 2 – Invitation to Participate
- The Parole Board Secretariat write to each of these prisoners inviting them to participate in the parole process
- Many determinate sentence prisoners refuse this invitation

- Stage 3 – Assembling a Review Dossier
- When a prisoner opts to participate a review dossier is prepared by the secretariat including reports from the Governor of the institution (discipline etc), Prison Review Committee (prison management, Probation Service (often incorporating home circumstance report), chaplaincy service, education and prison services directorate), Probation Service, Psychology Service (often with risk assessment), Psychiatrist, An Garda Siochana, Victim Representations

- Stage 4 – Disclosure
- The entire dossier is disclosed to the prisoner.
- The prisoner will be advised if there are any reports which are not disclosed to him and this decision will be subject to judicial review
- Victim's address/phone number will be redacted
- On receipt of the dossier all prisoners are afforded an opportunity to make written observations on the contents of the dossier

- Stage 5 – Interview
- Parole Board policy that interviews always take place on first review. Other reviews may be on papers
- Interviews are conducted by two Parole Board Members with member of secretariat
- Take place in institution where prisoner is detained
- No right to legal representation Barry v. Sentence Review Group [2001] 4 IR 167
- No right to legal aid Grogan v. Parole Board [2008] IEHC 204

- Stage 6 – Parole Board Meeting
- Full review dossier and record of meeting sent to each member
- Discussion led by interviewers

- Stage 7 – Recommendations to the Minister
- Generally detailed series of recommendations of steps the prisoner can take to lower their risk profile
- Temporary release recommended where appropriate
- Other recommendations can include suggestions in relation to therapy, education, work training, re-socialisation, transfer as well as many more

- Recommendations generally accepted in full by Minister for Justice however must be remembered that the Board's role is advisory only

- Reasons – Parole Board is as much a sentence management tool as an early release tool
- Hence rather than giving a reasoned refusal it appears that they advise what can be done to maximise the prospects of release in the future as opposed to refusing parole per se. Risk management is a key consideration in such recommendations
- No appeal process except judicial review but bar appears quite high – arbitrary, capricious etc