

**High Level Conference on Prison Overcrowding,
Strasbourg, 24 – 25 April 2019**

***The Use and Management of Imprisonment and Alternative
Sanctions in Ireland***

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(Slide 0): Good afternoon. It is a great pleasure and privilege to have been invited to speak to you here this afternoon, at this very important conference.

(Slide 1): I want to say a little bit about the Irish system, and the Probation Service and Prison Service in particular. I then want to outline the trend in prison numbers in Ireland over the last ten years or so. I will show how those numbers have fluctuated and consider why, and also look at how, having decreased for some years recently, the levels of imprisonment in Ireland have now started to increase again. I will review what we *have* done and *are* doing to address those issues, and also the question of transparency within and across our system. I will conclude then with some thoughts in relation to what we might need to do for the future, and lessons arising out of that.

(Slide 2): The Probation Service and the Prison Service in Ireland are two separate agencies of the Department of Justice & Equality. We have over 400 Probation Service staff, working with over 8,000 offenders every day in communities across the country. We also provide services in all of the country's prisons.

(Slide 3): The role of the Probation Service is to manage Court Orders, reduce the risk of harm and the likelihood of re-offending by those under our supervision, and to help them to make good the harm caused by crime.

(Slide 4): The Irish Prison Service manages twelve prisons in Ireland, two of which are open prisons. On any single day there are around 4,000 prisoners in custody in Ireland.

(Slide 5): Our legal system in Ireland is a Common Law one, with historic roots to that in the United Kingdom, and also similar to systems in a number of other English speaking jurisdictions, including the United States & Canada, Australia and New Zealand, as well as some non-English speaking countries such as India. In Ireland, we have a written constitution, which provides for a clear separation of powers between the Legislature, the Judiciary, and the Executive. In general, when the Courts

make decisions in criminal cases, the decisions and court orders arising are subsequently managed and executed by the relevant branch of the Executive – including the Probation Service and the Prison Service. Courts do not maintain, as a rule, any on-going involvement in the execution of penalties. It may well be the case that this separation of powers militates to *some* extent against enabling transparency between the three branches of the State, even at the ‘macro’ level.

The types of penalties or sanctions that are imposed for criminal convictions generally fall under two broad types: one is Community Based Sanctions, the other is Custodial Based Sanctions. Under the heading of Community Based Sanctions, some might be described as *supervised community sanctions* while others are unsupervised. I want to focus now however, mainly on custodial sanctions in Ireland *and* their alternatives.

(Slide 6): From an extremely low base of prison numbers in the 1960s, when there were only a few hundred people in prison on any day in Ireland, the prison population grew over the following decades – for various reasons – to the levels we see in this graph. You will note that there was a steady rise in the number of committals to prison in the years leading up to an overall peak in 2011. Numbers of committals to prison

have shown a steady decrease in the few years leading up to 2018. But, this graph does not give the complete picture.

(Slide 7): This graph shows committals to prison over the same time period, but excluding committals for non-payment of fines. Those sent to prison for non-payment of a fine tend to spend very short periods of time in custody, this distorting the picture of the actual numbers locked up. As a result, the statistics with fine defaulters taken out is a more realistic picture in many ways and reflects the steady decline in substantive committals to prison over the decade to 2016, and the rise since then, a rise which is continuing now.

(Slide 8): Another way of measuring and analysing prisoner numbers is to consider the average number in daily custody each year. You will see in this graph how this level of daily occupancy had been increasing between 2006 and 2011, at which point the average number of prisoners in the prison system peaked - at 4,390. After 2011, there was a decline in the daily population year on year until 2017, when it had fallen to 3,680. The numbers for last year, and currently, show an increase, which is still climbing and has reached over 4,000 today. It is estimated that if this trend is sustained through 2019 and 2020, we are potentially on course to exceed – by the end of 2020 – the highest daily level of prisoners in

custody recorded in Ireland. The unspoken expectation is that penal sanctions are part of a demand-led service, where those bodies managing the implementation of the sanctions are responsible for that management, from start to finish.

(Slide 9): Temporary Release under the 1960 Criminal Justice Act is a mechanism for the early release of prisoners either on a supervised or unsupervised basis. This graph shows the use of temporary release between 2006 and 2018. As indicated, the numbers on temporary release peaked in 2011 and 2012, and have declined ever since. It would be my assessment that this is a positive development insofar as that when this number is at a high level, it tends to indicate a high degree of unstructured early release, associated with a response to overcrowding. The lower numbers in the years since 2012 indicate a more realistic and appropriate level of structured early releases, frequently under probation supervision.

(Slide 10): One of the reasons for the decline in both the prisoner population and the use of unstructured temporary release has been the introduction since 2011 of the Community Return Programme. You will recall that up to 2011 the number of committals to prison and the numbers in prison daily had been increasing. Recognising this, the

Government had decided to build a new prison to hold several hundred prisoners on the outskirts of Dublin, at Thornton Hall. In the face of the then economic recession, this decision was reviewed, and reversed, while still recognising the need to address the rising numbers of people in prison. It was decided to mandate the Probation Service and Prison Service to come up with an early release programme to deal with the overcrowding and provide a structured and robust alternative to imprisonment for people serving medium term sentences. As a result, the Community Return Programme was launched in October 2011 and has continued to the present day. The Programme, which provides for early release – under Probation Service supervision – of suitable prisoners serving between one and eight years, was evaluated in 2014, with very positive findings. These included an 89% successful completion rate, much better interagency co-operation, and significant benefits for the participants, including a greater clarity and structure to post-release follow up. The programme evaluation is available on our website at the link in this slide. Community Return has been generally acknowledged as a success. The reasons for this include the secondment of four Prison Service staff to work in the Probation Service, the high degree and quality of interagency co-operation, and the clarity of the operational procedures, including swift responses to incidences of non-compliance. At some

level, wider transparency may have played a role, but probably to a limited degree.

(Slide 11): This slide shows the numbers released each year on the Community Return programme, starting with 66 in the three months it operated to the end of 2011, and peaking at 455 in 2014. Numbers since then have reduced, although I believe it is correct to say that all those eligible continue to be considered for the programme on an ongoing basis, and released if and as appropriate.

(Slide 12): When the number of those in custody starts to increase, one obvious question is “why”? Changes – upwards and downwards at different times – in the numbers of serving police officers in Ireland have mirrored comparable changes in numbers of people in prison. Numbers in pre-trial detention, and the length of time they spend in custody pre-trial have also increased recently. Sometimes this is linked to increases in gang-related and organised crime. Numbers sentenced to long, as well as short, sentences have also increased, and the number subject to presumptive mandatory minimum sentences has had an impact. The numbers of women being sent to prison have increased significantly, if not disproportionately, in recent times. Similarly, other categories of prisoners, including for example those suffering from mental illness,

present particular challenges. Some people serving prison sentences, because of various social and other factors, including homelessness, may find it difficult to secure early release. I will also refer to the possible impact of the recently implemented Fines Act on numbers in prison.

(Slide 13): This slide illustrates the comparison between the changes in the numbers of police officers, compared to the levels of committal under sentence to prison over a 10 year period up to 2018. As you can see, when the number of serving police officers decreased (due to the economic recession) the numbers of people being committed to prison followed a similar pattern of decrease, both of which were reversed when the number of police officers increased again, more recently. Is this causation, or just correlation – or neither? We don't know for sure, but there does seem to be a link.

(Slide 14): I referred already to the numbers of people being sent to prison for short sentences, which has been increasing over the last couple of years. Although these individuals, by definition, serve relatively short terms in prison, the level of increase in the number being committed for short sentences has an impact on the daily prison population. One question that arises in relation to this issue is: “Are short prison sentences an indication of failed alternatives, including community sanctions and

measures?” To this extent, the issue is not just about transparency regarding how sentences are executed - in the community or in custody - but also about relative confidence and trust in the two different types of sanction. It is also arguable that, at a time when alternatives to custodial sentences were needed most, that the Probation Service was less inclined to enthusiastically encourage court decisions in favour of supervised community sanctions, in a climate where Probation Service staff numbers were decreasing because of the economic recession and moratorium on recruitment.

(Slide 15): I do not have time to go into this in any great detail, but I just wanted to illustrate the changes in the rate of committals for non-payment of fines over the last twelve years. While numbers committed to prison for non-payment of fines decreased dramatically in 2017 and 2018, the reality of the situation is not fully visible here because since the Fines Act 2014 was implemented, there has been a buildup of a backlog of cases to be dealt with. This has resulted in large numbers of individuals, who have not paid fines, not yet having their cases processed to a conclusion either way. It remains to be seen how this situation will be resolved. It will require an ongoing level of transparency and attention, for this issue to be addressed and concluded satisfactorily.

(Slide 16): While the number of women in prison in Ireland is relatively small, the percentage increase of both committals and the daily average of females in custody have increased significantly over the last three years. The increases are much higher, on a percentage basis, than the comparable numbers for men and this needs to be addressed.

(Slide 17): Transparency is one matter, but who has ownership of the various issues I have outlined, and who should take responsibility for responding to those issues? In dealing with matters such as prison overcrowding, one obvious question is whether for example it should be dealt with by legislation or by leaving it to management of the relevant services. Apart from anything else, legislation in Ireland can be quite slow to be enacted, and the fact of the matter is that dealing with issues such as prison overcrowding remains primarily the responsibility of the relevant service or services. It is difficult in a jurisdiction such as ours, to facilitate a level of transparency between the different branches of the state, enabling action in one area to be seen to have a very direct and immediate impact in another, and for these actions to be 'adjustable' in some way. This is probably due to the strong separation of powers, which I described earlier on. Specific measures that are currently being undertaken by the Prison Service in Ireland, to manage prison numbers, include managing cell and bed spaces, as well as building and

refurbishment, including some new units. Areas that involve interagency cooperation include both so-called ‘front door’ and ‘backdoor’ responses, incorporating diversion from custody – for more women, for example – and the extended management of early release.

(Slide 18): If we are to have transparency in strategic responses to issues such as prison overcrowding, we need to share, as widely as possible, an identification and agreement of what the problem is and the goal of what we want to achieve. I also believe that we need to focus on the enforcement of *all* sanctions, not just imprisonment; because they are all interconnected, from start to finish. Any adequate response to this problem needs to begin in the first place with a sound data-driven analysis. It needs to incorporate good external inspection, at a system-wide level. In Ireland we have police and prisons inspections mechanisms; but none for probation, for example. Our responses to issues need to be based on a balance between a human rights and public safety focus. Responses need to be both strategic and operational, dynamic and diverse, durable, developmental, and deliverable, as well as systemic. Initiatives such as this conference will hopefully have a noticeable impact within and across jurisdictions.

(Slide 19): The level and nature of transparency regarding the criminal justice system in Ireland has changed over recent years. The report of the Strategic Review of Penal Policy, which was published in 2014, has established government policy in this area for the foreseeable future. International standards such as those of the Council of Europe, the Court, CPT inspections and reports in relation to prisons, and so on, are a significant influence. The Irish Department of Justice and Equality is currently undergoing a massive transformation programme, which includes a newly organised Division, headed up by a Deputy Secretary General, to lead, manage and co-ordinate criminal justice policy and operations in the country. That same Deputy Secretary General chairs a Criminal Justice Strategic Committee, which includes the heads of all relevant criminal justice agencies, and works to resolve interagency issues and improve effectiveness and efficiency. A number of subgroups or working groups established by the strategic committee address critical issues requiring cross-sectoral cooperation. Members of the Judiciary and representatives of the Office of the Director of Public Prosecutions participate in such groups, as appropriate. In a relatively small, and yet significant way, the communications media has been taking an increasing interest in not just news, but debate, on criminal justice matters and opening a window of transparency on that system in recent years. Examples include “fly on the wall” documentaries made in prisons and

probation. A couple of weeks ago, a TEDx talk event was held in Mountjoy Prison in Dublin - the first event of its kind in Ireland. Similarly there is significant interest and exchange regarding criminal justice matters through social media. And finally, the participation by Irish government departments and agencies in a range of EU and Council of Europe initiatives, and other networks such as the Confederation of European Probation and EuroPris, to cite just two areas with which I am familiar, offer the possibility of mutual learning with partner jurisdictions in a two-way transparency process.

(Slide 20): Issues and actions that impact on complex challenges such as prison numbers, overcrowding and related matters, are systemic. Action taken in one part of the system typically impacts on the other parts. Transparency in this regard is not always easy to achieve, particularly where the different branches of the state and its agencies work in separate silos. In addition to this, while organisations like the prison service and probation service may find it difficult enough to open up to and cooperate with each *other*, to begin with, the challenge to achieve such transparency and collaboration involving the Judiciary and prosecution service for example, is even more difficult, due to the separation of powers and those bodies' constitutional and legislative independence. There have been some positive changes in this level of transparency in Ireland in recent

years, as I described earlier, but there probably needs to be more, if we are to have a really positive impact on matters such as prison numbers and their management. Even within the area of law enforcement and sentence management, as far as the general public is concerned, what the police and prison services do is reasonably visible and transparent. This is not the case with services such as probation, for example, which as far as the public is concerned, are out of sight and out of mind.

Positive impact and reaching shared goals can be achieved, with the appropriate will; however this requires focus, energy, commitment, agility and persistence, as well as an increased level of transparency, and understanding among all the players, regarding how the system works and how each part of it is influenced and impacted by the other parts.

(Slide 21). Thank you for your attention.

ENDS.