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An Comhchoiste um Dhlí agus Ceart agus Comhionannas

Tuarascáil maidir le Ciontuithe Spíonta

Deireadh Fómhair 2019

Houses of the Oireachtas

Joint Committee on Justice and Equality

Report on Spent Convictions

October 2019

32/JAE/44



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Chairman's Preface

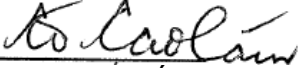
The Committee decided to hold a public engagement in July 2019 to examine the issue of spent convictions and the potential for reform in this area. Witnesses included Senator Lynn Ruane, who has undertaken considerable work on this subject. She has campaigned to ensure that this issue is examined thoroughly, and the Committee was pleased to play a part in that process.

From international research, an effective spent convictions regime has been shown to play a vital role in the rehabilitation and reintegration of ex-offenders. A criminal record can inhibit a person's opportunity to access work and housing and prevent individuals from participating fully in their communities. Allowing people who have demonstrated that they are no longer participating in criminal activities to have their conviction deemed "spent" will promote a penal system that places its emphasis on reform and rehabilitation rather than punishment. On foot of this report, I hope that we will see some real progress in this area.

A copy of this report and recommendations has been sent to the Minister for Justice and Equality, and we look forward to engaging with the Minister on this subject.

I express my gratitude on behalf of the Committee to the witnesses who attended our public hearing to give evidence, and others who made submissions. Finally, I also wish to thank the staff of the Committee Secretariat and of the Library and Research Service, who assisted in the preparation of this report particularly Ms Niamh Murray. Go raibh maith agaibh.




Caoimhghín Ó Caoláin T.D.
Chairman – October 2019

1. Introduction

The Joint Committee on Justice and Equality ('the Committee') decided to hold a public hearing on the issue of spent convictions, and the potential for reform in this area, in July 2019. This engagement was partly instigated at the request of Senator Lynn Ruane, who has undertaken considerable work in this area, and has sponsored a Private Members' Bill entitled the Criminal Justice (Rehabilitative Periods) Bill 2018. Whilst Senator Ruane's proposed Bill formed part of the context of its deliberations, the Committee sought to examine the issue more broadly, and was not confined to the measures contained in Senator Ruane's Bill.

From the outset, it is important to distinguish between the different terminology that is used when discussing spent convictions as some overlap arises in the academic literature. Under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 ('the 2016 Act'), where a conviction becomes spent, disclosure of the conviction can only be required in specific circumstances. By contrast with a situation where the criminal record is "wiped clean", the spent record of the conviction is not deleted. In circumstances where the record is "wiped clean" the conviction is usually removed from the record and the offender is treated as though no conviction was ever recorded. The term "expunged" has been used interchangeably by academics and politicians to cover circumstances where a conviction is deemed spent and where a conviction is deleted from the record. For a conviction to become spent, a person will normally be required to not have received any convictions for a set period after they have served their sentence. This conviction-free period is known as a "rehabilitation period."

The concept of spent convictions was first introduced into Irish law with the enactment of the Children Act 2001 ('the 2001 Act'), section 258. This provides for the non-disclosure of convictions for offences committed by children, on condition that the offender does not commit any further offence in a three-year period.

The absence of an equivalent mechanism for adult offenders led to calls for reform to assist in the rehabilitation of adults by providing them a greater opportunity to leave their criminal past behind. Reports by the National Economic and Social

Forum (NESF)¹, the Equality Authority² and the Irish Human Rights Commission (IHRC)³ criticised the fact that Ireland did not have appropriate measures to assist adult ex-offenders in their rehabilitation and highlighted that Ireland was the only EU country not to have implemented some form of anti-discrimination or spent conviction regime to assist adult ex-offenders in terms of gaining employment.

There are currently three existing schemes for expungement in Ireland:

- Under section 258 of the Children Act 2001, convictions received for offences committed by children aged under 18 may become spent after 3 years have passed since conviction. Convictions for sexual offences and for offences tried at the Central Criminal Court are excluded.
- Under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, all convictions received in the District Court for motoring offences and minor public order offences can become spent after 7 years, with the exception of dangerous driving which is limited to a single conviction.
- Additionally, where a person has one conviction (other than a motoring or public order offence), which resulted in a term of imprisonment of less than 12 months, it may become spent after 7 years. This provision applies to either a District Court or Circuit Court conviction. If a person has two or more such convictions, neither can become spent.

During the course of the meeting, the Committee heard that the reintegration and rehabilitation of former offenders protects society from further acts of crime. All international evidence demonstrates that a well-designed and fair spent convictions regime works to reduce recidivism and benefit both the individual and society. When access to spent convictions is made available to individuals, incidences of crime and reoffending decrease as unnecessary conviction disclosures for minor, non-violent and non-sexual crimes no longer serve as a barrier to progression.

¹NESF, Re-integration of Prisoners (Dublin, 2002), paras 6.23-6.25. Available at: <http://edepositireland.ie/handle/2262/72753>

²Equality Authority, Review of Discriminatory Grounds Covered by the Employment Equality Act 1998 (Dublin, 2002).

³ IHRC, Extending the Scope of Employment Equality Legislation (Dublin, 2005), pp.6-10. Available at: <https://www.ihrec.ie/documents/submission-on-extending-the-scope-of-employment-equality-legislation/>

Effective rehabilitation legislation can remove obstacles to the reintegration of persons with convictions who have demonstrated that they have moved on from past offending behaviour.

Engagement with Stakeholders

The Committee invited written submissions from several stakeholders on the issue of spent convictions reform. Arising from those submissions, a public meeting of the Committee was held on [10th July 2019](#) to further explore the points raised.

In addition to an opening statement from Senator Lynn Ruane, the Committee also heard from the following witnesses:

Ms Fíona Ní Chinnéide and Ms Michelle Martyn	Irish Penal Reform Trust
Dr T.J. McIntyre	University College Dublin
Mr Niall Walsh	Pathways Centre

See **Appendix 3** for a link to the **Official Transcript** of the hearing.

2. Overview of Spent Convictions Legislation

Development of the Irish regime for spent convictions

Prior to the enactment of the 2016 Act, there were a number of developments, both political and legal, that took place resulting in considerable alterations and delays to the legislation. This section tracks the development of the Irish legislation from the 2007 Law Reform Commission (LRC) Report on Spent Convictions,⁴ through to the enactment of the 2016 Act.

The 2007 LRC report

In 2007, the LRC produced an extensive report into spent convictions, examining the benefits of introducing a spent convictions regime for adult offenders and considering how such a regime could be applied. Included in this report was a draft Bill which would go on to form the basis of the *Spent Convictions Bill 2007* [initially a Private Members Bill], the *Spent Convictions Bill 2011* [PMB] and the *Criminal Justice (Spent Convictions) Bill 2012*.⁵ The report contained a comprehensive comparative analysis of similar jurisdictions and set out a number of recommendations.

The Spent Convictions Bill 2007

The *Spent Convictions Bill 2007* (the 2007 Bill) was initially introduced as a Private Members Bill by then Minister of State, Barry Andrews T.D. The 2007 Bill was later taken up by the Government and presented as a Government Bill for its Second Stage debate. The 2007 Bill drew extensively from the LRC Report. The Bill never made it to Committee Stage and ultimately lapsed with the dissolution of the 30th Dáil.

⁴ https://www.lawreform.ie/_fileupload/Reports/rSpentConvictions.pdf

⁵ [http://www.justice.ie/en/JELR/Criminal%20Justice%20\(Spent%20Convictions\)%20Bill%202012-P&C.pdf/Files/Criminal%20Justice%20\(Spent%20Convictions\)%20Bill%202012-P&C.pdf](http://www.justice.ie/en/JELR/Criminal%20Justice%20(Spent%20Convictions)%20Bill%202012-P&C.pdf/Files/Criminal%20Justice%20(Spent%20Convictions)%20Bill%202012-P&C.pdf)

The Spent Convictions Bill 2011

On the 11th May 2011, the *Spent Convictions Bill 2011* (the 2011 Bill) was introduced as a Private Members Bill by Dara Calleary TD. The Bill was a replica of the 2007 Bill introduced by Deputy Andrews. Several TDs spoke of the importance of introducing this legislation, and the Bill once again received broad support from across the Dáil chamber. During the Second Stage debate, the then Minister for Justice and Equality, Deputy Alan Shatter, indicated that a Government Bill on the matter would be forthcoming. Just as was the case with the 2007 Bill, some issues were raised with the intention that they would be dealt with at Committee Stage or during analysis of the Government's proposed Bill.

The 2011 Bill did not progress to Committee Stage as the Government published the *Criminal Justice (Spent Convictions) Bill 2012* (the 2012 Bill) on the 4th May 2012.

The Criminal Justice (Spent Convictions) Bill 2012

The 2012 Bill was a Government Bill and was first introduced in Seanad Éireann by the then Minister for Justice and Equality, Alan Shatter TD. While the Bill was based on the same 2007 LRC report as the Fianna Fáil Private Members Bills, there were several differences to this Bill, which sought to address the concerns raised during the previous debates.

Table 1: LRC Draft Bill v. 2012 Bill

	LRC Draft Bill	2012 Bill
Duration of qualifying custodial sentence	6 months	12 months
Duration of qualifying non-custodial sentence	6 months	12 months
Relevant rehabilitation period	7 years for a custodial sentence and 5 years for a non-custodial sentence	See Schedule 2 of the 2012 Bill: Custodial < 6 months = 5 years Custodial 6 - 9 months = 6 years Custodial 9 - 12 months = 7 years Non-custodial = 3 - 5 years
Maximum number of spent convictions	No Limit	2
Range of excluded employment	See s5 of draft bill (Entire public service is excluded)	See schedule 3 of 2012 Bill, (only certain sensitive positions in the public service are excluded)

MM v. United Kingdom and T & Anor v. Secretary of State for the Home Department

Between 2012 and 2016, the main reason for the delay in passing the 2012 Bill arose from the findings of the European Court of Human Rights [ECtHR] in *MM v. United Kingdom*.⁶ This decision dealt with mandatory vetting in Northern Ireland and the blanket disclosure of police cautions, even where they were deemed spent. The ECtHR held that the disclosure of this information interfered with the right to privacy under Article 8 of the European Convention on Human Rights [ECHR], displacing the common law view that convictions were regarded as public information. The ECtHR held that once Article 8 was brought into play, there would be a need to have a clear legislative framework which provided for a mechanism for independent review of disclosures.

Following the decision in *MM*, the UK Supreme Court considered the issue of the disclosure of spent convictions in the context of private vetting in *T & Anor v.*

⁶ *MM v. United Kingdom* (Application No. 24029/07, judgment of 13th November, 2012).

Secretary of State for the Home Department.⁷ Similar to *MM*, the disclosure regime in question required a blanket indiscriminate disclosure of previous convictions.

The result of the decisions in the UK was that it became clear that the 2012 Act, as enacted, was incompatible with Article 8 of the ECHR. The 2012 Act provided for mandatory disclosure of all convictions, regardless of whether they were spent or not.

Taking note of the situation relating to UK legislation, changes were made to the 2012 Bill before the Oireachtas, leading to a substantial revision which included several amendments to the 2012 Act. The most contentious of these amendments was the amendment allowing for the rehabilitation period to revert to seven years for all offences. According to the then Minister for Justice and Equality, Deputy Frances Fitzgerald, this was required to facilitate the inclusion of an amendment allowing for almost all road traffic convictions under the Road Traffic Acts to be treated as spent convictions after seven years. A similar approach was taken in relation to certain public order offences. However, the changes also resulted in a reduction from 2 to 1, the number of spent convictions for all other offences which are allowed.

These amendments were debated on 27th January 2016. The Government's amendments were all accepted, and the revised 2012 Bill formed the 2016 Act.

The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

The 2016 Act provides for a regime setting out when convictions can be regarded as spent, allowing the ex-offender to decline to disclose a previous conviction in certain circumstances. Excluded sentences which cannot result in a spent conviction are set out in section 4. These include a custodial sentence for a term of imprisonment greater than 12 months, offences which are tried in the Central Criminal Court⁸ and sexual offences.

The Operation and Effectiveness of the 2016 Act

⁷ *T & Anor v. Secretary of State for the Home Department* [2014] UKSC 35.

⁸ These include aggravated sexual assault, rape, murder, genocide and treason.

Unfortunately, detailed statistical information to evaluate the effectiveness of the 2016 Act is somewhat lacking. In order to assess whether the 2016 Act is meeting its stated aims of promoting rehabilitation and addressing recidivism, information is required on the number of convictions which have become spent. This information is not available due to the system operating automatically, with no central authority responsible for recording convictions as they become spent. In a short, post-enactment report which was laid before the Houses of the Oireachtas in March 2017 by the Department of Justice and Equality on the 2016 Act, the Department estimated that “slightly over 80% of all criminal convictions now become spent after 7 years.”⁹ This figure has been met with a degree of scepticism as the single conviction rule is likely to disqualify a significant number of people from the regime even though it may appear that the majority of convictions will be capable of being spent.¹⁰

⁹ Department of Justice and Equality, *The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, (March 2017) at p. 2. Available at http://opac.oireachtas.ie/AWData/Library3/Post-enactment_Report_-_Criminal_Justice_Spent_Convictions_and_Certain_Disclosures_Act_2016_124838.pdf

¹⁰ See McIntyre & O'Donnell, “Criminals, Data Protection and the Right to a Second Chance” *The Irish Jurist* (2017) Vol. 58(58), pp. 27-55, at 34.

3. International Models

Several countries have implemented a legal framework covering spent convictions. The ECtHR and the Court of Justice of the European Union have established principles that enable ex-offenders to limit access to information about old convictions.¹¹

United Kingdom

The Rehabilitation of Offenders Act 1974 (the 1974 Act) is the primary piece of legislation concerning spent convictions in England and Wales. The principal differences to the Irish regime include:

- a) Custodial sentences of up to 4 years can become spent;
- b) More than one qualifying sentence can become spent;
- c) There are different rehabilitative periods depending on the length of the sentence or the type of non-custodial provision that is used; and
- d) Where there are multiple offences, the rehabilitative period resets with each new offence, meaning all the offences do not become spent until the rehabilitative period of the most recent offence or the longest remaining rehabilitative period has been completed.

Comparing the two regimes, it was noted that the English regime is more liberal and provides offenders with a greater incentive to desist from offending.¹² The following sentences are exempt from the 1974 Act and can never become spent:

- a) Sentence of imprisonment for life;
- b) Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c) Sentence of preventive detention;
- d) Sentence of detention during Her Majesty's pleasure or for life;
- e) Sentence of custody for life;
- f) Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for

¹¹McIntyre and O'Donnell, (2017) "Criminals, Data Protection and the Right to a Second Chance" 58 Irish Jurist, (ns) 27 Accessed at https://researchrepository.ucd.ie/bitstream/10197/9350/1/Spent_convictions_preprint.pdf

¹² Holmes, "As Crimes Go By" (2016) Law Society Gazette Vol. 110(6), pp. 22-23.

public protection and extended determinate sentences for dangerous offenders).¹³

In the UK, there are a variety of different rehabilitative periods, ranging from 6 months to 3.5 years, which apply depending on the length of the sentence. These periods are in stark contrast to the position in Ireland, which requires a rehabilitative period of 7 years for all sentences (other than those which can never be spent). For the purposes of the 1974 Act, a custodial sentence includes a suspended sentence.

Rest of Europe

It is important to note that spent conviction regimes in most European countries address the issue from a privacy perspective, rather than the public safety perspective which features strongly in common law jurisdictions.

Studies have shown that widespread disclosure of criminal records undermines the basis of the 1974 Act in that it may hinder social reintegration.¹⁴ The 1974 Act operates from the basis that an employer is generally allowed to ask about a person's prior criminal background. By contrast, the position in most European regimes is that it is presumed that a person cannot be asked about any prior convictions unless there is a law expressly providing for this. In most European countries, all convictions become 'spent' by the passage of a certain period of time. This process is generally automatic and covers all convictions. However, there are some exceptions of convictions that do not get spent, for example, life sentences in Germany or the most serious crimes in France.¹⁵

In Germany and the Netherlands, a Certificate of Good Conduct can remove all convictions (excluding life sentences, preventative detention orders, and mental hospital orders).

Record sealing is the removal of Court records from general access. The record is not destroyed, but only Courts or law enforcement agencies can access these

¹³ See Ministry of Justice, New Guidance on the Rehabilitation of Offenders Act 1974. Available at: <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>.

¹⁴ Larrauri, "Criminal record disclosure and the right to privacy" (2014) *Criminal Law Review* 723.

¹⁵ *Ibid*, at 727.

records, and only under special circumstances. In Spain, a conviction record can be sealed for any crime, irrespective of how serious it is.

Generally, analysis of the different systems has indicated that the main difference between European spent conviction regimes and the regime under the 1974 Act to be one of breadth, with the UK regime providing for convictions to be considered spent in quite narrow circumstances, while disclosure to employers is permissible in a considerably larger set of circumstances. Given that the spent convictions regime in the UK is held to be restrictive in comparison to Europe, it is clear that the Irish regime under the 2016 Act would be seen as an outlier in Europe.

New Zealand

The statutory basis for the regime in New Zealand is the Criminal Record (Clean Slate) Act 2004. The key features of the scheme include:¹⁶

- 7-year rehabilitation period for all offences;
- Only applies to non-custodial sentences;
- Convictions become automatically spent;
- Can apply in respect of multiple convictions;
- Does not apply to certain “specified offences” (mainly sexual offences); and
- You can apply to the District Court to have your convictions disregarded where the offences of which you were convicted no longer exists or you received a non-custodial sentence for a specified offence.

Part VIIC of the Crimes Act 1914 is the legislation governing spent convictions for commonwealth and territorial offences.¹⁷ The key features of the spent convictions regime include:

¹⁶ Moira Paterson and Bronwyn Naylor, “Australian Spent Convictions Reform: A Contextual Analysis” (2011) University of New South Wales Law Journal, Vol. 34, No. 3, 938.

¹⁷ A commonwealth offence is an offence which comes within the law-making responsibilities of the Australian federal government. These include drug-trafficking, terrorism and social welfare fraud. A territorial offence relates to an offence which comes within the law-making responsibilities of the government of a specific Australian territory. These include the majority of criminal offences such as road traffic offences and public order offences.

- 10-year rehabilitation period for all offences;
- Applies to non-custodial sentences and custodial sentences of up to 30 months;
- Does not apply to “designated offences” (mainly sexual offences and offences where the victim was a minor); and
- Can apply in respect of multiple convictions.

Somewhat different schemes apply in the different territories of Australia.

United States - certificates of employability, relief or rehabilitation

Certificates of Rehabilitation or Relief demonstrate that ex-offenders have been rehabilitated, while stopping short of sealing the applicants’ records. They certify rehabilitation for an ex-offender through completion of specific steps and achievements. In 2003, Barack Obama introduced new legislation in the Illinois State Senate to help job seekers who had been convicted of a non-violent crime to overcome barriers to employment without expunging their records. Since then, the granting of so-called Certificates of Rehabilitation or Relief has been implemented in fourteen US states; in others, a compromise version of full expungement (or sealing of records) in courts has been introduced.¹⁸ American research on this approach demonstrates both the potential benefits of such mechanisms and the difficulty of uniform implementation.¹⁹ The process requires a deciding body to be in place and would require evidence of achievement, compliance and good behaviour. Where further offending arises, the certificate can be withdrawn or modified.

¹⁸ Marshall Project 2015

¹⁹Leasure and Stevens Andersen 2016.

4. The hearing - key issues identified

The Committee heard that whilst the 2016 Act went some way towards introducing a spent convictions regime, the proposed Criminal Justice (Rehabilitative Periods) Bill 2018 (the 2018 Bill) would increase the number of people who can benefit from the legislation by broadening the range of convictions which may become spent, providing for proportionality in deciding when a conviction can become spent and taking account of the special position of 18-23 year olds.

Witnesses highlighted that despite the relevant provision in the Children's Act 2001 generally meeting its rehabilitative aims, the 2016 Act is somewhat limited and does not adequately fulfil its rehabilitative purpose. Specifically, it does little to address the social inequalities that underlie most crime, and that it compounds the multiple disadvantages experienced by marginalized communities.²⁰ Furthermore, the 2016 Act does not apply the principle of proportionality to rehabilitative periods. Some of these limitations were identified by the Steering Committee of the National Drugs Strategy;²¹ in the Mulvey Report;²² and, by application, analysis of the Irish Human Rights Commission on previous versions of the legislation.²³

Eligibility of sentences

The 2018 Bill extends the eligibility of prison sentences that can become spent from the current maximum of 12 months to 24 months for custodial sentences and from 24 to 48 months for non-custodial sentences. This means the legislation will broaden access to the regime for those who have received up to a two-year custodial sentence or up to a four-year non-custodial sentence. Concerns about specific categories of offence that would be included could be addressed separately through vetting in regulated areas of work.

²⁰National Development Plan, 2000-2006 at p. 194.

²¹Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025, July 2017.

²²Mulvey, K (2017) Dublin North East Inner City: Creating a Brighter Future.

²³IHRC Observations on the Criminal Justice (Spent Convictions) Bill 2012, available at: https://www.ihrec.ie/app/uploads/download/pdf/ihrc_observations_on_spent_conviction_bill_2012_june_2012.pdf

Proportionality of the rehabilitative period

The principle of proportionality seeks to link the severity of sentence passed and the length of the rehabilitative period before that conviction can become spent. The 2018 Bill introduces the principle of proportionality to endeavour to take a fairer approach to the rehabilitative period.

Witnesses told the Committee that rehabilitation should be incentivised by setting proportionate and reasonable rehabilitative periods: that is, the more serious the offence, the longer time it takes to become expunged.

Single conviction rule

Ireland's position of allowing just one conviction to become spent is an outlier in Europe. The Committee heard that two or more convictions for separate offences does not indicate a pattern or propensity for offending but, rather, a set of circumstances or factors that contribute to offending. This could be due to immaturity and impulsivity, or it could be poverty, mental health issues, homelessness, addictions, experience of violence or domestic abuse. Expanding the single conviction rule would present an opportunity to support people who have recovered from such circumstances and moved on from offending to lead law-abiding lives.

Part 2, Section 6(b) 3(a) (b) of the 2018 Bill raises the limit on the number of convictions eligible to become spent from one to two convictions for offences committed as adults (24+) and from one to three convictions for offences committed as young adults (18-23). This will expand the number of people to whom the legislation applies to and benefits.

However, it was emphasised to the Committee that the 2018 Bill would still exclude those who have in their history a period or cluster of higher frequency offending, running contrary to the spirit of rehabilitation which dictates that any person who has demonstrated their commitment to move on from offending by completion of a conviction-free period should benefit.

Where a number of convictions relate to a single incident, it is treated as a single conviction. However, it is notable that within the 2016 Act, there is no limit on the number of certain public order or minor motoring convictions which may become

spent. Witnesses told the Committee that if public safety is a consideration, it is arguable that an individual having multiple motoring offences which can be spent without limit puts the public at greater immediate and direct danger than an individual with two separate convictions for shoplifting which are on their record for life, neither ever becoming spent.

Young adult offenders

The 2018 Bill recognises young adults (18 – 23) as a distinct cohort [Part 2, Section 5(1) 4A(2) & 4A (4), Part 2, Section 6(b), Part 3, Section 7(b), see also Schedule 3, Part 1 and 2, column 4 for relevant rehabilitative periods]. It allows for up to three convictions to become spent for young adults. It also provides for shorter rehabilitative periods to apply to convictions received for offences committed by this age group.

By recognising this cohort as distinct from children and adults, the 2018 Bill takes account of the wide body of international and domestic research which has found that the brain and maturity level continue to develop beyond adolescence and into the early twenties and recognises the distinct developmental needs of young adults. The Youth Policy Framework, '[Better Outcomes, Brighter Futures](#),' covering 2014–2020, defines a youth in Ireland as being under the age of 24. While anyone over the age of 18 is held accountable in line with all other adults, allowing the opportunity for certain offences to become expunged in the same way as for those under 18 would give a young adult a greater chance to be rehabilitated and to progress.

Barriers to Reintegration

The Committee was told that there are many barriers to reintegration faced by people with criminal convictions that cannot be considered spent. These include:

- Gaining and progressing in employment;
- Garda Vetting for employment, education courses, housing or voluntary work;
- Education: an individual may not be accepted or able to complete a course due to a placement element;

- Increased insurance costs; and
- Discrimination.

Employment

Witnesses reported that securing employment or training, and the ability to rebuild a life after committing an offence, are crucial steps in breaking the cycle of offending, establishing a pro-social identity and achieving a law-abiding lifestyle.²⁴ The development of social controls such as employment alter patterns of offending behaviour by providing individuals with a 'stake in conformity' and sufficient motivation to maintain ongoing desistance from offending.²⁵ Employment has socio-cultural value; employment structures daily life; employment gives people a sense of identity and a role in society; employment engenders belief and commitment in that the job can be seen to be done; employment increase self-esteem, uses energy and provides financial security; employment enables interaction with people who have no offending histories and can facilitate ambition.²⁶

It is prohibited to work in certain jobs, for example the army, if one has a criminal conviction for even a minor offence. This may push individuals towards lower paid, low-skill jobs when they may have preferred to progress in a very different direction but were prohibited. Therefore, it is not only about whether somebody is in employment, but about the nature of the employment opportunities open to these individuals which reinforces inequality.

The need for an onus to be put on employers to use their discretion if they become aware of minor offences in someone's past was underlined by several witnesses. They stressed that employers should be strategic about whether what is contained in a Garda vetting report will impact on the job or not. Certain employers have a "tick-the-box" question of "do you have a criminal conviction?" which will automatically exclude an applicant from the application procedure and does not allow for an explanation of what it was or how long ago it occurred. There is a

²⁴ Laub, J.H. and Sampson, R.J. (2001) Understanding Desistance from Crime. *Crime and Justice*, Vol. 28 (2001), pp. 1-69.

²⁵ Laub and Sampson (2001).

²⁶ Farrall, S. (2002) *Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime*, Willan, Cullompton.

campaign underway in the United Kingdom to “ban-the-box” and prohibit employers from asking this question until the final stages of an application.²⁷

Individuals can also face issues if they are required to travel internationally for work that would necessitate them disclosing their convictions. This can lead to people not applying for promotions, affecting their ability to retain and progress in their work.

Unspent convictions can prohibit students from participating in certain educational courses that require work placement as they may be refused a placement due to old, minor offences that are still on their record. This prevents people progressing and moving up in their educational attainment and work life.

There are many international examples of legislation to protect those with criminal records from facing discrimination in employment. For example, Australia has legislated that people should not be discriminated against in employment because of their criminal record if that record does not prevent them from carrying out the “inherent requirements” of the job. In Tasmania the words “irrelevant criminal records” are used.

Benefits of employing ex-offenders

Witnesses stated that for employers, there can be real benefits to employing people who have been through the criminal justice system. It was suggested to the Committee that people who come through the justice system and start to work will probably be committed to doing the best they can in the workplace, often over and above the call of duty. They also tend to be loyal to their employers and retention levels are relatively high. Companies that are looking to create a positive social impact and give back to communities in which they operate have experienced that employing persons with convictions can help build brand reputation.

²⁷ <https://www.unlock.org.uk/projects/employment-discrimination/ban-the-box/>

Housing

The Committee heard that there is a lack of transparency and accountability surrounding the eligibility criteria for acceptance onto housing waiting lists for those with unspent convictions on their record. The current system allows local authorities and county councils to use discretionary powers, which does not necessitate an explanation, when they determine acceptance onto the list results in a distinct lack of clarity.

Garda vetting

It was pointed out that criminal convictions continue to be an obstacle to employment in many instances, even where there are no child protection or offence-related employment risks. Vetting, when used for employment, provides the potential employer with confirmation from An Garda Síochána that the list of previous offences the person has committed is a true and accurate account of their criminal history. While it may provide assurance in relation to specific job risk concerns and necessary child protection measures, the criminal record remains a stigma and may discourage some employers from engaging at all with the person. For ex-offenders, especially those with more serious offending histories, long periods in prison or a high public profile, the obstacles are challenging and persistent, even for those who have moved away from offending and sustained significant change. For both the public and employers, perceptions, past history and reputation can be difficult to overcome.

The Committee was asked to consider how much information on a criminal record should be released, to whom and in what circumstances. While acknowledging the importance of ensuring effective systems are in place to protect the vulnerable, vetting information should not be allowed to influence someone's employment opportunities due to employer perceptions and biases.

The Committee was told of the need for increased public education around the Garda vetting scheme. This can be particularly unfair to parents who are prohibited from participating in afterschool or summer camp activities with their children. An individual's family time and relationships are vitally important to their rehabilitation and recovery, but the limitations on spent convictions and the way Garda vetting information can be disclosed to a school has been found to damage

this quality family time. The Committee heard of examples of where individuals did not bother applying to work at extra-curricular or summer camp activities which require Garda vetting in order to avoid this information being passed onto a school. Garda vetting involves a blanket approach that is not focussed on violent or sexual offences that would require consideration of whether one could participate in a children's summer camp or project. If a drug offence or a minor shoplifting offence comes up, the person is also excluded from being part of community life with their family which can have a negative impact on recidivism.

General Data Protection Regulation (GDPR) and the "right to be forgotten"

A fundamental principle of data protection law is that data controllers may only process data which are "adequate, relevant and not excessive in relation to the purposes for which they are collected".²⁸ This will constrain employers and others in asking about or making decisions based on old criminal records. In principle, three approaches can be taken when deciding what weight should be given to national rehabilitation laws in determining whether information about criminal records is irrelevant or excessive in a particular context.

First, data protection law could simply defer to the legislative judgment embodied in rehabilitation laws as to which convictions should be revealed. In the Irish context, for example, this would mean that data protection law would prohibit employers from asking about spent convictions, but would leave them free to ask about convictions within the last seven years or convictions which would never qualify to become spent, even if they date back twenty or thirty years.

A second possible approach might be to disregard national rehabilitation laws. In this approach, whether a conviction is spent would be immaterial in determining whether information about the conviction is relevant and proportionate in a particular context. This approach would have the benefit of promoting uniformity between different EU jurisdictions, avoiding anomalies based on the generosity or restrictiveness of a particular national system. But it seems equally untenable to say that the democratic judgment expressed in rehabilitation legislation is of no

²⁸ Data Protection Acts 1988 and 2003, s.2.

relevance whatsoever. At a minimum, the fact that a conviction is spent under national law reflects a societal understanding of rehabilitation and is strong evidence in favour of the argument that seeking information about the conviction would be excessive.

The third potential approach would be that whether a conviction is spent or not should be considered as a relevant but not decisive factor. It is one which employers, data protection authorities, and courts can take into account in deciding on an individual case but cannot be conclusive in either direction.

Following the 2014 decision of the CJEU in *Google Spain*²⁹, the right to data protection under the Charter of Fundamental Rights includes a right to have search engines remove links to information about an individual where a search is carried out on their name. The right applies to information which is “inadequate, irrelevant or no longer relevant or excessive ... in the light of the time that [has] elapsed.”³⁰ This is subject to a balancing test where there is a special interest in the public having access to the information, for example where the individual is a public figure.³¹ Individuals may contact the search engine directly to ask for de-listing of search results; if the search engine declines the request then the individual can bring the matter to the national data protection authority (DPA) for adjudication.³² This right – popularly known as the right to be forgotten but better described as a right to be delisted – has obvious implications for ex-offenders.

In November 2014, an independent European working party dealing with issues relating to the protection of privacy and personal data up until 25 May 2018 (the date of entry into application of the GDPR) known as the Article 29 Working Party, issued guidelines as to how national DPAs should consider requests to have search results removed, with specific guidance on the issue of criminal records.³³ These guidelines indicate that search results for spent convictions will usually be delisted on request. However, this approach does not mean that spent convictions will always be delisted. The decision to delist still requires an individual analysis, taking into account other factors such as whether the conviction is relevant to an

²⁹ Judgment of 13 May 2014, *Google Spain SL and Google Inc v Agencia Española de Protección de Datos and Mario Costeja González*, C-131/12, EU:C:2014:317.

³⁰ *Google Spain*, para.93.

³¹ *Google Spain*, para.97.

³² See e.g. O. Lynskey, “Control over Personal Data in a Digital Age: Google Spain v AEPD and Mario Costeja Gonzalez” (2015) 78(3) *Modern Law Review* 522.

³³<https://iapp.org/resources/article/all-of-the-article-29-working-party-guidelines-opinions-and-documents/>

individual's profession, whether the search results have a disproportionately negative impact on the ex-offender, and whether the ex-offender was under 18 at the time of the conviction.³⁴

There is also an issue in situations where an individual was charged but subsequently acquitted of a crime. They have no criminal record, but their name shows up in a search. In this situation, the person can have it removed from the search result. However, this is a remedy for people who are well-informed enough to know about the existence of this right and how to go about exercising it. It is not a solution for the average individual who is not aware of the finer points of European data protection law.

From a media perspective, there are two elements. The first is that there is an exclusion from the GDPR rules for journalistic activities that applies to reporting convictions. However, the second relates a recent ruling by the European Court of Human Rights which said that it is open to the state to decide to adopt rules that will allow, for example, newspapers to talk about old convictions and to include information about old convictions in their archives based on Article 8 of the European Convention on Human Rights.

³⁴ Article 29 Data Protection Working Party, "Guidelines", p.16, p.18, p.15.

5. Conclusions

The basis for spent convictions legislation is the belief that a reformed offender who has committed minor offences in the past should be afforded a reasonable opportunity to reintegrate into society. Given the extensive difficulties faced by individuals with convictions, particularly in terms of gaining employment, a spent convictions regime provides reformed offenders with a better opportunity to move on with their lives.

Research has established that re-entering the community after time spent in prison requires care, expertise, and an effective infrastructure to support a person's rehabilitation and reintegration process, their safety and security, and that of the wider community. This, in turn, reduces the likelihood of re-offending, reduces crime and reduces the number of victims.

Employment has been found to reduce the risk of re-offending by between a third and a half³⁵ while people with convictions make up a sizeable proportion of the unemployed population.³⁶ The criminal records system is there to protect the public but is having the opposite effect if it sees ex-offenders languishing without jobs and drawn back into criminality.³⁷ A spent convictions regime is an integral part of this reintegration process.

Rehabilitation is at the heart of a victim-centred criminal justice system. Assumptions are often made in the media about victims demanding sterner punishments, but there is little by way of public polling or research in Ireland to support these claims. In fact, international research finds that crime survivors want the criminal justice system to focus more on rehabilitating people than punishing them by a margin of two to one, and that crime survivors across all demographic groups support a range of non-custodial alternative approaches in order "to stop the cycle of crime and protect future generations from falling through the cracks".³⁸ Crime survivors want the offender to be held accountable,

³⁵Social Exclusion Unit (2002), *Reducing re-offending by ex-prisoners*, London: Office of the Deputy Prime Minister.

³⁶ 33% of Job Seekers Allowance claimants in England and Wales received a criminal record in the last ten years. Ministry of Justice and Department for Work and Pensions (2011) *Offending, employment and benefits – emerging findings from the data linkage project*, London: MOJ/DWP.

³⁷*The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, p.66:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³⁸ Alliance for Safety and Justice (2016) *'Crime Survivors Speak': National Survey of Victims Views on Safety and Justice*, available at: <http://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>

but primarily they want the offender to desist from offending. Therefore, measures to promote rehabilitation and reduce reoffending do not undermine the rights of victims – they do the opposite.

6. Recommendations

Based upon the evidence that presented, the Joint Committee recommends that:

1. Reform is necessary in order to ensure an approach to spent convictions that is proportionate and reasonable, giving ex-offenders a real opportunity at redemption whilst ensuring that we continue to protect the vulnerable in society. The provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, while welcome as a first step when introduced, are insufficient. There are models of practice in Europe and the United States that merit further consideration in this regard;
2. The Criminal Justice (Rehabilitative Periods) Bill 2018, tabled by Senator Ruane, is welcomed and supported as an important step in increasing access to spent convictions. However, the Committee is also of the view that it could be expanded further to better achieve its rehabilitative aims;
3. The eligible category of convictions that can become spent should be expanded significantly, to up to two years for custodial sentences and four years for non-custodial sentences. Concerns about specific categories of offence that would be included within this can be addressed separately through vetting for regulated areas of work;
4. The present limit (with certain exceptions) of allowing just one conviction to become spent is unduly restrictive and ought to be increased to at least two convictions. Consideration should also be given to removing the limit altogether, as previously recommended by the Irish Human Rights Commission. Consideration also ought to be given to introducing even greater leniency in the case of young adult offenders (aged 18-25);
5. The principle of proportionality should be incorporated into the spent convictions regime and rehabilitation periods in order to ensure greater fairness, so that the length of the rehabilitative period before a conviction can become spent is dependent upon the severity of sentence passed;

6. Given the potential ramifications for individuals, consideration ought to be given to the establishment of an independent oversight committee to review decisions to disclose specific information arising from Garda vetting to prospective employers, third level institutes, schools and other bodies. The principle of relevance should also be incorporated into the vetting scheme so that only convictions relevant to the purposes of the vetting itself should be disclosed;
7. Consideration ought to be given to the introduction of anti-discrimination legislation to ensure that individuals cannot be discriminated against by potential employers based on convictions that are spent or if the conviction does not relate to the ability to meet and perform the inherent requirements of a particular job. An amendment to the Employment Equality Acts should be made to this effect;
8. Anti-discrimination legislation should also be extended to preventing people with spent convictions from, *inter alia*, being charged higher insurance premiums or excluded from educational courses;
9. A distinct approach ought to be taken in the case of young adults, with further consideration given to how convictions for this cohort are addressed - for example, by extending the non-disclosure provisions of the Children Act 2001 to young adults under 25 years of age; by removing the three-year rehabilitative period for those under 18 and bringing legislation in line with *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* and with the upper age threshold of the Youth Work Act 2001, which both define a 'young person' as any person under 25 years of age;
10. Given concerns that the current system for spent convictions is not fully compliant with the European Convention on Human Rights, in particular Article 9 relating to the right to privacy, the Minister for Justice and Equality should immediately conduct a review of the 2016 Act in light of this;

11. The State should produce national awareness-raising materials that can better inform employers of their responsibilities and their ability to use discretion when convictions are disclosed by current or prospective employees, or when discovered through online searches. This would help address concerns over low levels of information among employers relating to criminal record disclosure requirements and responsibilities;
12. Where the conviction record of a prospective or current employee is disclosed or discovered, the individual should be given a fair and reasonable chance to explain the record and the circumstances thereof before action is taken. The Committee therefore supports the aims of the 'ban the box' campaign, so that such enquiries are made only at the final stages of a job application process;
13. Greater national-level statistics in relation to conviction rates, recidivism and rehabilitation ought to be collected to assist in the development of State policy in this area. The Committee welcomes the recent enactment of the Judicial Council Act 2019, its new statistical reporting provisions on sentencing, and recommends that the Department of Justice and Equality concurrently collect data on recidivism and rehabilitation, including access to spent convictions, to be published nationally;
14. The Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use, jointly convened by the Ministers for Justice and Equality and Health, recommended in their August report that the 2016 Act be amended so all Section 3 offences (personal use possession) under the Misuse of Drugs Acts can be spent and the rehabilitative period for such offences be decreased from seven years to three years; the Committee welcomes and endorses this recommendation.

Appendix 1 – Committee Membership

Joint Committee on Justice and Equality

Deputies



Caoimhghín Ó Caoláin TD
(SF) [Chair]



Colm Brophy TD
(FG)



Jack Chambers TD
(FF)



Catherine Connolly TD
(I4C)



Peter Fitzpatrick TD
(IND)



Jim O'Callaghan TD
(FF)



Thomas Pringle TD
(I4C)

Senators



Frances Black
(CEG)



Lorraine Clifford-Lee
(FF)



Martin Conway
(FG)



Niall Ó Donnghaile
(SF)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20th July 2016.
3. Deputy Peter Fitzpatrick replaced Deputy Alan Farrell by Order of the Dáil on 3 October 2017.
4. Deputies Catherine Connolly and Thomas Pringle replaced Deputy Clare Daly and Mick Wallace on the 9th July 2019.

Appendix 2 – Terms of Reference of Committee

JOINT COMMITTEE ON JUSTICE AND EQUALITY

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and

- (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)
[DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.

- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

Appendix 3 – Witnesses and Official Report

Witnesses/Organisation	Date of appearance and link to debate
Irish Penal Reform Trust University College Dublin Pathways Centre Senator Lynn Ruane, Seanad Éireann	10 July 2019

Appendix 4 – Opening Statements

Opening Statement

Niall Walsh, Manager, Pathways Centre

Good morning everyone, thank you for the invite to speak to you this morning. My name is Niall Walsh and I am the manager of the Pathways Centre. Pathways is the post release centre for the Educational Service to Prisons, which is part of the City of Dublin Education and Training Board, CDET.B.

Founded in 1996, The Pathways Centre offers respite to former prisoners in the crucial period after release by providing information, education, counselling, support and referral in a safe and understanding environment. Our work is made up of 4 essential elements, Peer Support, Guidance Counselling, Educational programmes and activities and personal addiction counselling. We work with upwards of 400 people every year, assisting them to change their life trajectory and reduce criminal behaviour.

An effective Spent Conviction legislation would assist in reducing recidivism and promoting reintegration through allowing individuals with previous convictions access education. Education has been and still proves to be a proven method of reducing criminal behaviour. It allows individuals become productive members of society, break away from a cycle of poverty and imprisonment and improves their life opportunities. This legislation has the potential to lead to safer communities, parents engaged in their children's lives and not in prison, it also has the knock on effect of them contributing to the tax base and contribute to their communities prosperity.

Some of the barriers to reintegration are;

- Someone with a conviction may not be accepted onto a college course or be able to complete a college course due to the placement element of the course. If the individual cannot complete and has to drop out, the way fees are structured they may have to pay to do a repeat first year in a different course. This has the effect of education being financially impossible and that path may be forever closed.
- Garda Vetting – affects all areas of life, college and employment. Someone could lose their educational course or employment due to their convictions becoming disclosed. Garda vetting is just that, it is not but can be seen as Garda clearance. I have come across a man with a serious conviction over 20 years old, working as a bus driver and when his employer found out about his conviction, through the media, he lost his job, then his accommodation and eventually ended up back in prison. He had been doing really well before losing his job.
- Increased Insurance Costs. If you have a conviction, no matter the type, when you disclose it to an insurance company you will pay a higher premium for insurance. Some of these premiums can be very excessive over the amount of €3000 or more
- Barriers to Employment – if an individual must disclose historical convictions regardless of the length of time since they offended then they may be unable to obtain even minimum wage employment. Surely they have a right to work and provide for themselves and their families.
- Section 55 Charity Act – A perfect example of discrimination, this is where if someone who has a conviction wishes to serve on the board of directors of a charity, they must go to the High Court and get an exemption to serve on the board of the charity. They must have legal council and through high court affidavits detail their life story and the judge decides if it is in the public interest for them to serve on the board of the charity. If you want to serve on another board of a charity you must go back to the High Court each time.

I would be very happy to answer questions the Committee might have.

Thank you.

Oireachtas Joint Committee on Justice and Equality

Hearing on Spent Convictions

Wednesday 10 July 2019

Statement of Dr. TJ McIntyre

I am grateful to the Committee for the opportunity to discuss this topic. For context, I am an Associate Professor in the UCD Sutherland School of Law working in the areas of privacy, data protection and criminal law, and I am a consultant solicitor with FP Logue Solicitors and chair of civil rights NGO Digital Rights Ireland. I have recently carried out research on the issue of spent convictions with my colleague Professor Ian O'Donnell but these views are my own.

I will attempt to summarise how spent convictions and the rehabilitation of ex-offenders are governed by European privacy law, and what this might mean for reform of Irish law in this area. Many members of this Committee will already be familiar with the law in this area from their work on the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 so I will keep this outline brief.

Article 8 ECHR and criminal convictions

It might sound unusual to talk about privacy in relation to criminal convictions. As members of the Committee will be well aware, in Ireland criminal trials must generally be held in public and there is extensive media reporting of trials which usually includes the name and address of the defendant.

However, since the 2012 decision of the European Court of Human Rights in *MM v United Kingdom*³⁹ it is clear that criminal convictions can still be “private” for the purposes of Article 8 of the European Convention on Human Rights (ECHR) which provides that:

³⁹ *MM v United Kingdom*, application 24029/07, judgment of 13 November 2012.

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

In *MM* the court noted that convictions became practically obscure after a period of time, so that:

“although data contained in the criminal record are, in one sense, public information, their systematic storing in central records means that they are available for disclosure long after the event when everyone other than the person concerned is likely to have forgotten about it, and all the more so where, as in the present case, the caution has occurred in private. Thus as the conviction or caution itself recedes into the past, it becomes a part of the person’s private life which must be respected”.⁴⁰

In that case, therefore, the court held that where the state discloses criminal records in the context of a vetting system it must do so in accordance with a clear legal framework, which balances the need for disclosure in certain circumstances with adequate safeguards for the former offender to ensure that disclosure is not disproportionate. In short, the law must strike a fair balance between protection of the public and the ability of the ex-offender to seek employment. This is particularly important given that:

“[I]t is realistic to assume that, in the majority of cases, an adverse criminal record certificate will represent something close to a “killer blow” to the hopes of a person who aspires to any post which falls within the scope of disclosure requirements.”⁴¹

The *MM* case dealt with state disclosures as part of a vetting system for certain types of employment, but the principle it established was extended to questioning by private employers by the 2014 decision of the UK Supreme Court in *T & Anor v Secretary of State for the Home Department*.⁴² In that case the court held that

⁴⁰ Para. 188.

⁴¹ Para. 199.

⁴² *T & Anor v Secretary of State for the Home Department* [2014] UKSC 35.

the duty to reveal convictions to prospective employers when asked – even for jobs which did not require vetting – could result in a disproportionate effect on the private life of the individual. As Lord Reed put it:

“the obligation imposed upon [one claimant] by the law of the United Kingdom to disclose to any potential employer in his chosen career, for the remainder of his life, the fact that he had received two warnings for stealing a bicycle when he was a child of 11, or otherwise lose the opportunity of being employed, involves an interference with his right to private life which is unjustifiable under article 8(2)”.⁴³

More recently, the UK Supreme Court has returned to this issue in the 2019 case of *R (P, G and W) and Anor v Home Secretary*⁴⁴ which found that a multiple conviction rule (requiring disclosure in every case in which there was more than one conviction) was in breach of Article 8 as disproportionate.

Criteria to be taken into account in assessing national laws

These three cases – *MM*, *T* and *P, G and W* – set out between them a number of principles which any vetting or spent convictions law must meet to be compatible with Article 8 ECHR and these can be briefly summarised as follows:

- National law must provide clear and accessible rules regarding the disclosure of criminal records.
- These rules must apply in the context of employment generally, not merely vetting.
- It is desirable, but not a requirement, that there be a mechanism for reviewing disclosure in individual cases – a rehabilitation law may determine the need for disclosure based on pre-defined categories even though this may lead to an arguably unfair result in an individual case.
- Rules requiring disclosure of offences must be proportionate. The UK Supreme Court has described this as asking four questions:
 - First, is the objective sufficiently important to justify limiting the rights of ex-offenders?
 - Second, is the disclosure rationally connected to the objective?
 - Third, does the disclosure requirement go no further than necessary to accomplish it?
 - Fourth, standing back, does the disclosure requirement strike a fair balance between the rights of ex-offenders and the interests of the community?⁴⁵
- Rules providing for indiscriminate disclosure are incompatible with Article 8; instead the UK Supreme Court has indicated that the following criteria should be taken into account in determining whether disclosure is required and, if so, of what offences:
 - the nature of the offence
 - the circumstances in which the person committed it
 - his age when he committed it

⁴³ Para. 127.

⁴⁴ [2019] UKSC 3.

⁴⁵ *Per* Lord Wilson in *T* at para. 39, paraphrased.

- in the case of a conviction, the sentence imposed upon him
- his perpetration or otherwise of further offences
- the time that elapsed since he committed the offence; and
- its relevance to the judgement to be made.⁴⁶

Application to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

As members of the Committee will be aware, the 2016 Act was significantly amended during its passage to address the issues raised by the *MM* judgment and subsequent UK litigation. However there are several aspects of the 2016 Act which still do not appear to meet the requirements of Article 8 ECHR.

The most obvious is the multiple conviction exclusion – a conviction can never become spent where an individual has more than one conviction. The equivalent rule in the United Kingdom was found contrary to Article 8 in *R (P, G and W) and Anor v Home Secretary*⁴⁷ as tending to lead to arbitrary and disproportionate results:

“the multiple conviction rule does not, properly speaking, define a category of offence or offender. It is in reality an aggravating factor affecting the significance of an offence. Its rationale is that the criminal record of a serial offender is more likely to be relevant to his suitability for a sensitive occupation, because the multiplicity of convictions may indicate a criminal propensity. In itself, that is an entirely legitimate objective of a legislative provision of this kind. The rule as framed is, however, a particularly perverse way of trying to achieve it. It applies irrespective of the nature of the offences, of their similarity, of the number of occasions involved or of the intervals of time separating them. As framed, therefore, the rule is incapable of indicating a propensity. It may coincidentally do so in some cases, but probably does not in a great many more.”⁴⁸

In addition, other elements of the 2016 Act are also problematic. The restriction to convictions bearing a sentence of 12 months or less, for example, will mean that an offence can never become spent notwithstanding that 20 years might have elapsed, and notwithstanding that it might not be relevant to a particular employment. In this and other aspects, a more graduated response appears to be necessary to comply with the ECHR.

⁴⁶ *Per* Lord Wilson in *T* at para. 41, paraphrased.

⁴⁷ [2019] UKSC 3.

⁴⁸ Para. 63.

Joint Oireachtas Committee on Justice and Equality - Spent Convictions Hearing

Senator Lynn Ruane, 5.7.19

Thank you Cathaoirleach and thank you colleagues for allowing me to present to you on my private members' bill, the Criminal Justice (Rehabilitative Periods) Bill 2019 which I was delighted to see pass second stage in the Seanad with unanimous, cross-party support in February.

The bill would expand access to spent convictions beyond those currently allowed for under the limited and unfortunately inadequate provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act, passed by the Oireachtas over three and a half years ago. I also welcome that we will today be discussing the area of spent convictions reform more generally.

My motivation for introducing the bill is based in the rehabilitative principles that underlie the Irish justice system and my own belief that a person who has committed an offence in the past should be given a fair and reasonable opportunity to reintegrate into society after a set period of time has passed without reoffending. Former convictions for minor, non-violent offences act as a barrier to resources, to the opportunities a person needs to enter or re-enter employment, education or travel after a period of offending behaviour in a way that is not fair or proportionate.

While our current law was a welcome first step to legislate in this important area, it is unfortunately not fulfilling its rehabilitative aims. It is extraordinarily limited in scope and in practice and is simply not accessible to former offenders who need and deserve to benefit from its provisions. Of particular note is the limitation placed by the effective single conviction rule, where only one conviction outside of minor driving and public order offences can become spent and the rehabilitative period you have to wait before your conviction is spent being set at a blanket 7 years for all crimes, no matter how long or short your sentence was.

My bill therefore seeks to expand fairer access to spent convictions in four ways, by firstly increasing the length of custodial and non-custodial sentences that are eligible to become spent, by removing the single conviction rule from the current Act, by making the waiting period, or *rehabilitative period*, proportional to the length of your sentence and by creating a more generous regime for young adults between 18-23 in light of their higher rehabilitative needs.

The reintegration and rehabilitation of former offenders is what protects us as a society from further acts of crime. All the international evidence demonstrates that when you have a well-designed and fair spent convictions regime, it works to reduce recidivism and benefits both the individual and society as a whole. When you make access to spent convictions possible for the individual, incidences of crime and reoffending go down as unnecessary conviction disclosures for minor, non-violent or sexual crimes no longer serve as a barrier to progression.

As a former community worker, I know first-hand that working in professions such as addiction, homelessness and also in teaching or social work, that when you have experienced similar experiences to those you work with, it is really invaluable. Some of the best community workers and drug workers I have worked with had previous convictions. However, there are many who will never get the chance to work within the communities that need them the most due to old, minor offenses on their records; offences that are simply no longer relevant to their lives anymore due to a combination of the passage of time, changes in behaviour and circumstance and major, substantive rehabilitation.

Since introducing this bill, I have been inundated with heart-breaking testimony from people in these kinds of circumstances. I've heard from students who have reached 2nd and 3rd year of their degrees in the social sciences and have been refused work placement based on old minor offences still being on their record. We have had representations from professionals in high level positions in the civil service and public bodies who will not apply for promotion due to a twenty year old mark on their record. This is not only harmful for the individual but detrimental to society as our laws are literally forcing people out of education, employment and progression. There is a cost to the individual and to society as a whole under the current regime and it needs to change.

This is an area that affects those from all walks of life and socio-economic backgrounds. It impacts on everyone from young men who are point blank refused entry to the army, young women and lone parents being locked out of education and courses like social work, and people from all sectors of society being prohibited from visiting family members abroad who emigrated during years of austerity. In cases like these, we're talking about convictions for possession of 15 euro worth of cannabis literally keeping families apart.

While this issue does affect everyone, the limits of the current law do have a disproportionate impact on marginalised, poorer and working class communities. This is made worse by the fact that the Act has no allowance for more than one conviction to become spent, apart from an unlimited number of minor driving and public order offenses, making it easy to criticise it as a law written for the middle classes. Removing the single conviction rule is an absolute must in this respect.

I've brought this bill forward because a spent convictions law is no use if people can't access it, which is unfortunately the case under the status quo. My bill is compassionate, it's fair, it's balanced and it's the right thing to do. I hope that you can give it your full support, thank you for your time.

Appendix 5 - Submissions



Probation Service Submission
to the
Oireachtas Joint Committee on Justice and Equality
On the
Issue of Spent Convictions

Overview of the Probation Service:

The Probation Service is an agency of the Department of Justice and Equality with a Director who is head of service. The Director reports to the Department of Justice and Equality, which has overall governance and responsibility for the Service.

The Probation Service is a national service, with offices / teams based in almost every county with the primary purpose of assessment and supervision of offenders in their communities. The majority of front line staff are Probation Officers and Community Service Supervisors. Probation Officers are qualified social workers who use their professional knowledge and skill base to engage with those in trouble with the law. Community Service Supervisors, on the other hand, are skilled trades people employed to oversee and support offenders carrying out unpaid work in the community. These supervisors are selected on their capacity to engage and motivate offenders as well as their competence in a relevant trade/ skill e.g. carpentry, building etc.

Probation Supervision holds offenders accountable for the harm that has been caused by offending while also providing them with the opportunity to avail of individualised and structured support in their community to address the factors which have contributed to offending. Rehabilitating offenders to achieve and maintain positive change is at the core of our work. We believe that offenders can change their behaviour and through rigorous assessment and supervision, we can help them achieve their potential as law-abiding citizens. We also believe that offenders must accept responsibility for their behaviour and where possible make good the harm they do. Our work is delivered, informed and underpinned by

social work practice and our staff have a specific expertise in intervening with offenders and in assessing and managing risk.

On any day, the Probation Service is managing and supervising in excess of 8,500 offenders in the community as well as working with those in custody.

Desistance, Changed Behaviour and Accessing Employment

Detailed understanding of why and how offenders reform and rebuild their lives has been at the core of desistance and research in criminology in recent years (Healy 2010). Factors such as changes in the person's style of thinking, attitudes and beliefs are key, as are the opportunities to support and sustain that new life style. When a person achieves such changes, often through periods of great difficulty, relapse and personal stress, there is a sense of pride in their achievement and transition, their new sense of self a desire to give back or make good.

Securing employment or training, and the ability to rebuild a life after committing an offence, are crucial steps in breaking the cycle of offending, establishing a pro-social identity and achieving a law-abiding life style. Laub and Sampson (2001) argue that the development of social controls such as employment alter patterns of offending behaviour by providing individuals with a 'stake in conformity' and sufficient motivation to maintain ongoing desistance from offending. Employment has socio-cultural value; employment structures daily life; employment gives people a sense of identity and a role in society; employment engenders belief and commitment in that the job can be seen to be done; employment increase self esteem, uses energy and provides financial security; employment enables interaction with people who have no offending histories and can facilitate ambition (Farrall 2002).

Once a person with a criminal conviction has paid his/her debt to society, it is very much in everyone's interest that they are reintegrated into society. A criminal record is not necessarily an indicator of current or future behaviour of a person. Committed to (and sustaining) change, having a criminal record can pose life long obstacles to employment. An ex-offender and academic, living in Dublin, has recently given an articulate personal voice to the challenges in making those changes and the difficulties in accessing opportunities to education, training and employment in his TEDX talk, *Building Bridges, Not Barriers*, filmed at Mountjoy Prison (<https://www.youtube.com/watch?v=rabIOMUXDhw>). He has also provided similar valuable

testimony in his academic work with Dr. Deirdre Healy, University College Dublin (Hart, Healy 2018).

Benefits of Employing Ex-Offenders

There are clear social and economic benefits to helping people with convictions move on and secure employment, playing a positive role in society.

For employers there are real benefits to be realised in employing people who have been through the criminal justice system. It is generally accepted that people who come through the justice system and start to work will probably be committed to doing the best they can in the workplace, often over and above the call of duty. They also tend to be loyal to their employers and retention levels can be relatively high. Experience, primarily from other jurisdictions, for companies looking to create a positive social impact and give back to communities in which they operate, employing persons with convictions can help build brand reputation and access a pool of talent that others do not.

Employing people with convictions also accrues benefits for the wider society, including a number of those identified above – a stake in the community, financial security and integration through purposeful interaction with people who have no previous convictions. As employed taxpayers, people with convictions are able to contribute to making communities safer for us all.

Current Situation and Challenges

Effective spent convictions legislation and structures can play a significant role in reducing barriers to the reintegration of former offenders, including ex-prisoners who have demonstrated that they have moved on from past offending behaviour.

The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 legislates for a number of minor offences to become ‘spent’ after a period of seven years, except in certain circumstances. It has to be acknowledged that the legislation has removed barriers to employment, education and training for a significant number of individuals who have moved on from their offending ways. It has, however, been argued that the current provision is limited

in its application. Research would be required to ascertain the impact and whether the legislation has achieved its desired effect.

Based on the experience of the Probation Service, three key areas presenting challenges are:

Vetting for Employment Purposes:

For many, criminal convictions continue to be an obstacle to employment in many instances, even where there are no child protection or offence-related employment risks. Vetting, when used for employment, provides the potential employer with confirmation from An Garda Síochána that the list of previous offences the person has committed is a true and accurate account of their criminal history. While it may provide assurance in relation to specific job risk concerns and necessary child protection measures, the criminal record remains a stigma and may discourage some employers from engaging at all, with the person. For ex-offenders, especially those with more serious offending histories, long periods in prison or a high public profile, the obstacles are challenging and persistent, even for those who have moved away from offending and sustained significant change. Perceptions, past history and reputation can be difficult to overcome.

There is a question to be asked regarding how much information on a criminal record should be released, to whom and in what circumstances. While acknowledging the importance of ensuring effective systems are in place to protect the vulnerable, there is a school of thought that decisions on employment are being ‘outsourced’ to vetting information and character perceptions, rather than considering the full picture, including employment skills and needs assessment. In effect the necessary vetting process, while addressing issues of risk and protection, may be extending beyond security and protection objectives to a quasi-selection measure.

Access to Employer- to- Employer References for Ex- Offenders

Through our work, the Probation Service is aware of the compound effect that has with service users experiencing difficulties in accessing and providing an employer-to-employer work reference which provides the ‘soft’ information an employer is looking for: time-keeping and attendance record, ability to work on their own initiative and as part of a team, trustworthiness, reliability, going above and beyond and their general attitude towards work. This

information is important to any employer. It can also lead to people with offending histories, being engaged in consecutive training courses and schemes, maintaining the role of *trainee* rather than progression to the role of *employee*.

Young Persons/ Young Adults

There is a growing body of evidence regarding the transition for young adults as they move away from offending ways and the importance of criminal justice responses supporting this process. Increasingly, researchers and international experience, suggests 25 years as the more realistic threshold given development and maturity patterns. To this end, while acknowledging the provisions of the Children Act 2001, further consideration should be given to how convictions for this cohort are addressed going forward, for example, extending the non-disclosure provisions of the Children Act 2001 to young adults up to those under 25 years..

Going Forward - Issues for Further Consideration

It may be time to revisit and think afresh about how to support ex-offenders in participating in and contributing positively to their communities, while at the same provide necessary reassurance to wider society and in particular the vulnerable. Issues for consideration in this regard could include:

Law Reform Commission, Report on Spent Convictions (LRC 84-2007):

In 2007, the Law Reform Commission, in its Report on Spent Convictions recommended a spent convictions scheme for adult offenders based on a hybrid model which would specifically exclude certain offences from its application and which would apply a sentencing threshold. Developments over time since then, particularly in European law, have largely overtaken the findings and recommendations of that report. It may now be timely and appropriate to revisit these recommendations.

European Models / Options:

In a number of other European countries, there already appears to be a legal structure to enable expunging criminal records. The European Court of Human Rights and the Court of Justice of the European Union have established principles that enable ex-offenders to limit access to information about old convictions (McIntyre and O'Donnell 2017).

In Germany, for example, all convictions (excluding certain life sentences, preventative detention orders, and mental hospital orders) can be removed by way of a *Certificate of Good Conduct*, showing that past conduct forms no obstacle to performing a specific task or job. A similar scheme operates in the Netherlands.

Record sealing is the removal of Court records from general access. The records are not destroyed. Only Courts or law enforcement agencies or courts, under special circumstances, can access them disappear and may still be reviewed under limited circumstances. In Spain, it is possible to seal a conviction record for any crime, however serious (McIntyre and O'Donnell 2017).

US Approach - Certificates of Employability or Relief or Rehabilitation

Certificates of rehabilitation or relief demonstrate that ex-offenders have been rehabilitated, while stopping short of sealing the applicants' records. They certify rehabilitation for an ex-offender through completion of specific steps and achievements. In 2003, Barack Obama introduced new legislation in the Illinois State Senate to help job seekers who had been convicted of a non-violent crime to overcome barriers to employment without expunging their records. Since then, the granting of so-called *Certificates of Rehabilitation or Relief* has been implemented in fourteen U.S. States and, in some, a compromise version of full expungement (or sealing of records) in courts has been introduced (Marshall Project 2015). American research on this approach demonstrates both the potential benefits of such mechanisms and the difficulty of uniform implementation (Leasure and Stevens Andersen 2016).

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It may be appropriate that consideration be given to an individualised application and evaluation process similar to the certificate of relief/rehabilitation or sealed records model rather than a rigid threshold that can lack flexibility. It could enable recognition of personal progress and achievement even where there was serious previous offending.

Generating New Thinking: A New Way Forward – Social Enterprise Strategy 2017 -2019

In 2017, the Department of Justice and Equality, with the Irish Prison Service and Probation Service, launched *A New Way Forward – Social Enterprise Strategy 2017 -2019*, as a mechanism to increase employment opportunities for people with convictions. In many cases, people leaving prison or completing a probation sanction had desirable training and skills but lacked employment history and opportunity.

Through our work, aware of the challenges for ex-offenders in securing work and being in a position to provide an employer-to-employer work reference, securing employment in a Work Integration Social Enterprise (WISE) acts as a stepping stone and provides the much needed employer to-employer work reference. What the Department of Justice and Equality Social Enterprise Initiative has found in the past two years is that people with convictions, who have secured meaningful work in a social enterprise, can in fact move quickly into mainstream employment as their work record in their curriculum vitae is completed. The SE initiatives provide the participants with the critical and much needed opportunity and experience, while at the same time allowing employers see the value added that each of these individuals brings to the workplace, in terms of both ability and skill as well as the important commitment and reliability in undertaking the work. Work in this regard continues.

A copy of *New Way Forward – Social Enterprise Strategy 2017 -2019* is attached.

Conclusion

The Probation Service welcomes the Committee's examination of the current spent convictions legislation. In recent years, some progress has been made in attempting to address these issues and the Probation Service is aware of the challenges in this regard. Equally, the Service is aware of the value of those with offending histories securing real and meaningful employment, as part of the change process. Such employment opportunities not only support desistance but also social integration and have the potential to accrue benefits for us all.

In conclusion, the Probation Service advocates for an approach that is proportionate and reasonable, giving ex-offenders a real opportunity at redemption, while ensuring we continue to protect the vulnerable in society. As outlined, there are models of practice in Europe and the United States that could potentially add value for us here in Ireland, and therefore merit further consideration. In short, these approaches afford ex-offenders the opportunity for rehabilitation, facilitate desistance and reintegration, while also supporting community safety and security.

References:

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Principal Areas of Work of the Probation Service:

1. Offender Assessment and Supervision:

Offender assessment underpins all the work of the Service. It informs sentencing decisions and the way we engage with offenders to promote positive change.

Orders for supervision are generally made following the completion of a pre sanction report that has been requested, by the Court post conviction, to inform sentencing. All reports assess needs related to the offending, risk of general offending and the risk of causing future harm to the community. Probation Officers are trained in and utilise a range of established risk assessment instruments as part of this process.

On-going supervision is built around a comprehensive case management plan agreed with the offender. Once an offender is placed under the supervision of the Service, the Probation Officer puts in place a Case Management Plan (CMP), in co-operation with the offender and any other persons / agencies relevant to the case. This plan will incorporate any specific conditions laid down by the Court and identify the actions which the offender must take in order to address the factors which have contributed to offending. The Probation Officer will balance support and guidance with an appropriate level of control related to the person's assessed risk of causing harm in the community.

In general, the Probation Officer works with offenders for a period of around 12 months, during which time the focus of the relationship is on addressing relevant issues to achieve change. In instances where the offender fails to comply, and/or disengages from the Service, the Probation officer is required to return the case to Court and the matter is dealt with by the judiciary.

2. Community Service and Community Return:

Community Service is a sanction used by the courts, in lieu of a prison sentence, whereby, convicted offenders over 16 years of age may be given the opportunity by the court to perform between 40 and 240 hours of unpaid work for the community.

The introduction of the Fines (Payment and Recovery) Act 2014, will increase capacity for the Courts to use Community Service as an alternative to custody. The option of Community Service allows fine defaulters make good on their debt through unpaid work rather than the more punitive sanction of imprisonment.

Community Return is a joint Probation and Prison Service initiative whereby carefully selected prisoners are granted reviewable temporary release conditional on them performing unpaid community work under the direction of the Probation Service Community Service Supervisors, in a range of projects, alongside Community Service participants. Currently the participants must be serving sentences of between one and eight years and must have served at least half of their sentence.

Both these schemes provide offenders with the opportunity to make reparation / 'pay back' to their communities, while maintaining links with their families and wider communities. Community Service / Community Return adds measurable value to communities and every year thousands of hours of unpaid work is completed in communities across our country, benefiting many communities and voluntary groups - benefits that would otherwise go unrealised.

Community Service and Community Return are real cost-effective alternatives to custody, with the average cost of implementing a Community Service Order, €1,500.

3. Support Sentence Management and Rehabilitation of those who serve Prison Sentences:

While the majority of our work is based in communities nationwide, Probation Officers have a long history of working in prisons. There is a team based in each of the country's fourteen institutions.

The value placed on our work in prisons is based on the importance of rehabilitation from pre to post imprisonment in order to reduce reoffending and support reintegration of offenders back into their communities. To this end, the Probation Officers work as part of the multi-disciplinary prison team to manage prisoners' sentences and assist in reintegrating them back into the community.

The Probation Service has responsibility for the supervision of all life sentence prisoners released on licence, supporting and monitoring their safe return and integration in the community. To this end, our staff in prisons work with those sentenced to life imprisonment addressing the factors relevant to their offending and preparing for their return to the community.

4. Restorative Justice and Supporting Victims of Crime:

Victims concerns are central to Probation Service engagement with offenders. Victim focused work can include specific elements of reparation and restoration such as Community Service, victim impact assessment reports completed for Courts, as well as restorative interventions including family conferences, victim-offender mediation and community-based restorative practice.

Rehabilitating offenders to achieve and maintain positive change is at the core of our work. We believe that offenders can change their behaviour and through rigorous assessment and supervision, we can help them achieve their potential as law-abiding citizens. We also believe that offenders must accept responsibility for their behaviour and where possible make good the harm they do. Our work is delivered, informed and underpinned by social work practice and our staff have a specific expertise in intervening with offenders and in assessing and managing risk.

Further details on the work of the Probation Service is available in the 2018 Annual Report available at www.pprobation.ie

Care After Prison submission to the Oireachtas Joint Committee on Justice and Equality

Care After Prison (CAP) is a charity and national peer led organisation supporting people affected by imprisonment, current and former offenders and their families. We are one of the organisations working with the Irish Prison Service to support offenders assessed as appropriate for the Community Support Scheme, we also provide a range of other services including prison in reach, community support, peer led mentoring, family support, information, advice and referral services. We work with four prisons in Dublin and two in Portlaoise.

CAP offers former offenders a safe environment where they can identify what they need to reach and sustain their goal of leading crime free lives. We believe in the ability of everyone to change given the right circumstances and support and that everyone deserves a second chance.

We wish to thank the Oireachtas Joint Committee on Justice and Equality for inviting our organisation to make a written submission to the Committee on the expansion of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016. Care After Prison notes the positive and progressive steps Ireland has taken in recent years to address the devastating effects previous convictions can have on an individual and their family's lives. We must also however, express our on-going concern regarding the very limiting nature of the Act and we strongly support Senator Ruane's proposed reforms. Our work to date could not identify one instance where a service users' life has been positively impacted by the present act. We highlight below a number of key issues pertinent to the current legislation, we also identify issues, indirectly linked which we believe warrant consideration.

Proportionality:

In the UK, there is proportionality with regard to the type of conviction and the amount of time it takes for it to be come spent. This practice makes

sense. The more serious the offence, the longer time it takes to become expunged. Having a blanket rule of 7 years before the limited conviction types can become spent seems illogical and unfair. Care After Prison recommends that the 'rehabilitation time' can be reduced and/or reflect proportionality regarding the type of conviction.

Young offenders:

Care After Prison recommends that the spent convictions legislation can expand its remit to those who committed offences up to the age of 24 to reflect the legislation (Under Section 258 of the Children Act 2001) which protects those under the age of 18. The Youth Policy Framework, 'Better Outcomes, Brighter Futures,' covering 2014–2020 defines a youth in Ireland as being under the age of 24. Defining a youth as being under the age of 24 acknowledges the developing levels of maturity amongst this cohort. While we hold anyone over the age of 18 accountable in line with all other adults, allowing the opportunity for certain previous offences to become expunged in the same way as those under 18 will give a young adult a greater chance in rehabilitation, progression and a brighter future.

Other Issues:

Employment Law:

Care After Prison recommends that a clause is inserted in employment law (under both Employment Equality Act 1998 and the Equal Status Act 2000) that protects an individual when a spent conviction is communicated from the bureau to the relevant organisation. While we acknowledge an organisation can come up any vague rationale as to why they have declined to allow entry to the individual in question, there should be an anti-discriminatory clause stating that an organisation cannot deny access/employment/volunteering etc to someone whose previous conviction(s) have been spent.

Housing:

Similarly, it would be helpful if housing units in local authorities and county councils across the country were legally required to provide consistent responses to an individual who has a criminal record and/or spent convictions applying to go on the housing waiting list. The lack of transparency and accountability on this matter as to the eligibility criteria for acceptance onto the housing waiting list is of concern, but moreover, the impact, if any on the final decision, of an individual's criminal history requires clarity. It is impossible presently to understand the rationale being applied by housing bodies when they determine acceptance since their use of discretionary powers does not necessitate an explanation.

Garda Vetting:

One of the founders of Care After Prison was a former offender and the value, inclusion and employment of former offenders underpins our work. We have considerable experience of the Garda Vetting scheme and the impact it may have on those with lived experience of prison. We believe that much needs to be done on educating, informing and explaining to the public on the Garda Vetting scheme, the process involved, and that consideration should be given to the introduction of targets for completion of the vetting process. Currently the amount of time it takes for completion of this process once all the necessary information has been provided can vary from weeks to over a year. This can have a very negative impact on rehabilitation and reintegration pathways for former offenders.

Soft (or 'specific) information re: Garda Vetting:

Soft (or 'specified) information presented from the Garda vetting Bureau on a person's previous charges, arrests, etc means that the current process of not having to declare spent convictions is ineffective. While we acknowledge that there is a process in place regarding specified information, we would like to highlight a clause we feel is not covered. An individual employed with previous convictions in our service was being Garda vetted. The Garda vetting officer in Care After Prison received a vetting disclosure for the subject. Care After Prison sent the individual's

vetting form off for verification at the end of November 2017. The individual then attended the Circuit Court to appeal 14 previous convictions on the 7th of December 2017. However, on the disclosure form, the result of the matters is not defined as appeals. This is also the case for 3 matters dated the 12th of December 2016 which the individual states were appeals from previous convictions.

Care After Prison is conscious that the dates of the appeals are relatively recent and would appear (to the untrained eye), that the individual was convicted of all 17 charges on those dates. This individual has made and is making huge efforts to turn their life around, however as this vetting disclosure stands it is not factually correct, moreover, it could reflect unfairly on them since the content is misleading.

Care After Prison followed up on this with the Garda Vetting bureau and was told that the Gardai will not provide any statement attached to this individual's disclosure highlighting that those recent appeals from 2016 and 2017 are defined as such and that in the disclosure form itself, it be highlighted when the actual convictions were handed down for clarity.

Care After Prison will always advise an individual to be upfront with future employer's, and relevant third level courses to highlight the relevant rehabilitative work they have done on themselves since the time of the offence, arrest, conviction etc such as counselling, addiction treatment or education attainment but we think it excessive when a person's history, which may have been over a decade ago, is highlighted.

This, we feel, is especially unfair to parent's who are being prohibited in participating in afterschool or summer camp activities with their children. An individual's family time and relationships are absolutely crucial to their rehabilitation and recovery but the limitations on spent convictions and the manner in which Garda Vetting soft (or 'specified) information can be disclosed to a relevant school has been found to damage this quality family

time. At times, an individual will not bother applying to work at extra-curricular or summer camp activities which require Garda vetting to avoid this soft information being passed onto a school. While Care After Prison understands the rationale behind a Garda sending specified information on to the potential employer, school, third level institute, etc, we recommend that consideration is given to the introduction of an independent committee to review such decisions to disclose specific information to a prospective employer, third level institute, school, etc. Care After Prison also recommends that this process is subject to an annual external review to ensure accountability and transparency.

Re-entering the community after time spent in prison requires care, expertise, and an effective infrastructure to support a person's endeavours, their safety and security, and that of the wider community. The Spent Convictions Bill with its present limitations fundamentally inhibits a person from accessing intrinsic elements of leading a successful and productive life as a citizen. CAP urges the Joint Committee to take seriously our expert knowledge and concerns in this area, specifically in terms of the lack of process or clear policy with regards to housing and individual discretion of the Gardai to provide information externally. If the public legal system is based on an idea of a common good and recognised principles of commonality, proportionality and fairness, it must make a communal effort to effectively administer justice and protect the rights of access of inclusivity. The ability of An Garda Síochána or another public service to use discretionary powers that may fundamentally undermine the communal effort made by the Irish Prison Service and others working in this field to help citizens access key elements of a successful future beyond crime is unfair. It is our belief that these related issues, combined with the key issue of disproportionate length of time currently in place, be remedied as a matter of urgency by significantly amending the Bill in a way that is modelled on neighbouring criminal justice systems.

Care After Prison wishes to thank the Ministers for their time. We would be grateful if the committee could update us on any future reports and committee hearings relating to this matter.