



COVID-19 and Prisons: Emergency Policy Responses

Introduction

Prisons are always at risk of outbreaks from infectious diseases as prisoners are in close proximity to each other.¹ Other exacerbating factors such as older, poorly ventilated buildings within the prison estate, inadequate individual hygiene regimes, and the existence of underlying medical conditions among prisoners add to the risk.²

The coronavirus COVID-19 is an unprecedented and extremely serious challenge to the Irish Prison Service (IPS) and the Department of Justice and Equality (DJE). Existing plans and protocols for tuberculosis or other infectious diseases will not be sufficient to undergird any planning for COVID-19.

European Governments predict that COVID-19 will not be under effective control until Spring 2021.³ Ireland is potentially 14 days behind similar exponential growth in new cases of COVID-19 as experienced by Italy.⁴ Immediate action is required during this window which will help to both contain and delay the spread in places of detention. Actions taken now must also serve the current and ongoing long-term planning of the DJE and the IPS.

One Person, One Cell

The Department of Justice and Equality and the Irish Prison Service should consider introducing policies which will drastically reduce the prison population⁵ by moving progressively and rapidly towards a “one person, one cell” model for incarceration. At present, there are no confirmed cases of COVID-19 among prisoners or staff and the IPS are naturally working within the containment phase, mirroring the response trajectory of the Irish Government. However, when a case of COVID-19 is confirmed with a prison, the operation and rationale behind the containment phase is defunct. The DJE and IPS will have to move rapidly to the second phase of delay which will pose incredible challenges to staff and management.

¹ Penal Reform International, ‘Coronavirus: Healthcare and Human Rights of People in Prison’ (Netherlands, 16 March 2020), <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>.

² Anton Shelupanov, ‘Briefing: Justice System Response to the Epidemiological Challenge of Coronavirus COVID-19 in the Community’, March 2020, <https://thinkjustice.files.wordpress.com/2020/03/justice-response-to-covid19.pdf>.

³ ‘UK Coronavirus Crisis “to Last until Spring 2021 and Could See 7.9m Hospitalised” | World News | The Guardian’, accessed 16 March 2020, <https://www.theguardian.com/world/2020/mar/15/uk-coronavirus-crisis-to-last-until-spring-2021-and-could-see-79m-hospitalised>.

⁴ ‘Ireland Is “Exactly 14 Days behind Italy” in Terms of Coronavirus Cases’, accessed 16 March 2020, <https://www.irishtimes.com/news/health/ireland-is-exactly-14-days-behind-italy-in-terms-of-coronavirus-cases-1.4202013>.

⁵ Penal Reform International, ‘Coronavirus: Healthcare and Human Rights of People in Prison’.

The primary tools, alongside hand and personal hygiene, within the delay phase are social distancing, self-isolation and quarantine. These three actions will prove impossible based on the current prisoner capacities under which Irish prisons are operating. The only over-arching policy approach is “one person, one cell”. Through a “managed and accelerated temporary release” of prisoners to bring the overall prison population down to a manageable level, this approach would allow an inevitable delay phase to be successfully implemented or, at least, allow a transition into mitigation.

Based on data in the most recently available Daily Prisoner Population Census⁶ and Monthly Information Note from January 2020,⁷ we estimate that the prison population needs to be reduced by 1,208 to guarantee each prisoner the availability of a single cell when needed. In January, 2,971 cells were used by the IPS to hold a varying number of prisoners (*see Table 1*). With 4,193 prisoners in custody on the 6th of March, and factoring in the number of utilised and available cells in January 2020, there was a differential of 1,208 prisoners.

Table 1: Overview of Cells in Use and Number of Prisoners

Prison	Cells in Use ⁸	In Custody ⁹	Differential
Arbour Hill	116	136	20
Castlerea	220	325	105
Cloverhill	176	416	240
Cork	160	316	156
Limerick Female	23	37	14
Limerick Male	150	235	85
Loughan House	97	126	29
Midlands	584	878	294
Mountjoy Female	93	144	51
Mountjoy Male	682	696	0*
Portlaoise	199	241	42
Shelton Abbey	58	108	50
Wheatfield	413	535	122
Total	2971	4193	1208

*Mountjoy Male Prison has a bed capacity of 711

High Risk Prisons

A number of male prisons – Midlands, Cloverhill, Cork, Wheatfield and Castlerea – are easily identifiable from *Table 1* as being at a higher level of risk due to increased levels of cell-sharing. The Midlands and Cloverhill would have to decrease their current populations by 294 and 240 respectively in order to implement an effective delay stage. Despite smaller number, Cloverhill prison may have the highest level of risk due to the default usage of triple-person cells. Though

⁶ Irish Prison Service, ‘Prisoner Population on Friday 6th March 2020’ (Dublin, n.d.), https://www.irishprisons.ie/wp-content/uploads/documents_pdf/06-March-2020.pdf.

⁷ Irish Prison Service, ‘Monthly Information Note - January 2020’ (Dublin, n.d.), https://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2020.pdf.

⁸ Irish Prison Service.

⁹ Irish Prison Service, ‘Prisoner Population on Friday 6th March 2020’.

differentials are smaller, Limerick Female prison is officially recorded at 132% bed capacity.¹⁰ Both female prisons are also at a high level of risk of being unable to delay the spread of any outbreak of COVID-19.

Without considering the ingress and egress of prison staff on an ongoing basis, the level of monthly committals and releases to a prison is also indicative of the risk posed by COVID-19 (See Table 2). Realistically, a high traffic of prisoners entering or leaving a prison increases the risk of transmitting to the prison community or wider community respectively. Cloverhill prison with remand or trial prisoners poses the largest risk in this regard.

Table 2: Committals and Releases in 2018¹¹

Prison	Committals	Releases
Cloverhill	3267	2210
Mountjoy Male	1068	1239
Cork	1056	809
Mountjoy Female	931	892
Limerick Male	827	737
Castlerea	787	755
Midlands	739	993
Limerick Female	241	220

Three Policy Responses to the COVID-19 Emergency

1. Implement “One person, One cell” Approach in Preparation for Delay Phase of COVID-19

With the presence of both prisoners under sentence and those on remand, there are two main strands to implement this “one person, one cell” approach in preparation for the delay phase. Comparing the number of utilised cells (2,971) in January 2020 with the most recent prison census (4,193) in March, the prison population needs to be immediately decreased by a total of **1,200 prisoners**. It is envisioned that 800 prisoners under sentence could be selected for full temporary release while 400 people currently on remand could be released pending trial. However, any ratio of people on custodial remand and prisoners under sentence would suffice once the overall prison population is reducing.

This is not proposal for a total blanket amnesty of over 1,200 prisoners, rather it is advocating for a “managed and accelerated” decrease of the prison population in two concurrent stages: reducing the custodial remand population; and accelerating temporary release for prisoners with short prison terms remaining or those in prison for less serious non-violent offences.¹²

¹⁰ Irish Prison Service.

¹¹ Irish Prison Service, ‘Monthly Information Note - December 2019’ (Dublin, n.d.), https://www.irishprisons.ie/wp-content/uploads/documents_pdf/December-2019.pdf.

¹² Shelupanov, ‘Briefing: Justice System Response to the Epidemiological Challenge of Coronavirus COVID-19 in the Community’.

A. Managed Decrease of Remand Prisoners by 400.

Compared with our European counterparts, Ireland has a high proportion of remand and trial prisoners. On 6th March, there were 786 people on trial or remand within Irish prisons, almost a fifth of the prison population. *Table 3* notes the seven prisons with the highest number on remand.

Table 3: Prisons with Highest Remand/Trial Populations¹³

Prison	On Remand/Trial
Cloverhill	335
Limerick Male	95
Midlands	85
Cork	72
Castlerea	60
Wheatfield	58
Mountjoy Female	41

At present, the Presidents of the High Court, the Circuit Court and the District Court have notified their respective courts of new protocols¹⁴ effective from Monday 18th March.¹⁵ These necessary court delays will increase the time people spend in prison, with almost 800 people on custodial remand at present. The postponement of normal court activity and new cases will significantly extend the period of time those on remand spend in prison, despite not having been convicted or sentenced.¹⁶ The number of people on custodial remand will remain high as the natural rate of people being acquitted at trial will not occur. Penal Reform International note that “pausing or slowing down criminal justice processes results in more people being detained, increasing levels of overcrowding and pressure on detaining authorities.”¹⁷

We recognise that there is a cohort of severely mentally ill people on remand who may not stand trial and no forensic psychiatric placements are available. However, it must be acknowledged by policy makers that a proportion of the remand population could be released prior to standing trial as they present little to no risk to public safety relative to extraordinary public health crisis posed by COVID-19. Within Cloverhill, as the primary remand institution, this is a key area to decrease the population due to the high proportion

¹³ Irish Prison Service, ‘Prisoner Population on Friday 6th March 2020’.

¹⁴ In the High Court, no new cases or trials will begin, and judges will sit in the Criminal Courts of Justice to deal with bail matters. The Circuit Court was issued the following directives: ongoing jury trials will continue to conclusion; no new jury trials will commence for remainder of term; and custody sentencing cases to be dealt with as usual. The District Court will continue to hear urgent matters in relation to criminal law such as where the accused is in custody and cases where people are charged with new offences.

¹⁵ Courts Service of Ireland, ‘NEWS & ANNOUNCEMENTS / Notices:Statements of the Presidents of Each Jurisdiction - Covid 19’, accessed 17 March 2020, <http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/CFBD614F393A630880258494003A8B40?opendocument>.

¹⁶ Scottish Prisoner Advocacy, ‘Too Late, Too Vague – Where Is the Detailed Transparent COVID-19 Plan for Scottish Prisons? A Disaster Waiting to Happen’, *Scottish Prisoner Advocacy & Research Collective (SPARC)* (blog), 17 March 2020, <https://scottishprisoneradvocacy.com/2020/03/17/too-late-too-vague-where-is-the-detailed-transparent-covid-19-plan-for-scottish-prisons-a-disaster-waiting-to-happen/>.

¹⁷ Penal Reform International, ‘Coronavirus: Healthcare and Human Rights of People in Prison’.

in two- or three-person cells. A reduction of 400 prisoners on remand still permits effective agency to the IPS and DJE to make decisions based on public safety and withhold people who pose a risk. Again, similar to full temporary release, bail conditions will lead to a person returning directly to prisons if additional offences occur.

B. “Managed and Accelerated” Temporary Release of Prisoners under Sentence to Reduce the Overall Prison Population by 800.

There are currently 960 prisoners who were given sentences of less than two years: 887 male prisoners and 73 female prisoners. In addition, there will be prisoners within the overall population who received sentences longer than two years, nearing the end of their sentence and have received all the rehabilitative inputs available, who could be deemed suitable for full temporary release until end of their sentence.

With a proposed target of 800 prisoners from those under sentence, this does allow discretion on the part of the IPS and the DJE to decide certain prisoners may pose a risk to public safety and therefore full temporary release would be denied. The initial identification by the IPS of at least 200 prisoners with less than three months remaining on their sentence should be progressed without delay.¹⁸ All prisoners under sentence granted full temporary release can be returned to prison if conditions of temporary release are broken.

A cohort of prisoners who received a mandatory minimum sentence for certain drug cases (S. 15A entered into the Misuse of Drugs Act 1977, as part of the Criminal Justice Act 1999),¹⁹ nearing the end of their sentence, are not eligible for temporary release until the end of their sentence. The statutory basis for mandatory minimum sentences should be repealed by the DJE to allow those prisoners near the end of mandatory minimum sentences to receive temporary release.

2. Twelve Month Moratorium on Sentences of Less than a Year and Custodial Remand If No Risk to Public Safety.

The judiciary are required to play a significant role in lessening the number of prisoners which the prisons are required by law to receive. Any consideration of sentences for less than twelve months should be diverted to the community. Similarly, if a person is deemed to pose no threat to public safety, then they must not be required to undergo custodial remand prior to trial. The Department of Justice and Equality need to liaise with the Presidents of the various Courts to instruct judges to reject any request for custodial remand if public safety is not at risk and to not issue sentences of less than twelve months. These instructions need to remain in place for at least a year.

Coupled with the *Response 1*, this proposed moratorium would lessen the strain on the prison system, allowing them to implement a “one person, one cell” approach in preparation for the delay

¹⁸ Conor Lally Crime, ‘Hundreds of Prisoners May Be Released to Reduce Jail Risk of Covid-19’, *The Irish Times*, accessed 17 March 2020, <https://www.irishtimes.com/news/crime-and-law/hundreds-of-prisoners-may-be-released-to-reduce-jail-risk-of-covid-19-1.4202626>.

¹⁹ Kiwana Ennis, ‘Mandatory Minimum Sentences in S. 15A Drug Cases.’, *The Bar Review* 8, no. 1 (2003): 30–35.

phase. With a decrease of prisoners entering the prisons on short-term sentences, the IPS could focus directly on reducing the existing population.

As the country enters a period of lockdown to combat COVID-19, community organisations and NGOs will likely be unavailable or on a reduced service, community sanctions will not be available. If a judge deems a community sanction is required but will not be available at this time, an option should be created to defer the sanction until a time when the public health risk is reduced, and community organisations and projects are available.

In a more typical social and political environment, remand should only be used if public safety is a very real concern. This ethos of an extremely limited use of custodial remand is even more pressing now.

3. Estimated Future Cost Savings Should be Available for Irish Prison Service, Probation Service and Community Services in the Present.

If the prison population is decreased by 1,200 prisoners, there will naturally be projected cost savings in the future. In their last Annual Report, the IPS place the cost on a twelve month stay in prison at over 73,802 euro.²⁰ These cost savings will not be available to the DJE in the present with a “managed and accelerated prisoner release”.

However, we acknowledge that *Response 1* will require additional funding. The lack of a fixed abode or an address should not be a barrier to a prisoner being released if they are deemed to meet the criteria set by the IPS and DJE. Similar to the ongoing work of the emergency homeless services (whose clients have similar needs to those in prison in relation to mental health and drug addiction), hotel places or other accommodation need to be sourced to permit social distancing.

As the risk of frontline prison staff contracting COVID-19 increases, with the concomitant issues around staffing levels, funding should be available to IPS to cover staffing shortages²¹ and other contingency costs which will surely arise. Staff who work in Ireland’s prisons, almost 3,300 people,²² are also at a heightened risk of infection so policymakers need to urgently prepare for the inevitably of a shortage of prison staff in the event of an outbreak of COVID-19. Prison staff need paid sick leave to avoid situations where staff present to work unwell due to financial need.²³

In order to operationalise *Response 2*, sentences of less than twelve months being diverted to the community, future cost savings need to be invested into community services, prisoner projects and the Probation Service to meet this increased demand on their services.²⁴

²⁰ Irish Prison Service, ‘Annual Report 2018’ (Dublin: Irish Prison Service, 2018).

²¹ Shelupanov, ‘Briefing: Justice System Response to the Epidemiological Challenge of Coronavirus COVID-19 in the Community’.

²² ‘IPRT Statement on COVID-19 and Ireland’s Prison System’, accessed 17 March 2020, <https://www.iprt.ie/latest-news/iprt-statement-on-covid-19-and-irelands-prison-system/>.

²³ Penal Reform International, ‘Coronavirus: Healthcare and Human Rights of People in Prison’.

²⁴ Shelupanov, ‘Briefing: Justice System Response to the Epidemiological Challenge of Coronavirus COVID-19 in the Community’.

Conclusion

As prisons risk amplifying any outbreak of COVID-19²⁵ by becoming cluster-zones where transmissions occur back to the wider community, previously unimaginable policy responses need to be seriously considered. A lockdown of a detention facility is not an appropriate response based on the emerging experiences from other countries. A psychiatric ward in South Korea's Daenam Hospital was put into lockdown in an attempt to confine and delay the spread of the virus.²⁶ All but two of the 103 patients in the ward contracted COVID-19, with seven patients dying.

The timeframe for an effective response to reduce the prison population in order to have an effective delay phase is a matter of weeks, rather than the six months or a year which may be required during a period of normalcy. Speed will be of the essence as a reasonable number of the 1,200 prisoners can be released immediately.²⁷ This will buy some time to effect risk assessments on the remaining number of eligible prisoners to have "one person, one cell".

Decarceration is the only logical and effective policy response available. The decision is a case of when the implementation occurs. Any failure to quickly reduce the prison population will undermine any attempt to control COVID-19, locally and nationally.²⁸

²⁵ 'Why Jails Are Key to "Flattening the Curve" of Coronavirus', The Appeal, accessed 17 March 2020, <https://theappeal.org/jails-coronavirus-covid-19-pandemic-flattening-curve/>.

²⁶ Amanda Klonsky, 'Opinion | An Epicenter of the Pandemic Will Be Jails and Prisons, If Inaction Continues', *The New York Times*, 16 March 2020, sec. Opinion, <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>; "'It Was a Medical Disaster": The Psychiatric Ward That Saw 100 Patients Diagnosed with New Coronavirus', *The Independent*, 1 March 2020, <https://www.independent.co.uk/news/world/asia/coronavirus-south-korea-outbreak-hospital-patients-lockdown-a9367486.html>.

²⁷ Paul Reynolds, 'Covid-19: Prison Service Considers Temporary Release', 13 March 2020, <https://www.rte.ie/news/coronavirus/2020/0313/1122169-prisons-covid-19/>.

²⁸ 'Why Jails Are Key to "Flattening the Curve" of Coronavirus'.