



## Oifig An Chigire Príosún Office of the Inspector of Prisons

### National Disability Strategy Consultation, February 2024

#### Submission by Office of the Inspector of Prisons

**Please respond to one of the options below. I am responding as:**

**Other, please specify:** Office of the Inspector of Prisons

The Office of the Inspector of Prisons (OIP) is the national oversight body for prisons. It conducts regular inspections of all prisons in Ireland. Inspection recommendations are rooted in relevant legislation as well as international human rights standards. Another key function of the OIP is the investigation of deaths that occur in prison custody, and within one month of temporary release. This fulfils the State's requirement under Article 2 of the European Convention on Human Rights to protect the right to life.

#### **What changes do you see as important to ensure that disabled people in Ireland are fully included in society in line with the vision of the UNCRPD?**

People in custody are a vulnerable societal group as they are placed out of sight and, with the loss of their liberty, they lack the capacity to advocate for their rights and entitlements. The OIP would encourage a greater recognition within the new National Disability Strategy of the needs of persons with disabilities who are in prison custody. The human rights of persons with a disability must continue to be respected and upheld in the prison environment in accordance with Article 14(2) of the United Nations Convention on the Rights of the Person with a Disability (Liberty and Security of Person).<sup>1</sup>

As of 1<sup>st</sup> February 2024, there are 4,775 people in custody in the Irish prison system.<sup>2</sup> The WHO has highlighted the highly complex physical and mental health needs of people in the prison system when compared to the wider community.<sup>3</sup> Persons with disabilities are overrepresented in the prison population.<sup>4</sup> Additionally, a substantial proportion of the prison population are categorised as 'older prisoners' (aged over 50 years); in

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<sup>1</sup> United Nations (YEAR). Convention on the Rights of Persons with Disabilities. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

<sup>2</sup> Irish Prison Service (2024). Daily Prison Population. Available at: [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/31-January-2024.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/31-January-2024.pdf)

<sup>3</sup> World Health Organisation (2019). Status report on prison health in the European region. Available at: <https://iris.who.int/bitstream/handle/10665/329943/9789289054584-eng.pdf?sequence=1>

<sup>4</sup> Gulati, G., et al. (2018). Intellectual disability in Irish prisoners: systematic review of prevalence. International Journal of Prisoner Health, 14(3):188-196. Mental Health Commission (2021). Access to Mental Health Services for People in the Criminal Justice System. Available at: <https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>; Gulati G, et al.(2019). The prevalence of major mental illness, substance misuse and homelessness in Irish prisoners: systematic review and meta-analyses. Irish Journal of Psychology Medicine, 36(1): 35-45; Murphy, M. et al. (2000) A survey of the Level of Learning Disability among the Prison Population in Ireland. Available at: [https://www.iprt.ie/site/assets/files/5983/learning\\_disability\\_report.pdf](https://www.iprt.ie/site/assets/files/5983/learning_disability_report.pdf)

December 2023, this age group comprised 18.2% of the prison population.<sup>5</sup> Compounded by poor baseline health, this group may experience complex health needs and age-related disabilities.

Very often the physical environment of a prison is not readily accessible to persons with disabilities; this can have knock-on effects for accessing purposeful activity and rehabilitative offerings. There can also be significant challenges with respect to accessing healthcare and supports. We note that the recognition of people in custody with a disability was absent in the previous National Disability Inclusion Strategy 2017-2021. The OIP would welcome a greater focus on the complex disability-related issues and inequalities that affect those in prison custody within the new strategy.

### **What needs to happen for these changes to be achieved?**

To ensure that people in custody with a disability are in receipt of equal treatment and have equal access to essential services, several challenges must be addressed.

A fundamental challenge is that robust data on the prevalence of disability in the Irish prison system is ostensibly lacking. The Irish prison system lacks effective screening processes, meaning that many disabilities can go unrecognised and therefore unsupported.<sup>6</sup> In particular, system-level data on the prevalence of physical disabilities is almost entirely absent. From best available evidence, the OIP note that:

- the prevalence rate of severe mental illness among people in custody is estimated at approximately 3.6%, and is approximately 4.3% for affective disorders.<sup>7</sup>
- intellectual disability is likely overrepresented in the Irish prisons,<sup>8</sup> with one study citing that it could affect as high as 28% of people in custody.<sup>9</sup>

A second critical challenge concerns the physical environment. Prisons are noisy, overcrowded, and offer cramped living spaces. The physical infrastructure is often old and outmoded, imposing sensory challenges, physical challenges, and challenges in providing reasonable accommodations. The OIP has observed first-hand the issues and inequalities faced by people with a disability as a consequence of living in an unsupportive environment. This includes, among others:

- people with mobility issues who are unable to access areas of the prison, thereby limiting their access to work, training, education, the yard, and consequently their means to engage in purposeful activity;
- people with physical health concerns who are accommodated in inappropriate living conditions (i.e. challenges using shower facilities; sleeping on mattresses, sleeping on top-bunks, or housed in cells on upper floors of the prison block);
- people with disabilities or physical health challenges being denied transfer to open prisons because their needs cannot be supported in these prisons.

Thirdly, imprisonment can infringe upon the rights of people with a disability by impeding their access to healthcare and undermining the quality of healthcare received. For people with severe mental illness, prison

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<sup>5</sup> Irish Penal Reform Trust (2023). Prison Facts. Available at: <https://www.iprt.ie/prison-facts-2/>

<sup>6</sup> Gulati, G., Murphy, V., Clarke, A., Delcellier, K., Meagher, D., Kennedy, H., Fistein, E., Bogue, J. & Dunne, C.P. (2018). Intellectual disability in Irish prisoners: systematic review of prevalence. *International Journal of Prisoner Health*, 14(3):188-196

<sup>7</sup> Gulati G, Keating N, O'Neill A, Delaunoi I, Meagher D, Dunne CP (2019). The prevalence of major mental illness, substance misuse and homelessness in Irish prisoners: systematic review and meta-analyses. *Irish Journal of Psychology Medicine*, 36(1): 35-45.

<sup>8</sup> Mental Health Commission (2021). Access to Mental Health Services for People in the Criminal Justice System. Available at: <https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>

<sup>9</sup> Gulati, G., Murphy, V., Clarke, A., Delcellier, K., Meagher, D., Kennedy, H., Fistein, E., Bogue, J. & Dunne, C.P. (2018). Intellectual disability in Irish prisoners: systematic review of prevalence. *International Journal of Prisoner Health*, 14(3):188-196

cannot be considered as a therapeutic setting and it may even further harm their well-being; therefore, it is an environment that is wholly inappropriate.<sup>10</sup> The OIP have also observed:

- people with psychiatric disorders who are placed in safety observation cells or close supervision cells which, in some circumstances, amounts to solitary confinement;
- people with psychiatric disorders not being transferred expeditiously to beds in the National Forensic Mental Health Service, and therefore not receiving appropriate treatment;
- widespread staff shortages in posts for nurses, GPs, psychologists, psychiatric in-reach, physiotherapy in-reach, occupational therapists, and healthcare assistants which results in a lack of timely, accessible, and appropriate healthcare supports.

**What would a successfully implemented strategy look like? For example, how do you think life should have improved for disabled people in Ireland at the end of a five-year strategy?**

In reference to the challenges noted above for people in custody with a disability, a successfully implemented National Disability Strategy would:

- 1) **Include explicit recognition of people in custody with a disability, and provide targeted supports and resources.** People in custody with a disability are a significantly marginalised and vulnerable group. The inequalities they experience are a critical issue that requires urgent attention, support, and evidence-based solutions.
- 2) **Support and gather accurate and timely data on the nature and prevalence of disability among people in custody.** As noted, data of this kind is lacking. Effective data collection would allow for greater identification of the systemic barriers encountered by people with a disability in custody, as well as the provision of targeted supports. Research and data of this kind would also greatly support the inspection and monitoring work of the OIP.
- 3) **Promote greater awareness and implementation of the principles of Universal Design within prison settings.** As described, people in custody with a disability face a host of challenges by virtue of living in an unsupportive physical environment. This can create inequalities by impeding their access to work, training, exercise, meaningful contact, as well as providing unsuitable accommodation for daily living.
- 4) **Ensure equality of access to healthcare for people in custody with a disability.** We would welcome a commitment in the new National Disability Strategy to support (i) the implementation of pathways for diversion from prison for people with a serious mental illness, and (ii) the provision of appropriate healthcare resourcing and supports within prison to allow equivalence of healthcare to that of the community.
- 5) **Support and address the challenges of reintegration faced by people in custody with a disability post-release.** The OIP recognises that people in custody can experience difficulties linking in with services, supports, healthcare, accommodation, and employment upon release from prison. These supports are vitally important for ensuring desistance and successful reintegration to the community. This is a particularly challenging and complex area, and one that has received little attention.

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<sup>10</sup> Office of the Inspector of Prisons (*forthcoming*). Thematic Inspection: An Evaluation of the Provision of Psychiatric Care within the Irish Prison System.

**If you have any other views that are relevant to the new National Disability Strategy please tell us?**

Additional important considerations concern to the composition of the prison population. Firstly, the Irish prison population is increasing. Between 2001 and 2021 the prison population increased by 20%<sup>11</sup> and this is predicted to continue in the short-term future. Additionally, the Irish prison population is aging. These two factors indicate that the concerns raised in this submission will only become more pressing over time. As one Irish prison health expert describes, “Irish prisons are, in effect, emerging as congregated settings for people with psychosocial and intellectual disabilities”.<sup>12</sup> Without accurate data and research the scale and nature of this issue cannot be understood, and the specificities of the inequalities and challenges faced go unacknowledged and unaddressed.

Of further note, the remit of our Office is set to expand with the passing of the Inspection of Places of Detention Bill.<sup>13</sup> This Bill proposes that the OIP will be designated as a National Preventive Mechanism (NPM), and provide oversight to prevent torture and ill-treatment in places of detention. The establishment of an NPM is necessary to allow Ireland ratify the Optional Protocol to the UN Convention Against Torture (OPCAT).<sup>14</sup> As an NPM for places of detention, our Office will have a role in the oversight and monitoring of places of police custody, in addition to prisons.

Police custody has previously been highlighted as an entry point to the mental health system;<sup>15</sup> many thousands of people with mental health vulnerabilities pass through Garda custody every year simply in order to be committed. Significant concerns have been raised with respect to: the quality of screening for mental health issues in Garda stations, the adequacy of supports and training, diversions from custody, and pathways to care for people with mental health issues. Under our responsibilities as NPM for places of detention, these issues will form an important area of work of our Office.

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<sup>11</sup> Irish Penal Reform Trust (2023). Prison Facts. Available at: <https://www.iprt.ie/prison-facts-2>

<sup>12</sup> Gulati et al. (2021). Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities. Available at: <https://www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/>

<sup>13</sup> Department of Justice (2022). General Scheme of the Inspection of Places of Detention Bill. Available at: <https://www.gov.ie/en/press-release/470b9-minister-for-justice-publishes-general-scheme-of-the-inspection-of-places-of-detention-bill/>

<sup>14</sup> OHCHR (2006) Optional Protocol to the United Nations’ Convention Against Torture. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

<sup>15</sup> Mental Health Commission (2021). Access to Mental Health Services for People in the Criminal Justice System. Available at: <https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>