

**Questionnaire – UN Working Group on Arbitrary Detention, pursuant to Human
Rights Council resolution 42/22.**

“Study on arbitrary detention relating to drug policies”

Response of Ireland

July 2020

Drug-related detention

As of 31 May 2020, there were 316 adults in custody in Irish Prisons for offences relating to drugs. This represented approximately 8.5% of the overall prison population on that date. Of those in custody for drug offences, 98% were male and 2% female. 73% of those in custody for such offences as of this date had declared their nationality as Irish on admission to prison. The second highest nationality declared by those sentenced for drug-related offences was Polish, at 10%, followed by British and Lithuanian both at 4%.

Among the sentenced persons in custody for drug-related offences on that date, the most common offences were recorded in the following categories:

- Possession of drug(s) for the purpose of sale or supply;
- Unlawful possession of drug(s);
- Cultivation of Cannabis Plants and Opium Poppy;
- Unlawfully importing or exporting controlled drugs.

As at 31 May 2020, there were 61 pre-detainee prisoners for offences relating to drugs, which represented approximately 8% of the overall total of pre-detained prisoners, and of whom the majority are on remand. The highest number of offences in relation to those pre-detainee prisoners were recorded in categories provided above, including unlawful possession of drug(s); possession of drug(s) for the purpose of sale or supply, and unlawfully importing or exporting controlled drugs.

There are no prohibitions on persons in custody, and those sentenced for drug related offences, to be considered for temporary release or other various forms of release open to the rest of the prison population, and there are a number of multi-agency schemes available in this regard.

The Community Return Scheme is an incentivised early release scheme, which was introduced in 2011. Prisoners released on the Community Return Scheme, under the supervision of the Probation Service, contribute to their local communities by engaging in activities such as working in charity shops, maintenance of public areas, sports facilities etc. As well as allowing prisoners to complete their sentence by performing a service to the community, it has significantly helped these prisoners to successfully resettle in their communities.

Another initiative, the Joint Agency Response to Crime Programme (JARC) aims to develop and strengthen a multi-agency approach to the management of prolific offenders and in this way to reduce crime and victimisation in local communities. Under JARC, offenders causing most harm in certain communities are identified and included in specific offender management programmes delivered on the ground by an operational team of frontline Gardaí, probation officers and prison officers. They work closely together to address the factors behind their offending and to direct them away from criminality by providing tailored supports and practical help with addiction, educational, training or other needs.

Complaints procedures

The Office of the Inspector of Prisons is a statutory body, independent in the exercise of its functions. It carries out regular inspections of prisons and places of detention in Ireland and investigates the deaths of prisoners in custody and has oversight of the prisoner complaints procedure in the Irish Prison Service.

Further oversight of Irish Prisons is provided by the Prison Visiting Committees, which are provided for by law and appointed by the Minister for Justice. The function of Visiting Committees is to visit the prison to which they are appointed at frequent intervals and to hear any complaints which may be made to them by any prisoner. The Visiting Committee members have free access either collectively or individually to every part of their prison.

The Irish prison service has developed the Irish Prison Service healthcare standards¹ which are the basis on which prison healthcare services are delivered to all persons in custody.

The UN Committee Against Torture (CAT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment both serve as monitoring

¹ http://www.irishprisons.ie/images/pdf/hc_standards_2011.pdf

mechanisms to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place.

Drug laws and policies

Possession of any controlled substance without due authorisation is an offence under the Misuse of Drugs Acts 1977-2017.

The acquisition, possession and use of drugs for personal use has not been decriminalised in Ireland. However, a change in the legislation surrounding the possession of drugs for personal use has been agreed at Government level and is currently being operationalised.

The Government has decided to adopt a health-led response to the possession of drugs.

Where a person has been found in possession of drugs for personal use, the Government has agreed to implement a health diversion approach whereby,

- On the first occasion, An Garda Síochána (police) will refer them, on a mandatory basis, to the Health Service Executive for a health screening and brief intervention; Where necessary, high-risk drug users would be offered onward referral for treatment or other supports.
- On the second occasion, An Garda Síochána would have discretion to issue an Adult Caution.

This approach will not decriminalise drug use; it is a mechanism to defer people to health and social services for help and support.

Further to that, treatment services will be available to those who require it, this will include, but not be limited to; community services, counselling, residential care, detox beds and social care.

Drug and alcohol facilities

Private drug and alcohol facilities exist in Ireland. The Mental Health Act of 2001 under section 8(2) states that it is not lawful to admit a person involuntarily in an Approved centre solely because that person is addicted to drugs or intoxicants.

The Mental Health Commission (MHC) was established in 2002 and its functions are set out in the Mental Health Act 2001. Essentially the Commission's role is to promote, encourage and foster high standards in relation to the delivery of mental health services in Ireland and to

protect the interests of patients who are involuntarily admitted. They register inpatient facilities providing care and treatment for people with a mental illness and mental disorder. They develop Codes of Practice to guide those working in the mental health services and enable them to provide high quality care and treatment to service users including advice on informed consent and individual care plans.

The MHC has an Inspector that annually inspects all mental health services with his/her team. It is illegal to coercively confine an individual who has been admitted voluntarily if they wish to leave.

Complaints procedures are outlined to all people admitted to Mental Health facilities. For a person admitted involuntarily for any Mental Health disorder there is a mandatory review by a Mental Health tribunal within 21 days of admission but this does not apply to people with drug or alcohol dependence as they are not permitted to be admitted involuntarily to an approved centre by law (Mental Health Act 2001, section 8 (2)). For other private facilities that are not 'Approved Centres' it is unlawful for them to detain people involuntarily. There are no criminal or other penalties for failure to complete treatment.

Administrative detention

Administrative detention of a person who uses drugs and is considered a danger to themselves cannot be ordered as addiction to drugs or alcohol is excluded from Mental Health legislation as a condition for which involuntary admission can be permitted (as above). If the person is a danger to others then this is a matter for the Police to consider and make a determination as to whether there is a credible threat of danger.

However, under the Health Act of 1947, section 38 allows for the detention and isolation of an individual who is a probable cause of infection and who will not isolate at home:

“Where a chief medical officer is of opinion, either consequent on his own inspection of a person in the area for which such medical officer acts or consequent upon information furnished to him by a registered medical practitioner who has inspected such person, that such person is a probable source of infection with an infectious disease and that his isolation is necessary as a safeguard against the spread of infection, and that such person cannot be effectively isolated in his home, such medical officer may order in writing the detention and isolation of such person in a specified hospital or other place until such medical officer gives

a certificate (for which no charge shall be made) that such person is no longer a probable source of infection.”

This applies to any person and may include someone who is addicted to drugs but the risk is due to the spread of an infectious disease (e.g. TB or indeed Covid-19) and they will not isolate. This person does have the right of appeal and legal representation.

Young people and drug-related detention

In 2019 13 young people were held in pre-trial detention for drug-related offences. This represented 12% of pre-trial detention of young people. In 2019 4 young people were detained pursuant to a conviction for drug related offences. 50% of these were detained pursuant to a conviction for drug-related offences specific to acquisition, use or possession of drugs for personal use.

Young people are detained in dedicated facilities for children. The Standards and Criteria for Children Detention Schools 2008² apply in relation to young people detained for drug-related offences.

There is no compulsory drug treatment for young people. Tusla, the Child and Family Agency, operates the Assessment Consultation Therapy Service (ACTS), a specialised clinical service that provides multidisciplinary consultation, assessment and focused interventions to young people who have high risk behaviours associated with complex clinical needs. The service offers on-site therapeutic services to young people in secure settings in Ireland, including children detention schools.

Complaints can be made to the Ombudsman for Children in relation to children in detention schools.

² [https://www.hiqa.ie/sites/default/files/2017-02/Standards and Criteria for Children Detention Schools 2008.pdf](https://www.hiqa.ie/sites/default/files/2017-02/Standards%20and%20Criteria%20for%20Children%20Detention%20Schools%202008.pdf)