

**PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO
IMPRISONMENT ACROSS EUROPE**

**NON-CUSTODIAL SANCTIONS AND MEASURES
IN THE MEMBER STATES OF THE EUROPEAN UNION**

Ireland

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**Funded by
the European Union**

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Non-custodial sanctions and measures in the Member States of the European Union

Republic of Ireland

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1. LEGAL FRAMEWORK

1.1 General Framework of penal sanctions in Ireland

General features of Republic of Ireland penal sanctions running from most serious to least serious category:

Sanction	Governing Legislation / Reference	Term of imprisonment / Explanation	Alternative to Imprisonment
Custodial Sentence	Sentencing court has a high level of discretion, subject to constitutional principle of proportionality. Sentencing Guidelines are currently being drafted as mandated by the Judicial Council Act 2019 .	Maximum life sentence (current average time served in prison is 20 years)	x
Part-suspended sentence	Criminal Justice Act 2006 , section 99 as amended by section 60 of the Criminal Justice Act 2007 and section 51 of the Criminal Justice (Miscellaneous Provisions) Act 2009	Sentencing court can make an order to suspend the execution of a custodial sentence in part, subject to the person entering into a recognisance (bond) to comply with the conditions of the Order. Mandatory conditions: keep the peace and be of good behaviour. Under the 2006 Act, the court has discretion to fully or part-suspend a custodial sentence. A part suspended sentence with supervision can be a combination of a custodial penalty and a probation measure in one Order.	x
Suspended sentence	Criminal Justice Act 2006, s99; Criminal Justice (Suspended Sentences of Imprisonment) Act 2017	Section 99 of the 2006 Act specifically refers to a “term of imprisonment” that may be suspended. <i>In The People (DPP) v Loving, [2006] IECCA 28</i> , Court of Criminal Appeal located the suspended sentence just below a sentence of immediate imprisonment on the range of available penalties.	(Avoids prison)
Deferred sentence	Criminal Justice Act 2006, s100	S.100 provides that where a judge imposes a conviction where the person is liable to a custodial sentence and a fine, s/he may impose a fine on the person and make an order deferring the passing of a custodial sentence, and specifying the term of imprisonment that the court would propose for that offence in case of non-compliance.	(Avoids prison)
Community Service Order	Criminal Justice (Community Service) Act, 1983;	The 1983 Act courts can order the performance of between 40-240 hours of unpaid work in the	✓

	Criminal Justice (Community Service) (Amendment) Act 2011	community by a convicted person aged 16+, for which the appropriate penalty would be a custodial sentence. The 2011 Act requires a court to consider imposing the alternative sentence of a community service order where a person is facing a custodial sentence of up to 12 months.	
Conditional Discharge	Probation of Offenders Act 1907, section 1(1)	Applies where the charge is proved but the offender is sentenced for that offence only if they reoffend or breach a condition of discharge within a period of time not exceeding 3 years.	✓
Fine	Fines (Payment and Recovery) Act 2014	Part 5 of the 2014 Act - an offender must complete a specified length of Community Service under the 1983 Act in lieu of payment of fine. (Between 30-100 hours in District Crt).	✓
Dismissal	Probation of Offenders Act 1907	Charge is proved but it would be inappropriate to enter a formal conviction or punish the offender.	✓

The maximum limit of imprisonment that allows replacement by a non-custodial sentence is up to twelve months for a community service order under the Criminal Justice (Community Service) (Amendment) Act 2011.

The law provides for the possibility of non-imposition of a sentence under the Suspended Sentence and Deferred Sentence outlined above.

1.2 Non-custodial sanctions

Non-custodial sanctions in the Irish criminal justice system:

Non-custodial sanction	Probation Order
Governing Legislation and legal requirements	<p>Probation of Offenders Act, 1907, s2(1), 2(2) and 2(3) Criminal Justice Administration Act, 1914, s8 and 9 Children Act 2001, s115</p> <p>A District Court, on finding facts proved but not proceeding to a finding of guilt, may make a Probation Order placing an offender under the supervision of a Probation Officer for a specified period of up to three years. A Probation Order is not a recorded conviction. Probation Orders made in the Circuit and Higher Courts under the 1907 Act are recorded convictions. Court must provide the offender with a notice in writing stating the conditions to be observed.</p>
Offender consent?	Required - offender must sign a recognisance (Bond) in court binding them to comply with conditions.
Condition(s)	<p>Can include: good behaviour, appear before Court as required for conviction and sentence, to be under supervision of a Probation Officer, co-operate with supervision, report changes of address or employment, do not associate with thieves and other undesirable persons and do lead an honest and industrious life.</p> <p>Specific conditions may be added e.g. sobriety, avoiding specified company or locations, obliging residence in a specified location or participation in a specified course.</p>
Min/max limits or amounts	3 years maximum limit (Section 1(1)(ii) of the 1907 Act)
Imposed directly or alternative to prison?	Imposed directly

Non-custodial sanction	Community Service Order
Governing Legislation and legal requirements	See section 1.1.
Offender consent?	Required under 1983 Act, s.4
Condition(s)	<p>Discretionary obligations:</p> <ul style="list-style-type: none"> -to report change of residence/work place. -to report at specified times to a specific authority; -to carry out community service; -to co-operate with Probation Officer / representative of social service.
Min/max limits or amounts	<p>40-240 hours of unpaid work in the community by a person aged 16 years or over, who has been convicted of an offence, for which the appropriate penalty would be a custodial sentence. Work must be performed within one year of the date of the Order. Fines (Payment and Recovery) Act 2014 makes provision for 30-100 hours community service in lieu of unpaid fine in the District Court.</p>
Imposed directly or alternative to prison?	Alternative - for prison sentences of up to 12 months.

Non-custodial sanction	Supervision Order under the Misuse of Drugs Act 1977
Governing Legislation and legal requirements	Misuse of Drugs Act 1977, s28
Offender consent?	No formal provision for treatment without consent. In practice, consent is required where a person, under a recognisance, must undergo treatment. The court can dispense with consent

	requirement in cases where the question of capacity or risk of death is relevant and a successful application to the High Court is made accordingly.
Condition(s)	<p>Discretionary conditions:</p> <ul style="list-style-type: none"> -offender placed under the supervision of a specified body or person (e.g. Health Board) for a specified period; -person may be obliged to receive visits as required and specified; -to undergo medical or other treatment recommended; -to attend or remain in a hospital, clinic or other place specified for a period so specified; -to attend a specified course of education, instruction or training. <p>Where probation supervision is part of the Order additional conditions may apply:</p> <ul style="list-style-type: none"> -to inform a specific authority of any change of residence or working place; -instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on modalities of carrying out a professional activity; -to report at specified times to a specific authority; -to co-operate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons; -to undergo therapeutic or addiction treatment; <p>Additional conditions as deemed reasonable and appropriate by the court in the circumstances.</p>
Min/max limits or amounts	No min/max period is provided in the legislation but for an order to be valid a specified period must be stated.
Imposed directly or alternative to prison?	Section 28(2) outlines the details of a supervision order which the Court shall, if in its opinion the welfare of the convicted person warrants its so doing, allow a convicted person enter in lieu of the imposition of any other penalty.

Non-custodial sanction	Restriction on Movement Order
Governing Legislation and legal requirements	Criminal Justice Act 2006, section 101, 102 Part 10 of the 2006 Act contains enabling provisions for the introduction of electronic monitoring for compliance with this Order – provisions not commenced. Order must specify the restrictions, in particular, the specified duration, timing and place.
Offender consent?	Required.
Condition(s)	Offender <i>must</i> keep the peace and be of good behaviour. Discretionary conditions relating to period, timeframe and place. The court cannot require the offender to be in any place(s) for a period(s) of more than 12 hours in any one day.
Min/max limits or amounts	Not more than 6 months.
Imposed directly or alternative to prison?	May be imposed as an alternative to prison where a person is convicted of certain offences (mainly public order and assault offences) and is sentenced to custody for 3 months or more.

Non-custodial sanction	Post Release Supervision Order
Governing Legislation and legal requirements	Part 5 of the Sex Offenders Act 2001 In considering whether to make Order, the sentencing court must consider the need for the offender's rehabilitation, public protection, and likelihood of further offending.
Offender consent?	Not specified.
Condition(s)	Discretionary conditions - treatment or counselling. Court may vary or discharge any of the conditions on the application of either the offender or a probation officer. Where probation supervision is designated as a condition additional obligations may apply:

	<ul style="list-style-type: none"> -informing on change of residence/workplace; -not to enter certain localities, places or defined areas; -limitations on leaving the territory; -instructions relating to behaviour, residence, education and training, leisure activities, or modalities of carrying out a professional activity; -to report at specified times to a specific authority; -to avoid contact with specific persons; -to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence; -to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons; -to undergo therapeutic treatment or treatment for addiction. <p>Additional conditions as deemed reasonable and appropriate by the court in the circumstances.</p>
Min/max limits or amounts	Restriction on the combined periods of custody and supervision cannot exceed the maximum custodial sentence specified for the relevant offence.
Imposed directly or alternative to prison?	A sentencing court that is imposing as custodial sentence on a person convicted of a scheduled sexual offences as defined in the 2001 Act, <i>must</i> consider whether or not to impose a sentence involving post-release supervision. Order can be imposed together with a custodial sentence.

Non-custodial sanction	Monitoring Order / Protection of Persons Order
Governing Legislation and legal requirements	Criminal Justice Act 2007, section 26(2); section 26(5)
Offender consent?	Not specified.
Condition(s)	Order comes into force after the convicted person has served a custodial sentence. Where such an order is made, the person must notify an Inspector of An Garda Síochána in their district as soon as practicable after the order comes into force. The court may provide that the offender is prohibited from engaging in any behaviour that, in the opinion of the court, would be likely to cause the victim of the offence concerned or any other person named in the order fear, distress or alarm or would be likely to amount to intimidation of any such person.
Min/max limits or amounts	Maximum seven years.
Imposed directly or alternative to prison?	A sentencing court that is imposing a custodial sentence on a person convicted of a scheduled offence as defined in the Act, <i>must</i> consider whether or not to impose an order.

The Irish system does not specify particular circumstances for which a non-custodial sentence cannot be imposed (e.g. foreign nationals, unemployed people, homeless people etc.).

Prior convictions do not preclude the imposition of a non-custodial sentence.

There is no formal provision for imposing cumulative penalties in Irish law and it is not common practice, with the exception of partially or fully suspended sentences which may have a condition of Probation Service supervision attached but this is very unusual.

1.3 Rationale for sentencing: determining the type and term of a non-custodial sentence

A criminal trial in Ireland consists of two distinct phases – the guilt evaluation stage and the sentencing stage (which includes the imposition of non-custodial sentences). The Oireachtas (legislative branch of government) usually specifies in legislation a minimum/maximum penalty for a particular offence. The sentencing judge, under the Constitution, having considered all the circumstances of a case, may impose an appropriate penalty within the specified range. Judicial discretion, as guided by precedent, is a constitutionally protected power under the doctrine of proportionality.¹ The judge must impose a sentence proportionate to the gravity of the offence but is obliged to mitigate or aggravate that sentence if required by virtue of the circumstances of the particular offender at the time of sentencing.² An offender's culpability at sentencing is evaluated with reference to broader circumstantial or behavioural factors relevant to the commission of the particular offence.³ Aggravating and mitigating factors are not presently proscribed by legislation, however, it is noteworthy that the court has recently held that a dysfunctional background is relevant to the assessment of moral culpability in terms of reducing the gravity of an offence.⁴ An important safeguard rests in the power of the Director of Public Prosecutions to apply to the Court of Appeal to review a sentence they regard as unduly lenient. The Superior Courts have developed a substantial body of case law setting out general principles of sentencing in relation to specific offences.⁵ The Judicial Council Act 2019 establishes a Sentencing Guidelines and Information Committee which will be responsible for the collation and dissemination of sentencing information, in addition to the drafting of more formal sentencing guidelines. The Committee falls under the aegis of the Judicial Council, the body responsible for promoting high standards of judicial conduct and judicial education.

There is no one, overarching sentencing priority in Irish jurisprudence, and the dominant judicial approach tends to represent an appropriate balancing of penal objectives of retribution, deterrence (general and/or specific) and rehabilitation.⁶ It is at the judge's discretion to determine the priority of the sentencing

¹ Article 38. 1, Article 40.3.1 , Article 40.3.2 and Article 40.4.1.

² *Deaton v Attorney General* [1963] IR 170; *State (Healy) v Donoghue* [1976] IR 325; *People (Attorney General) v O'Driscoll* (1972) 1 Frewen 351; *People (Attorney General) v Poyning* [1972] IR 402; *State (Stanbridge) v McMahon* [1979] IR 214.

³ *The People (DPP) v Shaun Kelly* [2016] IECA 204.

⁴ *The People (DPP) v Leon Byrne* [2018] IECA 120; *The People (DPP) v Stephen Comey* [2018] IECA 161.

⁵ For example, *People (DPP) v Ryan* (firearms case) [2014] 2 I.L.R.M. 98; *People (DPP) v Fitzgibbon* [2014] 2 I.L.R.M. 116 (assault case) / *People (DPP) v Casey* [2018] IECA 121; [2018] 2 I.R. 237 (burglary case).

⁶ *People (DPP) v DW* [2018] IECA 143; also *People (DPP) v GK* [2008] IECCA 110, *People (DPP) v Kelly* [2005] 2 IR 321 (CCA) and *People (AG) v O'Driscoll* (1972) 1 Frewen 351

objectives and how best to structure the sentencing order accordingly, including steps to incentivise rehabilitation.

There is no requirement for a mandatory imposition of a non-custodial sentence in Ireland. However, under the Criminal Justice (Community Service) (Amendment) Act 2011, where an offender is convicted of an offence for which a custodial sentence of up to 12 months would be appropriate, the sentencing judge is *obligated to consider* imposing the alternative sentence of a community service order.

The Criminal Procedure Act 1993 (as amended) sets out the procedure for appeal regarding the severity of an offence. The offender can lodge and appeal against a sentence and the judge may confirm or adjust the sentence as deemed appropriate following submissions from legal representatives. The Director of Public Prosecution can lodge an appeal with the Court of Appeal on the basis of undue leniency.

1.4 Implementation of non-custodial sanctions and consequences of non-compliance

The Probation Service is responsible for overseeing supervision of offenders in Ireland. Non-compliance with the conditions of a non-custodial sanction, such as a probation order, is prosecuted by the Probation Officer by way of an information to the court. The court may then issue a summons or warrant for arrest to return the offender to court. The court makes the final decision on non-compliance or revocation. The Court may then sentence afresh on the original charges which had been dealt with by the Probation Order.

1.5 Early release

Non-custodial sanction	Parole Order
Governing Legislation and legal requirements	Parole Act 2019, section 28 Parole Board may make an order where it is satisfied that the applicant: (a) would not, upon being released, present an undue risk to the safety and security of members of the public (including the relevant victim), and (b) has been rehabilitated and would, upon being released, be capable of reintegrating into society, and (c) it is appropriate in all the circumstances that the applicant be released on parole. Where an order is made a person must be released on parole no more than 18 months from the date of the making of the order.
Sentence time frame (quantum of sentence served)	The Parole Board must consider the period of the sentence served but there is no formally proscribed timeframe.

Granting authority	The Parole Board
Monitoring authority	The Probation Service
Conditions	No re-offending (28(1)(d), in addition a parole order may specify that the release of the person shall be subject to any one or more of the following conditions: (a) submit to supervision by the Probation Service; (b) resides or remains in a particular district or place in the State; (c) refrains from attending at such premises or other place as the order may specify; (d) from having any contact with such person or persons as the order may specify.
Consequences of non-compliance	Revocation of order under s.33 of 2019 Act. A person unlawfully at large following revocation or condition breach is guilty of an offence and liable to serve a term of imprisonment not exceeding 6 months (s.34 of the 2019 Act).
Recall automatic?	Decision with Parole Board under s.33.
If order revoked does time spent on conditional release count as prison time?	Unclear from legislation.

Non-custodial sanction	Temporary Release from custody with conditions of Probation Service supervision
Governing Legislation and legal requirements	The Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act, 2003 The Minister for Justice and Equality may direct that a person who is serving a custodial sentence shall be released from prison for a temporary period subject to certain conditions (which may include Probation Service supervision).
Sentence time frame (quantum of sentence served)	The period of supervision is as determined by the decision and order of the Minister for Justice.
Granting authority	The Minister for Justice and Equality
Monitoring authority	The Probation Service
Conditions	Temporary release for the purpose of: -assessing reintegration; -preparing for release at end of sentence; -assisting the Garda Síochána (Irish police) in the prevention, detection or investigation of offences; -assisting the Garda Síochána to apprehend a person guilty/suspected of an offence. -health or for humanitarian reasons; -prison governance and management reasons. Temporary release if the prisoner has been rehabilitated and would reintegrate into society – the granting Minister must take into account: -nature and gravity of the offence; -sentence imposed and any conditions attaching; -time served; -potential threat to the safety/security of the public and/or victim; -previous convictions; -risk of absconding; -conduct which in custody or previous release; -any reports from the Garda Síochána, the prison Governor, a Probation Officer or any person assisting the Minister; -risk of further offences; -risk of non-compliance with conditions; -likelihood of temporary release assisting reintegration or employment. Where probation supervision is designated as a condition additional conditions may apply (as outlined under Post Release Supervision Order).

Consequences of non-compliance	The authorities responsible in the case of revocation are Minister for Justice and Equality and the Governor of the prison from which the person was released.
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Non-custodial sanction	Community Returns Scheme
Governing Legislation and legal requirements	Community Return was set up in 2011 and is an incentivised programme providing for earned temporary release in return for supervised community service to perform unpaid work. The following factors are considered: progress during custodial sentence, risk to the community, and resettlement.
Sentence time frame (quantum of sentence served)	Applies to qualifying prisoners serving one to eight years in custody (with some flexibility for longer serving suitable prisoners), having served at least 50% of their sentence and following an individual assessment process. The number of weeks of unpaid work required in each case is calculated on the basis of number of weeks left in their sentence and will equate to half of their remaining time to serve.
Granting authority	Prison Service / Probation Service
Monitoring authority	Probation Service
Conditions	Undertaking unpaid work – typically 3 days per week (9.30 am to 4.30pm). Additional conditions can include reporting to relevant prison or local Garda (police) station.
Consequences of non-compliance	“Two strike” rule applies – non-attendance or lateness on two separate occasions results in removal from scheme and return to prison to serve remainder of sentence.

There is no formal proscription for mandatory conditional release in Ireland.

1.6 Sanctions or measures applicable to vulnerable persons and minority groups

There are no specific non-custodial sanctions designed nor specific requirements designated for particularly vulnerable persons. No formal programmes exist for vulnerable cohorts either, however, note the community service initiative developed for Roma women (Horgan, 2007). In practice, the Probation Service takes a particularised approach and will assess individual needs of an offender on a case by case basis and respond accordingly. The Irish Offender Supervision Framework is based on a Risks-Need-Responsivity and Desistance Framework (Durnescu, Griffin & Scott, 2020).

There are no specific forms of early release for vulnerable groups and/or minorities. There are no particular legal barriers to vulnerable persons or minority groups accessing non-custodial sanctions that the writers are aware of.

2. NON-CUSTODIAL SANCTIONS AND MEASURES IN PRACTICE

2.1 The Probation Service: An overview

As noted, the Probation Service is responsible for overseeing supervision of non-custodial sanctions and measures in Ireland. Service users may link in with the Probation Service prior to imprisonment, during the completion of a pre-sanction or probation report; in lieu of prison, through a Community Service Order or suspended sentence (in part or full) on the condition that they be supervised by the Probation Service; or upon release from prison, through Community Return, Temporary Release (TR) or supervision while out on license for those who received life sentences. The work of the Probation Service extends beyond control and monitoring. Rather, Probation Officers support service users in their re-integration into the community, desistance from crime, and personal development, helping them to recognise and address the issues which led to criminal behaviour. To that end, the Probation Service describes itself as *'a people-centred organisation. It believes that with the assistance of our knowledgeable, skilled and committed staff, acting as change agents, our service users have the capacity to change their behaviour and become better citizens.'* (Probation Service, 2021a).

The Covid-19 pandemic has impacted the flow of work from the Courts Service to the Probation Service caseload (further discussed in section 3); however, on October 1 2021, the Probation Service were working with 10,611 individuals, 1,511 of whom were still in custody. Of these, 32.6 per cent were under Probation Type Supervision, including Probation Orders, Fully Suspended Sentence Supervision Orders, and Supervision During Deferment of Penalty (Probation Service, 2021b). A further 18.7 per cent were engaged on Community Service Orders, and 13.8 per cent were under supervision in the community following their release from custody. This included those on Community Return, part suspended sentences, temporary release supervision, life sentence prisoners on supervision in the community, and sex offenders on supervision post release from custody.

In addition to partnerships with the Irish Prison Service, An Garda Síochána (the national police service), the Department of Social Protection, the Health Service Executive, and Tusla: The Child and Family Agency, the Probation Service work with, and provide funding to, voluntary sector organisations (VSOs) across the Republic of Ireland. These VSOs are involved in the delivery of community-based sanctions and early release schemes, providing, for example, group and individual support, addiction support, health support, education and employment support and familial support (Swirak, 2018). In 2016, the Probation Service provided €15million to 61 voluntary sector organisations 'to deliver supports to their clients in the

community with a view to reduce recidivism and support reintegration’ (Irish Probation Service, 2016, as cited by Swirak, 2018, p.28). In the Probation Service Annual Report 2020 (Probation Service, 2021a), this number had risen to 62 community-based organisations, including IASIO (Irish Association for Social Inclusion Opportunities), who provide resettlement support to those leaving prison; PACE (Prevention - Accommodation - Community - Enterprise), who use an assisted desistance and strengths-based approach to support the re-integration process of those with criminal convictions; and Le Chéile, a mentoring organisation who work with Young Persons Probation (YPP). Engagement with other agencies and organisations was particularly important during the Covid-19 pandemic, with one Senior Probation Officer stating that *“Whilst always a vital part of our work, in COVID-19 times multi-agency working is viewed as ‘critical’. Probation Officers have leaned on the very positive working relationships with the Irish Police force-An Garda Síochána, Irish Prison Service, Courts and probation-funded projects in managing the risks of re-offending posed by some higher-risk offenders in the community. Contact with other statutory agencies ... has supported clients’ presenting needs/difficulties. Referrals to community/voluntary services to assist clients with managing issues such as addiction and social deprivation also remain vital. Whilst Probation Officers have adapted to working on their phones/laptops it has been hugely reassuring for them to connect/co-work with these agencies in addressing the risks and needs clients on supervision continue to face”* (Alvey, 2020).

There are currently 216 Probation Officers, and 50 Senior Probation Officers in the Republic of Ireland. All Probation Officers must be registered in the Social Work Register maintained by CORU. Notably, those with previous convictions are ineligible to work for the Probation Service. There is currently no published data regarding the demographic profile of Probation Service staff.

2.2 Frequency of non-custodial sanctions and measures

Data provided by the Probation Service from 2019 indicates that the most frequent sanction was a Community Service Order, with 42.4 per cent of those engaged with the Probation Service receiving a CSO. In contrast, just 0.8 per cent of those engaged with the Probation Service were on a Post Release Supervision Order. Figure 1 illustrates the frequency of each Order.

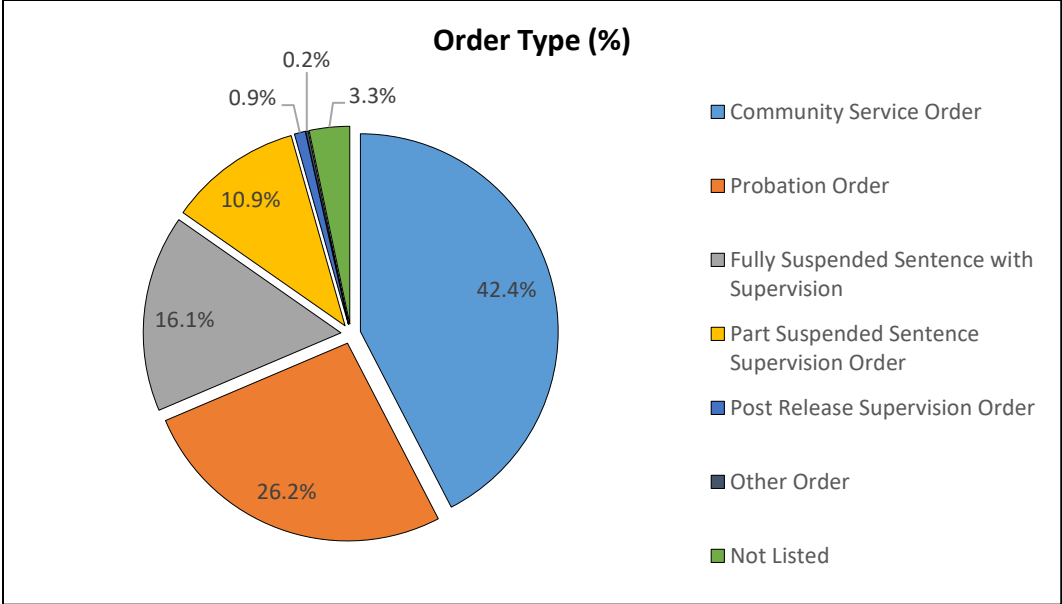


Figure 1: Frequency of Order

2.2.1 Minority ethnic groups

The largest demographic group within the dataset provided were the Irish-majority group, who comprised 66.9 per cent of those engaged with the Probation Service. They were followed by the Irish Travelling community (11.3 per cent) and those from any other White background (6.7 per cent). Notably, there was no ethnicity data available for 12.7 per cent those engaged with the Probation Service. Additionally, to protect service users anonymity, limited data was provided for those from the Roma community, those of Asian ethnicity and those of Black ethnicity. Accordingly, in some of the following figures, they may have been merged into the 'Unknown' data. Data on nationality was not provided. Additionally, in the absence of published ethnicity data from the Irish Prison Service, it is difficult to ascertain whether certain minority ethnic group are more or less likely to receive custodial or non-custodial sanctions. The following figures illustrate the breakdown of ethnicity within each Order group.

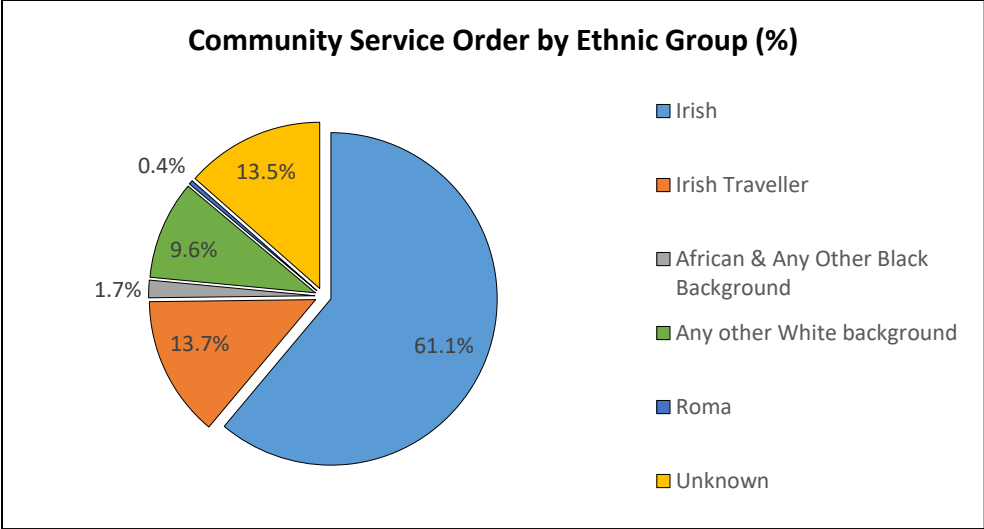


Figure 2: Community Service Order by Ethnic Group

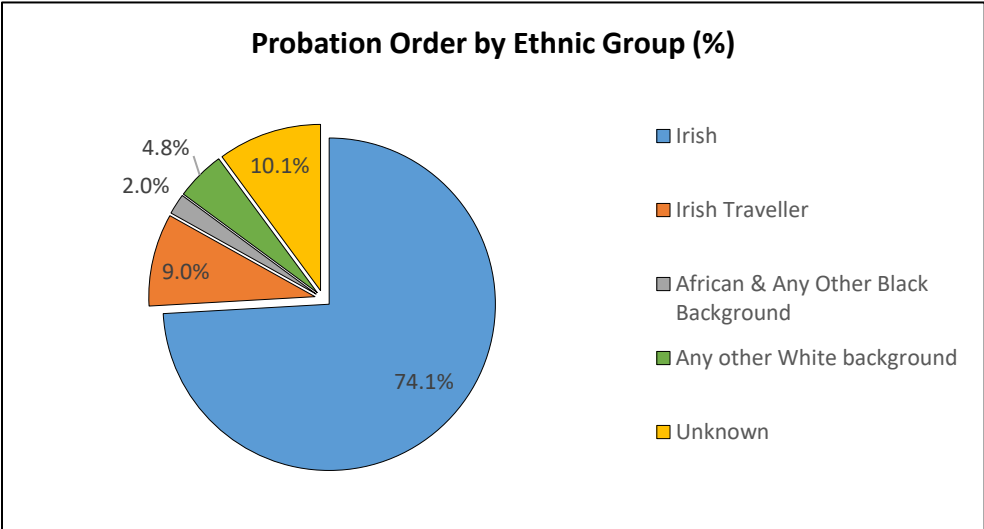


Figure 3: Probation Order by Ethnic Group

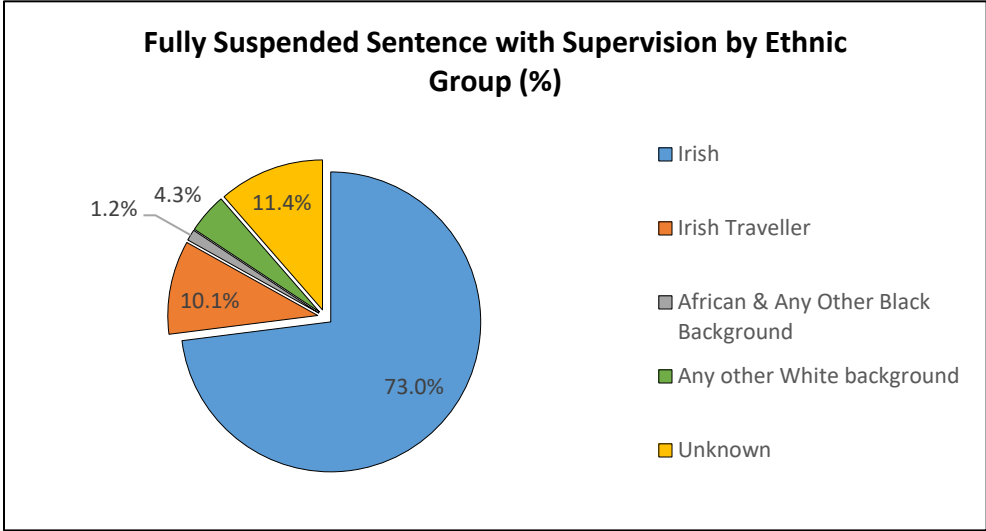


Figure 4: Fully Suspended Sentence with Supervision by Ethnic Group

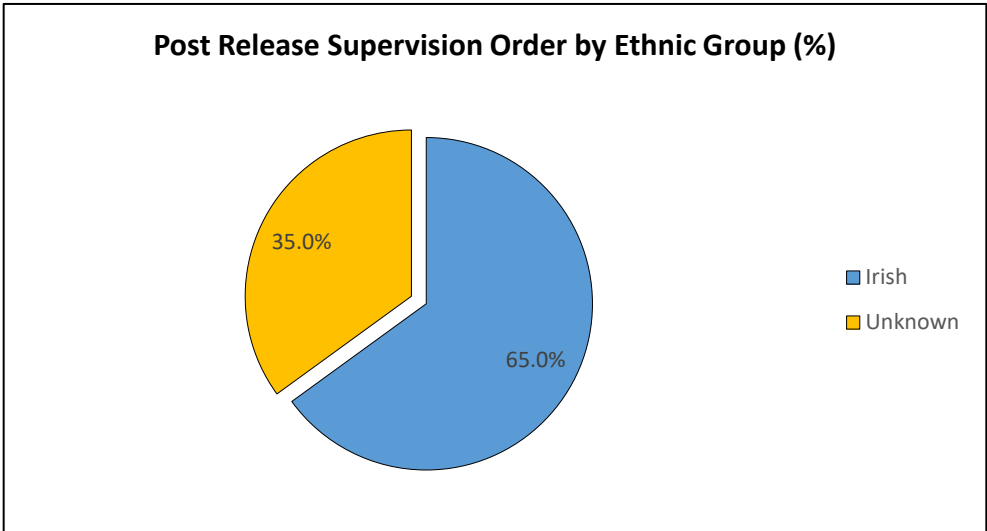


Figure 5: Post Release Supervision Order by Ethnic Group

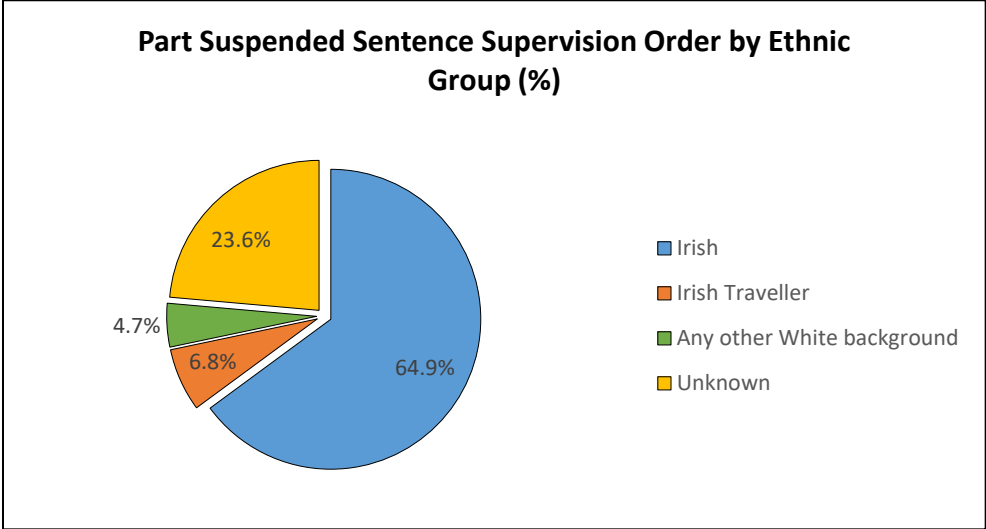


Figure 6: Part Suspended Sentence Supervision Order by Ethnic Group

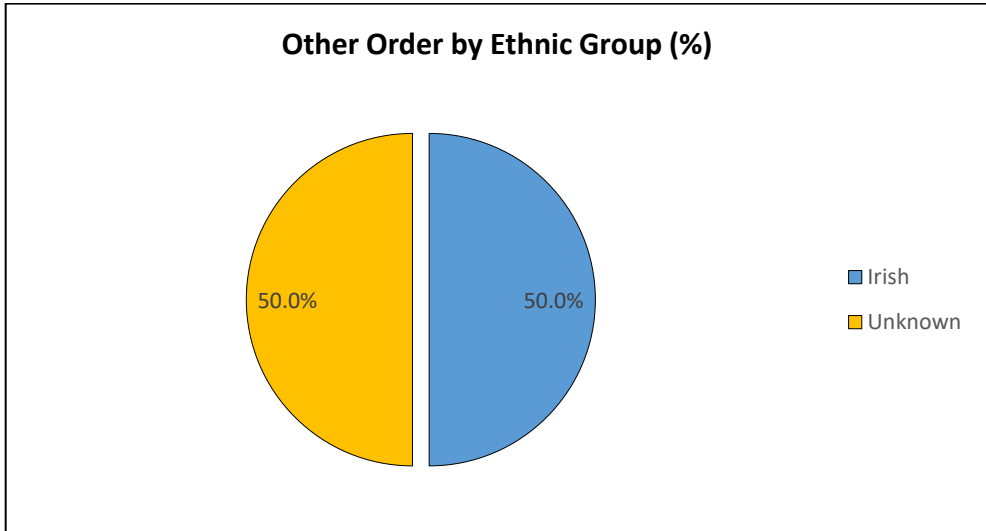


Figure 7: Other Order by Ethnic Group

2.2.2 Sex & Gender

Data on sex overall was provided, with females comprising 16.5 per cent of those engaging the Probation Service; however, sex-based data per order was not available. Despite this, the Probation Service emphasise that all Probation Officers are trained in ‘gender-informed’ practices, and that there is a recognition of the specific challenges faced by women. To that end, the Probation Service note that they use a ‘holistic/coordinated and multi-agency response’ to support women engaging with the Service (Probation Service, 2021c). Data on those from the LGBTQIA+ community was not provided. Figures 8 and 9 illustrate the breakdown of females and males by ethnic group.

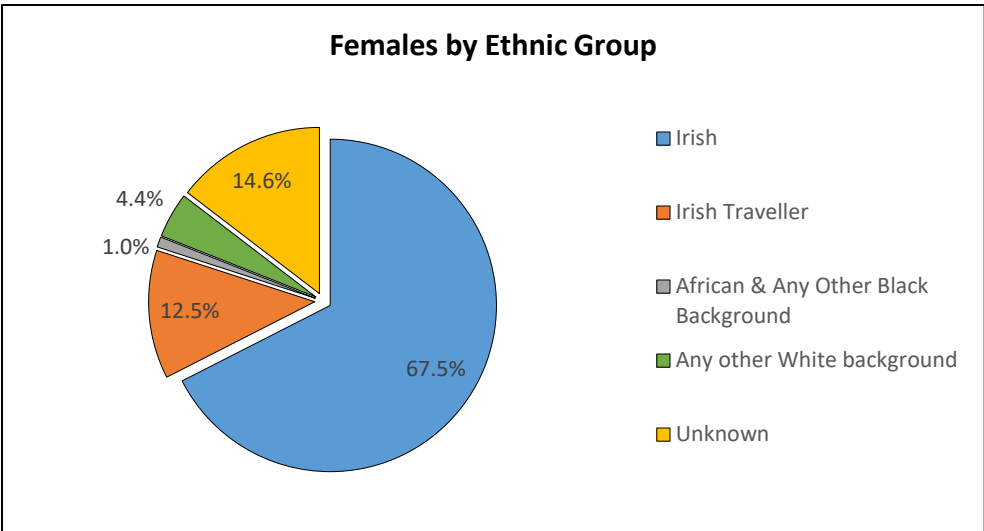


Figure 8: Females by Ethnic Group

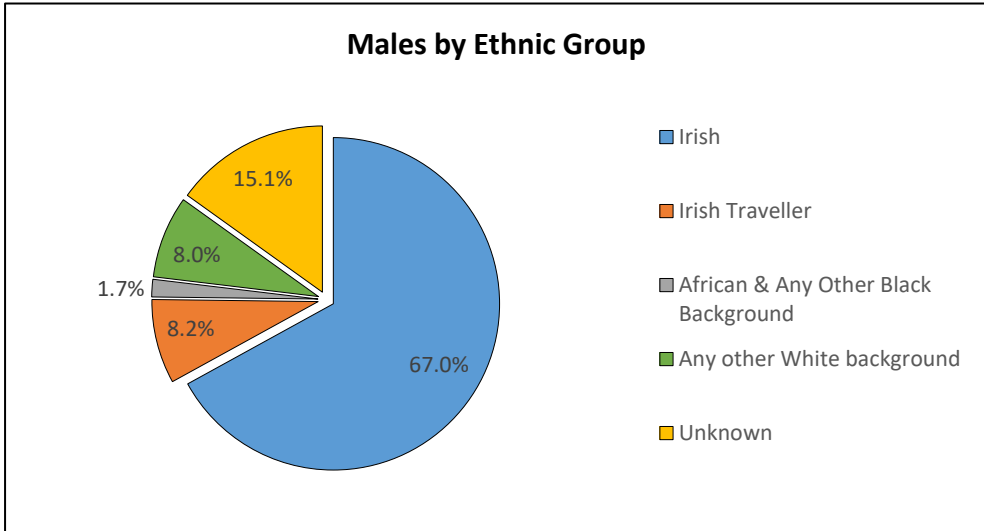


Figure 9: Males by Ethnic Group

2.2.3 Age

Looking to age, and in particular those aged below 18 years, those aged between 18 and 21, and those aged 50 and older, data regarding the proportion of age categories overall, and per ethnic group was provided. Data was not provided per order. For example, of those aged less than 18 years, 61 per cent were from the Irish majority, 18 per cent were Irish Travellers and 14 per cent were of unknown ethnicity. Figures 10 to 13, illustrate the age categories overall and ages (<18; 18-21; >50) by ethnic group.

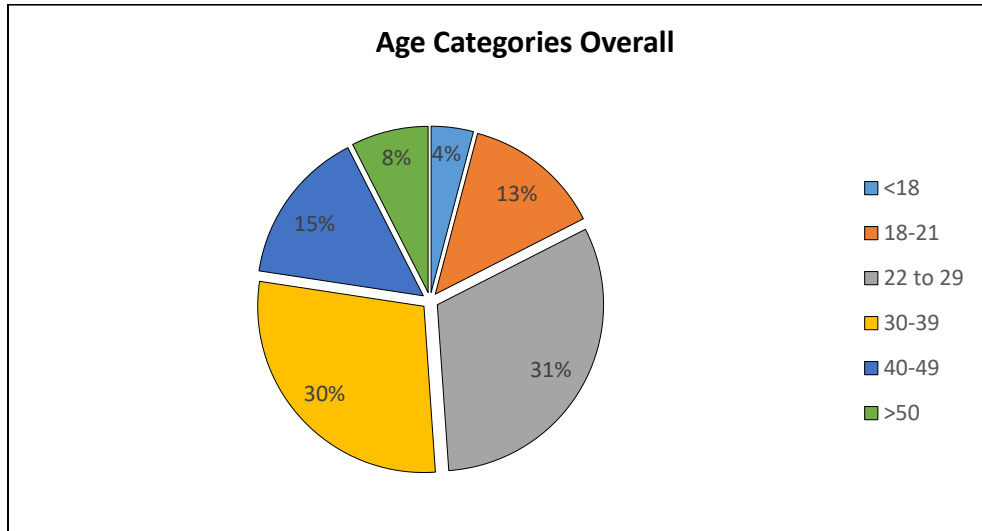


Figure 10: Age Categories Overall

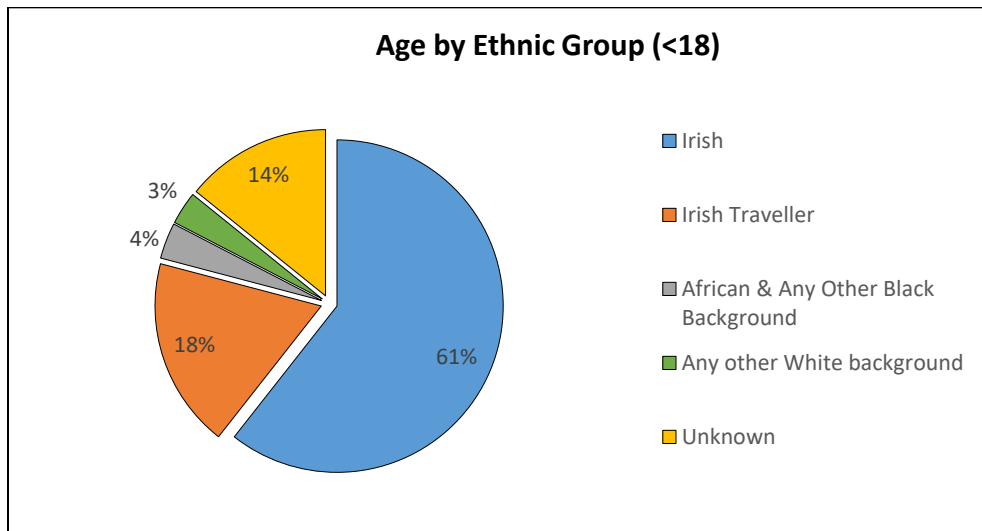


Figure 11: Age by Ethnic Group (<18)

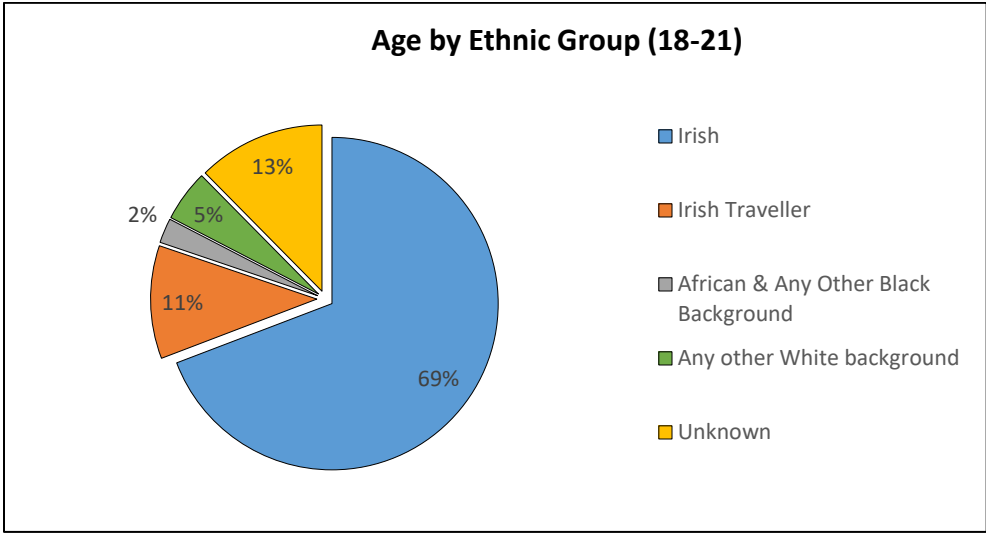


Figure 12: Age by Ethnic Group (18-21)

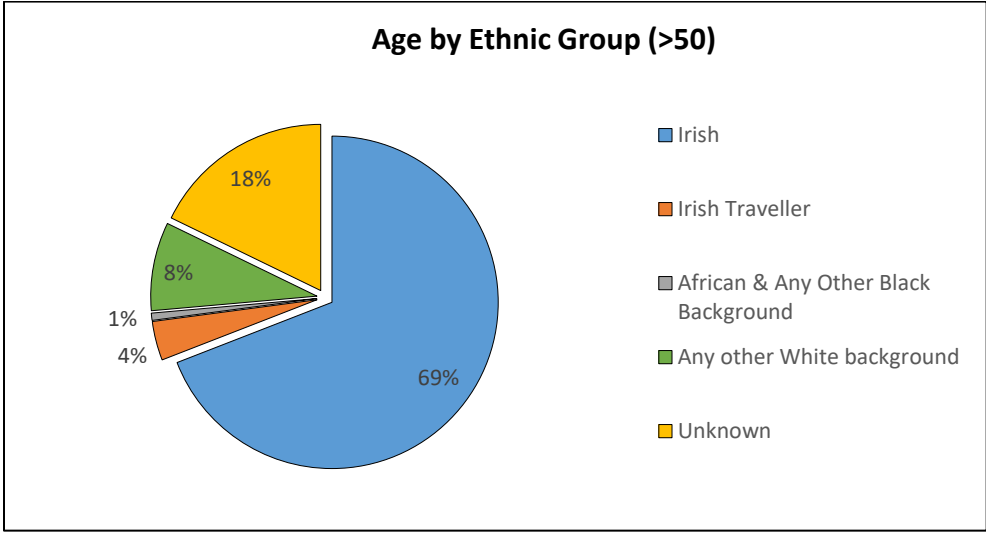


Figure 13: Age by Ethnic Group (>50)

2.2.4 Bias in non-custodial sanctions

There is limited research regarding sentencing outcomes in Ireland, particularly regarding non-custodial sanctions. Research carried out by Brandon and O’Connell (2018) observed significant sentencing differences between Irish and foreign nationals for certain crimes when both gender and previous custodial conviction were controlled; however, non-custodial alternatives were not included.

Despite these gaps in knowledge, Bracken (2015; 2014; 2010) has suggested that the actuarial nature of risk assessments carried out by the Probation Service may implicitly disadvantage minority ethnic communities and the Irish Travelling community. For example, elements of culture, including traditional nomadism, may be erroneously labeled as criminogenic. While some participating Probation Officers described using their ‘gut instinct’ to overwrite the risk assessment score, for others, the standardised nature of the risk assessment tool was considered beneficial. Further, Bracken (2014) reported that some Probation Officers were hesitant to identify service users as Irish Travellers in the preparation of reports for court, for fear of discriminatory sentencing. Figure 14 illustrates the non-custodial sanctions for the Irish Travelling community.

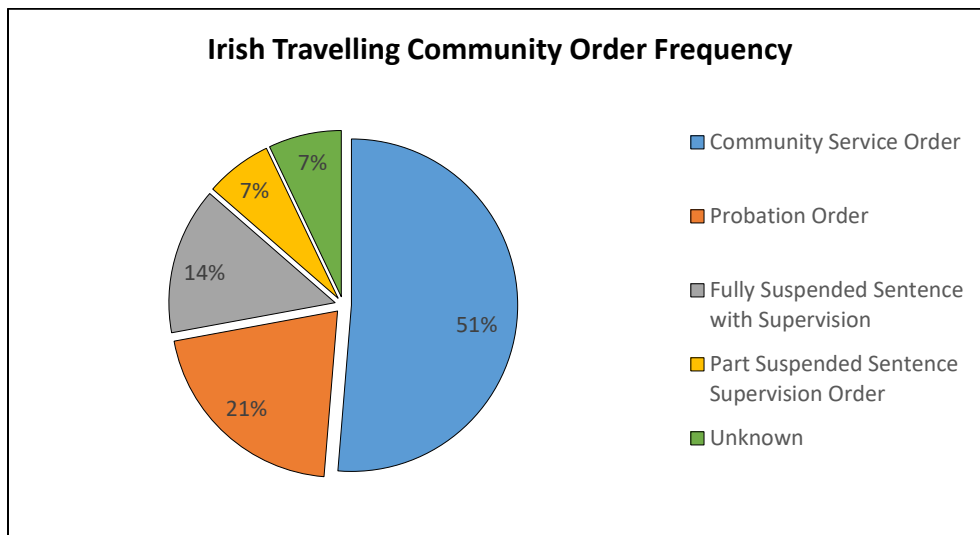


Figure 14: Irish Travelling Community Order Frequency

2.3 The effectiveness of non-custodial sanctions

The Central Statistics Office (CSO) collects data on the reoffending rates of those engaged with the Probation Service and the Irish Prison Service (Central Statistics Office, 2020). Looking to Probation, the most recent available data records reoffending levels in 2016 and considers those who began their engagement with the Probation Service in 2014, 2015 and 2016. Of those who began their engagement in 2016, 31.1 per cent of those engaged with the Probation Service had reoffended within a year. This suggested that reoffending rates were remaining relatively static over time, increasing marginally from 28 per cent in 2013. Among those who had begun engagement with the Probation Service in 2014, 47.2 per cent had committed at least one subsequent offence for which they had been convicted.

The difference between males and females was marginal, with 30.3 per cent of males and 30.0 per cent of females reoffending within one year of entering probation in 2016. However, significant differences were observed across age groups. To that end, persons younger than 18 were more than twice as likely to reoffend (45.6 per cent) as those aged over 65 (21.7 per cent).

Data from 2016 indicated that those who receive a Probation Order are more likely to reoffend (34.1 per cent) than those who receive a Community Sentence Order (28.3 per cent) or who are under a Post Release Supervision Order (15.9 per cent). This is comparable with data collated in 2015, at which time 32.7 per cent of those on a Probation Order had reoffended, compared to 28 per cent of those on a Community Sentence Order and 16.4 per cent of those on Post Release Supervision (Central Statistics Office, 2019). Among those who reoffended within one year, 50.6 per cent received received a custodial sentence for their reoffence.

To assess the effectiveness of non-custodial sanctions, these findings can be compared to the prison reoffending statistics. Among those who were released from custody in 2016, 48.5 per cent had reoffended within one year. The highest rates were observed among those aged 18 to 21, with 73.7 per cent of those released from custody in 2016 reoffending within one year. The lowest rate was among those aged over 50, with 21.3 per cent reoffending within one year.

More recent data indicates that of those released in 2018, individuals who had served a 3-6-month custodial sentence were the most likely to reoffend (60.8 per cent). In contrast, 35.5 per cent of those who had served more than 12 months in custody reoffended within one year of release. Of those who had served less than 3-months in prison, 48.6 per cent reoffended.

The Central Statistics Office estimate that 66.4 per cent of those who reoffended within a year of release received a custodial sentence for their reoffence. Those whose reoffence involved attempts/threats to murder, assault, harassment, and related offences were most likely to receive a custodial sanction (80 per cent), while those whose reoffence related to robbery and related offences were the least likely to receive a custodial sanction (25 per cent).

3. IMPACT OF THE COVID-19 PANDEMIC

3.1 Non-custodial sanctions and the Covid-19 pandemic

Throughout the Covid-19 pandemic, the Probation Service has been categorised as an essential service. As sittings in the Courts Service were disrupted, there was a significant reduction in referrals to the Probation Service. However, work with service users in prisons continued. First, the Irish Prison Service sought to reduce the number of prisoners by 10 per cent. To that end, the Probation Service were involved in facilitating the early release and supervision of selected prisoners, through programmes like Community Return, in partnership with the Irish Prison Service (Probation Service, 2021a). The majority of those released were serving a sentence of less than 12-months or had less than six months left on their sentence. These individuals were described by the Department of Justice as 'low risk'. These efforts to reduce prisoner numbers were successful, with the number of persons in custody reducing from 4,235 in March 2020 to 3,807 by April 2020. Moreover, of those released from the beginning of this process to June 2020, only 6 per cent were returned to prison (IPRT, 2021a). Further, compliance rates with the Community Return scheme were above 85 per cent (Probation Service, 2021a)

Community Service Orders were heavily impacted by the Covid-19 pandemic, due to reduced capacity at host organisations and the limitation to outdoor-only opportunities. From March to July 2020, Community Service was suspended and the number of people on a Community Service Order dropped from 2,376 in March 2020 to 1,747 in July 2020 (IPRT, 2021a). In mid-July, CSO sites began to reopen on a phased basis, with new procedures in place to manage Covid-19 risks. This was overseen by Probation Service staff, most notably Community Service Supervisors, who completed risk assessments and organised personal protective equipment (PPE). Further, due to the challenges posed by face-to-face group-based community service, the Probation Service developed and piloted online opportunities. To that end, opportunities for service users to engage in meaningful, online work as part of a Community Service Order were cultivated, in partnership with IASIO, NIACRO (Northern Ireland Association for the Care and Resettlement of Offenders) and the Irish Red Cross (Prisons to Community Initiative).

More generally, Probation Staff began remote supervision via telephone and videocall. Service users were notified of the changing format of supervision by telephone or letter (Norton, 2020). All service users were given the relevant contact numbers, including those of managerial staff. Alvey (2020) noted that service users who had been compliant with traditional office appointments continued compliance with telephone supervision appointments. As the situation continued and service users expected a phone call, some began

to initiate contact themselves. Those at high risk of offending or posing harm to others were prioritised, with *“the level of phone contact [reflecting] the identified levels for risk of re-offending”*. (Norton, 2020, p.187). Norton (2020) reported that the successful transition to telephone-based supervision appeared to correlate with the quality of the pre-existing relationship between the Probation Officer and the service user. Similarly, Alvey (2020) noted that having a well-established rapport between the Probation Officer and service user, as well as clear supervision plans and recent progress in addressing risks of reoffending, all contributed to the successful shift of supervision from face-to-face to remote.

Some feedback suggested that service users appeared to be more at ease during telephone supervision, compared to the traditional office environment. This allowed for deeper levels of engagement, and poses questions for supervision provision post-pandemic (Alvey, 2020). Probation Officers observed that some service users felt reassured to receive the supervision telephone calls, and to know that their Probation Officer was still maintaining contact. However, some individuals reported feeling more isolated and feared relapsing into alcohol and substance abuse by way of coping. Where there were concerns about service user disengagement, Probation Officers reported that continuing to write to service users and connecting with their extended family and services that they were known to engage with, proved effective as a way to re-establish contact (Alvey, 2020).

Norton’s research provides insights into the key themes addressed during this supervision period. Mental health was frequently discussed, including in cases where it had not been a concern previously. Probation Officers explored stress and anxiety management techniques with service users, and in cases where it was deemed necessary, they liaised with statutory mental health services. Looking to addiction and relapse prevention, service users continued to engage with community-based organisations and residential treatment programmes. Probation staff supported these individuals throughout this process and advocated on their behalf. The supervision of those who had been convicted of sexual offences continued to address key issues that had been identified during risk assessments. Probation Officers were cognisant that for some service users, the Officer was their only point of social contact. Similarly, the supervision of those with domestic violence offences continued to focus on specific risk factors. In particular, the potentially heightened risks for victims during lockdowns was noted. In response, there was a high level of collaboration with relevant partners that provide group work programmes. Remote contact with service users was increased, and project workers continued to focus on material from these programmes in tandem with supervision interventions.

Looking to the impact on individual groups, Norton reported that females were more likely to talk openly on the telephone, more likely to share their experiences, and more able to acknowledge the support provided by the contact with their Probation Officer. In contrast, many male service users required 'coaxing' to engage at this deeper level, and for young adults and those aged under 18, telephone engagement proved to be the most difficult. Further, digital poverty and less privacy for having these phonecalls may have disproportionately impacted certain minority ethnic and foreign national groups. For example, a higher proportion of foreign nationals live in rented accommodation, with a higher likelihood of sharing space with non-family members (Brandon & Dingwall, 2022). Similarly, 4.2 per cent of Irish Traveller households have nine or more persons, in contrast with just 0.1 per cent of the settled Irish majority population, and almost 40 per cent have more persons than rooms, compared with less than 6 per cent of all settled Irish majority households (Central Statistics Office, 2017). This issue was noted by Norton, who observed that some service users did not have the personal space to take phone calls, which had an impact on meaningful engagement. Nevertheless, most service users appreciated the contact, the opportunity to discuss stresses during the pandemic, and receiving guidance during this time.

Despite fluctuating workloads during the Covid-19 pandemic, in 2020, the Probation Service engaged with 15,537 service users in the community, completed 9,366 Probation Reports, and managed 1,161 Community Service orders. Further, 600 orders were made for Post-Custody Supervision by the Probation Service, 287 individuals began Community Return programmes and 115 life sentence prisoners were supervised in the community. Finally, the Probation Service completed 55 assessments for the Parole Board (Probation Service, 2021a).

3.2 Covid-19 & Supports

In addition to the continued support from Probation Staff, voluntary sector and community-based organisations continued to provide support programmes to service users. For example, PACE, a community organisation which works with people with convictions, moved training and social enterprise activities online, and continued to operate its Prevention Service programmes throughout the pandemic. Similarly, Westview, a community-based organisation working with young people, offered virtual music and cooking lessons, and delivered an online Anger Management Programme and programmes to support mental health.

Looking to supports offline, DEONACH/Tallaght Probation Project, which provides programmes and services to adults and young people, delivered more than 420 education and care-packs, made over 2500 care calls, delivered over 900 food parcels to their most vulnerable service users, and provided one-to-one support to all those engaged with them. WHAD (We Have A Dream Project) prioritised its most vulnerable clients, offering one-to-one programmes and continuing to organise outdoor-based programmes (Probation Service, 2021a).

Considering support for specific groups, Tus Nua, which provides safe, supported housing for women leaving prison and women with a history of offending, continued throughout 2020. Each woman has their own room and is appointed a key worker to support their stay. Each support plan addresses, for example, financial education, alcohol harm reduction, and mental and physical health support. This is funded by the Probation Service and the European Social Fund (Probation Service, 2021a).

The provision of supports both online and offline is a significant strength of these organisations. Again, it must be considered that not all groups, or individuals within groups, may have access to the technology required for virtual programmes and classes. While the option for online delivery should be maintained, it is important that those experiencing digital poverty are not excluded from support opportunities.

3.3 Covid-19 & Probation Staff

Probation staff began working remotely in March 2020. From May 2020, the Probation Service worked with the Department of Justice, and the Office of Public Works to implement the Return to Work Safely Protocol. Staff returned to the offices on a phased and time-scheduled basis, to facilitate interviews with service users and other essential work. On return to offices, staff were given personal inductions from the Probation Service Health and Safety Unit.

Norton's research identifies a range of challenges faced by Probation Staff. In addition to general concerns about their family and friends, many also experienced conflicting demands as they balanced work and personal lives: *"it was a juggling act at times, to balance the care and safety needs of dependent members of the family with the expressed needs of service users"* (Norton, 2020, p.184). To address this, many Probation Staff worked outside traditional office hours, or adopted more flexible schedules. In some situations, staff worked on Saturdays to avail of better childcare options. Additionally, at the early stages

of working from home, remote access to the Probation Service IT system was not available to all staff. While supervision could be continued through telephone contact, Probation Officers could not maintain case records and adjust case management plans. This created frustration among staff.

Nevertheless, Norton notes that strong and participative leadership was evident and a significant strength in the successful continuation of Probation work. They note that there was regular contact from line managers, offering support and exploring new ways to meet the Service goals and objectives, and frequent updates provided clarity and cohesion as the public health situation changed. Further, a suite of documents to guide and inform practice was published on the Probation Service intranet. This enhanced the confidence of staff and reinforced the standards and purpose across the Probation Service.

Perhaps most notably, Norton emphasises the importance of strong, well-established relationships between Probation Service colleagues and further, with external criminal justice stakeholders and other statutory and non-statutory agencies. This interagency collaboration ensured that service delivery remained to the highest standard. This was echoed by Alvey (2020), who noted that *“Whilst always a vital part of our work, in COVID-19 times multi-agency working is viewed as ‘critical’. Probation Officers have leaned on the very positive working relationships with the Irish Police force - An Garda Síochána, Irish Prison Service, Courts and probation-funded projects in managing the risks of re-offending posed by some higher-risk offenders in the community... Referrals to community/voluntary services to assist clients with managing issues such as addiction and social deprivation also remain vital.”*

4. THE FUTURE OF ALTERNATIVES TO IMPRISONMENT

4.1 Initiatives

Integrated Community Service Order – Introduced in 2016 following recommendation of the Penal Policy Review Group 2014, the Order allows for a probation officer to permit an offender to spend up to one third of their community service hours in an education, training or treatment programme. Anecdotal reports suggest underuse of this Order. Further evaluation of the initiative is needed. The initiative differs from similar approaches in Scotland, England and Wales and Northern Ireland because it moves away from the approach of allowing judges to attach requirements to community sanctions which may provide more flexibility (Guilfoyle, 2018).

Irish Offender Supervision Framework - The Irish Offender Supervision Framework is based on a Risks-Need-Responsivity and Desistance Framework, and is due to be implemented in the coming months (Durnescu, Griffin & Scott, 2020). It is taking a particularised approach to responding to the offender and is informed by international best practice. A formal evaluation is planned following its initiation.

Joint Agency Response to Crime (‘JARC’) - A strategic offender management initiative led by An Garda Síochána, the Probation Service and the Irish Prison Service, and supported by the Department of Justice. JARC takes a multiagency approach to manage prolific offenders for targeted support and intervention with a view to reducing crime in the relevant community. The multiagency response is also borne out through the following programmes: Acer3, STRIVE and Change Works. Evaluation of JARC is positive in terms of reducing reoffending and the severity of reoffences. Proposed recommendations for future direction include expansion, procedures for ongoing evaluation and extra resourcing (J-ARC Evaluation Framework Working Group, 2018).

Domestic violence training – Trained Probation Officers use the Spousal Assault Risk Assessment tool (SARA) to assess risk of future violence in people convicted of spousal assault (Probation Service, 2015).

Probation Service Mental Health Group – The Group’s research report published in spring 2021 identifies a significant level of mental health and addiction problems among clients, and recommends the reinforcement of multiagency and multidisciplinary approaches, in addition to mental health training for officers and enhanced reporting standards regarding deaths under supervision (Power, 2021).

This development is taking place in the context of the establishment of a new cross-Departmental Task Force on Mental Health which is due to publish a high-level implementation plan by end 2021. The IPRT

have commented that meeting staffing and resource challenges is central to the success of the scheme (IPRT, 2021b).

The Probation Service also has working groups taking a holistic response to female offending and young persons probation supervision (Probation Service, 2021a).

4.2 Prospects

There is a consensus that alternative sanctions are under-utilised in Ireland, and tend to be inconsistently applied. Further, community service orders are being used frequently for first time offenders, undermining this orders use as an alternative sanction (IPRT, 2017).

The Probation Service has commissioned an evidence review of the policy, practice and structure of the community service order, likely to be published end 2021. A broader, cross-departmental Penal Policy Review is also underway, with an unknown publication date. It is likely the emphasis will be on recommending extended use of the community service order in Ireland, particularly in relation to higher tariff offences, with an emphasis on consistency of application. The Service has a strong penal welfare ethos, and an increasing awareness of the importance of a desistance-based approach, which is likely to inform future direction.

New technologies – during the pandemic online modules were used to fulfil part of community service orders, for instance, in relation to traffic offences and domestic violence cases. Online platforms were also used to facilitate restorative justice conferences (Probation Service, 2021a). Online initiatives have not been evaluated formally though there is indication that it is an effective form of alternative that employs technology.

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