AMNESTY INTERNATIONAL

Submission to the 'Interdepartmental Group to examine the issue of people with mental illness coming into contact with the criminal justice system'

16 May 2012

Introduction

Amnesty International Ireland (AI) welcomes the opportunity to make a submission to the Interdepartmental Group. Mental health is a human rights issue and Amnesty International Ireland (AI) has been campaigning on mental health in Ireland since 2003. AI has been working in partnership with our Experts by Experience Advisory Group to demand action from the Government and achieve real improvement in the lives of people who experience mental health problems. AI welcomes this opportunity to make this submission to the 'Interdepartmental Group to examine the issue of people with mental illness coming into contact with the criminal justice system'. This issue of mental health and the criminal justice system has been a neglected topic and has only recently begun to be considered in Ireland. AI published a Report in 2003 that outlined criticisms of the treatment in Ireland of persons with mental illness in light of international human rights law dedicating a signification proportion of the Report to discrimination faced by persons with mental health problems coming into contact with the criminal justice system.[1] AI notes that there has been little progress in addressing the needs of persons with mental health problems in the criminal justice system since its 2003 Report. AI is concerned that the lack of forensic mental health services and diversionary measures results in persons with mental health problems receiving custodial sentences and being over-represented in the prison population.

It is well established internationally that the prevalence of mental health problems is disproportionately high in the prison population when compared to the general population. A number of factors have been identified that contribute to the over-representation of persons with mental health problems in prison. The WHO has acknowledged that the prison environment is harmful to mental health, substance abuse is widespread and diversion is often underdeveloped, under-resourced and

[1] See *The Neglected Quarter* (Dublin: Amnesty International Ireland, 2003). Available at: http://www.amnesty.ie/sites/default/files/report/2010/04/Neglected%20Quarter%20full%20report.pdf.

badly administered.[2] The rationale of diversion of offenders with mental health problems from the criminal justice system is that they are connected with services and supports in the community and in so doing address the underlying problems that are resulting in contact with the criminal justice system. However, some disability rights organisations are critical of diversionary programmes from a human rights perspective, as participation in such programmes may require psychiatric treatment, supervision and control in psychiatric setting or in the community.[3] In addition, connection to the mental health system can result in detention for indefinite periods of time where psychiatric treatment can be administered involuntarily. It has been suggested "diversion from the prison system to a secure psychiatric hospital is no longer beneficial for offenders, as detention in a secure hospital may lead to long-term deprivation of liberty without the legal safeguards available to ordinary offenders".[4]

International Human Rights Law

Most if not all Council of Europe countries have specialised systems "for people whose mental disability is a direct cause of their criminal behaviour".[5] The European Convention on Human Rights is clear that where the justification of a person's detention is based on the existence of a mental disorder, they need to receive treatment in a therapeutic environment such as a hospital.[6] Despite this in Ireland large numbers of persons with mental health problems are detained in prisons. The European Court of Human Rights has been clear that when persons with mental health problems are detained in prisons appropriate treatment has to be provided.[7] The case law of the European Court of Human Rights does not require diversion of persons with mental health problems from the prison to a psychiatric or hospital environment, even if their mental health problem is treatable provided that the treatment is available in the prison.[8] However, the failure to provide access to treatment has been found to be a violation of the ECHR. In May 2012 the European Court of Human Rights issued a judgment in a case entitled *M.S. v United*

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[2] "Trencin Statement on prisons and mental health" (Geneva: World Health Organisation, October 2007) at page 5.

[3] For example, the World Network of Users and Survivors of Psychiatry has suggested that the "SMR should prohibit the diversion of people with psychosocial disabilities into medical supervision and control at any stage of detention or proceedings under the criminal law-trials, sentences and parole should be handled on an equal basis with others, as criminal rather than medical matters". See WNUSP Submission on Revision of the SMR, 14 March 2011. Available at: www.chrusp.org/home/resources.

[4] Shah "Human Rights and Mentally Disordered Offenders" (*International Journal of Human Rights*: 2010, 14:7, 1107).

[5] Bartlett, Lewis & Thorold *Mental Disability and the European Convention on Human Rights* (Leiden: Martinus Nijhoff Publishers, 2007).

[6] See *Aerts v Belgium* (Application No. 25357/94, Judgment 30 June 1998).

[7] See *Keenan v United Kingdom* (Application No. 27229/95, Judgment 3 April 2001).

[8] Bartlett, Lewis & Thorold *Mental Disability and the European Convention on Human Rights* (Leiden: Martinus Nijhoff Publishers, 2007) at page 14.

Kingdom.[9] The European Court of Human Rights held unanimously that there had been a violation of Article 3 of the ECHR on prohibition of inhuman or degrading treatment. The case related to the detention of a man with a mental health problem in police custody for more than three days. The Court found that the applicant's prolonged detention without appropriate psychiatric treatment had diminished his human dignity, even though there had been no intentional neglect on the part of the police, and amounted to degrading treatment.

The UN Convention on the Rights of Persons with Disabilities (CRPD) contains many provisions that are relevant to persons with mental health problems who come into contact with the criminal justice system. The Convention introduces the concept of reasonable accommodation into international human rights law, which it defines in Article 2 as meaning "… necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". Article 5(3) provides that failure to provide reasonable accommodation will amount to discrimination. Therefore, failure to provide reasonable accommodation to persons with mental health problems in contact with the criminal justice system can amount to discrimination. Essentially reasonable accommodation places an obligation to factor in the specific needs that arise as the result of disability providing that they do not impose a disproportionate or undue burden. The provision of reasonable accommodation in respect of the criminal justice system may also require changes in practice and procedure so that persons with mental health problems can navigate the system and understand proceedings. Information on diversion programmes should be made available in an accessible way and should be explained to persons in a way that they can understand. The provision of accessible information on diversion programmes is essential if persons applying for entry onto programmes can make informed decisions as to participation.

The Interdepartmental Group needs to be mindful of Article 13 of the CRPD on access to justice, as it specifically requires the provision of reasonable accommodation in respect of persons in contact with the criminal justice system. Article 13 requires States Parties to the

[9] *M.S. v United Kingdom* (Application no. 24527/08, judgment 3 May 2012). This case concerned a man who had been arrested and detained under section 136 of the Mental Health Act 1983. Following his arrest he was assessed by a psychiatric specialist who determined he was suffering from a mental illness of a nature or degree that warranted detention in hospital in the interests of his health and safety and for the protection of others. The local psychiatric intensive care unit were unable to admit him and there was an attempt to place the applicant in a clinic with a medium secure unit. The applicant remained in police custody for more than 72 hours, locked up in a cell where he was very distressed shouting, removing his clothing, banging his head on the wall, drinking from the toilet and smearing himself with food and faeces. On the second day of his custody, the prosecution service concluded that there was insufficient evidence to charge him. After more than three days in detention and on the advice of the consultant forensic psychiatrist the applicant was taken in handcuffs to the clinic where he received treatment.

Convention to ensure effective access to justice for persons with disabilities on an equal basis with others. This involves the "provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages". Article 13(2) requires that State Parties in realising their obligations in facilitating access to justice ensure effective and promote appropriate training for all persons working in the field of administration of justice, including police and prison staff.

Article 12 of the CRPD relates to decision-making and asserts that persons with disabilities are entitled to make decisions and have their decisions respected on an equal basis with everyone else. Article 12(3) goes further in requiring the state to provide supports to persons who need them in order to exercise their legal capacity.[10] In this regard participation in any diversion programme should be voluntary and a person with a mental health problem should be able to decide what services or supports they need. A person with a mental health problem should not be required to take medication or any psychiatric treatment as a requirement of participation on the programme. It is important for the Interdepartmental Group in carrying out its work to be aware of the implications of Article 12 on the area of criminal responsibility. In its Thematic Report on enhancing awareness and understanding of the CRPD, the UN Office of the High Commissioner for Human Rights (OHCHR) stated that:

> "[i]n the area of criminal law, recognition of the legal capacity of persons with disabilities requires abolishing a defence based on the negation of criminal responsibility because of the existence of a mental or intellectual disability. Instead disability-neutral doctrines on the subjective element of the crime should be applied, which take into consideration the situation of the individual defendant. Procedural accommodations both during the pre-trial and trial phase of the proceedings might be required in accordance with article 13 of the Convention, and implementing norms must be adopted."[11]

The position adopted by the OHCHR reflects the position of a number of disability rights groups.[12] However, the rationale underlying this position

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[10] See Michael Bach and Lana Kerzner "A New Paradigm for Protecting Autonomy and the Right to Legal Capacity" (Toronto: Law Commission of Ontario, October 2010). To see the need to move to supported decision-making see "Who Gets to Decide? Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities" (Strasbourg: Council of Europe Commissioner for Human Rights, Issue Paper, 20 February 2012, CommDH/IssuePaper(2012)2).

[11] "Thematic Study by the Office of the United Nations High Commissioner for Human Rights On Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities" UN doc. A/HRC/10/48, 26 January 2009) at paragraph 47. The study was submitted pursuant to Human Rights Council Resolution 7/9, on human rights of persons with disabilities, in which the Council decided to hold on an annual basis an interactive debate on the rights of persons with disabilities.

[12] See Position Paper on the Convention on the Rights of Persons with Disabilities (CRPD) and other Instruments (International Disability Alliance, 25 April, 2008) and Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities (World Network of Users and Survivors of Psychiatry, February 2008).

has not been clearly articulated. Presumably the rationale is that the defence strips a person of their legal capacity in being held accountable for their actions and as such is incompatible with Article 12. Alternatively the rationale might be that the inevitable consequence of raising the insanity defence is that the defendant will be indefinitely detained and treated in a psychiatric setting as opposed to being released into the community and will likely spend longer in this setting had they served the prison sentence for the offence(s). Regardless of the underlying rationale for the OHCHR's proposition, it is important that the Interdepartmental Group should consider the implications of Article 12 of the CRPD as part of its work.

International human rights standards that were developed prior to the CRPD, such as the MI principles, permit the involuntary treatment and detention of persons with mental health problems provided that certain safeguards are complied with.[13] Similarly, Article 5 of the European Convention on Human Rights provides for the deprivation of liberty of persons of "unsound mind" subject to number of safeguards as articulated by the jurisprudence of the European Court of Human Rights. However, it is important that the Interdepartmental Group is aware that Article 14 of the CRPD calls into question the detention of persons with mental health problems solely on the basis of the existence of a mental health problem.

Article 14 of the CRPD reiterates the general right to liberty, which cannot be forfeited unlawfully or arbitrarily deprived. It adds, "disability shall in no case justify a deprivation of liberty". It was initially thought that Article 14 added little to international human rights law since disability per se has never been a justification for loss of liberty. It was always the conjunction of disability with "danger to self" or to "others" that justified the deprivation of liberty.[14] Article 14 signalled a tightening of the criteria upon which loss of liberty can occur. Article 14(2) provides that if a person with a disability is deprived of their liberty through any process (through criminal proceedings or civil committal), detainees are entitled to all the due process guarantees available to others under international human rights law and shall be treated in conformity with the objectives and principles of the CRPD.

However, the implications of Article 14 are much more significant than the tightening of the criteria upon which loss of liberty can occur. The OHCHR in its Thematic Report also made a number of other significant statements on action required by States Parties in order to comply with the Convention. Under the heading "right to liberty and security of the person", the OHCHR stated that Article 14 of the Convention means that involuntary detention and or treatment based on mental disability or a mental disorder is not permitted. The Report states that a "particular

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[13] See "Principles for the protection of persons with mental illness and the improvement of mental health care" (Adopted by General Assembly resolution 46/119, December 1991), principle 11 "Consent to Treatment" and Principle 16 "Involuntary Admission".

[14] See Quinn & O'Mahony "Disability and Human Rights: A New Field in the United Nations" Krause & Scheinin (eds) *International Protection of Human Rights: A Textbook (*Turku: Åbo Akademi University Institute for Human Rights, 2nd edition, forthcoming 2012).

challenge in the context of promoting and protecting the right to liberty and security of persons with disabilities is the legislation and practice related to health care and more specifically to institutionalisation without the free and informed consent of the person concerned".[15] The OHCHR went on to state that Article 14 means that legislation authorising the institutionalisation of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.

> "This must include the repeal of provisions authorizing institutionalisation of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorising the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness".[16]

However, the Interdepartmental Group should be aware that the OHCHR explained that this statement "should not be interpreted to say that persons with disabilities cannot be lawfully subject to detention for care and treatment or to preventive detention, but that the legal grounds upon which restriction of liberty is determined must be de-linked from the disability and neutrally defined so as to apply to all persons on an equal basis".[17]

Recommendations:

- The Interdepartmental Group in undertaking its review should be mindful of Ireland's obligations under international human rights law. In particular, it should be mindful of Ireland's obligations once it ratifies the UN Convention on the Rights of Persons with Disabilities.
- Diversionary programmes should provide for reasonable accommodation of persons seeking to participate in these programmes.
- Information on diversionary programmes should be provided for in accessible ways so that the persons applying for entry onto programmes make an informed decision as to participation.
- In line with Article 12 of the CRPD participation in any diversion programme should be voluntary and a person with a mental health

[15] Thematic Study by the Office of the United Nations High Commissioner for Human Rights On Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, UN doc. A/HRC/10/48, 26 January 2009) at paragraph 48.

[16] *Ibid*., at paragraph 49.

[17] *Ibid.*

problem should be able to decide what services or supports that they need. A person with a mental health problem should not be required to take medication or undergo psychiatric treatment as a requirement of participation in a diversion programme.

- In particular, the Interdepartmental Group should be mindful of the implications of Article 5, Article 12, Article 13 and Article 14 of the CRPD in undertaking its work and Articles 3 and 5 of the European Convention on Human Rights.

Law and Policy Context

It is well established that there is a lack of appropriate mental health services in Irish prisons. AI considers that the lack of services is regrettable as there is clear evidence on the prevalence of "psychiatric morbidity" in Irish prisons.[18] It has been suggested that the recommendations contained in *A Vision for Change* in relation to the expansion of forensic mental health services in many ways acknowledges "the longstanding 'criminalisation' of the mentally ill with disproportionally higher rates of mental illness in prison (particularly remands settings) than in the community."[19] *A Vision for Change* stated that forensic mental health services should be developed regionally throughout Ireland, with specialised forensic mental health services for children and persons with intellectual disability. However, there has been a failure to develop these services.

Research published Duffy et al in 2006 indicates that the rates of "psychosis" of prisoners serving custodial sentences are comparable to other jurisdictions.[20] However, Duffy et al also found a significantly higher prevalence of psychosis in life-sentenced prisoners (6.1 per cent) compared to fixed sentenced prisoners (1.8 per cent).[21] The research also showed that drugs and alcohol problems were very prevalent amongst offenders with mental health problems.[22] There is evidence that in Ireland there are higher rates of 'psychosis' in the remand prisoner population when compared to other countries.[23] The research found that the six-month prevalence of psychosis was 7.6 per cent, which was almost

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[18] Duffy et al "Psychiatric Morbidity in the Male Sentenced Irish Prison Population" (*Irish Journal of Psychological Medicine*: (2006), 23(2), 54).

[19] O'Neill, McInerney & Fitzpatrick "Prison Inreach and Court Liaison Services in Ireland" (Dublin: National Disability Authority, 2007). Available at: http://www.nda.ie/cntmgmtnew.nsf/0/8B71583417C5138080257444003F95FC/$File/paper03_conor_oneill.htm.

[20] Duffy et al "Psychiatric Morbidity in the Male Sentenced Irish Prison Population" (*Irish Journal of Psychological Medicine*: (2006), 23(2), 54). The researchers used an international meta-analysis in coming to this conclusion.

[21] *Ibid.*

[22] *Ibid*.

[23] Linehan et al "Psychiatric morbidity in a cross-sectional sample of male remanded prisoners" (*Irish Journal of Psychological Medicine*: (2005), 22(4), 128).

twice the rate in an international meta-analysis.[24] The research suggested that a major depressive disorder was present in 10.1 per cent.[25] While substance abuse problems were common the research suggested that there was no significant difference between rates of substance abuse in 'psychotic' and 'non-psychotic' prisoners. A total of 31.2 per cent of remand prisoners had a lifetime history of mental illness.[26] This research provides clear evidence that there are significantly high levels of 'psychiatric morbidity' in Irish prisons and that there is a clear lack of appropriate mental health services or diversionary procedures.

The Mental Health Commission established the Forensic Mental Health Services Committee in 2004. The terms of reference of the Committee were:[27]

- to review models of best practice in forensic mental health services
- to review and clarify definitions within the area of forensic mental health
- to review current provision of secure care and forensic mental health services in Ireland for adults and children /adolescents
- to review mental health services within prisons
- to prepare a discussion paper including recommendations on forensic mental health services for the Commission with a view to wider circulation as a discussion paper issued by the Commission

The Mental Health Commission then published a Discussion Paper in 2006, which was made available online and disseminated widely.[28] This Discussion Paper set out a number of provisional recommendations and invited interested parties to make submissions. Subsequently in 2011 the Mental Health Commission published a Position Paper on forensic mental health services for adults.[29] The Mental Health Commission defined forensic mental health services as "access and movement between different levels of therapeutic security and services without undue obstacles and delays for the individual service user, [ensuring] that the multiple and complex social and health needs of service users are met within a forensic setting".[30] The Mental Health Commission made a

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[24] *Ibid*.

[25] *Ibid*.

[26] *Ibid*. This statistic excludes substance misuse, adjustment disorder and personality disorder.

[27] "Forensic Mental Health Services for Adults in Ireland" (Dublin: Mental Health Commission, Discussion Paper, 2006) at page 4. Available at: http://www.mhcirl.ie/documents/publications/Discussion%20Paper%20Forensic%20Mental%20Health%20Services%20for%20Adults%20in%20Ireland%202006.pdf.

[28] *Ibid*.

[29] "Mental Health Commission Position Paper: Forensic Mental Health Services For Adults in Ireland" (Dublin: Mental Health Commission, Position Paper, February 2011). Available at: http://www.mhcirl.ie/Publications/Forensic_Mental_Health_Services_for_Adults_in_Ireland_Position_Paper_Feb_2011.pdf. The Position Paper took into consideration the recommendations in *A Vision for Change* (published subsequently to the Mental Health Commission's initial Discussion Paper) that related to forensic mental health services.

[30] *Ibid*.

number of important statements in relation to the development of forensic mental health services. The Commission in its Position Paper tried to progress implementation of *A Vision for Change* by recommending a comprehensive needs assessment to map the immediate action required in developing forensic mental health services.[31] The Commission also suggested that separate reviews needed to be undertaken to assess the needs of children and persons with intellectual disabilities.

In terms of the design of forensic mental health services in Ireland the Mental Health Commission made a number of recommendations. The Commission was of the view that given the size of the population, high and medium secure care should be make available centrally in one location in the Dublin area.[32] It envisaged that all other forensic mental health services together with low secure units ought to be delivered regionally. The rationale for this approach was that the needs of service users are not effectively met through the availability of forensic mental health services from one central compound. The provision of forensic mental health services regionally will be an important development that has the potential to divert persons with mental health problems from the criminal justice system. The delivery of forensic mental services in this way opens up the potential for diversion of offenders from the criminal justice system and more options will be open to judges making decisions on whether to remand a defendant and when sentencing. In that regard it was significant that the Mental Health Commission recommended that mental health professionals, Gardaí, lawyers and the courts in all regions "should have a comprehensive range of legislative and service options available to them in relation to mentally disordered people involved in criminal proceedings."[33]

The Commission in its Position Paper recommended the development of clear protocols to be put in place between forensic and general mental health teams in order to make possible a "seamless referral and treatment pathways … in ensuring optimal care for service users."[34] As part of that the Commission encouraged collaboration to ensure continuity of care that envisaged service users accessing multidisciplinary teams that would include:

- consultant psychiatrists
- mental health nurses
- clinical psychologists
- mental health social workers
- occupational therapists and addiction counsellors

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[31] *Ibid*, at page 13. The scope of the review it was recommended should address a review of the unmet mental health needs of the general population and specifically of the prison population.

[32] *Ibid*, at page 15.

[33] *Ibid*, at page 20. The Mental Health Commission referred to the policy direction outlined in *A Vision for Change* of diversion towards treatment and recovery options and the policy position of the National Crime Council to introduce Community Courts in Ireland.

[34] *Ibid*, at page 18.

- and where necessary professionals to provide vocational training, speech and language therapy, education

Other recommendations made in the Position Paper of particular importance include the suggestion that mental health services for each prison population should be provided by the forensic mental health service for the region in which the prison is situated as a secondary in-reach service.[35] This recommendation has great potential to ensure the continuity of mental health services to prisoners when they leave prison. The Mental Health Commission also envisaged that the regional forensic mental health services would work closely with other services such as the medical services in the prison, psychology, social work, probation officers, addiction counsellors and vocational services. The Commission recommended that the European Prison Rules adopted by the Council of Europe should inform mental health services provided in prisons.[36]

The Mental Health Commission stated that it was "important that in any new legislation in the mental health sphere, Ireland should seek to have reciprocal arrangements that allow for the transfer of detained mentally disordered patients between England, Wales, Scotland, Northern Ireland and the Republic of Ireland. This will reduce the current level of frustration and confusion for practitioners and families who become involved in inter-country transfers and make best use of referral to specialist services." Despite the work of the Mental Health Commission and the policy on forensic mental health services set out in *A Vision for Change* there has been a failure to deliver these regional forensic mental health services.

Notwithstanding the failure to implement the forensic mental health services outlined in *A Vision for Change* there have been some positive policy developments in this area. An example is the appointment of a member of An Garda Síochána at the rank of Inspector in each Garda Division to act as liaison person to the "approved centre" for the catchment their Division covers. It is also a welcome development that a memorandum of understanding has been agreed between An Garda Síochána, the Health Service Executive, the Mental Health Commission and service users on the removal or return of a person to an "approved centre" under sections 13 and 27 of the 2001 Act and on the removal of a person to an "approved centre" in accordance with section 12 of the Act. It is important that the commitment for specific training programmes for Inspectors carrying out these liaison roles are progressed. AI also

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[35] "Mental Health Commission Position Paper: Forensic Mental Health Services For Adults in Ireland" (Dublin: Mental Health Commission, Position Paper, February 2011) at page 21. Available at: http://www.mhcirl.ie/Publications/Forensic_Mental_Health_Services_for_Adults_in_Ireland_Position_Paper_Feb_2011.pdf.

[36] Recommendation Rec(2006)2 of the Committee of Ministers. The Mental Health Commission was mindful that human rights considerations should be core to the principles and ethical guidelines in the delivery of forensic mental health services. In that regard there was a reference to the UN Convention on the Rights of People with Disabilities with a particular emphasis placed on Articles 14 and 25. See pages 9-11 and appendix 1.

welcomes the developments of the in-reach diversion scheme at Cloverhill for remand prisoners in Dublin.

Recommendations:

- AI recommends that the Interdepartmental Group examine the provision of effective drug and substance programmes for persons with mental health problems. The Interdepartmental Group should ensure that persons requiring treatment for mental health problems and drug or alcohol abuse should be able to avail of treatment when in contact with the criminal justice system.

- AI recommends the development and delivery of specialised and regional forensic mental health services as outlined in *A Vision for Change* (2006) as a mater of priority.

- AI recommends that the Interdepartmental Group examine whether the provision of forensic mental health services in *A Vision for Change* will meet the demand for these services.

- AI acknowledges that the provision of forensic mental health services is essential if programmes for the diversion of offenders with mental health problems are to be developed.

- AI recommends that the Interdepartmental Group take note of the Mental Health Commission's work on the development of forensic mental health services.

- AI also endorses the Mental Health Commission's recommendation that mental health professionals, Gardaí, lawyers and the courts in all regions should have a comprehensive range of legislative and service options available to them in relation to persons with mental health services involved in criminal proceedings.

- The Interdepartmental Group should ensure that specific training programmes for Garda Inspectors carrying out liaison roles within their Garda Division should be progressed and carried out on an ongoing basis.

Current Law and Policy on Diverting Offenders with Mental Health Problems from the Criminal Justice System

A comparative analysis of the provisions allowing for the diversion of offenders with mental health problems from the criminal justice system reveals that Ireland has very underdeveloped law and policy in comparison to other common law jurisdictions. There are limited legislative provisions providing for the diversion of persons with mental health problems from the criminal justice system. Section 15 of the *Criminal Law (Insanity) Act 2006* provides for the transfer of a person

with a mental health problem from prison to a "designated centre". The only other relevant provision relate to detention of persons with a mental health problem in a "designated centre" and fitness to be tried under the 2006 Act and conditional release of persons detained under the 2006 Act by section 8 of the *Criminal Law (Insanity) Act 2010*.

There are few legislative powers open to members of the judiciary in responding to offenders with mental health problems. While *A Vision for Change* refers the issue of diverson it only addresses it in very broad terms, there is no official government policy in Ireland on the diversion of offenders with mental health problems from the criminal justice system. Other jurisdictions have developed diversionary procedures at different points of contact with the criminal justice system.[37] Programmes have being developed that seek to divert offenders with mental health problems from the criminal justice system through pre-offending interventions, pre-arrest and arrest interventions, court-linked interventions and corrections-based interventions. The following is a brief overview of what the different interventions involve.

1. Pre-offending interventions are generally community based and involve police, clinical and social support services and communities working together with a view to facilitating access to supports for people with mental problems. They run prior to the commission of an offence where an elevated risk of contact with the criminal justice system is identified.[38]

2. Pre-arrest and arrest interventions are used by police, emergency services and mental health services with a view to ameliorating responses to mental health crises. These initiatives also involve non-crisis situations and include use of police cautions/warning, discretionary powers to prosecute, police bail and referrals to supports and services.[39]

3. Court-linked interventions involve situations where a person has been charged with a criminal offence and are facing court proceedings. These interventions seek to inform the court about the offender's mental health problem with and take a problem solving approach that reduces the offending and improve the well being of the defendant.[40]

4. Corrections-based interventions occur after a person has been convicted and sentenced for an offence. These measures typically involve prison-based transition programmes and community

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[37] See "Diversion and Support of Offenders with a Mental Illness: Guidelines for Best Practice" (Melbourne: National Justice Chief Executive Officers' Group and the Victorian Government Department of Justice, 2010).

[38] *Ibid*.

[39] *Ibid*.

[40] *Ibid*.

corrections. The objective of these types of programmes is to address the risk factors for future offending.[41]

Below is a brief comparative overview of some the approaches to diverting offenders with mental health problems from the criminal justice system. Some of these models may be suitable for development in Ireland.

England and Wales

The England and Wales *Mental Health Act 1983* contains a number of measures that seek to divert offenders with mental health problems away from the criminal justice system into health and social services. During the 1980s there was a perception that these powers were not sufficiently availed of so the Conservative Government 1979-1997 introduced an unambiguous policy of diversion in the early 1990s aimed at facilitating greater use of the powers contained in the 1983 Act.[42] The Conservative Government introduced a number of measures that sought to divert offenders with mental health problems out of the criminal justice system at different points of the system. The approach was very much based on diversion from prison to health services and social services. As Laing has pointed out, the policy of diversion was predicated on interagency diversion schemes operating in courts and police stations across the country. This policy of diversion was subsequently embraced by New Labour 1997-2010 and now by the Conservative / Liberal Democrat coalition.

Diversion as it occurs in England and Wales is characterised by movement of persons with mental health problems away from prosecution or detention in a prison setting and envisages a greater role for health services and a diminished role for the apparatus of the criminal justice system. Diversion can happen at different stages at which an offender with a mental health problem comes into contact with the criminal justice system in England and Wales. It can occur at arrest, at the police station, when deciding to prosecute, at the initial court proceedings or after conviction at the sentencing stage. Diversion can occur through section 136 of the *Mental Health Act 1983*, whereby the police might decide not to take action against a suspect and instead refer them to health services as an alternative. Diversion may also occur where a person while still being prosecuted is permitted to get treatment as an alternative to being held on remand pending court proceedings. Diversion can also occur through the reduction of a charge(s). The Crown Prosecution Service might also decide not to prosecute an offender with a mental health problem. Diversion can also happen at the sentencing stage where a judge is open to a non-custodial option for an offender with a mental health problem. The use of diversion in England and Wales is not formulaic and is decided on a case-by-case basis depending on the nature of the offender's mental disorder and the circumstances of the crime(s) committed.

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[41] *Ibid*.

[42] Laing *Care or Custody* (Oxford: Oxford University Press, 1999) at page 46.

There are many legislative procedures that provide for a range of special measures in relation to persons with mental health problems who come into contact with the criminal justice system. For example, Code C of the *Police and Criminal Evidence Act 1984* deals with the detention, treatment and questioning of persons by the police. Amongst the safeguards provided for is the requirement for an "appropriate adult" to be present during police questioning. Code C provides that "[i]f an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code".[43]

The *Mental Health Act 1983* for England and Wales, unlike its Irish counterpart the *Mental Health Act 2001*, contains provisions that judges can use when sentencing an offender who has a mental health problem. Ireland's White Paper on the *Mental Health Act 2001* did anticipate that there would be provisions relating to offenders with mental health problem; however, these provisions were omitted from the Bill that led to the 2001 Act.[44] The *Mental Health Act 1983* in England and Wales provides for a range of orders that a judge can use in cases involving defendants with mental health problems. They can order a person to be remanded to hospital or issue an interim hospital order, guardianship order, restriction order or a hybrid order. There is also provision in the *Criminal Justice Act 2003* to use community orders. By contrast there is no corresponding provisions in the *Mental Health Act 2001*.[45]

Diversion in Australia

In Australia as in Ireland there is much evidence that persons with mental health problems are over-represented in the prison population.[46] Studies that have examined the prevalence of mental health problems amongst prisoners in different parts of Australia have indicated that prisoners have a much higher prevalence of mental health problems when compared to the general population.[47] In Australia the different states and territories have taken different approaches to persons with mental health problems who come into contact with the criminal justice system. Under the federal system the six states and two territories have different mental health and criminal justice systems. Some of the diversion programmes in Australia

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[43] "Code of Practice For the Detention, Treatment and Questioning of Persons by Police Officers" [Code C, *Police and Criminal Evidence Act 1984* (PACE), January 2008].

[44] "White Paper: New Mental Health Act" (Dublin: Department of Health, 1995).

[45] Criminal Law (Insanity) Act 2006 deals with the defences of insanity, infanticide and diminished responsibility and fitness to plead.

[46] Wallace, Mullen, Burgess, Palmer, Ruschena, & Browne "Serious Criminal Offending and Mental Disorder: Case linkage study" (*British Journal of Psychiatry*: June, 1998, 172, 477-84).

[47] For example, see Butler, Allnutt, Cain, Owens, & Muller "Mental disorder in the New South Wales prisoner population" (The Australian and New Zealand Journal of Psychiatry: 2005, 39, 407–413) and Butler, Andrews, Allnutt, Sakashita, Smith, & Basson "Mental disorders in Australian prisoners: A comparison with a community sample" (*The Australian and New Zealand Journal of Psychiatry*: 2006, 40, 272–276).

facilitate diversion prior to conviction while others do not.[48] There is provision in Australia for judges and magistrates in Victoria and Tasmania and the Commonwealth to make hospital orders as an alternative to a sentence. These orders are similar to the provisions used in England and Wales under Part 3 of the *Mental Health Act 1983*.

Recommendations:

- AI recommends that a number of measures should be introduced to divert offenders with mental health problems away from the criminal justice system.
- The Interdepartmental Group should recommend that a coherent and consistent policy of diversion be introduced and that all relevant law and policy initiatives should ensure that diversion is provided for.
- AI recommends that diversion should involve the movement of persons with mental health problems away from the prosecution or detention in a prison setting.
- AI recommends that diversion should happen at the different stages of the criminal justice process as is the case in other jurisdictions.
- AI recommends that diversion should occur as early in the process as possible and that provisions should be made for diversion to occur at arrest, at the police station, at prosecution, at the initial court proceedings or after conviction at the sentencing stage.
- AI recommends that clear policy documents on diversion are developed for the Gardaí and for the Office of the Director of Public Prosecutions.
- AI recommends that all stakeholders in the criminal justice system should receive training on offenders with mental health problems and on diversion initiatives as they are developed.
- AI recommends that legislative provisions should be developed that allow the Gardaí to discontinue action against a suspect and refer them to services as an alternative.

Other Issues

[48] See Richardson & McSherry "Diversion Down Under- Programs for Offenders with Mental Illnesses in Australia" (*International Journal of Law and Psychiatry*: 33(2010) 249-257) and Richardson "Mental Health Courts and Diversion Programs for Offenders with Mental Illnesses: The Australian Context" (Vienna: Paper presented at the 8th Annual International Association of Forensic Mental Health Services Conference, 2008).

The Interdepartmental Group has a unique opportunity to examine the treatment of persons with mental health problems who come into contact with the criminal system against a broader law reform agenda. It is important that the Interdepartmental Group is mindful that the Department of Health is currently undertaking a review of the *Mental Health Act 2001* and that the Department of Justice and Equality is undertaking a review of the *Criminal Law (Insanity) Act 2006*. In addition, the Department of Justice and Equality is due to publish shortly new legal capacity legislation.

The appropriateness of the terminology used in the 2006 Act, in particular, the term "insanity"

Article 3 of the CRPD outlines its underlying principles, which include concepts such as respect for inherent dignity, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity. There is no question that the terminology used in the *Criminal Law (Insanity) Act 2006* is wholly inappropriate, particularly in light of the CRPD. The Interdepartmental Group in undertaking its work should avoid using terminology that is inconsistent with international human rights law. The rationale for not removing the term insanity from the 2006 Act was that its deletion would open up the defence to be interpreted to include categories of persons not envisaged to come under its remit. The international experience of using alternatives to the term "insanity" bears this out. For example, the *Criminal Justice and Licensing (Scotland) Act 2010* through section 168 introduced the more acceptable phrase "criminal responsibility of persons with mental disorder" into the Scottish statute book.[49] The *Canadian Criminal Code* uses the term "not criminally responsible on account of mental disorder".[50] These alternatives are preferential to the out-dated term "insanity", which is stigmatising. It should be noted that Ireland, as it moves towards ratification of the CRPD, under Article 8 is required to take positive actions in terms of awareness-raising. Article 8 requires State Parties to "undertake to adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities". This clearly requires Ireland at a minimum to remove offensive, outdated and prejudicial terms such as "insanity" from its domestic law and other official documents of the State.

Recommendation:

- The term "insanity" should be removed from the statute book and other official documents of the State.

[49] See http://www.legislation.gov.uk/asp/2010/13/section/168.

[50] See http://laws-lois.justice.gc.ca/eng/acts/C-46/page-319.html#h-223.

The Demarcation of the 2001 & 2006 Acts

The judgment in *DPP v B*[51] highlights the deficiencies in terms of the human rights of persons detained under the *Criminal Law (Insanity) Act 2006* when compared to persons held involuntarily under the 2001 Act. These concerns have been made elsewhere, for example, by the European Committee for the Prevention of Torture (CPT) in its 2006 report on Ireland, which stated that a comparative reading of both the *Mental Health Act 2001* and *Criminal Law (Insanity) Act 2006* indicates that patients placed under the 2006 Act potentially benefit from considerably fewer safeguards than those placed under the *Mental Health Act 2001*.[52] It noted that the 2006 Act lacks provisions on the use of physical restraint, seclusion and inspection. Similarly, the mandate of the Mental Health (Criminal Law) Review Board is limited when compared with that of the tribunal system operating under the 2001 Act. This criticism was reiterated by the CPT in its most recent Report on Ireland, where it noted that the Central Mental Hospital voluntarily applies the *Mental Health Act 2001* provisions "as regards consent to treatment and use of means of restraint and seclusion, to patients placed under the 2006 Criminal Law (Insanity) Act."[53] The CPT recommended that the Irish Government "introduce legally binding safeguards, including as regards consent to treatment and use of means of restraint and seclusion, for patients detained under the 2006 Criminal Law (Insanity) Act".[54]

Recommendation:

- The Interdepartmental Group should examine the disparities between the human rights protections afforded to persons dealt with under the *Mental Health Act 2001* and *Criminal Law (Insanity) Act 2006*.

Offenders with Intellectual Disability

AI is concerned that the Terms of Reference of the Interdepartmental Group do not refer to persons with intellectual disability. It has been recognised internationally that offenders with intellectual disability are not

[51] *DPP v. B* [2011] IECCC 1.

[52] "Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006" (Strasbourg: Council of Europe, 2007 at paragraph 106).

[53] "Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010" (Strasbourg: Council of Europe, CPT/Inf (2011) 3) at page 68.

[54] *Ibid*.

correctly identified early enough in the criminal justice system.[55] There is limited research that has examined the criminal conduct of offenders with intellectual disability in Ireland.[56] It has been suggested that criminal offending by persons with intellectual disability "is often under-reported" in Ireland.[57] It was further suggested that issues pertaining to competence and *mens rea* complicate holding a person with intellectual disability accountable.[58] Another suggested reason for the underreporting of criminal behaviour of persons with intellectual disabilities may be that blurring between criminal conduct and behaviour that is considered to be "challenging".[59] The Irish College of Psychiatry note that the underreporting of offending behaviour was in part due to this overlap and suggested that underreporting makes it complex in defining and measuring offenders with intellectual disability.[60] Research from other jurisdictions has suggested that the failure to develop dedicated services for offenders with intellectual disabilities was stifled as offenders with mental health problems fall between different services and the lack of dedicated funding.[61]

Following the publication of *A Vision for Change* the Forensic Learning Disability Working Group was established by the Irish College of Psychiatry with the goal of assessing the level of need for a Forensic Learning Disability Service in Ireland and develop a position paper.[62] In that regard a national survey was carried out in order to feed into its position paper 'People with a Learning Disability who Offend: Forgiven but Forgotten'.[63] The Irish College of Psychiatry "warmly welcomed" the

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[55] See for example, Vanny, Levy & Hayes "People with an Intellectual Disability in the Australian Criminal Justice System" (*Psychiatry, Psychology and Law*: Vol 15, No 2, July 2008, 261-271).

[56] For example, it was noted that there has been no research examining the level of criminal behaviour amongst service users of Irish mental health services who have an Intellectual Disability. See "A National Survey of Offending Behaviour amongst Intellectually Disabled Users of Mental Health Services in Ireland" (Dublin: National Disability Authority) Available at: http://www.nda.ie/cntmgmtnew.nsf/0/8B71583417C5138080257444003F95FC/$File/paper11_peter_leonard.htm.

[57] *A Vision for Change* (Dublin: 2006, Stationery Office) at page 132.

[58] *Ibid*.

[59] Emerson *Challenging Behaviour: Analysis and Intervention in people with Learning Disabilities* (Cambridge: Cambridge University Press, 1995).

[60] "People with a Learning Disability who Offend: Forgiven but Forgotten? (Dublin: The Irish College of Psychiatrists, 2007, Occasional Paper 63) at page 5. Available at: http://www.rcpsych.ac.uk/files/pdfversion/OP63xx.pdf.

[61] Myers "On the Borderline? People with Learning Disabilities and/ or Autism Spectrum Disorders in Secure, Forensic and other Specialist settings" (Edinburgh: Scottish Development Centre for Mental Health, 2004). Available at: http://scotland.gov.uk/Resource/Doc/47251/0023734.pdf.

[62] There was much anecdotal evidence of significant unmet need in this area, which formed the main impetus for this work.

[63] "People with a Learning Disability who Offend: Forgiven but Forgotten? (Dublin: The Irish College of Psychiatrists, 2007, Occasional Paper 63). Available at: http://www.rcpsych.ac.uk/files/pdfversion/OP63xx.pdf.

commitment to a forensic intellectual disability service in Ireland as envisaged in *A Vision for Change*.[64] However, it was very critical of the level of service to be provided (10 bed residential unit) as it considered "it inadequate when compared with the service provision recommended in the research literature."[65] As part of this research it conducted a survey of service providers in Ireland. This involved a consultation with stakeholders using focus groups. The main findings of the Working Group survey were that 431 persons with a learning disability and offending behaviour were identified nationally and the majority of this population consisted of "males with learning disability in the moderate or severe range".[66] The survey also reported that the majority of service providers strongly supported the urgent development of a forensic service for persons with intellectual disabilities. The survey revealed, "105 patients reported to require urgent forensic service assessment, care and treatment."[67]

Research commissioned by the Department of Justice examined the incidence of "learning disability" in the Irish prison population from a randomly selected sample of 264 prisoners.[68] The study revealed 28.8 per cent of the sample scored below 70 on the Kaufman Brief Intelligence Test, which represents one of the necessary indicators of learning disability.[69] The data collected also indicated that the average school leaving age was 14.67 years and 80 per cent had never seen a school counsellor or psychologist while at school.[70] 65.5 per cent of the sample population had been suspended from school at some stage and 40.2 per cent of the sample population had been expelled from school.[71] It was suggested in this study that the "nature of their disability presents additional challenges to services for the prevention and management of criminal behaviour".[72] It was further suggested that addressing the problems of offenders with intellectual disability required specialised support services that respond to specific needs required within the criminal justice and education systems.[73] Other recommendations in the research related to early identification and the provision of support to children with learning disabilities "who are at high-risk for later

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[64] *Ibid*, at page 5.

[65] *Ibid*.

[66] *Ibid*.

[67] *Ibid*, at page 6.

[68] Murphy et. Al "A Survey of the Level of Learning Disability Among the Prison Population in Ireland" (Dublin: Department of Justice, Equality and Law Reform, 2000). Available at: http://www.irishprisons.ie/documents/learning_disability_report.pdf. Approximately 10% of the prisoners in each prison under the jurisdiction of the Department of Justice, Equality and Law Reform completed psychometric tests and a questionnaire.

[69] *Ibid*, at page 14.

[70] *Ibid*, at pages 14-15.

[71] *Ibid*, at page 15.

[72] Ibid, at page 18.

[73] *Ibid*.

delinquency".[74]

There was also a recommendation to develop diversion services for offenders with intellectual disability, which would include an "early-warning" screening system that identifies individuals with learning disability when they first come into contact with the criminal justice system.[75] It was recommended that Gardaí should operate a brief screening assessment and a "systematic referral for full psychological assessment of all individuals who are identified through the screening process". Other recommendations included the development of specialised probation services that could work to integrate offenders with intellectual disabilities within their local community. Other recommendations involved the development of training programmes for the relevant stakeholders (Gardaí, probation officers, Judges and members of the legal professions).[76] There were a number of other recommendations in relation to the creation of specialised prison programmes for offenders with intellectual disabilities and recommendations in relation to post-release support services.[77]

It is clear from the available evidence that there is a significant unmet need for the provision of forensic mental health services for persons with intellectual disability. There is a significant gap between the scale of the service envisaged in *A Vision for Change* and the scale of the service needed as suggested by the Irish College of Psychiatry's research.

Recommendation:

- The Interdepartmental Group should examine as part of its review persons with intellectual disabilities coming into contact with the criminal justice system.
- The Interdepartmental Group should examine whether the provision for forensic mental health services for persons with intellectual disabilities in *A Vision For Change* are adequate.
- The Interdepartmental Group should work to realise the development of forensic mental health services for persons with intellectual disabilities.
- The Interdepartmental Group should examine the need for specialised support services that respond to specific needs of persons with intellectual disabilities within the criminal justice system.

[74] *Ibid*, at page 19.

[75] *Ibid*.

[76] *Ibid*, at page 20.

[77] *Ibid*.

- The Interdepartmental Group should explore early identification and the provision of support to children with learning disabilities who are at high-risk of coming into contact with the criminal justice system.

Conclusion

There has been a disconnection between law and policy in diverting offenders with mental health problems from the criminal justice system. There needs to be a joined up approach to responding to offenders with mental health problems. Therefore, it is important that the Interdepartmental Group avail of a unique opportunity to examine the treatment of persons with mental health problems (and persons with intellectual disability) who come into contact with the criminal system against a broader law reform agenda. It is important that the Interdepartmental Group is mindful that the Department of Health is currently undertaking a human rights based review of the *Mental Health Act 2001* and that the Department of Justice and Equality is undertaking a review of the *Criminal Law (Insanity) Act 2006*. In addition, the Department of Justice and Equality is due to publish shortly new legal capacity legislation. It is also essential the Interdepartmental Group is mindful of Ireland's obligations under international human rights law, in particular, the UN Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights.

Appendix 1: Summary of Recommendations

International Human Rights Law

Recommendations:

- The Interdepartmental Group in undertaking its review should be mindful of Ireland's obligations under international human rights law. In particular, it should be mindful of Ireland's obligations once it ratifies the UN Convention on the Rights of Persons with Disabilities.

- Diversionary programmes should provide for reasonable accommodation of persons seeking to participate in these programmes.

- Information on diversionary programmes should be provided for in accessible ways so that the persons applying for entry onto programmes make an informed decision as to participation.

- In line with Article 12 of the CRPD participation in any diversion programme should be voluntary and a person with a mental health problem should be able to decide what services or supports that they need. A person with a mental health problem should not be required to take medication or undergo psychiatric treatment as a requirement of participation in a diversion programme.

- In particular, the Interdepartmental Group should be mindful of the implications of Article 5, Article 12, Article 13 and Article 14 of the CRPD in undertaking its work and Articles 3 and 5 of the European Convention on Human Rights.

Law and Policy Context

Recommendations:

- AI recommends that the Interdepartmental Group examine the provision of effective drug and substance programmes for persons with mental health problems. The Interdepartmental Group should ensure that persons requiring treatment for mental health problems and drug or alcohol abuse should be able to avail of treatment when in contact with the criminal justice system.

- AI recommends the development and delivery of specialised and regional forensic mental health services as outlined in *A Vision for Change* (2006) as a mater of priority.

- AI recommends that the Interdepartmental Group examine whether the provision of forensic mental health services in *A Vision for Change* will meet the demand for these services.

- AI acknowledges that the provision of forensic mental health services is essential if programmes for the diversion of offenders with mental health problems are to be developed.

- AI recommends that the Interdepartmental Group take note of the Mental Health Commission's work on the development of forensic mental health services.

- AI also endorses the Mental Health Commission's recommendation that mental health professionals, Gardaí, lawyers and the courts in all regions should have a comprehensive range of legislative and service options available to them in relation to persons with mental health services involved in criminal proceedings.

- The Interdepartmental Group should ensure that specific training programmes for Garda Inspectors carrying out liaison roles within their Garda Division should be progressed and carried out on an ongoing basis.

Current Law and Policy on Diverting Offenders with Mental Health Problems from the Criminal Justice System

Recommendations:

- AI recommends that a number of measures should be introduced to divert offenders with mental health problems away from the criminal justice system.

- The Interdepartmental Group should recommend that a coherent and consistent policy of diversion be introduced and that all relevant law and policy initiatives should ensure that diversion is provided for.

- AI recommends that diversion should involve the movement of persons with mental health problems away from the prosecution or detention in a prison setting.

- AI recommends that diversion should happen at the different stages of the criminal justice process as is the case in other jurisdictions.

- AI recommends that diversion should occur as early in the process as possible and that provisions should be made for diversion to occur at arrest, at the police station, at prosecution, at the initial court proceedings or after conviction at the sentencing stage.

- AI recommends that clear policy documents on diversion are

developed for the Gardaí and for the Office of the Director of Public Prosecutions.

- AI recommends that all stakeholders in the criminal justice system should receive training on offenders with mental health problems and on diversion initiatives as they are developed.

- AI recommends that legislative provisions should be developed that allow the Gardaí to discontinue action against a suspect and refer them to services as an alternative.

The appropriateness of the terminology used in the 2006 Act, in particular, the term "insanity"

Recommendation:

- The term "insanity" should be removed from the statute book and other official documents of the State.

The Demarcation of the 2001 & 2006 Acts

Recommendation:

- The Interdepartmental Group should examine the disparities between the human rights protections afforded to persons dealt with under the *Mental Health Act 2001* and *Criminal Law (Insanity) Act 2006*.

Offenders with Intellectual Disability

Recommendation:

- The Interdepartmental Group should examine as part of its review persons with intellectual disabilities coming into contact with the criminal justice system.

- The Interdepartmental Group should examine whether the provision for forensic mental health services for persons with intellectual disabilities in *A Vision For Change* are adequate.

- The Interdepartmental Group should work to realise the

development of forensic mental health services for persons with intellectual disabilities.

- The Interdepartmental Group should examine the need for specialised support services that respond to specific needs of persons with intellectual disabilities within the criminal justice system.

- The Interdepartmental Group should explore early identification and the provision of support to children with learning disabilities who are at high-risk of coming into contact with the criminal justice system.