



**IPRT**  
Irish Penal Reform Trust

# **Out on the Inside**

**The Rights, Experiences and Needs of LGBT People  
in Prison**

February 2016



The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

This report was written by Dr Nicola Carr, Dr Siobhán McAlister and Dr Tanya Serisier, and was supported by The Community Foundation for Ireland.

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## 1. Introduction

Lesbian, Gay, Bisexual and Transgender (LGBT) people have long been a ‘hidden’ or overlooked population in prisons, both in Ireland and internationally. In recent years, however, international research and policy has begun to focus on the experiences and needs of this group of prisoners. This research, as summarised by the United Nations Office on Drugs and Crime (UNODC, 2009) has revealed a range of issues that affect LGBT individuals in prison. This includes heteronormativity, homophobia and transphobia both within and outside prison, the threat of physical and sexual violence within prison, institutional discrimination and neglect, health needs, and social isolation.

The *Yogyakarta Principles* (ICJ, 2007), a set of standards which apply human rights law to issues of sexual orientation and gender identity, specifically address the need to adequately meet the rights of LGBT people in detention. This includes the need to provide adequate placements, appropriate protective measures and access to medical care. These principles also emphasise the importance of independent monitoring of detention facilities by the State, as well as by non-governmental organisations working in the areas of sexual orientation and gender identity. The recent passage of the *Irish Human Rights and Equality Commission Act (2014)*, which sets out the positive duties of public bodies to eliminate discrimination, promote equality and protect human rights, adds further impetus to address this area.

This report represents the first study of the needs and experiences of LGBT prisoners within the Irish context<sup>1</sup>. The themes raised are drawn from considerations of human rights and equality, and placed within the context of international literature and policy, although the limitations of transferability are noted.

### Aims and Objectives

The aim of this research is to identify and explore the needs and experiences of LGBT people in prison in Ireland. Its objectives are to:

- Present what is known internationally about the experiences and needs of LGBT prisoners;
- Identify examples of best practice in prison and penal policy;
- Analyse the needs of LGBT prisoners in Ireland from an equality and human rights perspective;
- Conduct primary research into the needs and experiences of LGBT people in prison in Ireland;
- Make a series of evidence-based recommendations to the Irish Prison Service (IPS) and other relevant bodies.

### About the Research

It is important to emphasise that this is a small-scale qualitative study. Due to the absence of existing research on this topic in Ireland the study is exploratory in nature. Desk-based research was initially conducted to survey the relatively small amount of literature that exists internationally and to identify examples of good practice.

The second stage of the research involved collecting primary qualitative data on the experiences and needs of LGBT individuals in the Irish prison system. In-depth interviews were carried out

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<sup>1</sup> Many of the issues raised in this paper also relate to the needs and experiences of intersex prisoners. While we did not speak to any intersex individuals in the course of our research we wish to note that they face many similar challenges to LGBT prisoners (especially transgender individuals) in the context of incarceration.

with ten stakeholders from the criminal justice system and four from the LGBT sector. Finally, we conducted seven interviews with prisoners and ex-prisoners who identify as LGBT (three men and four women, including one transgender woman), and a focus group with eight prisoners involved in a peer education and support group. Interviewees were accessed with the assistance of outreach organisations and pre-existing contacts.

## **Report Structure**

Chapter 2 presents the policy and practice context within which this research occurs. We briefly consider the position of LGBT issues in Ireland, the context of the Irish prison system and present a brief survey of key issues from the international literature on LGBT prison populations. We continue to draw upon and present findings from this literature in the chapters that follow. Chapter 3 explains our methodology in more detail, highlighting the strengths of our approach as well as outlining the limitations and noting the need for further research. Chapter 4 considers questions of prevalence and visibility of LGBT people in prisons, with an emphasis on the extent to which LGBT prisoners and ex-prisoners can be seen as a 'hidden population'. Chapter 5 explores the needs and experiences of transgender people in prison in more depth, noting that their needs are at times unique and distinct from cis-gendered<sup>2</sup> LGB individuals. Chapter 6 considers the effects of heterosexism, homophobia and transphobia on LGBT prisoners, focusing on harassment, discrimination and violence within prison. Chapter 7 considers questions around sexual health and relationships in prison, and notes that prisons have a public health obligation around questions of safe sex and healthy relationships. Finally, we conclude and present our recommendations.

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<sup>2</sup> Denoting or relating to a person whose self identity conforms with the gender that corresponds to their biological sex.

## 2. Policy and Practice Context

### Introduction

This chapter provides a brief introduction to LGBT issues in Ireland and recent developments in Irish prisons. Drawing on local research it outlines policy developments impacting on the rights of LGBT people. It notes some of the contemporary concerns in relation to prisons and the lack of research and policy focus on LGBT individuals in prison. Key themes from international literature in relation to LGBT prisoners are presented. These themes are further developed throughout this report. The chapter demonstrates that despite advances in both areas, LGBT prisoners remain a doubly marginalised group: both in LGBT service provision and in prison policy and practice.

### LGBT People and Irish Society

Recent decades have seen significant shifts in Irish social attitudes towards LGBT people, reflected in a range of legislative reforms (Ryan, 2014). In 1993 the criminal laws prohibiting homosexuality between men were abolished, and equality legislation introduced in the 1990s and 2000s provided protections against discrimination for gay and lesbian people, although not for transgender individuals<sup>3</sup>. The recent successful referendum on same-sex marriage continues these advances for lesbian, gay and bisexual communities and the *Gender Recognition Act (2015)* represents a significant step forward in the rights of transgender people in Ireland. While legislative reform and the increased visibility of LGBT people within Irish society have undoubtedly been positive developments, it is important to note that the lived experiences of LGBT people may lag behind the ideals expressed in legislation and official policy (Ryan, 2014).

The scale of discrimination faced by Irish LGBT individuals and communities is evidenced in a survey conducted by the European Union Agency for Fundamental Rights (FRA) (FRA, 2013). In 2012, almost half (47%) of Irish respondents reported discrimination or harassment within the last 12 months on the grounds of their sexual orientation or gender identity (FRA, 2013). Consistent with other research (e.g. Mayock et al, 2009), transgender respondents reported even higher rates of victimization including significant rates of transphobic violence (FRA, 2013: 22)<sup>4</sup>. It is also noteworthy that data from the Eurobarometer Survey (which measures public opinion on a broad range of issues) points to large divergences between perceived levels of discrimination towards specific groups and the lived experiences of group members. For instance the Eurobarometer Survey on Discrimination in the EU (European Commission, 2012) reports that while 20% of Irish respondents acknowledged that discrimination towards transgender people was widespread, 83% of transgender respondents reported discrimination towards them (FRA, 2014). Ireland was one of the countries with the greatest divergence between general perceptions and lived experiences (FRA, 2014).

Experiences of marginalisation and discrimination are further highlighted in a range of research on LGBT people in Ireland (Mayock et al, 2009; McIlroy, 2009; Higgins et al, 2011; FRA, 2013). This research has identified concerns regarding visibility, the adequacy of protections against discrimination, service provision and policy responses in areas including health services, education and employment (Mayock et al, 2009; McCann and Sharek, 2014; Sharek et al, 2015). Difficulties in

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<sup>3</sup> See: Employment Equality Acts (1998-2011) and Equal Status Act (2000 to 2004). Notably this legislation prohibits discrimination on 'nine grounds', including gender and sexuality. There is no specific reference to transgender people within this legislation - see: Ryan (2013) 'Current Legal Protections for Transgender Employees'. Available at: <http://www.diversity-champions.ie/attachments/012bcf0c-95a3-4800-9bb5-e4ec3ebbb78a.pdf>

<sup>4</sup> 8% of Transgender respondents had experienced an attack or threat of violence within the past 12 months, partly or completely because they were perceived to be LGBT. 28% of transgender respondents reported repeat victimization (i.e. more than three incidents in the past year) (FRA, 2013: 23).



accessing adequate healthcare services have been shown to be a particular issue for transgender people (Collins and Sheehan, 2004). Homophobic and transphobic bullying within schools has also been documented as a problem (Minton et al, 2008; Mayock et al, 2009; McCormack and Gleeson, 2010; Neary, 2013). Although there has been some consideration of LGBT people as victims of crime (Sarma, 2004), to our knowledge there has been no published research in Ireland on the experiences of LGBT people within the criminal justice system.

Importantly, as McDermott (2011) observes, the dividends of equality are not universally experienced among LGBT people, as other inequalities, such as social class, have significant mediating effects. This point is also articulated in the *Yogyakarta Principles* where it is noted that experiences of discrimination based on sexual orientation or gender identity 'are compounded by discrimination on grounds such as gender, race, age, religion, disability, health and economic status' (ICJ, 2007:8). In a similar vein, researchers such as Stychin (2000) have issued cautions about the tendency to construct 'acceptable homosexualities' in policy, legislation and public discourses. As a result of these constructions, LGBT people who are seen as 'respectable' may notice a significant reduction in discrimination and prejudice. However, individuals who are perceived to transgress social norms around relationships, gender identity, or behaviour, may face continuing stigmatisation and isolation. Significantly, as noted above, discrimination and prejudice against transgender individuals remains a considerable problem.

These cautions have particular resonance for LGBT prisoners and ex-prisoners, who are likely to have experienced socio-economic marginalisation, as well as prejudice on the basis of having been incarcerated. Such prejudice can exist within mainstream LGBT communities as well as the wider society, and may be connected to isolation from LGBT support services. These issues were recognized by all of the LGBT organisations that we interviewed, with a representative from GLEN (Gay and Lesbian Equality Network) describing engagement with LGBT prisoners and ex-prisoners as a "significant gap" in the work of LGBT organisations in Ireland.

## Irish Prison Context

There has been a significant increase in the Irish prison population in the past few decades (DoJE, 2014; Inspector of Prisons, 2014)<sup>5</sup>. The 2014 *Strategic Review of Penal Policy* (DoJE, 2014) (hereafter the *Strategic Review*) noted the need to reduce prison numbers. Initiatives introduced to achieve this include legislation allowing the non-payment of fines to be dealt with without resort to custody and a 'community return' scheme facilitating supervised early release of sentenced prisoners. While there has been some reduction in the number of committals to prison in recent years, the latest data shows that the proportion of short custodial sentences (less than 3 months) has risen (IPS, 2015a). Consequently, and notwithstanding some recent amelioration in prison conditions (Inspector of Prisons, 2014), overcrowding and a poor infrastructure within parts of the prison estate are ongoing concerns (DoJE, 2014; Inspector of Prisons, 2014; IPRT, 2015). Despite a stated aspiration to move towards single cell accommodation within Irish prisons (DoJE, 2014) just over half of prisoners are accommodated singly (54%) and 37% have to use a toilet in the presence of another prisoner (IPS, 2015b).

Prisoner safety has been identified as a concern in various oversight reports and policy documents (e.g. CPT, 2011; DoJE, 2014). The Inspector of Prisons (2014:14) specifically articulated concerns

<sup>5</sup> The rate of imprisonment in Ireland is 88 per 100,000 (Walmsley, 2013). The prison population in Ireland increased by 400% from 1970 to 2011. The number of committals to Irish prison rose from approximately 12,000 in 2008 to over 17,000 in 2012. There has been a reduction in numbers since then. In 2014 there were 12,853 committals to prison (DoJE, 2014; IPS, 2015a).

regarding a culture of abuse of authority by a ‘minority of officers’ towards prisoners. Bullying amongst staff was also identified as an issue and prisoner on prisoner bullying and violence remain ‘a major problem’<sup>6</sup> in Irish prisons. The use of protective custody for at-risk prisoners, the length of time prisoners are subject to such regimes, and the impact on opportunities for association and access to services is also a concern (DoJE, 2014; IPRT, 2013, 2015; Rogan, 2014).

Referencing the Irish Constitution and international human rights standards, the *Strategic Review* (DoJE, 2014) notes the importance of ensuring that the penal system pays appropriate accord to the respect and human dignity of those who are incarcerated, and the provision of ‘safe and secure’ custody is a core aim of the Irish Prison Service as articulated in its 2012-2015 strategic plan (IPS, 2012). The service has implemented a ‘dignity and respect campaign’, which has focused in particular on the working environment for prison staff. In addition a programme of human rights training has been developed for existing prison staff and new trainees.

The treatment and experiences of minorities within Irish prisons has been the subject of some attention. The Inspector of Prisons recognises that some prisoners are more at risk of abuse ‘due to factors such as age, *sexual orientation*, ethnicity, racial origin, etc.’ (Emphasis added) (Inspector of Prisons, 2014:14). In recent years, the challenges faced by Travellers in prison have received particular attention (CPT, 2011; Costello, 2014). The lack of ‘gender-specific’ measures for female prisoners has also been recognized (Irish Prison Service and Probation Service, 2014). To date, however, there has been no research or policy response addressing the specific needs and experiences of LGBT people within prisons.

The lack of specific policies and practices for LGBT prisoners was noted by all members of the LGBT sector with whom we spoke, as was the need for greater research around the rights, needs and experiences of this particular group of prisoners. Instructively, organisations such as Dundalk Outcomers questioned whether the needs of LGBT prisoners are on the agenda within the context of wider pressing issues impacting on the prison system, while the absence of developed policies for transgender inmates particularly was noted by TENI.

The Irish Prison Service has, however, begun to recognise LGBT issues, and currently participates in the GLEN Diversity Champions programme through the ‘Inside Out’ network for LGBT prison staff. While this network does not involve prisoners it represents an important instance of the LGBT sector and the Irish Prison Service working together on issues of diversity and challenging homophobia. For GLEN, this programme represents a potential “first step” in raising LGBT visibility and challenging cultures of homophobia and heteronormativity more widely in prisons. This hope was shared by other LGBT organisations.

## **International Research Context**

Throughout this report we draw on research from a range of jurisdictions, while noting that there is limited research on the experiences and needs of LGBT prisoners globally, and much of what exists is new and exploratory in nature. While small amounts of research have been conducted in countries such as the UK (eg. Dunn, 2013), Australia (eg. Butler et al, 2010) and Canada (Mann, 2006), the vast majority of existing literature comes from the United States. The relatively unique context of imprisonment in the US, both in terms of scale and the prison environment (Clear and Frost, 2014), means that there is a need to be cautious of generalising these findings to the Irish context. While we take account of these limitations, the report points to relevant international findings and policy suggestions, exploring the implications for LGBT prisoners within the Irish context.

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<sup>6</sup> Inspector of Prisons (2014: 14)

## Conclusion

LGBT prisoners form a doubly marginal population, falling outside of the ‘mainstream’ of LGBT community organizing and support services, and hidden and largely overlooked in terms of current prison policy. Our research indicates that both the LGBT sector and the Irish Prison Service are increasingly aware of the existence and potential needs of this population. Recent wider attention towards issues of LGBT equality evident in the passage of the marriage referendum and the *Gender Recognition Act (2015)* may signal an opportunity to address the needs, rights and experiences of LGBT people within the prison setting.

## 3. Methodology

This is a small-scale exploratory study. The research comprised three phases. The first was a literature review of the rights, needs and experiences of LGBT prisoners. Given that this issue has received limited attention in the Irish context, much of this literature derives from the United States, the United Kingdom, Canada and Australia. We have drawn out the relevant themes raised in this literature and the policies that have been developed in response to the recognized need for prison systems to respond more effectively to LGBT people in custody.

Secondly, interviews were conducted with relevant stakeholders. Ten interviews were conducted with stakeholders from the criminal justice system. This included representatives from the Irish Prison Service, the Probation Service, the Department of Justice and Equality and service providers within prisons such as the Red Cross. A further four interviews were conducted with representatives from the LGBT sector: TENI (Transgender Equality Network Ireland), GLEN (Gay and Lesbian Equality Network), BeLonGTo and Dundalk Outcomers.

Finally, interviews were carried out with LGBT prisoners and former prisoners. Because of the hidden nature of this population, the scale of the project and the importance of ensuring the confidentiality and the safety of participants, these were recruited through pre-existing contacts and, in some instances, following from initial interviews with stakeholders. We interviewed three male prisoners and three female prisoners who self-identified as lesbian, gay or bisexual, and one transgender woman. A focus group interview with eight prisoners involved in a peer-support group was also conducted. Given the nature of the focus group process, participants were not asked about their sexuality and/or gender identity, although they were free to discuss this if they wished. The purpose of the focus group was to explore general attitudes towards LGBT prisoners.

The final sample, therefore, comprises of 14 serving prisoners and one former prisoner (7 of whom identified as lesbian, gay, bisexual or transgender), 10 representatives from criminal justice agencies and four representatives from LGBT organisations (n=29).

## Ethical Considerations

There are particular ethical considerations in research of this nature. Research on aspects of a person’s sexuality and/or gender identity are sensitive and personal issues and we were particularly mindful of this within the prison context where participants may not wish to be ‘out’ regarding their sexual or gender identity. The research literature highlights some of the challenges faced by LGBT people within the prison system, including experiences of marginalisation and victimization. We needed, therefore, to exercise sensitivity in our recruitment strategy and in the questions we asked participants. The project was submitted for review and the Research Ethics Committee (REC) in the School of Sociology, Social Policy and Social Work, Queen’s University Belfast, granted ethical

approval. Permission regarding access, which incorporated a review process, was also sought and granted by the Irish Prison Service.

To safeguard the confidentiality of the prisoner research participants, arrangements for interviews were made via designated personnel within the prison service. Information on the nature of the study was not circulated by post. A member of the research team provided each participant with information on the project in a face-to-face meeting where the parameters of confidentiality were fully explained. Participants were informed that the interview was confidential, and the only circumstance in which confidentiality would be breached was if a disclosure of a serious risk of harm was made. All participants signed a written consent form. Interviews were audio-recorded and subsequently transcribed. All of the prisoners who participated in the study have been given a pseudonym in this report. In order to safeguard confidentiality we do not identify the prisons in which the interviews and focus group took place. The criminal justice stakeholder interviews are designated by – CJ (Number) to further safeguard confidentiality. References to interviews with stakeholders from LGBT organisations, with their consent, identify the relevant organisation.

## **Representativeness**

It is important to note that this research makes no claims to representativeness. We do not know how many people are LGBT within the Irish prison population and therefore cannot make a comment on this in relation to our sample. Furthermore, for practical reasons our fieldwork took place in a small number of prisons. While some of the participants in the sample had spent time in a number of prisons, and make some comparisons between their experiences, we do not claim that our findings apply across the entire prison estate. Indeed an extensive body of research documents how prisons form their own internal cultures and dynamics mediated by the prison population, staff composition, management culture, architecture and so forth (see for example: Crewe, 2009; Liebling et al, 2012). Reports from the Irish Inspector of Prisons also bear this out.

That said, this research does tell us something about the experiences of LGBT prisoners in Ireland. This is the first study focusing on the rights, needs and experiences of this population, and there is particular value in the method of gaining insight from service providers, service users, and LGBT advocates. The findings are presented thematically and are explored in light of the international literature and policy developments in this area. Points of convergence and divergence with this literature are noted and a series of recommendations made. It is customary in reports of this nature to recommend further research; *we believe that this area does require further research and we hope that the themes raised underscore the need for further sustained attention towards this area.*

## **Themes and Structure**

In the remainder of the report we address the key themes that arise from a survey of existing literature and our own qualitative research. The first section of the report explores the difficulty in establishing the prevalence of LGBT prisoners, drawing on reported data from elsewhere but highlighting issues which make this population difficult to access. Research shows that the highly heteronormative and often homophobic nature of prison environments may prevent or discourage LGBT people from identifying themselves to other prisoners, staff or to researchers (even if they would wish to do so) (Lamble, 2012; Marksamer and Tobin, 2013). We consider the different context of male and female prisons as well as the situation of transgender prisoners who may be more visible than lesbian, gay and bisexual prisoners.

We then consider the issue of discrimination, arising from the fact that prisons internationally remain highly heteronormative institutions based on clear gender divisions, and are thus more homophobic

and transphobic spaces than the societies in which they exist (Butler et al 2010; Jewkes, 2005; Richters et al 2012). We pay particular attention to questions of safety and violence, noting that the United Nations has declared 'vulnerability to violence', both physical and sexual, to be the most significant issue facing LGBT prisoners internationally (UNODC, 2009). We note again that male and female prisons pose differing risks for sexual and gender minorities, as well as being cognizant of the fact that internationally, transgender prisoners, particularly women, face disproportionately high instances and severity of violence and discrimination, both in and out of prison (eg. SRLP, 2007; Erni, 2012; Tarzwell, 2006).

We then consider questions of sexual health, and safety within relationships, for LGBT prisoners. International literature consistently shows that sexual and intimate relationships occur within prisons even if there are highly divergent assessments of their prevalence and frequency (Butler et al, 2010; Stevens, 2015). Finally, we argue that attention needs to be paid to issues of broader social isolation, noting that international literature highlights that LGBT prisoners may face particular challenges on leaving prison as they experience higher levels of social isolation than other groups (eg Robinson, 2011).

## 4. LGBT People in Prison: A Hidden Population

...there would be very few prisoners over the years who would have been open about it, I mean, over the thousands, hundreds of thousands of people that I would have seen over the years, you know, you could say a handful of openly gay men within the prison. (CJ01)

...it's hard to do it in here [come out] because people in here will prey on your weakness, they will prey on you, if you're gay or bisexual, they'll use that, they think that you are a, as they say, they think you are a poof, and, and you can't handle yourself, and they try to prey on you ... (Damien, bisexual male)

### Introduction

This section of the report discusses research on the prevalence of LGBT people in prison, and documents distinct issues around the visibility of LGBT people in male and female prisons. Specific concerns in respect of transgender prisoners are also highlighted, before being expanded upon in the following section. We note that there is no information available on the numbers of LGBT people in prison in Ireland and in many respects LGBT prisoners constitute an 'invisible' population. LGBT prisoners spoke about the need to have access to LGBT specific culture and supports. While separate issues arise in male and female prisons, there is some evidence that wider social change provides an opportunity to develop policy and practice in this area.

### Numbers of LGBT People in Prison

The Irish Prison Service does not collect information on the sexual orientation or gender identity of prisoners. There is therefore no information on the number of LGBT people within Irish prisons. Internationally, only some jurisdictions have, in recent years, begun attempts to measure numbers of LGBT prisoners. In the US information is gathered in the context of attempts to address sexual violence in prisons<sup>7</sup>. England and Wales began monitoring prisoner sexual orientation in 2011 (Dunn, 2013). However, monitoring of sexual orientation is a difficult task, with monitoring systems criticised for being 'crude' and 'ineffective' (Dunn, 2013; Robinson, 2011).

The first difficulty is in establishing clear and agreed definitions, as sexual orientation, unlike race or gender, is not a category that is frequently or consistently used in official surveys. Individuals' sexual practices and identity may also diverge; for instance, people may engage or have engaged in same-sex activity and still consider themselves heterosexual. Additionally, prisoners may not wish to publicly or officially identify as LGBT because they fear reprisals and violence in prison, or because they fear the withdrawal of social, family and community support. Such a consideration may be particularly pertinent to ethnic or racial minority prisoners (Robinson, 2011). Finally, some prisoners simply may not wish to be publicly 'out' about their sexual identity, or may not wish to reveal private information unnecessarily. On this question, some researchers have argued that monitoring regimes lack respect for prisoners' right to privacy around intimate and personal information (Robinson, 2011).

Despite these difficulties, there is a body of international literature that suggests LGBT people are at risk of disproportionate contact with, and over-representation within, the criminal justice system (Sullivan, 1996; Himmelstein and Bruckner, 2010). Reasons put forward for this include that experiences of discrimination and harassment among LGBT young people may lead to higher levels of engagement in risky and illicit behaviours, resulting in increased likelihood of contact with

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<sup>7</sup> The National Inmate Survey is conducted as part of the Bureau of Justice Statistics National Prison Rape Statistics Programme, and it includes questions on sexual orientation (BJS, 2013).

criminal justice authorities (Sullivan, 1996; Rosario et al, 1997; Rosario et al, 2012; Snapp et al, 2015). Other research has highlighted the differential treatment of LGBT people, and transgender individuals particularly, by criminal justice agencies, including the youth justice system (Curtin, 2002; Himmelstein and Bruckner) and the police (Bernstein and Kostelac, 2002; Williams and Robinson, 2004, Radford et al, 2006; Dwyer, 2011).

The few existing studies that seek to measure the prevalence of LGBT people in prison have provided mixed results, although all indicate that LGBT people are incarcerated at rates at least similar to their proportion of the total population. International research is far more uniform in finding that transgender individuals are over-represented in incarcerated populations (Mann, 2006; Brown and McDuffie, 2009). Reasons for this may include the more extreme social marginalisation and discrimination experienced by transgender people (Grant et al, 2011). As with LGB individuals this discrimination can result in higher engagement in risky and illicit behaviours or in differential treatment by criminal justice agencies. Some research also highlights that workplace discrimination or inability to access appropriate medical treatments may cause transgender individuals to engage more heavily in the shadow or illicit economy (SRLP, 2007; Lamble, 2012).

What is clear from the research literature internationally is that LGBT people are present in prisons in at least comparable ratios to the general population, and may indeed be over-represented. The lack of information about gay and bisexual prisoners is not, however, simply a product of institutional indifference or neglect (Lamble, 2012; Marksamer and Tobin, 2013). There is a range of reasons that sexually diverse prisoners remain a hidden population, and these are elaborated in more detail below.

### **Men's Prisons: Masculinity, Homophobia and Invisibility**

Historically, in Ireland and elsewhere, entrenched and systemic homophobia and transphobia has led many LGBT people to live 'closeted' lives. The homophobia that exists both in prisons and wider society means that even LGBT prisoners who would otherwise choose to be 'out' may not feel safe to be open about their identity or only reveal this information to select groups of people. LGBT individuals may be wary both of negative repercussions in prison, detailed below, and of their sexuality being revealed to friends and family on the outside without their consent, and of the negative consequences which may follow from such involuntary 'outing' (Robinson, 2011).

There is substantial evidence that homophobia is amplified in men's prisons as a result of a 'corrections culture' of hyper-masculinity and a strict hierarchy, often maintained through violence. Several attitudinal studies in different jurisdictions have found that male prisoners are likely to express higher levels of disapproval of homosexual relationships than those found in the general community (Butler et al, 2010; UNODC, 2009). It is important to note that this hyper-masculine and homophobic culture has also been reported to exist among staff in many prisons (Butler et al, 2010; Jewkes, 2005; Richters, et al 2012). This culture results in the degradation and devaluing of gay, bisexual, transgender and other prisoners who are not deemed 'sufficiently masculine' (Davis et al, 2010; Dunn, 2013).

This culture of hyper-masculinity, and the corresponding stigmatisation of gay, bisexual and transgender prisoners, was referenced by Irish prisoners in our study:

I mean I have to be honest about like when I was in prison in relation to LGBT, if you were openly gay or you were camp or it was suspected that you were gay you were avoided and your place was to keep your mouth shut and your head down, because people are homophobic and transphobic and every other phobic in prison and they are not going to interact with you, and if they do it'll be on a very, very surface level. (Rachel, transgender woman)



...being gay in prison is seen as a weakness, and people prey [on] that weakness, because it singles somebody out. And that makes them a target for verbal abuse and physical abuse and emotional abuse and psychological abuse, the whole lot right, so that is the major challenge... (Brendan, Focus Group Participant)

It is important to emphasise that this culture and the hierarchy that accompanies it, not only affects GBT prisoners, but also those who are perceived to be GBT. In interviews for this study respondents noted that 'any difference' made a person a potential target for victimisation:

Any difference, like we said, any difference is seen as a weakness ... if they see themselves as different, you're in trouble...Losing your hair, drugs, taking drugs or whatever, you do have to cope with it, and, you know what I mean and there is a huge problem in the jail with that. You've got all types of people who can't be who they are, and they won't want to be or, be true to themselves because they would have to hold themselves away from everybody else, so they have to be straight, it's a fucking minefield... (Eric, Focus Group Participant)

The imperative to 'act straight' and to keep information private as a means of self-protection is echoed in other accounts:

...you keep your mouth shut and your head down... (Rachel, transgender woman)

Oh you make a choice not to [be out], to avoid hassle. (Patrick, gay man)

I suppose the key things that I've heard about are areas of bullying, fear on behalf of gay prisoners to be able to feel that they can't tell anybody because of the perceived consequences of being attacked. (CJ02)

This understandable response by LGBT prisoners is part of a 'cycle of invisibility' (Dunn, 2013) that results in a lack of awareness of the existence and needs of LGBT prisoners. Our interviews showed that prisoners were well aware of this cycle and its consequences:

... I don't think there is anything there for gay people because they don't know who is gay, they don't like, they need someone like, if, if another 30 people stands up and says yeah we are gay and bisexual, and they talk about it, well then you will have to bring in issues there to protect them, but because that's not there, there is no protection... (Damien, bisexual man)

Basically gay prisoners are not helped in prison when they have issues, do you understand that? They're not heard... if they want us to engage, they have to give us some kind of protection. (Patrick, gay man)

International literature indicates that in such an environment there is a tendency for prison bureaucracies to see homosexuality and transgenderism themselves as disruptive and problematic, rather than the homophobia and transphobia that marginalises gay, bisexual and transgender prisoners (Dunn, 2013; PRI & APT, 2013). Needless to say, such an attitude, or the perception of such an attitude by prisoners, further contributes to the cycle of invisibility and the resulting marginalisation of non-heterosexual prisoners.

### **Lesbian and Bisexual Women in Prison**

Homophobia and transphobia, and their violent expression, are generally seen to be less severe in women's prisons with literature suggesting that non-heterosexual behaviours and identities are both less hidden and less stigmatised than in men's prisons (Hensley, 2000; Blackburn et al, 2011).



However, homophobia and transphobia remain serious problems. The United Nations has declared that lesbian, bisexual and transgender women are some of the groups in women's prisons most at risk of discrimination, abuse, and physical and sexual violence, both at the hands of other prisoners and prison authorities (UNODC, 2009).

In the interviews conducted for the purpose of this study, some of these findings are borne out. It was evident that within the Irish prison context non-heterosexual female prisoners face less stigma regarding their sexuality, although as Miriam's account emphasises, an undercurrent of stigma remains:

So you can be open to a degree and of course a lot of women are inclined to make fun and jokes about your sexuality. I'm a lesbian, I get all fun and jokes, but when they're in their cell and they're on their own, you know, I'm sure like they would feel quite awkward about their situ-, I do, I would feel quite awkward a lot of the time, and I'd have to man it up, brave it up, you know what I mean? (Miriam, lesbian)

As will be discussed in later chapters, increased visibility can result in other difficulties for women prisoners. These differences are particularly important as discussions of LGBT prisoners internationally tend to focus primarily on experiences of prisoners in male prisons. Our research confirms that women's prisons offer a distinct environment.

### **Transgender Prisoners and Hyper-Visibility**

An important caveat on the discussion of invisibility of LGB populations is the different experience and position of transgender individuals. While at least some transgender individuals also choose to hide their identity in prison, even if this means not living in their true gender identity, many transgender people do not have this option (Tarzwell, 2006; Erni, 2012; SRLP, 2009). The hyper-visibility of at least some transgender people, particularly those in men's prisons, increases the risk of harassment and violence, as will be detailed in the following sections.

### **Same-Sex Behaviour and Identity in Prisons**

A final complication for assessing the size of the lesbian, gay and bisexual prison population is that individuals may engage in same-sex activity while still identifying as heterosexual. Several researchers note that in a single-sex environment, such as prison, individuals may engage in intimate, romantic or sexual relations with others of the same sex for a variety of reasons (Robinson, 2011; Stevens, 2015). Again, there is limited research internationally, and in the Irish context particularly, on the extent of same-sex activity among prisoners who identify as heterosexual. As with lesbian, gay and bisexual identity, however, there is evidence that such behaviour is more open and accepted in women's prisons, and subject to greater taboo and stigmatisation in men's (Robinson, 2011). This was borne out in our research where staff and prisoners in women's prisons used the term 'jail gay' to describe this phenomenon:

So 'jail gay' to me means women that are lonely, frightened and scared, and find comfort for the soul, and often physical comfort, in another woman, but are not necessarily gay. When they go back outside they will again pursue a relationship with a man, they wouldn't pursue a relationship with a woman... (Miriam, lesbian)

While this report is focused primarily on prisoners who identify as LGBT, some of the discussions and recommendations will also be of relevance to prisoners who engage in intimate relationships with others of the same sex in prison while still identifying as heterosexual.

## Visibility and LGBT Culture in Prison

There was an overall consensus among the prisoners that we interviewed that more could be done to make LGBT culture more accessible and visible within prisons. At the most basic level prisoners noted the need to have access to reading material and resources, including gay magazines and newsletters, to enable them to feel a connection with the world outside the prison:

...like in regards to kind of articles, like magazines and stuff, from the outside we can't get, they won't allow them. I've asked for, to try and get a copy of the Gay Times, I've asked in the shop, you know, because we get to order through the shop, our tuck shop here like, and I've put in for it but they've, I think they've refused it because they don't like the idea of it or something. But there's never anything bad in them, you know, it's more for kind of information for me... (Derek, gay man)

...when you have these mags you keep up with what's going on outside in the world... where when they stop when you come into prison and that's gone, you don't know what's going on, so you're sort of getting lost in the system. (Damien, bisexual man)

Both male and female prisoners also noted the need to have someone to talk to about relationships and sexuality in a non-judgemental way:

Basically someone to talk to, you know, like kind of, that might be able to give me a bit of advice and help me along the way, you know that kind of, maybe get some people who like to write to prisoners, you know what I mean? Like on the outside maybe, you know, who would like to say get more involved with prisons, you know, as I say to kind of see their kind of experience in prison like, because a lot of people don't realise what it's like in prison, because you lose your freedom, you're locked up, what, eighteen hours a day. It gets so kind of, you've no contact really on the outside apart from your visits, your phone call, two phone calls a day if you're working, if you're enhanced. So yeah it's not easy for a person, you know, for a gay, like, a gay man in prison, I think it's not easy because I feel that they lack the facilities there. (Derek, gay man)

There is an over-, there is an abundance of, actually ... an abundance of counselling. There is not so much bisexual, gay, lesbian counselling. I feel that's definitely something that girls could benefit from, most definitely. (Miriam, lesbian)

The sense of isolation that prison engenders and the need to stay connected with the outside world was highlighted in a number of accounts. These concerns also suggest the importance of specific consideration to the needs of LGBT prisoners in terms of sentencing plans and resettlement. Our interviews with LGBT organisations demonstrated a willingness to work with the IPS to introduce LGBT visibility into prisons and to increase opportunities for connection between LGBT prisoners and outside communities.

## Inside Out – LGBT Peer Support

This report focuses on the rights, needs and experiences of LGBT prisoners, but it is also important to note that issues of homophobia, transphobia and the wider culture of heteronormativity also affect LGBT staff. We spoke to individual LGBT staff members in the course of this research and they outlined that they too had experiences of homophobia, including being the targets of abuse by prisoners:

A lot of name calling...in the last week or two there is one particular prisoner who ... called me the most horrendous names. Like I just brush it off, but in this day and age it's unacceptable. And it's constant, and it's if they don't get their way – 'you're a big dyke, you're this, you're that, you're the other.' (CJ07)

The Irish Prison Service joined the GLEN Diversity Champions Programme and established the 'Inside Out' staff peer support group in June 2013. The Diversity Champions Programme is aimed at assisting Irish employers towards the inclusion of lesbian, gay, bisexual and transgender employees. Prison staff reflected very positively on the establishment of a LGBT peer support group and its effect on wider culture:

...in fairness our, the staff here who ...belong... to the peer group have had ... to do their own battle in that area, in regards to comments and so on, and they have had to do their own battle and education, you know, they've kind of educated the staff to some respect, so, so from that point of view it kind of feeds into [the wider culture]. (CJ01)

### **Conclusion: Prisons, Equality and Social Change**

...the prison I think can be a microcosm of society, it does change at times, like it's very stagnant, in ways and attitudes ... and I have seen that like I said with the younger guys, who are being more open to acceptance of everything and anything through education and being involved in society... (Brendan, Focus Group Participant)

It is important to note that prisons are not completely isolated from broader society or immune to social change, and there is some indication in the literature internationally that as social attitudes towards LGBT people become more accepting these changes filter slowly into prisons (Richters et al, 2012). This change was also highlighted by prisoners interviewed for this project who reflected on generational differences in attitudes towards LGBT people:

There is still, I think there is still this institutional stigma on being, of being different, and when I say different I mean sexually different, and yeah, but ...younger prisoners being more open I think that's a sign of the society on the outside, the change there is seeping into the prisons but ... the older prisoners, from what, 25 onwards the stigma, it is a stigma as far as they are concerned, you are a deviant, you are different, you are wrong, you are not right... (Brendan, Focus Group Participant)

They also highlighted the significance of social changes such as the recently passed referendum on gay marriage in encouraging discussion within the prison:

Yeah, but I think, I think the fact that the thing with the same-sex referendum where conversations were in prison about it and it wasn't all negative. We were sitting in the classrooms even with the teacher, and there'd be a full conversation. And it was the general consensus that it's about time for it, we're in the twenty-first century...

They can sit around and talk about it gay, lesbian, bisexual or whatever, and it's not all negative whereas it would have been years ago, do you know what I mean? (Eric, Focus Group Participant).

Such shifts are significant and provide ways of thinking of prisons not as static institutions but as social microcosms that are permeable to broader social developments and changes. There is reason to hope that the social and legislative shifts occurring in wider Irish society will help to challenge prison cultural norms of homophobia and the invisibility of LGBT prisoners. It is important to underscore that fostering such changes is likely to require developing policy and practice in tandem with LGBT organisations to proactively address this area.

## 5. Transgender Prisoners

### Research on Transgender Prisoners

There has been limited research on the experiences of transgender prisoners. While most existing literature is concentrated in the United States, there are small amounts of emerging research in the United Kingdom (e.g. Lambie, 2012; Disspain et al, 2015), Australia (Blight, 2000; Samiec, 2009) and Canada (Mann, 2006). There is no existing research in the Irish context, but it is reasonable to assume that transgender prisoners here face similar barriers to those experienced elsewhere. The existing research consistently notes that transgender prisoners tend to experience high levels of social marginality and the co-occurrence of multiple needs including substance misuse, mental health conditions, and higher incidences of prior experiences of abuse than those in the general prison population (Sexton et al, 2010).

Research has also highlighted the particular challenges faced by transgender people within prisons. Transgender individuals are not easily accommodated within the strict binary gender structure of most prisons, and there are recurrent concerns about prison placement policies, appropriate access to medical treatment, the right to gender expression, and the use of gender-specific policies such as body searches (Mann, 2006; Tarzwell, 2006; Jones and Brookes, 2013). Transgender prisoners are also at particular risk of assault and victimization as a result of the culture of violence and hyper-masculinity that exists in many male prisons (SRLP, 2007; Sexton et al, 2010; Beck et al, 2013).

Several of the issues discussed in this section, such as placement, privacy and searches, also relate to the needs and experiences of intersex prisoners. While we did not speak to any intersex individuals in the course of our research we wish to note that they face many similar challenges to transgender individuals in the context of incarceration.

### Policy – Placement

In Ireland there are no specific policies regarding the accommodation or treatment of transgender prisoners. The most common practice currently is for transgender prisoners to be placed in prisons based on their genitalia or assigned sex at birth. In interviews we were told that while not a common occurrence, transgender people have on occasion been remanded or sentenced to custody:

... I have a recollection of at least one incident, ... many years ago... The organisation goes on what's on a person's birth cert, so if on the birth cert they are a man they go into a male prison. If they are on the birth cert a woman they going to the women's prison and that's where we go, and unfortunately if it is someone ... who's going through the process [gender transition] it's a, you know, it's difficult. (CJ01)

I do know of two transgenders [prisoners] who were committed to custody and it's probably the quickest route to Temporary Release. It's a bit of an Irish solution to an Irish problem. There is no policy and it is something that needs to be addressed. (CJ05)

Genitalia-based placement is inherently discriminatory in that it refuses to recognise gender identity, and thus violates human rights responsibilities. Inappropriate placement may also place transgender people at significant risk of harm (Peek, 2004; UNODC, 2009; Smith et al, 2013). This issue is particularly acute for transgender women placed in male prisons (SLRP, 2007).

According to current legislation, it is the courts through issuing a warrant who determine the placement of a prisoner in a male or female facility. We were told that the prison service has no authority to transfer prisoners between the two and that legislative change would be required to alter this situation:

A warrant has six points in it, it's a court document. For want of a better term it is actually a delivery docket and the description of goods on that delivery docket cannot be changed by somebody who is receiving the goods. So therefore the Governor doesn't have a choice. And if you're committed to custody in a male institution, well that's it...or a female institution, that's it. There is no possibility in law currently for changing that. There's also I mean if you go back to transfers between prisons, it's under the *1914 Administration of Prisons Act*, and ... effectively that's to transfer the warrant between addressees so moved from the Governor of Mountjoy to the Governor of Midlands for example, and then the person follows the warrant. But there is no possibility according to that for transferring somebody from a male to a female prison... (CJ05)

### International Models of Practice

Several jurisdictions have moved away from genitalia-based placement. The National Offender Management Service (NOMS) in England and Wales have developed guidance on 'The Care and Management of Transsexual Prisoners' (NOMS, 2011). This states that prisoners should ordinarily be accommodated according to their gender as recognized by UK law, but where 'there are issues to be resolved' a multi-disciplinary case conference should be convened to determine the most appropriate accommodation. The case conference should consider where the prisoner would feel more comfortably housed, risks to the individual prisoner and to the wider prison population and whether the prisoner would be likely to spend an extended period in segregation if located within a particular estate (NOMS, 2011). Jurisdictions such as Australia and Canada have also moved towards individual placement procedures based primarily on transgender and intersex individuals' preference and expressed gender identity, as well as considerations of safety. This is in line with the Yogyakarta Principles which state that, as far as possible, prisoners should be involved in decisions 'regarding the place of detention appropriate to their sexual orientation and gender identity' (2007: para 9c). Such an assessment could result, for instance, in placing a Female to Male (FTM) individual in a women's rather than a men's prison due to safety considerations and wishes of the prisoner.

The Scottish Prison Service (SPS, 2014) applies the principle of 'social gender' in their accommodation policy, but, importantly, specifies that transgender people in custody *must* ordinarily be placed in single cell accommodation. The need for single-cell accommodation is highlighted in Rachel's account of being placed in a shared cell in a male prison:

I was put into a shared cell... of course there was a lot of people in there who knew me, and of course everyone knew that I was effeminate et cetera, so of course the word went around like wildfire and I'd be queuing up to see the governor and there'd be maybe six blokes leaning on a railing and they're going 'would you, would you fuck him? What do you think of that bit of fluff? You'd never know it was a fucking fella would you?' and all this. So I mean hearing all of this right? And this kid [cell-mate] was as paranoid as fuck at having me in the cell ...because he's thinking people are going to think that he's having sex with me or something, and as a result he was a real bully. (Rachel, transgender woman)

The Scottish guidance further emphasizes the importance of safeguarding the safety, dignity and privacy of the person in custody in respect of accommodation. These principles, and the principle of individually assessed placement, we believe, could represent best practice in the Irish context.

### Expression of Gender Identity

In institutions based around binary gender codes it is common for institutional practices to limit or erase aspects of transgender life and deny opportunities for gender expression (SRLP, 2007; Lamble, 2012). Rachel recounts this issue in respect of her experience as a transgender woman in male prisons:

Now I had to go into prison and un-work sort of eight years of living as female, and try and develop a male persona again, to the point where I wasn't going to be bullied. (Rachel, transgender woman)

...it was never tolerable because it was alien to me. Like I said I had lived, presented and been accepted as female, as I said, for eight years, and to suddenly have to go back to playing parts where you're actually sort of, it's going to come across as a he. Because I don't feel he, nobody ever gets that, a masculine vibe off me. (Rachel, transgender woman)

It is clear that alongside prison placement policies, consideration needs also to be given to opportunities for the expression of a person's gender identity. At a basic level this means gender appropriate clothing, toiletries and other gender-specific materials (NOMS, 2011; SPS, 2014). The right to gender expression needs to be considered alongside that of placement and to be respected even where an individual's expressed gender does not match the institutional remit of the institution – for instance, a female to male transgender individual in a women's prison.

### **Access to Medical Treatment**

A further area of concern for transgender prisoners is medical treatment. Prisons have a duty to supply appropriate medical care for prisoners that is at least equal to the level of care they would receive in the community. Gender Identity Disorder is recognised as a medical condition and even those who dispute the 'psychiatrisation' of transgender identity recognise that risks of mental illness, drug and alcohol abuse, self-harm and suicide are greatly increased when individuals are denied access to treatments that enable them to more closely embody their gender identity (SRLP, 2007). The right to access treatment has been upheld in court cases in jurisdictions such as Canada (*Kavanagh v A. G. of Canada*) and the USA (*Kosilek v Maloney; Mann 2006*). However, in practice many transgender individuals face difficulties, delays or denial of appropriate treatment and even the withholding of medications as a form of disciplinary sanction (SRLP, 2007). Such an approach treats gender-related treatment as a luxury or a privilege rather than a right and a necessity.

Even jurisdictions which provide medication have been documented to take a 'freeze frame' approach, where transgender individuals are unable to commence or increase treatment beyond that which they were able to access prior to incarceration (Jones and Brookes, 2013). This ignores the difficulties that many transgender individuals face in accessing treatment in the community and the links that exist between lack of access to treatment, transgender identity and self-harm, poverty and criminalised behaviours (SRLP, 2007). Further, gender transition for many individuals is a process, not a static state, and to deny appropriate increases or changes in medication does not equate to adequate care or equal standards of care in the community.

Both the guidance issued by the National Offender Management Service in England and Wales and the Scottish Prison Service outline the importance of adequate access to medical treatment for transgender prisoners. In the Irish context we were told that despite the absence of a specific policy governing this area, there would be no issue regarding access to medical treatment for a person who was already accessing services in the community:

...the bottom line is if a person came in today...and they were going through the process [gender transition] and they were under a particular care and so on, I mean that, outside in one of the hospitals or whatever, that would absolutely continue... (CJ01)

The absence of a clear policy, however, may mean that practice is ad-hoc. It is also less clear what processes exist for a person who may wish to begin to access such services while in custody.



## Privacy – Searches and Showers

Transgender and intersex individuals have the right to privacy and dignity, both in relation to staff and other prisoners. In jurisdictions that operate genitalia-based placement policies, transgender prisoners are frequently subject to invasive and unnecessary body searches that, in their worst manifestations, may be to satisfy staff curiosity or for other illegitimate purposes (Davis et al, 2010; Tarzwell, 2006; SRLP, 2013). Even where searches are necessary, searching by gender-inappropriate staff may be experienced as a form of violation or sexual violence by prisoners.

In Ireland the *Prison Rules (2007)* set out the procedures governing searches of prisoners on reception into prison and where there are considered to be ‘reasonable grounds’ to carry out a search while they are in custody. These state:

A search under this rule shall not be undertaken by a prison officer who is not of the same gender as the prisoner being searched. (Part 2, Section 6, 5).

Similar provisions in relation to gender apply to the presence of a member of the Garda Síochána at a search<sup>8</sup>. International best practice identifies that where transgender prisoners are concerned, the wishes of the person being searched should be given primacy (SRLP, 2007). For example the Scottish Prison Service Guidance outlines that body searches should be conducted in accordance with the expressed gender of the transgender prisoner. Where a person’s gender is unclear, the person should be asked by which gender they wish to be searched (SPS, 2014).

Transgender and intersex individuals may also experience violence and voyeurism in the context of prison showers, particularly if their bodies display primary or secondary sex characteristics that draw unwanted attention. This may require individual or private shower facilities. This is of particular concern in the Irish context where 45% of prisoners are still required to use the toilet in the presence of another (IPS, 2015b). Such provisions need to be considered as part of the safety management for all transgender and intersex prisoners.

## Rehabilitative Purpose

Much of the research literature on transgender prisoners has focused on the practicalities of accommodation and safety within prisons. A limited amount of research has also focused on wider issues regarding the experiences of custody and the adequacy of rehabilitative programmes both within prison (Disspain et al, 2015) and in the community (Poole et al, 2002). In a small-scale study of a transgender prisoner’s experience of a prison Therapeutic Community in the United Kingdom, Disspain et al (2015:17) note the following:

...engagement in offending behaviour treatment is mediated by the extent to which the treatment approach is responsive to the needs of the transgender prisoner. Specifically engagement within treatment was enhanced where the treatment environment and those involved in treatment were able to be supportive, knowledgeable and engage with the individual about their gender identity and transition process.

The *Strategic Review* (DoJE, 2014) notes the importance of tailoring rehabilitation and reintegration supports to promote desistance from offending. It is important therefore that considerations of rehabilitation and post-release opportunities and conditions be part of all policies developed around transgender prisoners and that transgender organizations be involved in developing these practices and policies.

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<sup>8</sup> Prison Rules (2007) Part 2, Section 6, 8.

## Conclusion

Respondents in our research noted that the issues regarding the placement, safety and experiences of transgender prisoners arise from time to time in the Irish prison context. However, there is currently no policy in place regarding the treatment and accommodation of transgender prisoners and there is clearly a need to address this. The recent passage of the *Gender Recognition Act (2015)* adds further impetus to this area. The Act provides a process for transgender people to attain full legal recognition of their preferred gender and it allows for a person to be issued with a new birth certificate to reflect this. It is clear that the Irish Prison Service needs to consider the implications of this legislation in relation to the needs, rights and experiences of transgender prisoners, as well as their equality duties.

## 6. The Consequences of Heterosexism, Homophobia and Transphobia: Experiences of Discrimination, Harassment and Violence

### Introduction

This section of the report draws on international literature to note that LGBT prisoners are particularly at risk of experiences of discrimination, violence and sexual coercion. This literature is considered in light of findings in the Irish context. Discrimination against LGBT people occurs along a continuum within heterosexist environments, that is, environments that presume or act to enforce heterosexuality and certain, rigidly-defined gendered behaviours. Within these environments, discrimination ranges from a silencing or lack of recognition of minority sexuality and gender identity to more overt behaviours including verbal and physical abuse.

Some countries have introduced 'hate crime' legislation, which considers certain offences (such as assault) to be 'aggravated' when motivated by hostility, prejudice bias or hatred towards the victim on the basis of personal characteristics (perceived or otherwise). This includes but is not limited to characteristics such as gender, race, religion and sexual orientation. No such provision exists in the Republic of Ireland and this has been the subject of some critique (see Schweppe et al, 2014). The *General Scheme of the Criminal Justice (Victims of Crime) Bill 2015* makes no specific reference to people in secure settings (IPRT, 2015), and this is an area that requires further consideration. The need to develop policy and practice responses in this area is highlighted.

### Discrimination

International research indicates that LGBT prisoners can face a variety of forms of institutional discrimination. According to the UNODC (2009) LGBT prisoners, in common with other minority prison populations, frequently face placement in substandard housing or inferior conditions, or are discriminated against in terms of popular activities or valued work duties. While this research did not reveal any evidence that this happens in Ireland, international experience points to numerous examples, in both men's and women's prisons, of LGBT, gender-nonconforming and intersex inmates being placed in segregated housing, often with pejorative labels such as 'fairy wings' or 'butch wings' (PRI & APT, 2013; Special Rapporteur on Torture, 2001). These wings are different to those designed explicitly for protection, discussed below, but represent the deliberate segregation of LGBT prisoners for discriminatory purposes.



There are also specific forms of discrimination that relate directly to sexuality and gender identity in prison. Several studies have found that prisoners who are perceived to be homosexual or transgender are more likely to be penalised or penalised disproportionately for expressions of physical affection, which may be automatically coded as 'sexual' by staff (Stevens, 2015; Dunn, 2013). There is also a broader heterosexual bias to reading and other materials in many prisons. Gay oriented magazines and other materials are often not stocked or prisoners are required to specifically and publically request them, forcing them to out themselves (Dunn, 2013). These practices also contribute to the invisibility of LGBT prisoners within prisons, sending a message that homosexual identities and activities are deviant and taboo.

Our study did not find complaints of direct discrimination in the form of inferior housing or work duties from LGBT prisoners. This is not to say that such discrimination does not occur or does not require monitoring. However, respondents did note the bias in magazine and reading materials, suggesting that such materials should be stocked and freely available wherever the heterosexual equivalents are.

### **Harassment, Abuse and Physical Violence**

There is a consensus internationally across the literature that risk of harassment, abuse and violence is a key issue for LGBT prisoners (UNODC, 2009; PRI & APT, 2013; Special Rapporteur on Torture, 2001). This is particularly an issue in male prisons (UNODC, 2009; Richters et al, 2012; SRLP, 2007). Research from the UK confirms that LGBT prisoners face pervasive and 'routine' physical victimization (Edgar et al, 2003; Stevens, 2015). This harassment and violence does not always come from other prisoners but may also be facilitated by or even carried out by prison staff (PRI & APT, 2013). In interviews with prisoners for this study we heard several accounts of verbal harassment and threats of physical violence against gay and bisexual prisoners. Consistent with international research such experiences were more commonly reported among gay and bisexual men and transgender prisoners, than among lesbian and bisexual women:

I put up with two years of horrific abuse while I was locked in my cell... this guy ... he was outside... during the day all day ...and while I was locked in my cell every day he was outside my door, 'you dirty steamer, you filthy faggot' and 'you take it up the ass', all of this stuff. (Patrick, gay man)

I'd be down playing snooker and people would be like, do you like playing with balls? ... But like an awful lot of shit you come against, but I, I knew how to play, play it off like, I just never listened to them... (Damien, bisexual man)

Women reported some experiences of verbal harassment on the basis of their sexuality, but these tended to be less directly threatening:

Some people wouldn't be nice. Well they never say anything to my face or my girlfriend's face, but I hear them like being bad to some people over it. It's not nice like at all, but not, to me personally no, people weren't like nasty ... but I've seen it happening to other people. (Evelyn, bisexual woman)

The consequences of homophobic and transphobic harassment can be deeply felt, particularly in an institutional environment where there is little opportunity for escape. Such instances need to be recognised as abusive in themselves, and acts of violence that include homophobic or transphobic abuse need to be recognised as such in order both to provide support to those victimised, and to increase awareness of LGBT issues in prison.

Putting up a front, threatening, or even engaging in violence, in order to avoid being a victim of abuse, was seen as something necessary within the prison environment and in male prisons in particular:

I somehow had managed to convey a certain subliminal message to most of the people in the prison that like yeah I might look different and I might be this and that, but I'll cut your fucking throat in two minutes flat ...but it's a really harsh way to have to live your life, but, you know, you were on tenterhooks in prison, you have to have eyes in the back of your head. You don't know where the blade is coming from, you don't know who's saying what, and you don't know whose toes you've stepped on out here [outside of prison]. (Rachel, transgender woman)

Damien, a bisexual man, described how the threat of abuse and violence led him, reluctantly, to 'tool up' (i.e. arm himself with a weapon). In another instance Patrick describes retaliating to an assault by the prisoner who had been harassing him:

...it was worse it got, eventually I was in the gym and he came up and he called me a dirty steamer and he spat in my face and he swung for me and I defended myself. He came out the worst of it. (Patrick, gay male)

A further issue revealed in interviews with LGBT prisoners is the risk of self-harm and suicidality that experiences of harassment and abuse engender. Research on LGBT mental health and wellbeing in Ireland (Mayock et al, 2009) has used the concept of 'minority stress' (Meyer, 2003) to describe the effects of living with ongoing stigmatization, harassment and violence. Damien's account provides insight into how this may be compounded within a prison environment:

...people by just saying you are a queer, that's a violent remark at someone that is a queer you know, you're making that person who is, who is, who is gay or bisexual, you are making him feel like... Me, I'm so used to it now where I don't feel anything off it I just ignore it but ... when I was feeling down, I felt like hanging meself, I felt like killing meself, I felt like topping meself. (Damien, bisexual man)

## Sexual Violence

There has been minimal research on sexual abuse in prison and the extent of the problem is not known. Sexual violence in prison is hidden and under-reported. While studies have been conducted in different jurisdictions there is reason to be cautious of transferring results as rates of sexual violence may vary greatly between different prison systems due to factors such as crowding, levels of surveillance and distinct prison cultures (Yap et al, 2011). This is particularly the case with data from the US, as several studies have acknowledged that the problem of sexual violence within the US prison system is particularly acute (National Prison Rape Elimination Commission Report, 2009; Beck et al, 2013). However, this research does suggest that while prisoners in men's prisons are primarily at risk from other prisoners, in women's prisons prison staff are the main perpetrators of sexual violence (National Prison Rape Elimination Commission Report, 2009).

The most reliable data that exists in the UK suggests that approximately 1% of prisoners experience rape and approximately 5% experience sexual coercion or other forms of sexual victimization (Banbury, 2004; Stevens, 2015). British research has also found that, when interviewed, three quarters of prisoners thought that sexual assaults either did not occur at all or were very rare (Edgar et al, 2003; Stevens 2015). Despite this recent research suggests that rates of sexual violence in British prisons may be rising as a result of increasing prison numbers and overcrowding (Stevens, 2015).

Irrespective of the exact numbers, research consistently shows that LGBT prisoners are amongst those with the highest rates of sexual victimisation (Stevens, 2015; Steels and Goulding, 2009;

Struckman-Johnson and Struckman-Johnson, 2006; Davis et al, 2010). For instance, research in the US has shown that lesbian, gay and bisexual prisoners are approximately three times as likely as heterosexual prisoners to experience sexual victimization while incarcerated (Beck et al, 2013). The population most at risk are transgender prisoners, and particularly transgender women (Jones and Brookes, 2013). As a result, the UN considers protection from rape and sexual assault to be the main need of LGBT prisoners (UNODC, 2009). It is also important to note that while most research focuses on the numbers of people rather than incidents, the issue of multiple victimisation, is also an important consideration (Stevens, 2015).

An important complication when discussing sexual violence in prisons is that the prison environment itself makes it difficult to delineate between consensual and coercive sex (Fleisher and Krienert, 2006). Under the Prison Rape Elimination Act the USA has defined all sexual contact between staff and prisoners as coercive, stating that the 'the power imbalance between staff and prisoners vitiates the possibility of meaningful consent' (NPREC, 2009). A number of other jurisdictions have or are considering similar codification.

Issues of consent between prisoners are more complex due to the range of factors that vitiate the possibility for meaningful consent in prison environments. However, these factors may equally lead prisoners to seek comfort, intimacy and safety in sexual relationships. Research from other jurisdictions shows that trading sex for contraband or to settle debts incurred to other prisoners is common, and in a situation where prisoners have little alternate recourse to money or goods this can be seen as a situation of limited or restricted consent (Stevens, 2015). The violent and coercive environment in prison means that vulnerable prisoners may consent to having sexual relations with an individual in exchange for protection, or consent to sexual encounters because they fear retaliatory violence if they do not (Peek, 2004; Banbury, 2004). For transgender women in men's prisons particularly, some authors argue that sex is always coercive on some level because of the extreme threat of sexual and other forms of violence that transgender women in these situations face (Peek, 2004).

There has been a very limited amount of research on coercive sex within Irish prisons. The SAVI Report on Sexual Abuse and Violence in Ireland (McGee et al, 2004) conducted some research in relation to the incidence of sexual violence in Irish prisons by exploring this issue from the perspective of prison personnel. This study reported that while there was a high prevalence of previous experiences of sexual abuse among the prison population, reported incidences of sexual abuse within prison were 'quite rare'. However, the barriers to disclosure were also noted. Reports from oversight bodies and legal cases provide some indication that sexual assaults occur within Irish prisons. The 2011 country report of the European Committee for the Prevention of Torture documented concerns in relation to the adequacy of record-keeping in relation to allegations of sexual assaults in Cork Prison (CPT, 2011:40)<sup>9</sup> and in a legal challenge regarding the use of protective custody [*Connolly v Governor of Wheatfield Prison*] evidence was heard in relation to a rape of a gay prisoner.

In interviews for this research we heard varying perspectives regarding the prevalence of sexual assaults within Irish prisons and the particular risks for LGBT prisoners in this respect:

...we would have had a few cases of rape in prison, now they have been dealt with but there is probably more. We only, we only know if a prisoner complains about it... (CJ02)

I suspect that prison rape is a, is a very under-recorded problem... (CJ02)

<sup>9</sup> The report pertains to visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Ireland in 2010.

As the Inspector of Prisons (2014) acknowledges, there are often significant barriers, including the threat of further victimisation that may prevent someone from reporting an incident to authorities or taking forward a complaint. Minority groups may be particularly vulnerable in this respect. In interviews prisoners told us that in their experience sexual assaults were uncommon but that this perception may be as a result of lack of visibility of this issue:

...just because you don't necessarily hear about it doesn't mean that it doesn't go on. I mean I am aware of people who were tied up and raped. (Rachel, transgender woman)

Other prisoners told us that they believed that the incidence of sexual assaults in Irish prisons is low because it is viewed as a particular taboo and possible repercussions (i.e. retaliation from other prisoners) would follow for a perpetrator of a sexual assault:

No, no, not here, not in this country [sexual assaults in prison]. Because the way rapists and paedophiles are hated in this place, and I'm sure they are hated everywhere, but I think anybody would see that that's the way they'd been seen in the prison system... And I think people in this country are so blatant at cutting each other up and everything else... if something was going to happen, that's what's going to happen. It wouldn't be a case of...I don't believe it anyway. (Brendan, Focus Group Participant)

It should be noted that none of the LGBT prisoners interviewed for this report reported any incident of sexual coercion or assault. These responses indicate that *while sexual assault may not be a common phenomenon in Irish prisons, where it occurs it is likely to be under-reported*. Furthermore there may be significant differences in relation to risk and prevalence across the prison estate that our data does not enable us to comment upon. Similar findings have been reported in the context of UK prisons (Edgar et al, 2003; Stevens, 2015) and like there, it suggests a need for further systematic research in this area.

## **The Need for Safer Prisons**

As outlined earlier in this report, violence and harassment against LGBT prisoners is a problem of the general culture of violence and hyper-masculinity in men's prisons particularly. It is not only LGBT prisoners who experience violence and harassment in such a culture. Those who are perceived within the prison environment to be LGBT face a comparable level of risk (UNODC, 2009). Additionally, other minority prison groups, such as prisoners with disabilities, face a similarly heightened risk of harassment and physical and sexual violence (Robinson, 2011). Measures designed to combat harassment and violence should therefore be aimed particularly but not exclusively at LGBT prison inmates.

Many general good-practice measures for safer prisons, such as increased surveillance and single-cell occupancy will particularly benefit LGBT prisoners. Measures such as protective segregation, discussed below, may simply displace violence onto other vulnerable populations or even onto LGBT prisoners who are not identified by prison staff. There is a need to think about the rights of all prisoners and to ensure that measures designed to protect LGBT prisoners should help to make prisons safer by targeting violent cultures and opportunities for abuse through education of prison populations, training of staff and effective, robust independent complaints procedures. Prison cultures, management and policies matter a great deal in reducing harassment and violence. Issues such as over-crowding lead to increased risk of harassment and violence. Examples from other jurisdictions indicate that physical and sexual violence can be significantly reduced via structural and systemic changes such as responsive management approaches, fewer prisoners per cell and increased video surveillance (Yap et al, 2011).

## Responding to Harassment and Abuse

Research internationally has shown that prison staff often fail to challenge homophobic name-calling and abuse, and may be unsympathetic to complaints of harassment from LGBT individuals. In the UK, discrimination or harassment against LGBT inmates were found to sometimes be excused by reference to religious teaching or ‘cultural’ norms (Dunn, 2013). Furthermore this form of harassment is often not addressed explicitly in prison violence reduction strategies (Dunn, 2013). Investigations carried out by the Prisons and Probation Ombudsman in the UK reported that in many prisons no clear statement was made during induction or in residential units that homophobic or transphobic abuse would not be tolerated (PPO, 2013).

Other research has found that staff may blame LGBT inmates for their own victimisation, accusing them of ‘flaunting themselves’ or failing to be discreet (Marksamer and Tobin, 2013). This is particularly the case for transgender prisoners who are often a highly visible population and may come to be seen by staff as the source of prison disorder and as management problems due to their targeting by other prisoners (Jenness et al, 2007; Jones and Brookes, 2013). There are also reports of LGBT prisoners being targeted for harassment or reprisals after making or attempting to make complaints (SLRP, 2007; NPREC, 2009).

As noted above, failure to respond by prison staff can lead to LGBT individuals taking matters into their own hands, responding to victimization with threats or violence of their own. Such actions can ultimately lead to sanctions for the prisoner who had been the subject of homophobic or transphobic harassment in the first instance, as their behaviour (i.e. carrying a weapon, involvement in an assault) then becomes the cause of concern.

In this study we heard varying accounts of the manner in which homophobic and transphobic harassment was dealt with by prison staff and authorities. Prisoners did not describe encountering any overt homophobia or transphobia from prison staff. However, the manner in which complaints were dealt with was seen to vary widely. In one instance a prisoner described the response from prison authorities as deeply ineffective, leaving him to endure a sustained period of further abuse:

My experience of homophobic harassment and the response of management and staff....has been deeply traumatizing, dehumanizing and degrading. I don't think I will ever get over the experience. So much so that I have not come out as gay since I arrived in [name of prison].  
(Patrick, gay male)

But another prisoner described a far more proactive response:

I actually told the governor of what was going on [threats of violence] and he said look you should have just been telling us and we can stop that guy coming to this jail... (Damien, bisexual male)

While the sample size of this study is small, these divergent experiences suggest the need for a more systemic approach within the Irish Prison Service to dealing with bullying and harassment of LGBT prisoners. Again, we note the need for recognition of the links between harassment and violence, and the need to record and respond to homophobic and transphobic violence specifically.

A further challenge relates to the ability of prisoners to raise their concerns in the first instance. Raising a complaint necessitates a person outing themselves to prison staff, and prisoners who do so risk further victimisation. As Damien explains, to be viewed as ‘a rat’ by other prisoners was to his mind worse than having to endure homophobic harassment:

...like if I went up and said to the governor, there is two blokes there in the toilet calling me a queer, and they are telling me that they are going to stab me, that's seen as ratting then, you know what I mean like. So if they get pulled out, and say Jesus that cunt is after ratting on us, then I get people coming at me calling me a rat, a queer, and then I have to tool up [arm with a weapon], and I don't want to do that... (Damien, bisexual man).

The need for an independent complaints mechanism in Ireland through which prisoners can safely and confidentially report complaints has been previously highlighted (IPRT, 2009; Martynowicz, 2011). Under a recent revision to the Prison Rules (Section 12 *Prison Rules (Amendment) Act, 2013*), the Inspector of Prisons has oversight over investigations into serious complaints. A Protocol and Standard Operating Procedures in relation to prisoner complaints have been in place since June 2014. Dealing effectively with complaints regarding homophobic or transphobic harassment and bullying are key to an effective prison response, and the specific needs of LGBT and other minority prisoners should be considered in relation to this. The need to proactively address this area is particularly underscored by the difficulties that the Inspector of Prisons himself notes regarding prisoners feeling sufficiently confident about making a complaint in the first instance.

### **Accommodation Policies**

Accommodation is a key risk factor for violence generally, and for LGBT prisoners particularly. Single-occupancy cells are recognised as best safety practice and this is particularly important for LGBT prisoners (Yap et al, 2011). In cases where single-occupancy cells are not available special care needs to be taken in placement decisions for LGBT prisoners. At a minimum, institutions should respect objections made by LGBT prisoners to specific cellmates (UN, 2005).

As outlined at the outset of this report, the overall issue of prisoner accommodation in the context of high occupancy, over-crowding, and poor infrastructure has been consistently raised as an issue of concern within the Irish prison system. There is a stated aspiration to move towards single-cell accommodation for all prisoners (DoJE, 2014). However, currently, just over half of prisoners are accommodated singly (IPS, 2015b). The male prisoners that we spoke to identified the particular difficulties facing them in shared cell accommodation. This included potential harassment and/or rejection by cell-mates, who were keen to avoid any perception that they might also be gay:

I found it very difficult. I suppose it was like a heterosexual man sharing a cell 18 ½ hours a day with a woman. I felt uncomfortable when I dressed or when my cell-mate undressed. (Patrick, gay male)

...you don't know the reaction from your cellmate or what way they're going to react, you know? They might not want you in the cell, they might want you out, you know, they might be afraid that you would come onto them or whatever, you know, so there's issues there. (Derek, gay male)

### **Use of Segregation and Protective Custody**

It is common practice in many jurisdictions for 'at risk' prisoners, and LGBT prisoners especially, to be placed in protective custody to safeguard them from harassment and victimization within the wider prison population (Smith et al, 2013). However, in practice, conditions in 'protective' segregation are often identical to conditions for prisoners placed in segregation for disciplinary reasons, thus breaching fundamental human rights principles of non-discrimination (Edney, 2004; UNODC, 2009). This can lead to longer-term issues including mental health difficulties caused by the effects of isolation and more limited access to services (Grassian, 2006).

Protective segregation for LGBT prisoners has been subject to legal challenges in a number of



jurisdictions. The European Court of Human Rights found the practice, commonly used as a protective measure for LGBTI prisoners in Turkey, to be in violation of the European Convention of Human Rights, both on the grounds of discrimination and on the grounds of cruel and unusual punishment (PRI & APT, 2013).<sup>10</sup> Similarly, the Israeli Supreme Court has intervened to reduce a transgender prisoner's sentence on the basis that protective segregation, which was deemed necessary for the prisoner's safety, represented a harsher sentence than that originally imposed (PRI & APT, 2013).

The need to reduce the numbers in protective segregation and to afford adequate access to resources and services for those for whom segregation is considered necessary is recognized by the Irish Prison Service (IPS, 2012). There has been a reduction in the numbers of prisoners under such regimes (IPS, 2015a). However, the use of protective custody and the impact of this remain issues of concern (IPRT, 2013, 2015). The use of protective custody for a gay man who had previously been sexually assaulted in prison and feared further homophobic victimization was challenged in the High Court in 2013 [*Connolly-v-Governor of Wheatfield Prison, 2013 IEHC 334*]<sup>11</sup>. In this case the prisoner argued that being placed under a 23-hour lock up regime was in breach of his Constitutional rights. While the court acknowledged that the obligation to protect individual dignity is 'more acute in the case of those who are vulnerable, marginalised and stigmatized', it refused the application for release, noting that the prisoner had been placed under a segregated regime at his own request because of fears for his safety. The court did, however, recognize that if such measures continued they may come to violate the prisoner's constitutional rights, noting the responsibility of the prison service to carefully monitor and review the health needs of the prisoner.

This consideration of duration was also raised in a more recent High Court ruling, which confirmed that prolonged detention in protective custody breaches a prisoner's Constitutional rights, although this judgment was subsequently over-ruled by the Court of Appeal.<sup>12</sup> In response the Chief Commissioner of the Irish Human Rights and Equality Commission noted that such cases should be kept under consistent review and that consideration should be given to amending the Prison Rules in order to formalise the review process.<sup>13</sup>

We found some evidence for the use of protective segregation in the Irish context as a fall-back response for the safety needs of transgender prisoners:

I think the solution from a safety point of view it would probably be easier for a man transitioning to a woman to go into a woman's prison, but for a woman transitioning to a man to come into a man's prison... you would definitely have to put them aside [in protective custody]. (CJ01)

<sup>10</sup> Case of X v. Turkey (Application No. 24626/09) European Court of Human Rights (27.05.13). Available at: [http://hudoc.echr.coe.int/eng?i=001-113389#{"display":\["0"\],"languageisocode":\["ENG"\],"appno":\["24626/09"\],"itemid":\["001-113876"\]}](http://hudoc.echr.coe.int/eng?i=001-113389#{) The applicant, a Turkish citizen who had been placed in solitary confinement as a protective measure, had asked the prison authorities to be separated from the inmates he was originally sharing the cell with because he had been intimidated and bullied for being gay. He was placed in an individual cell, which measured seven metres squared for more than 13 months, with no access to open-air exercise and no contact with other inmates.

<sup>11</sup> 'Gay Prisoner loses bid over solitary lock-up.' Available at: <http://www.irishtimes.com/news/crime-and-law/courts/gay-prisoner-loses-bid-over-solitary-lock-up-1.1465824>

<sup>12</sup> *McDonnell –v-Governor of Wheatfield Prison* [2015] IEHC 112; *McDonnell –v-Governor of Wheatfield Prison No.2* [2015] IEHC 362. In these judgments the High Court held that the defendant's Constitutional rights had been breached by virtue of the length of time he had been placed in protective custody and that his mental health was deteriorating as a consequence. In evidence the Governor of Wheatfield prison outlined that the prisoner was at serious risk of assault within the general prison population. The High Court granted an injunction directing the prison authorities to allow Mr. McDonnell more time out of his cell and provide him with more social interaction. In July 2015 the Court of Appeal overturned the High Court Ruling, finding that the measures put in place were necessary for the prisoner's safety. See: <http://www.irishtimes.com/news/crime-and-law/court-overturns-ruling-on-solitary-confinement-of-killer-of-girl-16-1.2303753>

<sup>13</sup> Commission notes Court of Appeal decision in case concerning prisoner's rights.' Available at: <http://www.ihrec.ie/news/2015/07/31/commission-notes-court-of-appeal-decision-in-case/>

Rachel, a transgender woman who has spent time in custody in Irish prisons, describes her experience of entry into a male prison and placement on a psychiatric wing for her safety:

Now they put me on a psychiatric ward and they put me in a cell of my own, and that was their, what would you call it...that was them doing me a big favour. (Rachel, transgender woman)

This is an area of concern and needs to be looked at in the broader context of placement and accommodation options for transgender prisoners raised in the previous section.

## Conclusion

International literature is clear that safety is a key, and perhaps the primary, need of LGBT prisoners. Lesbian, gay, bisexual, and especially transgender individuals experience heightened rates of violence and abuse in prison. Such abuse can have ongoing effects on mental health and may also occasion LGBT prisoners to resort to retaliatory violence. We found evidence of harassment and bullying of LGBT prisoners in the Irish context, particularly in men's prisons. While we did not receive any direct reports of sexual violence or victimisation, international literature suggests that it remains a high risk for LGBT prisoners. Consideration should be given to the need to develop policy and practice responses that pay particular attention to the needs of LGBT prisoners.

## 7. Sexual Health and Relationships in Prison

Any consideration of the needs, rights and experiences of LGBT prisoners must consider issues of sexual behaviour and intimate relationships alongside questions of identity. Policy and research in this area has historically been limited by its controversial and taboo nature. Thus, there is a need for more sustained policy and research attention (Stevens, 2015). Some unpublished scoping research has recently been conducted within the Irish Prison Service, highlighting the need to address this area. International research highlights that this is an important area in terms of public health, emphasising the need to tailor policy and practice accordingly (Harman et al, 2007; Butler et al, 2012; Kreinart et al, 2014).

Literature internationally confirms that both sexual activity and intimate relationships occur in men and women's prisons, even if there are highly varying findings regarding prevalence. While LGBT prisoners may be more likely to engage in sexual or intimate activities in prison, prisoners who identify as heterosexual may also engage in same-sex behaviours (Butler et al, 2010; 2012; Stevens, 2015). Our study, while making no claims about prevalence, also found that sexual activities and romantic relationships do occur in Irish prisons:

I met a few lads here that were into having sex with the prisoners, they are gay, and one fella is bisexual, and one fella isn't even, he didn't even use the term he just, he is doing it and that's the way it is like. (Damien, bisexual man).

As such, this represents an important health issue with implications for LGBT prisoners and the prison population more broadly.

### Regulation of Sex and Relationships

The issue of sexual behaviour in prisons raises a number of competing concerns, one of which, for prison administrations and staff, is the maintenance of order. The Prison Rules (2007) prohibit engagement in so-called 'indecent language, act or gesture', and prisoners may be sanctioned for



this<sup>14</sup>. As one criminal justice stakeholder told us:

R: You can be put on a disciplinary report for a lewd act. So if you are, if..

I: How do you interpret that?

R: If... well, I would interpret that if an officer was to come across two prisoners engaging in sexual activity they would be put on report and disciplined.

I: Right, and what would that..?

R: Now that doesn't mean that will, would happen, but what I'm saying is that that's, that's the system, that's the prison rules, that's within the system...you know the organisation within the prison rules 2007 certainly doesn't allow for sexual activity. (CJ01)

In Ireland currently therefore, the loss of freedom to pursue or physically express an intimate or sexual relationship within the prison setting is a loss consequent on the loss of liberty. However prohibition does not, of course, prevent sexual activity occurring.

Different issues in relation to the regulation of sexual and intimate behaviour emerged from the female and male prisoners in our study. These can be related to the different cultures in male and female prisons described earlier in this report. Women's prisons were reported to be less overtly homophobic and transphobic and women felt able to be more open about their sexuality and relationships. However, this resulted in greater administrative regulation of these relationships, which some respondents regarded as discriminatory:

I have a girlfriend ... and I found it like, that they were really discriminating to us, because like we're not just like together in prison or, but officers kind of, some officers is like 'oh we don't have to watch this or watch that.' 'What do you mean like?' It's my girlfriend...and what happened then they moved us to separate yards so we couldn't see each other any more. So that was really upsetting, like that was, that wasn't nice at all. There was no need to do that at all. So it's not, they're not really nice, some officers have been not nice at all to me. (Evelyn, bisexual)

From the perspective of prison staff, the importance of maintaining order within the prison environment in circumstances of overcrowding where women with diverse and complex needs are accommodated together was emphasised. Application of the Prison Rules and the consequent regulation of the physical expression of same-sex relationships could result in transfer of one partner to another prison:

I felt very awkward around the staff then. You know, I felt really 'okay then these don't agree with it', and they moved me then, they shoved me off [to another prison]. (Karen, lesbian)

Male prisoners did not report similar experiences, but neither did any report engaging in, or knowing of, ongoing intimate relationships in prison. This is likely to be related to different cultures in men's prisons and to greater need for relationships to be covert for reasons of personal safety.

## Sexual Health and Safe Sex

Where sex occurs in prison then sexual health must be seen as part of the healthcare responsibility of prisons. Given the specific health needs of prison populations (WHO, 2008), there is an added impetus to address issues of sexual health. International human rights law recognizes the right to the highest attainable standards of health, which includes sexual health. Internationally, distribution of safe-sex materials in prisons is considered to be best practice (Yap et al 2011).

<sup>14</sup> Prison Rules (2007) Schedule 1, 30.

There has been some consideration of sexual behaviour and sexual health in Irish prisons in the context of public health initiatives targeting the incidence of HIV and Hepatitis (Allwright et al, 2000). More recently, a policy has been developed in relation to condom access for male prisoners, in response to prisoners' requests for safe-sex provision. While this policy is currently only in place in a small number of prisons we were informed that it is shortly due to be implemented across the prison estate. We found that the male prisoners we spoke to were well aware of the need for condom provision and of the health risks associated with a lack of safe-sex materials. These risks not only include transmission of infections but also health risks from attempts to 'improvise' condom alternatives:

But one or two of them have hepatitis C...so, they'd be having sex in the prison with no condoms and no safety like, a few of the lads is using, they give us bags in here, sugar bags, so they have been using them for a condom. (Damien, bisexual man)

The current policy goes some way to addressing these issues but even where condoms are available they can only be accessed via a request to a medical officer. In an environment where sexual activity is proscribed, and being perceived as gay has significant safety risks, prisoners perceived that this policy would dissuade many inmates from accessing condoms:

... it's only for people that are out, that have the confidence to go and ask for them, if somebody wants to keep it discrete or they won't have the confidence to go and ask for them, or they are afraid that somebody will overhear... (Eric, Focus Group Participant)

...there is still not enough confidentiality around access to condoms you know because there is still a stigma attached to it, accessing them, you know what I mean? (Peter, Focus Group Participant)

Prisoners we spoke to thought that the insular environment of the prison made confidentiality very difficult to ensure, resulting in heightened real and perceived risks of disclosure:

But going back to the beginning of the actual process of getting the condoms...gossip in jails and the rumours spread, and that's from the staff as well, you know what I mean, so if I'm going up to him [staff], he's going to tell him [another staff member], and before long it's gone around and it gets back to the prisoners then as well. (Eric, Focus Group Participant)

While the implementation of a policy in relation to condom use is a welcome development the efficacy of a model whereby prisoners have to 'out' themselves in the process must be questioned. However, from the perspective of prison administration there are a number of other considerations, such as security, cost effectiveness and order maintenance:

I believe if we are going to put condoms in prisons we should put them in places where they can be accessed anonymously but there is, in terms of the regime, there is concern about what it will be used, what it will be used for. (CJ02)

Specific concerns include that condoms could be used as means to smuggle contraband substances such as drugs.

While there is a policy of condom provisions in men's prisons there is no equivalent policy in place for women. The women that we spoke to highlighted a need in women's prisons not only for provision of materials such as dental dams but for information and education on safe sex and sexual health:

I didn't know they had a vagina condom. I never knew that... (Karen, lesbian)

Although there are leaflets and things like that a lot of the girls don't choose to read the leaflets. If there was maybe a course preventing HIV and sexually transmitted diseases, a course like this, you know, needle transmitted diseases, sexually transmitted diseases, to actually show girls what they do need to do, what they don't need to do...(Miriam, lesbian)

...but like if they had kind of information here, if you did have it [STI] how easy it would be to pass on when you're so intimate like that with somebody, like that would be major... (Karen, lesbian)

Our research suggests that distribution of safe-sex information and materials in both male and female prisons is an area that requires further attention.

### **Coercion and Abuse**

As highlighted earlier the culture and environment of prisons means that there is a high risk of coercion, including coercive sexual practices. Prison authorities must be mindful that an unintended consequence of banning or disciplining all sexual activity is that the boundaries between consensual and coercive sex may become blurred. This may result in concealing the victimisation of vulnerable prisoners, and in the worst case, disciplining victims of coercive sexual activities (NPREC, 2009; Dunn, 2013).

The need to protect vulnerable prisoners, and the inherent vulnerability of incarceration itself was noted by staff who discussed this issue:

...it's just that prison is, it makes people vulnerable, it makes people, make people form alliances that they wouldn't otherwise form. (CJ04)

This concern is echoed in international literature, which highlights the need to safeguard against harassment and bullying within intimate relationships (Stevens, 2015). The prison environment means that, if relationships become abusive or damaging, they are difficult to leave. A report from the Prisons and Probation Ombudsman in the UK (PPO, 2013) identified intimate relationships in women's prisons as a significant source of bullying and abuse as well as comfort and solace. The potential for relationships to increase stress, or reduce individual well-being, was noted by one prisoner in our study, who avoided relationships in prison for this reason:

It's a catalyst for stress, and the amount of stress that comes out of it is unbelievable. (Miriam, lesbian)

Research in this area has emphasized, however, that rather than simply seeking to eradicate or regulate intimate relationships, and therefore driving them underground, it is necessary for staff to develop knowledge of individuals and their relationships, and to work with prisoners to challenge abusive relationships, wherever they may occur (PPO, 2013).

### **Conclusion**

The existence of sexual activity and intimate relationships in prison presents a complex and challenging situation for prison administrations who must balance concerns for order with individual rights and autonomy, as well as considering questions of sexual health and the possibility for abusive or damaging behaviours. However, seeking to simply eradicate or strictly regulate such behaviour is not only unlikely to work, but increases the risks around transmission of infections and the likelihood of coercive and damaging behaviour.

All of this underlines the need for the development of a comprehensive policy and practice guidance in this area. We are happy to note that the Irish Prison Service has plans for further research in this area, as we believe such research is essential. We also emphasise the need for education and the promotion of sexual health within prison environments.

## 8. CONCLUSION

The lack of visibility of LGBT prisoners and the need to attend more fully to the needs of this population have been highlighted in this report. This is a topic that has not been the subject of previous research or policy attention in Ireland, and the themes raised in this report underscore the need to develop policy and practice in this area. There is a clear need for further in-depth research in relation to some of the issues raised, specifically in respect to violence, discrimination and safety, and the broader issue of sexual behaviour and sexual health in prisons.

LGBT people in prison are often doubly marginalised, both within the prison system and in relation to the supports available to them within the wider LGBT community. While we have used LGBT as a common umbrella term throughout this report, we have noted the distinct and varied experiences within male and female prisons and the specific issues raised for transgender prisoners. The need to develop policy in this area is particularly highlighted in respect of transgender prisoners. The recent passage of the *Gender Recognition Act (2015)* provides further impetus to address this.

All prisoners interviewed raised issues regarding the visibility of LGBT culture within the prison system and the need for more tailored supports for LGBT prisoners. Given the issues identified in respect of isolation and increased vulnerability to discrimination and abuse, this is particularly pertinent. While prisons are the specific focus of this report the themes raised suggest the need for a more holistic look at this area across the wider criminal justice system. For instance we consider that the needs of LGBT prisoners in the context of sentencing planning and resettlement merits specific attention. The *Strategic Review (DoJE, 2014)* notes the importance of tailoring rehabilitation and reintegration supports to promote desistance from offending. It is therefore important that considerations of rehabilitation and post-release opportunities and conditions be part of all policies developed around LGBT prisoners and that LGBT organizations be involved in developing these practices and policies.

We note that prisons are not stagnant environments and that wider social change is likely to impact on prison culture and attitudes. Importantly prisoners in Ireland have a right to vote, and our research suggests that the public debates in relation to the Marriage Referendum led to increased visibility of this issue within prisons also. All representatives from the criminal justice agencies and LGBT organisations with whom we spoke noted the need to address the needs and rights of LGBT prisoners, and indicated that the time may now be opportune to do so. The recommendations that follow reflect the specific issues outlined in respect of detained persons in the *Yogyakarta Principles (ICJ, 2007)* and the recent legislative requirement for public organisations to promote equality and rights.

## 9. Recommendations

- The Irish Prison Service should pursue a 'Mainstreaming Plus' approach to meeting the needs of LGBT prisoners. A Mainstreaming Plus approach would involve ensuring that the needs of LGBT prisoners are explicitly considered and addressed as part of overall prisoner management, response and welfare. Alongside this, a Mainstreaming Plus approach would involve ensuring that specific needs of LGBT prisoners are also identified and catered for, e.g. having policies in place designed to protect LGBT prisoners from harm.
- Any policy should be developed taking into account the implications of the *Gender Recognition Act (2015)* and international best practice, which focuses on the needs and expressed wishes of transgender prisoners regarding their placement. In this way the Irish Prison Service can be confident that it is addressing the public duty to promote equality and human rights in respect of transgender prisoners.
- Single-cell accommodation should be the norm for all prisoners across the prison estate, but particularly for prisoners identifying as LGBT who may feel vulnerable in the prison environment.
- Homophobic and transphobic bullying and harassment amongst prisoners must be tackled through a combination of information provision, staff training, and clear sanctions for breach of policy, where appropriate. There is potential for such input to be incorporated into existing work such as the current peer education and support initiatives coordinated by the Red Cross.
- Schedule 1, Section 30 of the *Prison Rules 2007* should be amended to include the terms 'homophobic' and 'transphobic' as behaviour and language which is prohibited.
- LGBT prisoners report isolation and a lack of visibility of gay culture within the prison system. Consideration should be given to the development of specific resources and services for LGBT prisoners, potentially involving the 'inreach' of LGBT organisations.
- The *Strategic Review* (DoJE, 2014) notes the importance of tailoring rehabilitation and reintegration supports to promote desistance from offending. It is important therefore that considerations of rehabilitation and post-release opportunities and conditions be part of all policies developed around LGBT prisoners.
- Consideration should be given to developing sexual health policy and practice guidance. Such a policy needs to give careful consideration to issues of privacy and safety. Given that a condom use policy is in place in male prisons, particular attention should be given to the needs of women prisoners in any such policy.
- Current human rights training for prison staff should be extended to address more specifically the needs, rights and experiences of LGBT prisoners.
- Further research is necessary in three specific areas:
  - sexual health and sexual behaviours in prison;
  - the rights, needs and experiences of young LGBT people within the youth justice system;
  - sexual violence and coercion, and their prevalence within the Irish prison context



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## GLOSSARY OF TERMS

**Cisgender:** is a term for someone who has a gender identity that aligns with what they were assigned at birth.

**Gender identity:** is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

**Heteronormative:** denoting or relating to a world view that promotes heterosexuality as the normal or preferred sexual orientation.

**Intersex:** is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male.

**LGBT:** in this report we use this umbrella term to refer to lesbian, gay, bisexual and transgender people. While using this common term we recognise that LGBT are not an homogenous group and people will have varied experiences based on many aspects of their identity, including their sexual orientation and gender identity.

**Sexual Orientation:** is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**Social gender:** is the gender in which a person lives their day-to-day life.

**Transgender:** is commonly used as an umbrella term to describe people who identify or express gender differently than what is traditionally associated with the sex they were assigned at birth.





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