



**IPRT Submission to the Joint Committee on Justice on the
Life Sentences Bill 2024**

4 October 2024

About IPRT

The Irish Penal Reform Trust (IPRT) is Ireland's principal non-governmental organisation working for systemic penal reform. Our vision is a just, humane Ireland where prison is used as a last resort. Our mission is to advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through research, campaigning and changing attitudes.

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Introduction

1. IPRT welcomes the opportunity to make a submission to the Joint Committee on Justice on the General Scheme of the Life Sentences Bill 2024 ('the Bill') to inform its pre-legislative scrutiny process.
2. IPRT's understanding is that this Bill, in its current form will require the sentencing Judge, in cases where a life sentence is imposed, to recommend a minimum custodial term (otherwise known as a 'tariff') that they believe the convicted person should serve before parole is granted. While the recommendation will not be binding on the Parole Board, it will have to 'have regard to' the recommendation when making its decision on whether to grant parole.
3. IPRT understands that the Bill is still very much in draft form and is only the first step towards making the significant reforms that are proposed. We anticipate that there will be a lot of further work on the Bill over the coming months and we hope to continue engaging with this Committee, as well as the Department of Justice and other key stakeholders, in developing the legislation which does not result in unintended consequences.
4. IPRT remains firmly opposed in principle to the introduction of mandatory minimum custodial periods.

Background and Overarching Observations

Life Sentences

5. Since 1990, following the abolition of the death penalty in statute, anyone convicted of murder has received a mandatory term of life imprisonment.¹ Additionally, discretionary life sentences can also be imposed for a number of other serious offences, including rape, attempted murder, and assault causing serious harm.² While the sentencing Judge can make comments during the sentencing hearing that should be considered in decisions on granting parole, there is currently no mechanism for the Judge to recommend a minimum term or tariff that should be served before the convicted person is eligible for release.
6. The operation of life sentences has been considered by the Law Reform Commission (LRC) on several occasions. In 2008, the LRC published its *Report on Homicide: Murder and Involuntary Manslaughter* and recommended "that the mandatory life sentence for murder be abolished and replaced with a discretionary maximum sentence of life imprisonment".³
7. The LRC published a subsequent *Report on Mandatory Sentences* in 2013 following extensive consultation.⁴ In this report, the Commission recommended the retention of the mandatory life sentence by a majority although two Commissioners favoured the LRC's previous position to replace the mandatory life sentence for murder with a discretionary life sentence.⁵ Additionally, the LRC in its 2013 report recommended that:

1 Criminal Justice Act 1990, s 1.

2 Department of the Taoiseach, '[Taoiseach & Minister McEntee announce Cabinet approval for Bill allowing judges recommend minimum prison terms for life sentences](#)' (Department of the Taoiseach 2024).

3 Law Reform Commission, *Report on Homicide and Involuntary Manslaughter*, (LRC 2008) para 1.66.

4 Law Reform Commission, *Report on Mandatory Sentences*, (LRC 2013)

5 Ibid. For a detailed discussion on this issue see pp.120-122.

where an offender is convicted of murder, and is therefore sentenced to life imprisonment, legislation should provide that the judge may recommend a minimum term to be served by the offender.⁶

8. There is little to no evidence that mandatory sentences act as an effective deterrent to crime. IPRT believes that the mandatory sentencing regime for murder should be amended and replaced with a discretionary maximum sentence of life imprisonment in line with the LRC recommendation in 2008. This would empower the Court to recommend that a defendant serves a minimum specific term of imprisonment having regard to the particular circumstances of the case.
9. When considering mandatory sentencing in 2013, the LRC also recommended the establishment of an independent, statutory Parole Board.⁷ The Irish Human Rights Commission had found that the parole process in Ireland at that time was contrary to the European Convention on Human Rights.⁸

Reform and operation of Parole System

10. In July 2019, the Parole Act 2019 ('the Act') was signed into law. The Act places the Parole Board on an independent statutory footing with the power to make final decisions on the release of eligible prisoners. The Act also increased the number of years before a life-sentenced prisoner can become eligible for their first parole review from seven to 12 years. During Committee Stage on the Parole Board Bill, the timeframe for eligibility was increased to 12 years following a number of debates on the issue. Jim O'Callaghan TD who had introduced the Bill as a Private Members Bill, put forward the amendment to the original proposal of eight years with the following rationale:

It is just not feasible because people do not get parole after eight years. Parole is not generally considered until after 12 years have passed. For that reason, I am proposing that we substitute the reference in the Bill to "eight years" with a reference to "twelve years". We are holding out false hope to prisoners who have been convicted of life-sentence offences by leading them to believe they can get parole after eight years.⁹

The amendment was accepted by the Minister for Justice, Frances Fitzgerald TD.

11. At the time of the debate on the Parole Bill 2016, IPRT was concerned that increasing the timeframe for eligibility for parole may disincentivise people to engage with rehabilitative programmes at the earliest possible opportunity as they will not become eligible to apply until 10.5 years into their sentence.¹⁰ IPRT continues to advocate, as it did then, for a greater discussion about the purpose of imprisonment – while it is punitive and some argue it acts as deterrent (though evidence is limited), it is also about rehabilitation and reform.

⁶ Ibid, para 6.04.

⁷ Ibid, para 6.05.

⁸ Irish Human Rights Commission, *Report into Determination of Life Sentences*, (IHRC 2006).

⁹ Houses of the Oireachtas, *Select Committee on Justice and Equality – Parole Bill 2016: Committee Stage*, 24 May 2017.

¹⁰ Irish Penal Reform Trust, *Submission on Parole Reform and the Parole Bill 2016*, (IPRT June 2019) 1.

12. The Act commenced on 30 July 2021, with the Parole Board established on 11 August 2021.¹¹ At present, the provisions of the Act apply only to those serving a life sentence.
13. The Board can consult with a wide range of stakeholders to inform their decision – the Irish Prison Service, Probation Service, psychiatrists, psychologists, the Gardaí or anyone else relevant to the person’s case. They will also consult with the victim or victim’s family members if they have registered with the Parole Board.
14. In terms of life sentences, it should be noted that even where a person is eligible for parole after 12 years of serving a sentence, it does not mean that they will be automatically released. The Parole Board is required to take into account a number of different criteria and the level of risk will be assessed to determine whether a person should be released. The views of victims will also form an important part of that decision-making process. If a person is released, they are released on licence with conditions and if they breach those conditions then they will be sent back to prison. They will also be under probation supervision for the rest of their lives.
15. Notably, the Parole Board has only been in operation for three years. To date one annual report has been published for 2021-2022, and the launch of which noted that ‘during the first year and a half of its operation, the Board’s primary focus was on developing new processes’.¹² It is expected that the 2023 report will be published in the coming weeks or months. It should also be noted that the Board was not fully staffed until the end of 2022¹³ and given the current slow pace of decisions, IPRT calls for further resources for the Parole Board to be able to process and consider more applications in an efficient and timely manner. This will be even more important in the context of the proposed introduction of regulations to allow the Board to consider people on determinate sentences of eight years or more.¹⁴

Proposed introduction of minimum tariffs

16. More recently, under the mandate of the current Government, in August 2022, the Department of Justice published its *Review of Policy Options for Prison and Penal Reform 2022-2024*.¹⁵ The Review set out six priority actions, the last of which was:

To introduce judicial discretion to set minimum tariffs for life sentences and examine the effectiveness of use of mandatory minimums for certain crimes.¹⁶

17. The preceding five priorities focus on progressive measures including placing the principle of imprisonment as a last resort on a statutory footing, addressing the issues of short sentences of 12 months or less to reduce prison overcrowding and examining alternatives to prisons. However, the Life Sentences Bill appears to have been prioritised over other

11 Department of Justice, ‘[Minister Humphreys establishes new Parole Board and increases time life prisoners must serve before being considered for parole](#)’ (DOJ 2021).

12 Parole Board, ‘[Statutory Parole Board publishes first Annual Report](#)’ (Parole Board 2023).

13 Liz Dunphy, ‘[Parole Board CEO: “What keeps me from my sleep is not being able to contact a victim”](#)’ *Irish Examiner* (20 February 2023)

14 Department of Justice, Criminal Justice Policy (2022) [Review of Policy Options for Prison and Penal Reform 2022-2024](#) (DOJ 2022) 4.

15 Ibid.

16 Ibid, Priority Action 6.

commitments that IPRT would consider more pressing and would have a greater impact on reforming the penal system.

18. It is also worth noting that 6.2 of the *Priority Penal Policy Action Plan 2022-2024* stated that a review would be conducted ‘of all matters relating to length of imprisonment in cases of life sentences’.¹⁷ It also contained associated actions and indicated that a review of Whole Life Order sentences for murder had been completed though this has not been published. Given the current legislative proposals before the Committee, IPRT welcomes that there is no suggestion of introducing Whole Life Order sentences as the European Court of Human Rights have found that they contravene Article 3 of the European Convention on Human Rights given that there would be no possibility of a review and this could amount to torture and inhuman or degrading treatment.¹⁸ However, in the interests of transparency, IPRT would urge the Department to publish the completed review.
19. Similarly, Action 6.2 indicated that a review on sentence tariffs for minimum periods of imprisonment and current access to parole were ongoing. It is IPRT’s understanding that this review was completed in advance of the publication of the General Scheme of Life Sentences Bill 2024. Again, IPRT would call for publication of this review to inform the current discussion.
20. The rationale for the introduction of tariffs for life sentences is to allow judges:

[...]ensure that a convicted person will serve a minimum number of years before they are entitled to apply for parole. Judges would have to take into account aggravating and mitigating circumstances. In practice, it could mean, for example, that a judge could decide to impose a life sentence and stipulate that a minimum of 20, 25, or 30 years must be served.¹⁹
21. While the Government had set out its intention to explore the need for minimum tariffs, one impetus for the current Bill coming before the Committee appears to be a political reaction to a particularly high-profile murder case where the convicted person showed no remorse, where the sentencing judge, Mr Justice Tony Hunt made comments that it was “long past time that judges should have some say in setting what the minimum terms should be”.²⁰

Recommendation: The Committee should urge the Department of Justice to publish its reviews on Whole Life Order sentences for murder and its review on sentence tariffs for minimum periods of imprisonment and current access to parole to inform its pre-legislative scrutiny process.

17 Ibid, 22.

18 A review of cases taken under the ECHR concluded that: “the mere fact that a life sentence might in practice be served in full did not mean that it was irreducible. Consequently, the possibility of review of life sentences entailed the possibility for the convicted person to apply for release but not necessarily to be released if he or she continued to pose a danger to society” See European Court of Human Rights, [Fact Sheet on Life Imprisonment](#), (ECtHR 2019) p. 9.

19 Department of Justice, [‘Government publishes Review of Policy Options for Prison and Penal Reform 2022-2024’](#) (DOJ 2022).

20 Dara Robinson SC, [‘Minimum life terms: should judges have a say?’](#), Law Society Gazette, 28 November 2023.

Potential unintended consequences

22. IPRT believes there *may* be some merit in the introduction of tariffs in certain particularly sensitive cases where it is highly unlikely that a person would be released at the 12-year point, to provide some reassurance and certainty to victims and their families – and also to the convicted person and their families. However, there is also a concern that if a lengthy minimum tariff is recommended, there could be a lack of provision of rehabilitative services and programmes until nearer the time that a person may expect to be considered for release (particularly in light of considerable waiting lists for many services and limited space in the two open prisons) or a lack of engagement on the part of the person in prison as they do not believe that the Parole Board will consider their application before the recommended minimum tariff has expired.

23. IPRT's 2024 survey with our members in prison asked about conditions in prison and if there were any specific concerns that people wanted to raise. Parole is an issue that features regularly. It is worth noting some of the comments made to IPRT in the context of the current operation of the parole process given that they would validate our concerns that by introducing a recommended minimum tariff, that rehabilitative efforts and supports may be further delayed which will do nothing to support the individual in their rehabilitative journey to ultimately minimise any risk to public safety upon their release. On the current process, one member made the point that:

It takes 12 years before the services begin to make an attempt to work with a life sentenced prisoner. That's twelve years too late in my opinion.

Another person highlighted the impact that delays in the parole process are having already on overcrowding:

The overcrowding is exacerbated by massive delays in paroling life sentence prisoners - the services are simply not there

Finally, one member emphasised the lack of a progression route for people on life sentences:

There are so many lifers in the system who can not be moved on, as no spaces are available in open centers [sic] for lifers. We are forced to spend many unnecessary years in a closed prison environment.

24. IPRT is concerned that in the current context of record overcrowding, delays in the existing parole process, which is already under-resourced, are impacting everyone in the prison system. Introducing legislative measures which could result in people serving even longer sentences will do nothing to alleviate the capacity crisis in Irish prisons.

25. The average time a life-sentenced prisoner serves has continued to increase significantly over time. From the mid-80s to mid-90s, the average time served in custody was 12 years, rising to 18 years between 2005 and 2014. This rose to 19 years between 2015 and 2018 and since 2019, 'the average time served among persons released on parole was approximately

21.25 years'.²¹ According to the most recent data from 2023, eight people were released on parole having served an average of 24 years in prison.²²

26. The Committee may wish to note a recent publication by the Howard League for Penal Reform, the world's oldest penal reform charity based in London. Its paper on *Sentence inflation: a judicial critique* was published in September 2024 and signed by the four surviving former Lords Chief Justice of England and Wales, and the only surviving President of the Queen's Bench Division who was also Head of Criminal Justice. In particular, it looks at the impact legislative changes have had in England and Wales in driving up the length of prison sentences (sentence inflation). The paper states:

Legislative changes have been obvious drivers of sentence inflation. The introduction of statutory starting points for the minimum terms for murder in Schedule 21 of the Criminal Justice Act 2003 by the last Labour government was one part of a deliberate 'tough on crime' political agenda; it has been described as representing a 'fundamentally flawed' change. Schedule 21 distorted sentencing proportionality, driving up sentences for other offences. The coalition government's assessment of Schedule 21 in December 2010 described it as 'based on ill thought out and overly prescriptive policy. It seeks to analyse in extraordinary detail each and every type of murder. The result is guidance that is incoherent and unnecessarily complex and is badly in need of reform so that justice can be done properly in each case.'²³

27. The research found that in England and Wales 'the number of life sentence prisoners serving a minimum term of over 20 years more than doubled between 2013 and 2023'. IPRT encourages the Committee to consider the potential implications of introducing judicial discretion to recommend minimum tariffs given the experience of other jurisdictions, in particular England and Wales.

Recommendations: The Committee should consider the potential unintended consequences of introducing recommended minimum custodial terms or tariffs, particularly in relation to the engagement of a life-sentenced prisoner with rehabilitation and the availability and prioritisation of those services for people who are becoming eligible for parole. This is a significant consideration in light of the current prison overcrowding crisis.

The Committee should consult with experts from other jurisdictions, particularly the UK, to consider the potential consequences in terms of sentence inflation that could happen as a result of introducing minimum tariffs.

21 Department of the Taoiseach, '[Taoiseach & Minister McEntee announce Cabinet approval for Bill allowing judges recommend minimum prison terms for life sentences](#)' (Department of the Taoiseach 2024).

22 Ibid.

23 Howard League for Penal Reform, '[Sentence inflation: a judicial critique](#)' (Howard League 2024) p.10.

Human rights considerations

28. Article 5 of the European Convention on Human Rights (ECHR) to which Ireland is a party, sets out the right of everyone to the right to liberty and security of person. Article 5(1) provides that ‘No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law’ and lists a number of circumstances including ‘the lawful detention of a person after conviction by a competent court’ which is relevant for the purposes of this discussion. Article 5(4) also provides a mechanism to challenge the lawfulness of a person’s detention.
29. In the LRC’s 2013 *Report on Mandatory Sentences*, it explores the jurisprudence of the European Court of Human Rights in relation to life sentences. The LRC highlights that the current position in Ireland is distinct from that in England and Wales as in Ireland the “Irish sentencing system... considers life sentences to be wholly punitive” whereas “a mandatory life sentence in the United Kingdom is composed of two parts: a punitive part and a preventative part”.²⁴ The LRC emphasises that:
- [...] while the imposition of a life sentence may be lawful under Article 5(a), the continued detention of a prisoner may become unlawful where the punitive part of the sentence has been served and the prisoner no longer represents a risk or danger to the public.
30. Therefore, if recommended minimum tariffs are introduced, and a person serves that part of their sentence but is not then granted parole, they could then potentially challenge their continued detention for what would be considered the ‘preventative’ part of the sentence.
31. The European Committee on the Prevention of Torture (CPT) has outlined the key factors that should be considered in terms of upholding the human rights of a person sentenced to life imprisonment:

Indeed, the CPT considers that a prison sentence which offers no possibility of release precludes one of the essential justifications of imprisonment itself, the possibility of rehabilitation. While punishment and public protection are important elements of a prison sentence, excluding from the outset any hope of rehabilitation and return to the community effectively dehumanises the prisoner. This is not to say that all life-sentenced prisoners should be released sooner or later; public protection is a crucial issue. However, all such sentences should be subject to a meaningful review at some stage, based on individualised sentence-planning objectives defined at the outset of the sentence, and reviewed regularly thereafter. This would provide not only hope for the prisoner, but also a target to aim for which should motivate positive behaviour. It would thus also assist prison administrations in dealing with individuals who would otherwise have no hope and nothing to lose.

Recommendation: The Committee should conduct a thorough human rights audit of the current proposals to ensure that the potential introduction of recommended minimum custodial terms do not interfere with the Article 5 rights of a person sentenced to life imprisonment and will continue to allow for appropriate and regular meaningful review by the Parole Board.

24 Law Reform Commission, *Report on Mandatory Sentences* (LRC 2013) para. 2.16.

Initial Provisions

Part 2: Amendment of the Criminal Justice Act 1990

Head 3: Specification of recommended minimum custodial term

32. IPRT notes that Head 3 provides that the “court shall specify a recommended minimum custodial term when imposing a relevant life sentence” and that this term “shall reflect the court’s view as to the minimum term of the sentence which should be served before parole is granted”. It is welcome that the proposed minimum term will be a recommendation to be considered by the Parole Board, rather than a binding decision that has to be implemented.
33. However, IPRT is concerned that – under the provisions in the General Scheme – the court would be obliged to specify a recommended minimum custodial term in all cases where a life sentence is imposed. When questioned by the media in 2023 around the intention to provide for setting minimum tariffs in cases of life sentences, then Taoiseach Leo Varadkar TD, stated:

That wouldn’t mean a minimum sentence in all circumstances, but would give a judge the power to impose a minimum sentence if the judge felt it appropriate.²⁵

34. In a response to a parliamentary question in April 2024, the Minister responded that “[u]nder these reforms, a minimum custodial sentence **may** be recommended by the trial judge” (emphasis added).²⁶ It had been IPRT’s understanding that the judge would have discretion as to whether they would set a minimum tariff. However, the current draft provisions mean that in every case where a life sentence is imposed, the trial judge **shall** have to specify a recommended minimum term of imprisonment. While the judge may reiterate that their recommendation is a minimum term of 12 years in line with the Parole Act 2019, IPRT does not believe that the court should have to specify a minimum term in every case.
35. Furthermore, IPRT would question the necessity of these proposed provisions given that the functions of the Parole Board are already set out in the 2019 Act and although Judges do not currently have the ability to hand down a minimum tariff, their comments during sentencing hold weight and are already considered during the parole process. The Act clearly specifies in s.27(2)(b) that:

The Board shall, in deciding whether to make a parole order in respect of a parole applicant, have regard to... the sentence of imprisonment concerned and any recommendation of the court that imposed that sentence in relation thereto in deciding whether to make a Parole Order, the Board will consider... the sentence of imprisonment concerned and any recommendation of the court.

36. While remaining opposed, in principle, to any compulsory recommended minimum custodial term in every case where a life sentence is imposed, IPRT welcomes that under Head 3 of the General Scheme, the court would be required to “give reasons for the recommended minimum custodial sentence” as this will be important in the context of decisions by the Parole Board if and when a person becomes eligible and applies for parole.

25 Gráinne Ní Aodha, ‘[Government examining powers for judges to set minimum term in life sentences](#)’ *Breaking News* (18 November 2023).

26 Houses of the Oireachtas, ‘[Written Answers - Departmental Priorities](#)’ (23 April 2024).

37. The proposed amendment of the Criminal Justice Act 1990 to insert a new s.2A(5) of the Heads of Bill specifies that the court cannot hand down a minimum term of less than 12 years to be served before parole is granted. This aligns with the existing provisions of the Parole Act 2019. In this context, IPRT questions whether this is necessary.

Recommendations: IPRT recommends that if the legislation does proceed, that proposed wording should be amended to state that the court may, if it considers it appropriate, specify a recommended minimum custodial term when imposing a relevant life sentence.

IPRT recommends the deletion of Head 3(5) of the General Scheme which is proposed to insert s.2A(5) into the Criminal Justice Act 1990 as it is superfluous given the provisions of the Parole Act 2019.

Head 4: Further provisions in respect of minimum custodial terms

38. IPRT welcomes that Head 4 provides that the requirement to set a minimum term will not impede the court's ability to comment on or make other recommendations on "any matter relevant to the administration of, or the granting of parole" in respect of the life sentence imposed.
39. This Head provides welcome clarity that any recommended minimum custodial sentence shall be subject to appeal and review which aligns with Article 5(4) of the ECHR. While the court will only be able to recommend a minimum tariff rather than hand down a binding decision, given that the Parole Board is already tasked with having "regard to... the sentence of imprisonment concerned and any recommendation of the court that imposed that sentence in relation thereto",²⁷ any recommended minimum tariff could have a persuasive impact on a person being granted parole in the future. A person subject to a recommended minimum tariff, may wish to challenge this at the outset given the potential impact it could have when they become eligible for parole 12 years later.
40. Head 4(5) clarifies that a person will not generally earn remission of sentences to reduce the recommended minimum term. Given that the court cannot recommend a minimum term of less than 12 years, this will not alter the current situation as people serving a life sentence are not eligible for parole before 12 years is served as set out in the Parole Act 2019.

Head 5: Transitional provisions

41. IPRT notes and welcomes that if enacted, the provisions of the legislation will not be applied retrospectively. However, this does mean that there could potentially be a two-tier system operating when applying for parole.

²⁷ Section 27(2)(b) of the Parole Act 2019.

Part 3: Amendment of the Parole Act 2019

Head 6: Effect of recommendation; inward transfers of sentenced persons.

42. This Head provides for changes to the Parole Act 2019 to stipulate that the Board will have to consider any recommendations on a minimum custodial term that should be served when making its decision on an application for parole. It will also have to consider any minimum tariff handed down by a court in another jurisdiction if the convicted person has been transferred to Ireland to serve the remainder of their sentence.
43. Given that the Parole Act 2019 already specifies that the Parole Board has to take into account any comments or recommendations of the court that handed down the sentence, IPRT would question the necessity of this provision.

Recommendation: IPRT recommends that this Head is not necessary, and the Committee should consider recommending its removal given the powers already afforded to the Parole Board under the Parole Act 2019.

Part 4: Amendments to other enactments

Head 7: Sentencing guidelines (Amendment of the Judicial Council Act 2019)

44. In its 2013 Report on *Mandatory Sentences*, the LRC was clear in its recommendation around the need for a Judicial Council to be established and “empowered to develop and publish suitable guidance or guidelines on sentencing, which would reflect the general aims of criminal sanctions and the principles of sentencing”.²⁸
45. IPRT maintains that to ensure fairness, transparency and consistency in sentencing, the Sentencing Guidelines Information Committee (SGIC) of the Judicial Council should produce and publish clear and comprehensive Sentencing Guidelines that establish the principles and purposes of sentencing. This important guidance should be expedited, and the Judicial Council provided with the necessary resources to complete this important work before any further legislative changes to sentencing are implemented.
46. IPRT welcomes, that the General Scheme recognises the importance of producing sentencing guidelines which ‘may relate to the specification of recommended minimum custodial terms within the meaning of the [Life Sentences Act 2024]. However, we maintain that the development of sentencing principles and clear guidelines based on those principles should **precede** any introduction of a tariff-based system.

Recommendations: IPRT recommends that this legislation should not be progressed until the Sentencing Guidelines Information Committee has completed its work on providing initial guidance for judges. The potential introduction of minimum tariffs should be referred to the SGIC for its consideration.

IPRT recommends that in the event that the legislation is enacted, it should not be commenced until after the SGIC issues clear guidance on the factors to be considered when handing down a recommended minimum custodial term in the context of a life sentence.

²⁸ Law Reform Commission, *Report on Mandatory Sentences*, (LRC 2013) para. 6.02.