



**NIACRO Response to Department of Justice Sentencing  
Review Northern Ireland**

**3<sup>rd</sup> February 2020**



## **Introduction**

NIACRO is a voluntary organisation that has been working for almost 50 years to reduce crime and its impact on people and communities. Our vision is of a society in which the needs and rights of all citizens, including victims of crime, adults and children who offend and those who are at risk of offending, are equally respected.

The Charity's Articles of Associations, approved in October 2015 by the Charity Commission for NI, identify NIACRO's objects which meet public benefit test, as being:

- to alleviate need and disadvantage through the provision of services, assistance, advocacy and representation to care for, resettle and rehabilitate offenders and ex-offenders, alleged offenders, persons at risk of becoming offenders and to care for the victims of crime and the families.
- to work for the prevention and reduction of crime for the benefit of the public in Northern Ireland.

Specifically, NIACRO's contributions are to:

- support the resettlement of adults leaving prison and those on community supervision.
- build skills, confidence and employability of people both in prison and in the community.
- support children, young people, families and adults who are displaying behaviour that would put them at risk of engaging with the criminal justice system, to make positive lifestyle choices.
- influence service providers in the statutory, voluntary and community sector and build their capacity to provide appropriate support to those affected by the criminal justice system.
- impact policy and practice by communicating our policy asks and engaging relevant publics at every level.

At the heart of NIACRO's work is the aim to reduce (re)offending in the belief that integrated and flexible approaches towards desistance are most effective.



## Preliminary Comments

NIACRO welcomes the opportunity to comment on the Sentencing Review consultation recognising the commitment of the Department of Justice and the Sentencing Review team to work towards this end.

NIACRO's Corporate Plan-2018-2023 anticipated that the Sentencing Review could lead to an increased emphasis on community sentencing and tackle the disturbing effects of hate crime within communities.<sup>1</sup>

The re-establishment of the Assembly and Executive as of January 2020 provides a basis for moving forward on recommendations emerging from this Review.

Thoughtful conversations with our NIACRO members, senior leadership, and our Executive Committee members informed this response.

NIACRO's Chief Executive Officer, Olwen Lyner, served as a member of the Sentence Review Core Reference Group.

It is clear that diligent work and careful considerations went into preparing this consultation and the Review has the potential to standardise, as far as practical, sentencing and associated legislation. However, we believe that the document would have benefited from a more in-depth consideration of the following:

- Current disparities in sentencing, based on for example; gender, court jurisdiction, the profile of the perpetrator;
- Articulating the complexities which are unique to Northern Ireland;
- Addressing the various resource requirements associated with implementing recommendations; and
- Challenging the notion that prison is the primary sentencing outcome.

## NIACRO Responses

The consultation seeks views from respondents on the following (page iv of consultation preface):

- Principles & purposes of sentencing;
- Public perception;
- Sentencing guidance;
- Tariff setting for murder;

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<sup>1</sup> <https://www.niacro.co.uk/sites/default/files/publications/NIACRO%20Corporate%20Plan%202018-2023.pdf>



- Unduly lenient sentencing arrangements;
- Community sentencing; and
- Sentencing for:
  - hate crime;
  - attacks on frontline public services;
  - crimes against older and vulnerable people; and
  - driving offences causing death or serious injury

We have selected the following headings from this list on which we have based this response:

- Principles & purposes of sentencing
- Public perception
- Sentencing guidance
- Community sentencing
- Sentencing for hate crime

### **Principles & Purposes of Sentencing**

It is NIACRO's view that the four principles of sentencing, as outlined in the consultation document, provide appropriate standards for sentencing. Under the use of punishment sparingly principle, we welcome the acknowledgement that "harsher punishment does not necessarily help to address offending behaviour". This reflects NIACRO's experiences of supporting people who have been through the justice system. We recognise, however, that this view must be held in tension with proportionality and fairness and that crime requires punishment, for legitimising the rule of law, maintaining society's confidence in the justice system and recognising victims of crime.

Furthermore, NIACRO recognises all five of the purposes of sentencing as set out in the review document. These principles run throughout all of our work with people who have offended although we are particularly concerned that sentencing supports rehabilitation and creates opportunities for reparation.

### **Public Perception**

NIACRO recognises that public perception of sentencing is an important aspect of justice and the victim's perception to be of particular importance. A sentencing framework may be useful in helping to set realistic expectations of sentencing for victims.



The importance of public perception places an onus on the justice system to improve transparency and accountability. Access to information which is easy to understand and obtain is critical to creating inclusive ownership of the criminal justice system. The language used in criminal justice can contribute to confusion. For example, the term 'life sentence', which more generally recommends some level of fixed term sentence, is misleading for many members of the public and victims.

It is not only the perceptions of the wider public and victims in sentencing decisions that require consideration. The perception of the defendant regarding the sentencing decision-making process emerged as important in research undertaken by NIACRO in 2019.<sup>2</sup> The research found that the 20 women included in the study lacked understanding about the process by which they were sentenced; they tended not to know or understand all that was written in their Pre-Sentence Reports. Nor did they know whether mitigating factors (particularly their experiences of domestic abuse) were taken into account at sentencing. This led the researchers to recommend that Probation Board for NI and NI Prison Service consider a review of the process by which women are taken through what is written in their Pre-Sentence Reports and how these details were (or were not) reflected in the sentences handed down. This may involve identifying an appropriate time for a structured conversation to take place sometime after the sentence has commenced. Such a structured conversation would help to ensure that women can take in all that is explained and have the opportunity to reflect on the trial process and the sentence received. Whilst this study focused on the experiences of women who had been sentenced, NIACRO supports many (particularly younger) men who do not understand the process by which they were sentenced and proper explanation, at a time when they can take this on board, we believe, is an important part of the justice process for the defendant.

### Public Confidence

There is a presumption from the public that prison is the main sentence, and we believe that is because the public has been undersold the benefits and effectiveness of alternative sentencing. There are Public Relations opportunities to evidence better outcomes from community sentencing rather than the traditional custodial sentence.

NIACRO believes that promotion/education about these benefits and better outcomes from community sentencing should be spearheaded at a Programme for Government level and trickle down through cross-cutting governmental departments to allow the public to participate.

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<sup>2</sup> Survived...but at what cost? A study of women in the criminal justice system who experienced domestic abuse and the potential for change



## Sentencing Guidance

### Merits and Limitations of Sentencing Framework

We recognise that a sentencing framework has the potential to contribute to increased fairness; improving consistency and reducing discrepancies. Strict adherence to a framework may, however, mean that judges could lose the exceptionality of a case. Sentencing therefore requires a balance of fairness based on consistency and room for discretion that accounts for mitigating circumstances, for example particular vulnerabilities of the defendant.

In addition to sentencing guidelines, NIACRO would also encourage the establishment of a Sentencing Guidelines Council that would be responsible for commissioning/undertaking research into effective sentencing, what works for particular groups, and to make this information available to sentencers.

### Resource Considerations

NIACRO recognises that this review is still in consultation and any realistic consideration of fiscal analysis/impacts are still to be considered. However, there does need to be discussion about the resources that may be required to support a sentencing framework in the future. For instance, how might the introduction of a range of community sentences under consideration impact the speed of the justice system, or on the ability of Probation Board of Northern Ireland (PBNI) to fulfil all of its existing obligations? Would imprisonment costs per person increase or decrease? What additional resources might be required by Northern Ireland Courts and Tribunals Service (NICTS), PBNI, or other organisations that might be legislated to provide alternative disposals and associated services? How might court processes be reconfigured to accommodate the new approaches and what role might technology/artificial intelligence have to play? What additional training would the judiciary and the wider legal profession require?

### Use of Prison Sentences

Existing research suggests that whilst a prison term might have differential effects on prevention, “compared with noncustodial sanctions, incarceration appears to have a null or mildly criminogenic effect on future criminal behaviour.”<sup>3</sup> This, and other research, corroborates NIACRO’s experiences over many years of supporting people who have served (particularly short) sentences. We note that whilst the consultation document acknowledges the relative merits of community sentencing for cases where there is “minimal risk to public safety” and require “forms of rehabilitative activities and therapeutic interventions”, the document does perhaps not go far enough in challenging

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<sup>3</sup> Imprisonment and Reoffending (Nagin, Cullen, and Jonson 2009). Crime and Justice, Vol 38, No.1, pp. 115-200.



the traditional notion that custodial sentences remain the primary sentencing option. Nor does it consider what sentence length makes rehabilitation more difficult.

### License Conditions

How well people adhere to licence conditions, particularly data relating to breaches of licence conditions, may be a helpful signal to the judiciary that particular licence conditions may require review. An understanding of the appropriateness of licence conditions and whether the conditions are practical would help inform how to allow a person under these conditions to remain in the community, without disrupting employment and family responsibilities. Given that recall rates are at 30% for licence breaches, there needs to be consideration as to whether there are more effective alternatives. Licence conditions were not examined at much length in the review document. However, we believe if there are to be changes to the sentencing framework, licencing conditions should be included.

### Considerations at Sentencing

As of October 2019, new general sentencing guidelines in England and Wales were amended to take into account factors that may make the offence more serious and factors which may reduce seriousness or reflect personal mitigation. Listed in the factors reducing seriousness or reflecting personal mitigation include considerations for the defendant being the 'sole or primary carer for dependent relatives'. The guidelines give clarity to sentencers regarding how they should consider dependent children when sentencing mothers and fathers.<sup>4</sup> NIACRO would welcome this safeguarding measure being included in sentencing guidelines in Northern Ireland. We would also recommend that Child Impact Statements be included in pre-sentencing reports.

NIACRO agrees that fairness is required in sentencing, though it is important to note that *equality* works differently to *equity*. It is widely understood that women are disproportionately impacted by the criminal justice system, in particular when serving a custodial sentence, and their offending behaviour is often linked to experiences of domestic and/or sexual abuse or other victimhood.<sup>5</sup> NIACRO would want to ensure that these differences are factored into sentencing policy. In July 2019, Northern Ireland saw the number of women imprisoned reach the highest numbers recorded; 84 women.<sup>6</sup>

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<sup>4</sup> [https://www.law.ox.ac.uk/sites/files/oxlaw/maternal\\_sentencing\\_briefing\\_paper.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/maternal_sentencing_briefing_paper.pdf) to learn more about safeguarding children when sentencing parents.

<sup>5</sup> <https://www.thegriffinsociety.org/survivedbut-what-cost-study-women-criminal-justice-system-who-experienced-domestic-abuse-and>

<sup>6</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-49066952>



## Community Sentencing

### Evidence-Based Sentencing

NIACRO is particularly concerned that sentencing supports rehabilitation. We believe that in many instances, and where appropriate to the offence, community sentences represent ideal rehabilitation outcomes. Chart 3 on page 61 of the review document reflects that reoffending rates were lower for those who served their sentences in the community than those who served short term custodial sentences.

NIACRO calls for sentencing to be based on evidence of what disposals are most effective and to take into account the needs and attitudes of a rapidly changing society. Sentencing guidelines could usefully incorporate evidence of the effectiveness and impact of each disposal. This may include, for example, instances of prison recall amongst people who have been subject to particular disposals. We would consider that a Sentencing Council would be responsible for the collation of such evidence.

NIACRO supports greater use of community sentences given their effectiveness and the opportunity provided to the person to continue in employment and community health supports, retain accommodation and support families. Community sentences, specifically Enhanced Combination orders, contain restorative, reparative, and retributive principles and can also provide windows of opportunities to involve victims of a crime in the sentencing process and account for their needs.

Community sentences should be unique and appropriate with decreased involvement of formal supervision in lower tariff cases, as evidence supports that increased formal supervision increases further involvement in the criminal justice system.

NIACRO supports the inclusion of restorative elements in appropriate community sentences. NIACRO's Get Real and other voluntary organisation programmes incorporate helpful restorative elements. This is only effective when engaged with voluntarily. It is difficult to see how a community order with an obligatory restorative or reparative element could be enforced or be effective. Many of NIACRO's projects sit within a restorative continuum by supporting the repair of family and community relationships.

There is great value in non-justice agencies becoming involved in the delivery of programmes, complementing statutory agencies' supervision. However, it must always include the key element of choice. Whilst we see a growing role for the third sector in supporting people through the justice system, we would not see a role for the third sector in delivering sanctions.



## New Options

NIACRO believes current community sentencing options should be utilised and increased before new options such as Structured Deferred Sentences, or Supervised Suspended Sentence Orders be considered, the newer options outlined in the document requiring further evidence of effectiveness before being introduced.

## **Sentencing for Hate Crime**

NIACRO delivers Get Real, a project supported by the European Union's PEACE IV programme, managed by the Special EU Programmes Body. Get Real provides help for those with hate crime offences, those at risk of committing such offences, and the victims of hate crime through restorative interventions, community-based education, and training for criminal justice agencies. Get Real accepts referrals across Northern Ireland and the border counties of the Republic of Ireland. It links with PBNI's Accepting Difference programme to deliver one to one interventions to individuals involved in hate crime or incidents.

The referrals received by Get Real to date are mainly concerned with low-level offences. In our experience, the current enhanced sentence approach is not appropriate for dealing with hate or prejudice-motivated offences. NIACRO would support a comprehensive restorative adult strategy in which victims and those who offend could be better supported through an appropriately managed diversionary restorative practice approach to hate crime. This approach should take note of potential issues highlighted in Judge Desmond Marrinan's ongoing Review of Hate Crime Legislation in Northern Ireland.

## **Conclusion**

NIACRO welcomes the opportunity to contribute to the consultation on Sentencing Review for Northern Ireland and looks forward to continuing the development of future policy framework.

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