

Opening Statement
Joint Committee on Justice and Equality
Bail (Amendment) Bill 2017

Chairperson, and members of the Committee, I thank the Committee for the invitation to speak to you today on the topic of bail and the use of pre-trial detention, as part of discussions on the Bail (Amendment) Bill 2017, sponsored by Deputy O’Callaghan.

In this opening statement I will provide an overview of a research project I undertook as part of a study of the use of pre-trial detention and bail in Ireland and six other European countries (Austria, Belgium, Germany, Lithuania, the Netherlands, and Romania). The project is called ‘Towards Pre-trial Detention as Ultima Ratio’ (DETOUR), and it was funded by the European Commission.¹

I would like to share with the Committee some of the outcomes of our research which are most relevant to the Committee’s deliberations under three headings:

1. The use of pre-trial detention in Ireland generally and the European context;
2. Observations on the risk of offending as a ground for pre-trial detention;
3. Reflections on the use of electronic monitoring.

1. The use of pre-trial detention in Ireland generally and the European context

The rate of pre-trial detention in Ireland at present stands at around 14 detainees per 100,000 population. Ireland’s rates of pre-trial detention are lower than in the other six countries which

¹ *Towards Pre-trial Detention as Ultima Ratio? (DETOUR)*, funded by the European Commission, Directorate-General Justice and Consumers, Agreement No. JUST/2014/JACC/AC/PROC/6606 (the Justice Programme of the European Union).



formed part of our study. The most recent figures which can be compared indicate, for example, that our rate of pre-trial detention (the number of pre-trial detainees per 100,000 of the population) is about half that of the Netherlands, Belgium, and Austria. The Irish rate is comparable to the rate in Germany.

The numbers of people in pre-trial detention in Ireland have, however, shown a marked rise over the last two years. For example, in January 2015 the average number of people in pre-trial detention was just under 500, in October of this year it was 725. This rise is especially notable (though the overall numbers are smaller) amongst women (figure 2), where we see the numbers going from 14 to 39.

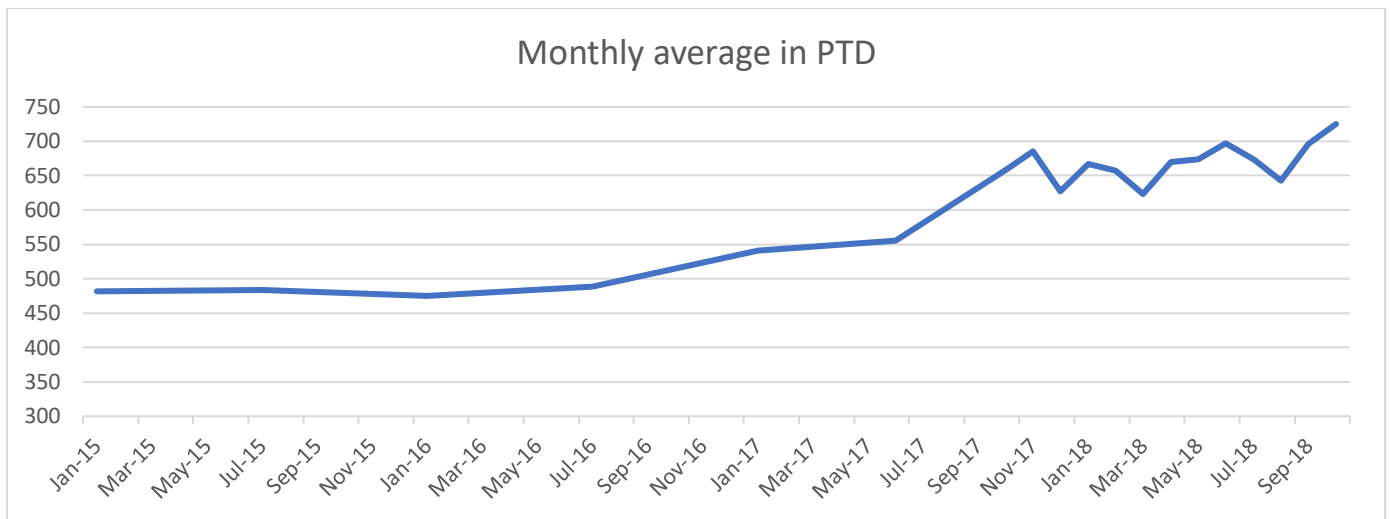


Figure 1: Monthly snapshot of numbers of people in pre-trial detention January 2015 – October 2018. (Source: Irish Prison Service, Monthly Snapshot)



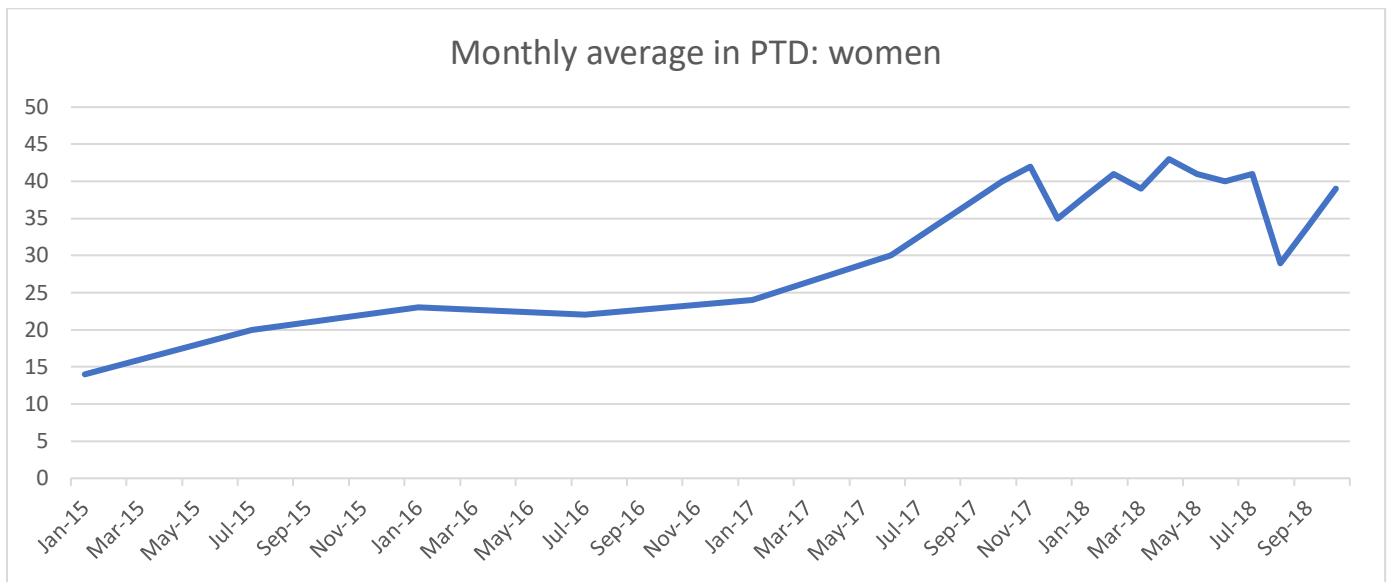


Figure 2: Monthly snapshot of numbers of people in pre-trial detention January 2015 – October 2018, women only. (Source: Irish Prison Service, Monthly Snapshot)

It is not possible to say at present what the precise reasons for this increase are. The Committee will be aware, however, that there have been recent changes to legislation affecting pre-trial detention, which sought to limit the possibility of a person taking up bail in circumstances where a risk of offending while on bail is at issue. It is notable, and regrettable, that we cannot say more on the reasons behind these changes. The information we have from the Courts Service is not adequate for public policymaking or research purposes.²

Pre-assessment of the effects of legislation on the numbers in prison has been recommended by the Penal Policy Review Group, and members might note that no such formal assessments have been completed since that recommendation was made in 2014.³

² See further, Perry and Rogan, 'The use of pre-trial detention in Ireland: how does the law operate in practice?' (2018) 2 *Criminal Law and Practice Review*.

³ Penal Policy Review Group, *Strategic Review of Penal Policy Final Report*, (2014), available at: <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy%20Accessible.pdf/Files/Strategic%20Review%20of%20Penal%20Policy%20Accessible.pdf> (last accessed, December 3 2018); Implementation Oversight



On this point, then, members of the Committee might also note that, were the upward trend in the numbers of people in pre-trial detention to continue to increase, Ireland would be going against the trend at the European Union level which seeks to reduce the numbers of people in pre-trial detention and to use alternatives where possible.

It is also important to recall that debates on pre-trial detention tend to revolve around the binary distinction between liberty and detention. We must not forget that bail is not liberty simpliciter; the decision before a court, is, in the vast majority of cases, between pretrial detention and *gradations* or *levels* of liberty. There is a wide variety of possible conditions which can be imposed on a person as an alternative to pre-trial detention. The question of the monitoring of them, and the supports in place to ensure compliance, needs to be considered.

2. Observations on the risk of offending as a ground for pre-trial detention

The emphasis in the Bill on risk of offending as a ground for pre-trial detention raises some interesting issues which our research findings address. Our participants reported that the *O'Callaghan* grounds (risk of flight and risk of interference with witnesses) remain the dominant consideration in bail applications in Ireland. It was a notable conclusion of the authors of the comparative report we produced, that: "countries focusing on preventive aspects in their PTD practice seem to have rather high rates of PTD".⁴ This raises a strong concern that increasing use of the risk of offending ground is likely to lead to higher rates of pre-trial detention.

Group, *Implementation of Penal Policy Review Group Recommendations: Sixth Report*, (2018), available at: [http://www.justice.ie/en/JELR/Sixth Report of the Implementation Oversight Group to the Minister for Justice and Equality July 2018.pdf/Files/Sixth Report of the Implementation Oversight Group to the Minister for Justice and Equality July 2018.pdf](http://www.justice.ie/en/JELR/Sixth%20Report%20of%20the%20Implementation%20Oversight%20Group%20to%20the%20Minister%20for%20Justice%20and%20Equality%20July%202018.pdf/Files/Sixth%20Report%20of%20the%20Implementation%20Oversight%20Group%20to%20the%20Minister%20for%20Justice%20and%20Equality%20July%202018.pdf) (last accessed December 3 2018).

⁴ Hammerschick et al, n2, at page 71.



3. Reflections on the use of electronic monitoring

Careful consideration must be given, it is submitted, to the what the purposes of electronic monitoring in the Irish context are to be. The experience of other jurisdictions is instructive, and I respectfully recommend that advice be sought on that experience. For example, our European colleagues in this study found that of the seven countries involved, Belgium and the Netherlands used electronic monitoring most frequently; these are also countries with rates of pre-trial detention almost double ours. There are also many technical matters which need to be considered. Again, an impact assessment should be carried out.

There were mixed feelings amongst Irish participants as to whether the availability of electronic tagging would be a useful development. Some felt that it might give judges more confidence to impose restrictions on movement, and they would therefore be more likely to grant bail. Other participants said there should be an emphasis on the reasons behind why people do not turn up for trial or offend on bail e.g. addiction problems, rather than investing in an electronic tag. As one probation practitioner said: it's about what's going on in people's heads" (**Probation Participant 2**). A particularly interesting perspective which emerged concerned the idea that defendants might seek electronic monitoring as an alternative to pre-trial detention, and review or appeal an outcome where pre-trial detention was ordered and electronic monitoring not used.

A common view expressed by participants in Ireland was that electronic tagging would be quite similar to the curfew and mobile phone conditions which are frequently imposed as conditions of bail by the Irish courts at present.



4. Recommendations

It is respectfully recommended that:

1. The Courts Service be asked to provide figures on:
 - a. The numbers of bail applications made, granted, and refused at District Court and High Court level on a consistent basis and broken down by offence type;
2. Analysis be undertaken of the trends developing in the use of pre-trial detention in Ireland;
3. An assessment be made of the implications of this Bill in terms of prison numbers, and the overall cost;
4. An assessment be made of the logistical requirements for electronic monitoring and the methods used, along with the likely cost;
5. Evidence be sought from those administering systems of electronic monitoring in other jurisdictions, e.g. Belgium and the Netherlands.

I thank the Committee for the opportunity to discuss these matters and look forward to questions.

