An Roinn Dlí agus Cirt
Department of Justice

Tuarascáil maidir le hath-bhreithniú ar achtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta a fhorchur

Alt 29 den Acht um Chomhairle na mBreithiúna, 2019

Clár an Ábhair

1. Cúlra

Foráiltear mar a leanas le halt 29 den Acht um Chomhairle na mBreithiúna, 2019:

> *Déanfaidh an tAire—*
>
> > *(a) tráth nach déanaí ná 2 bhliain tar éis don alt seo teacht i ngníomh, tús a chur le hathbhreithniú ar achtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta a fhorchur i leith cionta agus gan dochar do ghinearáltacht an mhéid sin roimhe seo, féadfaidh an tAire, mar chuid den athbhreithniú, breithniú a dhéanamh i dtaobh—*
> >
> > > *(i) an cuí leanúint de na pianbhreitheanna íosta sin a fhorchur trí oibriú na bhforálacha sin i leith na gcionta uile lena mbaineann na forálacha sin, agus*
> > >
> > > *(ii) a mhéid a dhéantar, i gcleachtas, na pianbhreitheanna íosta sin a fhorchur de réir na bhforálacha sin,*
> >
> > *agus*
> >
> > *(b) tráth nach déanaí ná 12 mhí tar éis tús a chur leis an athbhreithniú sin, tuarascáil a thabhairt do gach Teach den Oireachtas maidir le haon fhionnachtana ón ath-bhreithniú sin.*

Achtaíodh an tAcht um Chomhairle na mBreithiúna, 2019, an 13 Nollaig 2019. Mar a fhoráiltear faoi alt 29(a), cuireadh tús le hathbhreithniú ar na hachtacháin sin an 13 Nollaig 2021. Leis an tuarascáil seo, arna leagan faoi bhráid Thithe an Oireachtais, comhlíontar an oibleagáid reachtúil atá ar an Aire Dlí agus Cirt de réir alt 29(b).

2. Téarmaí Tagartha

Is iad seo na téarmaí tagartha don athbhreithniú:

1. Sainaithint a dhéanamh ar gach achtachán reatha lena ndéantar foráil maidir le pian-bhreitheanna íosta a fhorchur i leith cionta;
2. Faisnéis a sholáthar faoina mhéid a dhéantar na pianbhreitheanna íosta sin a fhorchur de réir na bhforálacha sin;
3. Scrúdú a dhéanamh ar na hachtacháin sin, laistigh de chomhthéacs na n-athbhreith-nithe roimhe seo ar an gcéanna, chun a shuí cé acu atá nó nach bhfuil siad fós cuí i leith na gcionta uile a bhfuil feidhm ag na forálacha sin maidir leo; agus
4. Tuarascáil a chur i gcrích ar an athbhreithniú chun rogha roghnaithe beartais a mholadh lena breithniú ag Tithe an Oireachtais.

3. Pianbhreitheanna Íosta

Achtacháin lena ndéantar foráil maidir le cionta coiriúla, is gnách go sonraítear iontu pionós nó pianbhreith uasta a fhéadfar a thabhairt ar chiontú. I gcásanna den sórt sin, éascaítear rogha bhreithiúnach, de réir Airteagal 34 den Bhunreacht, ionas gur féidir tromchúis agus tionchar na coire agus tosca maolaitheacha a bhreithniú le linn an phróisis um ghearradh pianbhreitheanna. Déantar amhlaidh chun a chinntiú go dtabharfar pianbhreith atá cothrom cóir.

I gcodarsnacht leis sin, thug an Stát líon beag achtachán spriocdhírithe isteach roimhe seo i leith cionta coiriúla sonracha, ar achtacháin iad lena sonraítear na pianbhreitheanna íosta nach mór a chur isteach ar dhuine a chiontú.

3.1 Pianbhreitheanna Íosta Toimhdean

Le pianbhreith íosta toimhdean, cuirtear oibleagáid ar bhreitheamh pianbhreith íosta, mar atá sonraithe san achtachán iomchuí, a thabhairt, ar dhuine a chiontú. Féadfaidh an breitheamh a bheidh ag gearradh na pianbhreithe an phianbhreith sin a mhéadú, de réir mar is cuí leis nó léi.

I bprionsabal, tá pianbhreitheanna íosta toimhdean den sórt sin ceaptha chun béim a leagan ar thromchúis an chiona choiriúil agus chun an breithniú ar thosca maolaitheacha a d'fhéadfadh fad na pianbhreithe a laghdú a chur as an áireamh.

Mar sin féin, le hachtacháin reatha iomchuí sa Stát seo, déantar foráil maidir leis an bpianbhreith a laghdú faoi bhun na pianbhreithe toimhdean iomchuí in imthosca fíor-eisceachtúla.

Mar shampla, le halt 27(3C) den Acht um Mí-Úsáid Drugaí, 1977 (arna chur isteach le halt 5 den Acht um Cheartas Coiriúil, 1999), déantar foráil maidir le pianbhreith íosta toimhdean 10 mbliana i leith sealbhú drugaí ar €13,000 nó níos mó a luach. Agus an tAcht um Mí-Úsáid Drugaí, 1977, á leasú, cuirtear tuairisc ar 'na himthosca eisceachtúla' isteach le hAcht 1999 freisin:

> *(3C) Ní bheidh feidhm ag fo-alt (3B) den alt seo i gcás inar deimhin leis an gcúirt go bhfuil imthosca eisceachtúla sonracha ann a bhaineann leis an gcion, nó leis an duine a chiontaítear sa chion, ar imthosca iad a d'fhágfadh gur phianbhreith mhíchóir sna himthosca go léir pianbhreith nach lú ná príosúnacht 10 mbliana agus chun na críche sin féadfaidh an chúirt aird a thabhairt ar aon nithe is cuí léi, lena n-áirítear—*

(a) ar phléadáil an duine sin ciontach sa chion agus, má rinne,

(i) an chéim inar chuir sé in iúl gur bheartaigh sé pléadáil ciontach, agus

(ii) na himthosca inar chuir sé é sin in iúl,

agus

(b) ar chabhraigh an duine sin go hábhartha in imscrúdú an chiona.

I gcásanna den sórt sin, níl aon oibleagáid ar an mbreitheamh atá ag gearradh na pianbhreithe a mhionsonrú go beacht cé 'na himthosca eisceachtúla sonracha a bhaineann leis an gcion' a bhfuil feidhm acu agus pianbhreith á tabhairt ná conas a ualaítear na himthosca sin chun fad deiridh na pianbhreithe a ríomh. Fágann sé sin nach ann d'aon sonraí iontaofa i ndáil le tosca den sórt sin a úsáid agus nach féidir aon anailís chomhleanúnach a chur ar fáil ar an gcéanna faoi láthair.

Rud gaolmhar, in imthosca den sórt sin, tá ag an Stiúrthóir Ionchúiseamh Poiblí an ceart chun achomharc a dhéanamh in aghaidh aon bhreithe ó bhreitheamh trialach gan pianbhreith íosta toimhdean a thabhairt. Foilsítear sna Tuarascálacha Bliantúla ón Stiúrthóir Ionchúiseamh Poiblí sonraí a bhaineann leis na hachomhairc a rinne an Stiúrthóir maidir le pianbhreitheanna a forchuireadh agus a measadh sa dlí a bheith róthrócaireach. Tá an Tuarascáil Bhliantúil don bhliain 2021 ar an gceann is déanaí de na tuarascálacha sin.[1] Ní ghabhtar sna tuarascálacha bliantúla ón Stiúrthóir Ionchúiseamh Poiblí, áfach, fo-thacar na n-achomharc sin a bhaineann le cásanna ina raibh feidhm ag pianbhreitheanna íosta toimhdean, más ann dó.

Níor fhoilsigh an Stiúrthóir Ionchúiseamh Poiblí sonraí maidir leis na cionta agus na pian-bhreitheanna sonracha a tugadh agus a bhí ina n-ábhar do na hiarratais sin. Mar sin, ní féidir, a mhéid a bhaineann le pianbhreitheanna íosta toimhdean, teacht ar aon chonclúidí ó shonraí foilsithe an Stiúrthóra.

San am i láthair, déantar foráil maidir le pianbhreitheanna íosta toimhdean i ndáil le gníomh-artha coiriúla sonracha a bhaineann le cionta drugaí agus cionta arm tine.

[1] Torthaí ar na hIarratais de Réir na Bliana ar Éisteadh Iad, Tuarascáil Bhliantúil 2021 ó Oifig an Stiúrthóra Ionchúiseamh Poiblí, lch 35.

3.1.1 Cionta drugaí (pianbhreitheanna íosta toimhdean)

An Cion	*An Phianbhreith*	*An Fhoráil*	*Arna tabhairt isteach*
Sealbhú drugaí ar €13,000 nó níos mó a luach	Pianbhreith saoil, lena ngabhann pian-bhreith íosta 10 mbliana (rogha éigin)	Alt 15A den Acht um Mí-Úsáid Drugaí, 1977	Alt 5 den Acht um Cheartas Coiriúil, 1999 (lena leas-aítear alt 27 d'Acht 1977)
Drugaí rialaithe os cionn luach áirithe a allmhairiú	Pianbhreith saoil, lena ngabhann pian-bhreith íosta 10 mbliana (rogha éigin)	Alt 15B den Acht um Mí-Úsáid Drugaí, 1977	Alt 5 den Acht um Cheartas Coiriúil, 1999 (lena leas-aítear alt 27 d'Acht 1977)

3.1.2 Cionta arm tine (pianbhreitheanna íosta toimhdean)

An Cion	*An Phianbhreith*	*An Fhoráil*	*Arna tabhairt isteach*
Seilbh ar airm thine le hintinn duine a chur i gcontúirt bháis	Pianbhreith saoil, lena ngabhann pian-bhreith íosta 10 mbliana (rogha éigin)	Alt 15 d'Acht na nArm Teine, 1925	Alt 42 den Acht um Cheartas Coiriúil, 2006
Arm tine a bheith ag duine agus é ag tógáil feithicle gan údarás	Pianbhreith 14 bliana, lena ngabhann pian-bhreith íosta 5 bliana (rogha éigin)	Alt 26 d'Acht na nArm Tine, 1964	Alt 57 den Acht um Cheartas Coiriúil, 2006
Toirmeasc ar airm thine a úsáid chun comhrac in aghaidh gabhála nó cabhrú le héalú	Pianbhreith saoil, lena ngabhann pian-bhreith íosta 10 mbliana (rogha éigin)	Alt 27 d'Acht na nArm Tine, 1964	Alt 58 den Acht um Cheartas Coiriúil, 2006
Arm tine nó lón lámhaigh a shealbhú in imthosca amhrasacha	Pianbhreith 14 bliana, lena ngabhann pian-bhreith íosta 5 bliana (rogha éigin)	Alt 27A d'Acht na nArm Tine, 1964	Alt 59 den Acht um Cheartas Coiriúil, 2006

Arm tine a iompar le hintinn choiriúil	Pianbhreith 14 bliana, lena ngabhann pian-bhreith íosta 5 bliana (rogha éigin)	Alt 27B d'Acht na nArm Tine, 1964	Alt 60 den Acht um Cheartas Coiriúil, 2006
Bairille gunna gráin nó raidhfil a ghiorrú	Pianbhreith 10 mbliana, lena ngabhann pian-bhreith íosta 5 bliana (rogha éigin)	Alt 12A d'Acht na nArm Tine agus na nArm Ionsaitheach, 1990	Alt 65 den Acht um Cheartas Coiriúil, 2006

3.2 Pianbhreitheanna Íosta Sainordaitheacha

Cosúil le pianbhreitheanna íosta toimhdean, le pianbhreitheanna íosta sainordaitheacha cuirtear oibleagáid ar bhreitheamh pianbhreith íosta, mar atá sonraithe san achtachán iomchuí, a thabhairt ar dhuine a chiontú. Féadfaidh an breitheamh a bheidh ag gearradh na pianbhreithe an phianbhreith sin a mhéadú, de réir mar a mheastar is cuí.

Murab ionann agus pianbhreitheanna íosta toimhdean, áfach, ní fhéadfar pianbhreitheanna íosta sainordaitheacha a laghdú in imthosca eisceachtúla.

Ní dhéantar i ndlí na hÉireann faoi láthair aon fhoráil maidir le pianbhreitheanna íosta sainordaitheacha. Fágann sé sin go bhfuil an díospóireacht ar an gcéanna lasmuigh de shainchúram na tuarascála seo.

3.3 Athchionta

3.3.1 Pianbhreitheanna Íosta Toimhdean i leith Athchionta

Le halt 25 den Acht um Cheartas Coiriúil, 2007, déantar foráil maidir le téarmaí íosta príosúnachta i dtaca le cionta dá éis sin a dhéanamh laistigh de thréimhse ar leith. Chun cáiliú dó sin, ní mór an chéad chion a bheith ar cheann amháin de na cionta ar liosta sonrach atá sainaitheanta i Sceideal 2 a ghabhann le hAcht 2007, agus ní mór an phianbhreith i leith an chéad chiona a bheith 5 bliana ar a laghad ar fad. Ní mór an dara cion a bheith sainaitheanta i Sceideal 2 freisin, agus ní mór an dara cion a bheith déanta laistigh de 7 mbliana ón gciontú i leith an chéad chiona. Tá Sceideal 2 leagtha amach in **AGUISÍN I** thíos.

In imthosca den sórt sin, tá oibleagáid ar na cúirteanna pianbhreith phríosúnachta a thabhairt is comhionann le *"téarma nach lú ná trí cheathrú den téarma uasta príosúnachta a fhorordaítear le dlí i leith ciona den sórt sin ... agus, más príosúnacht saoil an téarma uasta a fhorordaítear amhlaidh, sonróidh an chúirt téarma príosúnachta nach giorra ná 10 mbliana"*.

Féadfar, maidir leis an oibleagáid chun téarma íosta a fhorchur, a thabhairt gan í a bheith infheidhme i roinnt comhthéacsanna. Áirítear sna cionta iomchuí a thagann faoin bhforáil sin, mar atá ar áireamh i Sceideal 2, dúnmharú, cionta neamh-mharfacha in aghaidh an duine, cionta maidir le pléascáin, cionta arm tine, trombhuirgléireacht, cionta gáinneála ar dhrugaí, agus coireacht eagraithe.

Le halt 4 den Acht um an Dlí Coiriúil (Cionta Gnéasacha) (Leasú), 2019, déantar foráil maidir le hoibleagáid den chineál céanna i ndáil le hathchiontóirí gnéasacha. Chun cáiliú dó sin, ní mór an chéad chion a bheith ar cheann amháin de na cionta ar liosta sonrach atá sainaitheanta sa Sceideal a ghabhann le hAcht 2019, agus ní mór an phianbhreith i leith an chéad chiona a bheith 5 bliana ar a laghad ar fad. Ní mór an dara cion a bheith sainaitheanta sa Sceideal freisin, agus ní mór an dara cion a bheith déanta laistigh de 10 mbliana ón gciontú i leith an chéad chiona. Tá Sceideal iomlán na gcionta leagtha amach in **AGUISÍN II** thíos.

In imthosca den sórt sin, tá oibleagáid ar na cúirteanna pianbhreith phríosúnachta a thabhairt is comhionann le *"téarma nach lú ná trí cheathrú den téarma uasta príosúnachta a fhorordaítear le dlí i leith ciona den sórt sin ... agus, más príosúnacht saoil an téarma uasta a fhorordaítear amhlaidh, sonróidh an chúirt téarma príosúnachta nach giorra ná 10 mbliana"*.

Arís eile, féadfar an oibleagáid sin a bhaint i roinnt comhthéacsanna.

Ar aon dul le hathbhreithnithe roimhe seo ar phianbhreitheanna íosta, go háirithe an tuarascáil a d'fhoilsigh an Coimisiún um Athchóiriú an Dlí sa bhliain 2013 (mionsonraí tugtha thíos), meastar go dtagann pianbhreitheanna íosta toimhdean i leith athchionta faoi shainchúram an athbhreithnithe reatha a ndéantar foráil maidir leis faoi alt 29 den Acht um Chomhairle na mBreithiúna, 2019.

3.3.2 Pianbhreitheanna Íosta Sainordaitheacha i leith Athchionta

Gabhann le pianbhreith íosta shainordaitheach i leith dara cion nó cionta dá éis sin pianbhreith íosta nach mór a thabhairt, agus ní ghabhann léi aon fhéidearthacht chun a thabhairt an oibleagáid sin gan a bheith infheidhme.

Measadh pianbhreitheanna íosta sainordaitheacha i leith athchionta a bheith míbhunreachtúil (féach *5. Achtacháin Roimhe Seo*, thíos), agus aisghaireadh achtacháin iomchuí. Fágann sé sin go bhfuil an díospóireacht ar an gcéanna lasmuigh de shainchúram na tuarascála seo.

3.4 Pianbhreitheanna Íosta agus Scaoileadh Sealadach

I gcás gach achtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta sa dlínse seo, gabhann siad freisin le hachtacháin ina bhfuil forálacha sonracha a bhaineann le hincháilitheacht an duine aonair ar ar gearradh pianbhreith le haghaidh scaoileadh sealadach.

Tagraíonn scaoileadh sealadach do scaoileadh sealadach ón bpríosún ar feadh tréimhse socraithe ama. Tá an bunús reachtach do scaoileadh sealadach leagtha amach san Acht um Dhlínse Choiriúil, 1960, arna leasú leis an Acht um Cheartas Coiriúil (Scaoileadh Sealadach Príosúnach), 2003. Is minic a bhreithneofar cineál scaoilte shealadaigh struchtúrtha ag druidim le deireadh phianbhreith duine aonair, más rud é go measfar an duine aonair sin a bheith incháilithe. Agus breitheanna á dtabhairt sa chomhthéacs sin, tugtar aird ar chineál an chiona a rinneadh, ar iompraíocht daoine aonair le linn dóibh bheith sa phríosún, ar an mbagairt a d'fhéadfadh a bheith ann do shábháilteacht an phobail, agus dá mhéid a d'éascódh scaoileadh sealadach den sórt sin athimeascadh rathúil sa tsochaí.

I gcás na ndaoine sin ar gearradh pianbhreith orthu faoi na hachtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta, níl feidhm ag na hachtacháin a bhaineann le neamh-incháilitheacht le haghaidh scaoileadh sealadach ach amháin maidir leis na daoine ar gearradh an phianbhreith íosta toimhdean iomlán orthu i leith an chiona iomchuí. Mar shampla, i gcás, ar aon dul leis an bpianbhreith íosta toimhdean, go dtabharfar pianbhreith 10 mbliana do chiontóir i leith ciona faoi alt 15A den Acht um Mí-Úsáid Drugaí, 1977, measfar an ciontóir sin a bheith neamh-incháilithe le haghaidh scaoileadh sealadach.

Mar sin féin, más rud é go dtabharfar do dhaoine aonair pianbhreith ar lú í nó ar mó í ná an phianbhreith íosta toimhdean, tiocfaidh siad chun bheith incháilithe le haghaidh scaoileadh sealadach nuair a chomhlíonfaidh siad na critéir incháilitheachta eile. Sa chás sin, maidir le daoine aonair ar a ngearrfar tréimhse príosúnachta níos faide, amhail 11 bhliain, bheadh cion déanta acu a mheastar a bheith níos tromchúisí ná an cion a bheadh déanta ag duine éigin ar a ngearrfar an phianbhreith íosta toimhdean 10 mbliana, ach tiocfaidh ciontóirí ar a ngearrfar tréimhse príosúnachta 11 bhliain chun bheith incháilithe i ndeireadh na dála dá mbreithniú le haghaidh scaoileadh sealadach ach ní bheidh daoine aonair ar a ngearrfar tréimhse príosúnachta 10 mbliana incháilithe choíche dá mbreithniú le haghaidh scaoileadh sealadach.

Déantar an t-ábhar níos casta fós, mar shampla, nuair a ghearrtar ar dhuine aonair an phianbhreith íosta toimhdean 10 mbliana, a bhfuil cuid di ar fionraí. I gcás Kavanagh v An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí a seoladh sa bhliain 2013,[2] cuireadh an méid seo a leanas in iúl sa bhreith ón Ard-Chúirt;

> *"Ní aisghairm uathoibríoch í aisghairm an ordaithe lena gcuirtear an phianbhreith ar fionraí. Ina ionad sin, tá aisghairm an ordaithe faoi réir bhreithniú na cúirte ar imthosca*

[2] Kavanagh v An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, [2013] IEHC 626.

> *an cháis. Ní fhéadfar a cheangal ar an iarratasóir … blianta ar fionraí dá phianbhreith a chur isteach gan aon ordú eile ón gcúirt. Ní cheanglaítear an phianbhreith bhunaidh a chur isteach ach amháin tar éis aisghairm a dhéanamh de bhun alt 99 den [Acht um Cheartas Coiriúil, 2006].”*

Ina theannta sin;

> *“Is é an ghnáthbhrí shoiléir atá le pianbhreith ar fionraí de thréimhse príosúnachta 10 mbliana, a bhfuil na 3 bliana deiridh di ar fionraí, go bhfuil 7 mbliana le cur isteach.”*

Sna himthosca sin, agus á thabhairt faoi deara go bhféadfar cuid de na pianbhreitheanna a chur ar fionraí, ní thiocfaidh duine aonair ar ar gearradh pianbhreith íosta toimhdean, a bhfuil cuid di ar fionraí, chun bheith neamh-incháilithe le haghaidh scaoileadh sealadach.

Maidir le daoine aonair ar gearradh pianbhreith orthu faoi na hachtacháin sin, tá neamh-chomhsheasmhacht ann i ndáil lena n-incháilitheacht le haghaidh scaoileadh sealadach a rochtain. Mar gheall ar an neamh-chomhsheasmhacht sin, agus mar gheall ar an bhfíoras go meastar roinnt ciontóirí a bheith neamh-incháilithe le haghaidh ní ar próiseas forchéimnitheach é chun athimeascadh a éascú agus chun dóchúlacht an atitimeachais a laghdú, caitear amhras ar iomchuibheas na n-achtachán sin a bhaineann le scaoileadh sealadach, agus tá tuilleadh comhsheasmhachta agus cothroime ag teastáil.

3.5 Pianbhreitheanna Íosta agus Parúl

Cosúil leis na forálacha a bhaineann le scaoileadh sealadach, tá in alt 24 den Acht Parúil, 2019, roinnt forálacha lena dtugtar le fios go mbeidh daoine ar gearradh pianbhreitheanna íosta orthu faoi achtacháin iomchuí neamh-incháilithe le haghaidh parúil roimh dhul in éag do na téarmaí íosta sin.

Níl an t-ábhar sin iomchuí faoi láthair, toisc nár achtaigh an tAire aon rialacháin faoi alt 24 go fóill chun foráil a dhéanamh maidir le hincháilitheacht na ndaoine sin atá ag cur pian-bhreitheanna cinntithe isteach le haghaidh iarratas a dhéanamh ar pharúl. Mar sin féin, a luaithe a thabharfar na rialacháin sin isteach, ar obair í ar ghabh an tAire uirthi féin tús a chur léi san *Athbhreithniú ar Roghanna Beartais le haghaidh Athchóiriú Príosún agus Pionós, 2022-2024*, tiocfaidh chun cinn roinnt ábhar atá le breithniú i gcomhar leis na hábhair sin a tarraingíodh anuas i ndáil le hincháilitheacht le haghaidh scaoileadh sealadach.

Tá gá le comhsheasmhacht idir incháilitheacht le haghaidh scaoileadh sealadach agus incháilitheacht le haghaidh parúil. Rud gaolmhar, tá gá le comhsheasmhacht agus cothroime a chinntiú, ionas nach gcuirfear pionós míchuí ar na daoine atá ag cur pianbhreitheanna íosta isteach, go háirithe i gcomparáid leis na daoine a ciontaíodh sna cionta céanna ach ar mó a bpianbhreitheanna ná an phianbhreith íosta a ndéantar foráil maidir léi sna hachtacháin

iomchuí. Ar deireadh, agus cosúil an athuair leis an ábhar a bhaineann le scaoileadh sealadach, tá gá le breithniú a dhéanamh ar an tionchar a d'fhéadfadh a bheith ag incháilitheacht le haghaidh parúil i ndáil le hathshlánú agus athimeascadh a spreagadh nó a éascú agus i ndáil le dóchúlacht an atitimeachais a laghdú.

4. Pianbhreitheanna Lán-Sainordaitheacha

Is é is pianbhreith lán-sainordaitheach ann pianbhreith nach mór a thabhairt i ndáil le cionta sonracha agus nach bhféadfaidh an breitheamh a bheidh ag gearradh na pianbhreithe a fad a athbhreithniú suas ná síos.

Níl ach trí phianbhreith lán-sainordaitheacha i ndlí na hÉireann. Is i leith chionta an dúnmharaithe, an dúnmharaithe breithe báis agus an tréasa faoi seach a ghearrtar iad.

Ní cineálacha pianbhreitheanna íosta iad pianbhreitheanna lán-sainordaitheacha. Fágann sé sin go bhfuil siad lasmuigh de raon feidhme an athbhreithnithe seo.

Is ceart a thabhairt faoi deara gur tharla sé, ar aon dul le Gníomh 6.2 den *Athbhreithniú ar Roghanna Beartais le haghaidh Athchóiriú Príosún agus Pionós, 2022-2024*, gur cuireadh tús le hobair chun athbhreithniú a dhéanamh ar phianbhreitheanna saoil, lena n-áirítear pianbhreitheanna sainordaitheacha saoil, d'fhonn scrúdú a dhéanamh ar thréimhsí íosta príosúnachta a thabhairt isteach, agus ar ábhair ghaolmhara pharúil. Tá an obair sin á déanamh lasmuigh de shainchúram an athbhreithnithe reatha seo.

5. Achtacháin Roimhe Seo

Tugadh isteach leis an Acht um Cheartas Coiriúil, 2006, pianbhreitheanna íosta sainordaitheacha i leith athchionta áirithe arm tine agus i leith athchionta áirithe drugaí. Murab ionann agus na forálacha den Acht um Cheartas Coiriúil, 2007, agus den Acht um an Dlí Coiriúil (Cionta Gnéasacha) (Leasú), 2019, lena ndearnadh foráil maidir le pianbhreitheanna íosta toimhdean i leith athchionta, ar pianbhreitheanna iad a d'fhéadfaí a laghdú in imthosca eisceachtúla, ní raibh aon fhoráil den sórt sin san Acht um Cheartas Coiriúil, 2006, rud a d'fhág gur pianbhreitheanna fíor-shainordaitheacha iad na pianbhreitheanna a bhaineann leis an Acht sin.

Sa bhliain 2019, cinneadh sa bhreithiúnas ón gCúirt Uachtarach i gcás Ellis v An tAire Dlí agus Cirt agus Comhionannais agus daoine eile [2019] IESC 30 na hachtacháin iomchuí den Acht um Cheartas Coiriúil, 2006, a bheith míbhunreachtúil. Measadh na hachtacháin sin a bheith ag teacht salach ar an scaradh bunreachtúil cumhachtaí maidir le féachaint lena chinneadh cén pionós íosta nach mór do chúirt a fhorchur ar ghrúpa teoranta ciontóirí a bhfuil saintréith

ar leith acu agus ar an ngrúpa sin amháin. Ba é an tsaintréith ar leith sin go ndearna na ciontóirí sin cion liostaithe amháin nó níos mó roimhe sin.

Is amhlaidh go rialaítear sa bhreithiúnas ón gCúirt Uachtarach go bhfuil pianbhreitheanna íosta fíor-shainordaitheacha i leith dara cionta “in aghaidh an Bhunreachta”.

Chun aghaidh a thabhairt ar an ábhar sin, achtaíodh an tAcht um Cheartas Coiriúil (Leasú), 2021, i mí na Nollag 2021. Aisghaireadh leis an Acht sin na hachtacháin iomchuí den Acht um Cheartas Coiriúil, 2006, a measadh a bheith míbhunreachtúil, eadhon:

An Cion	*An Phianbhreith*	*Arna tabhairt Isteach*	*Arna haisghairm*
Cionta drugaí dá éis sin faoi alt 15A nó alt 15B den Acht um Mí-Úsáid Drugaí, 1977	Pianbhreith íosta 10 mbliana	Alt 84 den Acht um Cheartas Coiriúil, 2006 (lena leasaítear alt 27 d’Acht 1977)	An tAcht um Cheartas Coiriúil (Leasú), 2021
Cionta arm tine dá éis sin faoi Acht na nArm Teine, 1925	Pianbhreith saoil, lena ngabhann pian-bhreith íosta 10 mbliana	Alt 42 den Acht um Cheartas Coiriúil, 2006	An tAcht um Cheartas Coiriúil (Leasú), 2021

Leis an Acht um Cheartas Coiriúil (Leasú), 2021, déileáladh freisin le sean-Achtanna atá i reachtaíocht réamh-1922 agus atá fós i bhfeidhm in Éirinn. Bhí forálacha neamhghnácha sna sean-Achtanna sin le cineál pianbhreithe íosta sainordaithí d’athchiontóirí agus bhí na forálacha sin freisin ag teacht salach ar an mbreithiúnas i gcás Ellis agus leasaíodh iad dá réir sin.

Ba iad seo na sean-Achtanna:

1. *Dublin Police Magistrates Act* 1808
2. *Illicit Distillation (Ireland) Act* 1831
3. *Refreshment Houses (Ireland) Act* 1860

Mar atá soiléirithe i 3.3.2 thuas, is amhlaidh, ós rud é gur aisghaireadh na hachtacháin roimhe seo, atá siad lasmuigh de raon feidhme an athbhreithnithe seo anois.

6. Pianbhreitheanna Íosta a Fhorchur

De réir alt 29(a)(ii) den Acht um Chomhairle na mBreithiúna, 2019, is ceart aghaidh a thabhairt, san athbhreithniú seo ar phianbhreitheanna íosta, ar a mhéid a dhéantar na pianbhreitheanna íosta sin a fhorchur iarbhír de réir na n-achtachán iomchuí. Chuige sin, lorgaíodh sonraí ó Sheirbhís Phríosúin na hÉireann maidir le cimiú agus lorgaíodh sonraí ón tSeirbhís Chúirteanna maidir le gearradh pianbhreitheanna, a mhéid a bhaineann leis na cionta sin.

I mí Lúnasa 2022, sholáthair Seirbhís Phríosúin na hÉireann tacar sonraí a bhaineann le cimithe i leith cionta is iomchuí don tuarascáil seo. Áiríodh sa tacar sonraí sin pianbhreitheanna gníomhacha agus pianbhreitheanna ar fionraí araon ón mbliain 2003 go dtí an bhliain 2021, agus an dá bhliain sin san áireamh.

I mí Lúnasa 2022, chomhroinn an tSeirbhís Chúirteanna leis an Roinn Dlí agus Cirt sonraí a bhí ar fáil maidir le pianbhreitheanna iomchuí ó mhí Eanáir 2014 go deireadh mhí an Mheithimh, 2022. Eisiadh achomhairc ó na sonraí, agus níor measadh é a bheith indéanta rochtain a fháil ar shonraí iontaofa a bhaineann le dara cionta nó le cionta dá éis sin. Bhí dhá nóta thábhachtacha ag gabháil leis na sonraí sin:

- Díorthaíodh an tuarascáil sonraí go príomha ón réimse ‘ráiteas faoin gcion’ sa Chóras Comhtháite Rialaithe agus Bainistithe, ar réimse téacs é ina bhfuil éagsúlacht shuntasach maidir leis an dóigh a sonraítear cionta.

- Chun laghdú a dhéanamh ar an scóip le haghaidh earráide/neamhbheachtais, rinneadh an téacs a ghlanadh agus a chaighdeánú nuair ab fhéidir. Ní féidir cuntas a thabhairt i ngach éagsúlacht i dtéacs arna iontráil ag oifigí ar fud na tíre, áfach. Dá bhrí sin, níor cheart a mheas na sonraí a bheith cuimsitheach.

Mar gheall ar an difríocht idir sonraí maidir le cimiú agus sonraí maidir le gearradh pianbhreitheanna, ar na rabhaidh choibhneasta shláinte don dá thacar sonraí, ar na raonta difriúla ama atá i gceist leis na tacair sonraí a soláthraíodh, agus ar an deacracht tuairiscithe a bhaineann le hathchionta a rianú go háirithe, ní féidir tuarascáil lánchuimsitheach a sholáthar ar a mhéid a dhéantar na pianbhreitheanna íosta sin a fhorchur iarbhír de réir na n-achtachán iomchuí.

Chun aghaidh a thabhairt air sin, cinneadh pointí sonraí a leithlisiú ó thacair sonraí Sheirbhís Phríosúin na hÉireann agus na Seirbhíse Cúirteanna araon ina dtagraítear do pianbhreitheanna gníomhacha, agus dóibh sin amháin, chun na pointí sonraí sin a thiomsú ina dtacar sonraí aonair agus chun na pointí sonraí a chur i láthair ar fud raon fhaid na pianbhreithe in aghaidh an chiona sna cairteacha thíos.

Agus na laigí lena mbaineann á n-aithint, ar laigí iad a tháinig as na deacrachtaí a bhí i gceist leis na sonraí príomhúla a bhailiú, is é an toradh atá ar an gcur chuige sin go bhfaightear léargas ar scála coibhneasta na gcionta, agus iad curtha i gcomparáid le chéile taobh le taobh,

agus go bhfaightear léiriú ginearálta ar raon na bpointí sonraí, nó ar na pianbhreitheanna lánghníomhacha a tugadh, a mhéid is féidir iad a shainaithint ó na taifid atá ar fáil.

6.1 Sonraí maidir le Pianbhreitheanna Íosta

Sealbhú drugaí ar mó a luach ná €13,000 lena ndíol nó lena soláthar

Pianbhreith íosta 10 mbliana

(1,521 phianbhreith ghníomhach)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	41	129	169	285	271	208	122	112	76	17	91

Drugaí rialaithe os cionn luach áirithe a allmhairiú

Pianbhreith íosta 10 mbliana

(21 phianbhreith ghníomhach)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	0	0	7	3	4	1	1	3	2	0	0

Seilbh ar arm tine le hintinn duine a chur i gcontúirt bháis

Pianbhreith íosta 10 mbliana

(288 bpianbhreith ghníomhacha)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	14	26	38	50	24	40	16	17	13	8	47

Arm tine a bheith ag duine agus é ag tógáil feithicle gan údarás

Pianbhreith íosta 5 bliana

(0 pianbhreith ghníomhach)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	0	0	0	0	0	0	0	0	0	0	0

Airm thine a úsáid chun comhrac in aghaidh gabhála nó cabhrú le héalú

Pianbhreith íosta 10 mbliana

(53 phianbhreith ghníomhacha)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	2	1	6	3	1	24	0	12	2	0	2

Arm tine nó lón lámhaigh a shealbhú in imthosca amhrasacha

Pianbhreith íosta 5 bliana

(565 phianbhreith ghníomhacha)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	32	58	102	110	60	98	45	39	7	6	6

Arm tine a iompar le hintinn choiriúil

Pianbhreith íosta 5 bliana

(377 bpianbhreith ghníomhacha)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	8	18	18	157	156	18	4	5	2	0	6

Bairille gunna gráin nó raidhfil a ghiorrú

Pianbhreith íosta 5 bliana

(2 phianbhreith ghníomhacha)

Fad na Pianbhreithe (blianta)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
IOMLÁN	0	0	0	2	0	0	0	0	0	0	0

6.2 Conclúidí ó na Sonraí

Bunaithe ar scrúdú ar na tacair shonraí a sholáthair Seirbhís Phríosúin na hÉireann agus an tSeirbhís Chúirteanna, feictear gurb amhlaidh, i ndáil leis na cionta uile ar ina leith a dhéantar foráil maidir le pianbhreitheanna íosta in achtacháin, is faoi bhun na bpianbhreitheanna íosta sin a bhíonn formhór mór na bpianbhreitheanna a thugtar.

I gcás trí chion lena ngabhann pianbhreith íosta 10 mbliana – is iad sin, sealbhú drugaí ar mó a luach ná €13,000 lena ndíol nó lena soláthar, seilbh ar arm tine le hintinn duine a chur i gcontúirt bháis, agus airm thine a úsáid chun comhrac in aghaidh gabhála nó cabhrú le héalú – is lú i bhfad formhór na bpianbhreitheanna a thugtar ná an phianbhreith íosta, agus ní thugtar pianbhreitheanna íosta ach i leith céatadáin fhíorbhig de na cionta sin. Mar sin féin, go háirithe i ndáil le sealbhú drugaí ar mó a luach ná €13,000 lena ndíol nó lena soláthar, tugadh freisin roinnt pianbhreitheanna ar mó i bhfad iad ná an phianbhreith íosta a ndéantar foráil maidir léi.

Tá na tacair shonraí sin mar fhianaise ar a mhéid a úsáideann na breithiúna rogha bhreithiúnach chun pianbhreitheanna cuí a thabhairt chun aghaidh a thabhairt ar chineál sonrach na gcásanna aonair os a gcomhair. D'ainneoin na bpianbhreitheanna íosta a ndéantar foráil maidir leo in achtacháin shonracha, tá na pianbhreitheanna sin sa raon idir pianbhreith faoi bhun aon bhliana agus pianbhreith saoil.

Rud nach féidir a eachtarshuí ó na sonraí sin is ea an réasúnaíocht atá taobh thiar den difríocht idir phianbhreitheanna, go háirithe a mhéid a bhaineann leis an úsáid a bhaintear as imthosca eisceachtúla chun pianbhreith a laghdú faoi bhun na pianbhreithe íosta toimhdean. D'fhéadfadh gurbh fhiú do Choiste Chomhairle na mBreithiúna um Threoirlínte maidir le Gearradh Pianbhreitheanna breithniú a dhéanamh ar an ábhar sin in am trátha.

7. Athbhreithnithe agus tuarascálacha roimhe seo

7.1 An Coimisiún um Athchóiriú an Dlí (2013)

Agus é ina chomhlacht reachtúil neamhspleách a bhfuil sé mar phríomhról aige an dlí a choinneáil faoi athbhreithniú agus moltaí a dhéanamh maidir le hathchóiriú, d'fhoilsigh an Coimisiún um Athchóiriú an Dlí (an Coimisiún) tuarascáil maidir le pianbhreitheanna sainordaitheacha sa bhliain 2013. An tuarascáil sin, a tháinig sna sála ar an doiciméad dar teideal *Páipéar Comhairliúcháin ar Phianbhreitheanna Sainordaitheacha*[3] a d'fhoilsigh an Coimisiún sa bhliain 2011, ullmhaíodh í ar iarratas ón Ard-Aighne ag an am, faoi alt 4(2)(c) den Acht fán gCoimisiún um Athchóiriú an Dlí, 1975:

> *"scrúdú a ghabháil de láimh agus taighde a sheoladh agus, más cuí, athchóirithe i ndlí an Stáit a mholadh, i ndáil leis na himthosca ina bhféadfaidh sé gur cuí nó gur tairbheach socrú a dhéanamh i reachtaíocht do phianbhreitheanna sainordaitheacha i leith cionta."*

Tugadh i gCaibidil 6 den tuarascáil sin achoimre ar roinnt moltaí iomchuí, lena n-áirítear iad seo a leanas:

> *6.03 Molann an Coimisiún, le tromlach, go gcoimeádfaí an phianbhreith shainordaitheach saoil i leith dúnmharaithe.*
>
> *6.06 Molann an Coimisiún go n-aisghairfí iad seo a leanas: (i) an córas um ghearradh pianbhreitheanna íosta toimhdean is infheidhme i leith cionta drugaí faoi alt 27(3C) den Acht um Mí-Úsáid Drugaí, 1977; agus (ii) an córas um ghearradh pianbhreitheanna íosta toimhdean is infheidhme i leith cionta arm tine faoi alt 15 d'Acht na nArm Teine, 1925; alt 26, alt 27, alt 27A agus alt 27B d'Acht na nArm Tine, 1964; agus alt 12A d'Acht na nArm Tine agus na nArm Ionsaitheach, 1990. Molann an Coimisiún freisin nár cheart úsáid na gcóras um ghearradh pianbhreitheanna íosta toimhdean a leathnú chuig cionta eile.*
>
> *6.08 Molann an Coimisiún go n-aisghairfí iad seo a leanas: (i) an córas um ghearradh pianbhreitheanna toimhdean is infheidhme i leith athchionta tromchúiseacha faoi alt 25 den Acht um Cheartas Coiriúil, 2007; (ii) an córas um ghearradh pianbhreitheanna íosta sainordaitheacha is infheidhme i leith athchionta drugaí faoi alt 27(3F) den Acht um Mí-Úsáid Drugaí, 1977; agus (iii) an córas um ghearradh pianbhreitheanna íosta sainordaitheacha is infheidhme i leith athchionta arm tine faoi alt 15(8) d'Acht na nArm Teine, 1925; alt 26(8), alt 27(8), alt 27A(8), agus alt 27B(8) d'Acht na nArm Tine, 1964; agus alt 12A(13) d'Acht na nArm Tine agus na nArm Ionsaitheach, 1990. Molann an Coimisiún freisin nár cheart úsáid na gcóras um ghearradh pianbhreitheanna*

[3] An Coimisiún um Athchóiriú an Dlí, *Páipéar Comhairliúcháin ar Phianbhreitheanna Sainordaitheacha* (CAD PC 66-2011).

íosta toimhdean agus sainordaitheacha a leathnú chuig cineálacha eile ath-chiontaithe.

Moltar sa tuarascáil ón gCoimisiún um Athchóiriú an Dlí go n-aisghairfí na pianbhreitheanna íosta uile a bhí ann tráth na tuarascála uaidh, idir phianbhreitheanna toimhdean agus phianbhreitheanna sainordaitheacha do chéadchiontóirí nó d'athchiontóirí, agus go gcoimeádfaí an tráth céanna an phianbhreith lán-sainordaitheach do dhúnmharú. Moltar inti freisin nár cheart aon phianbhreitheanna íosta nua d'aon chineál a thabhairt isteach.

Áirítear i moltaí na tuarascála, freisin, a thabhairt de chumhacht do Chomhairle Breithiúna treoir oiriúnach nó treoirlínte oiriúnacha maidir le gearradh pianbhreitheanna a fhorbairt agus a fhoilsiú, rud a ndearnadh foráil maidir leis faoin Acht um Chomhairle na mBreithiúna, 2019. Tá liosta iomlán de na moltaí achoimre leagtha amach in **AGUISÍN III**.

Maidir leis an réasúnaíocht a bhí taobh thiar de na moltaí sin, luaigh an Coimisiún, i ndáil le cionta drugaí, nár dhóigh go ngníomhódh pianbhreitheanna toimhdean mar dhíspreagadh ar aon slí shuntasach, nach raibh sé cóir go bhfaigheadh na ciontóirí uile an t-aon phionós amháin gan aon aird chuí a thabhairt ar chiontaíl mhorálta an duine aonair, agus gurbh iad 'iompróirí drugaí', a mbeadh a ngníomhaíocht choiriúil spreagtha trí dhúshaothrú agus trí chomhéigean, na ciontóirí ar dhóichí go mbeidís faoi réir gearradh pianbhreitheanna íosta toimhdean.[4] I ndáil le cionta arm tine, tháinig an Coimisiún ar an gconclúid chéanna maidir le saincheisteanna a bhaineann le neamhéifeachtacht mar dhíspreagadh agus maidir le hábhair a bhaineann le ciontaíl choibhneasta ciontóirí.

7.2 Iontaobhas na hÉireann um Athchóiriú an Chórais Choiriúil (2013)

Agus é ina eagraíocht neamhrialtasach a théann i mbun feachtais ar son cearta daoine sa phríosún agus ar son athchóiriú forásach bheartas pionóis na hÉireann, d'fhoilsigh Iontaobhas na hÉireann um Athchóiriú an Chórais Choiriúil páipéar seasaimh maidir le gearradh pianbhreitheanna sainordaitheacha sa bhliain 2013. Bhí an tuarascáil sin ag teacht, tríd is tríd, leis an tuarascáil ón gCoimisiún um Athchóiriú an Dlí. Cé gur aithin an tIontaobhas an mealladh mothúchánach a bhaineann le gearradh pianbhreitheanna íosta toimhdean, agus an teacht-aireacht láidir a ghabhann leis na pianbhreitheanna sin, rinne sé, sa chonclúid uaidh, tagairt don fhianaise ó dhlínsí eile lena léirítear, maidir le pianbhreitheanna sainordaitheacha,

- gur féidir leo bheith ina gcúis le pionós míchóir agus le sáruithe ar chaighdeáin chearta an duine i riaradh an cheartais;
- go mbíonn siad neamhéifeachtach mar dhíspreagadh;
- go n-imríonn siad tionchar diúltach ar rátaí príosúnaithe; agus

[4] An Coimisiún um Athchóiriú an Dlí, *Tuarascáil maidir le Pianbhreitheanna Sainordaitheacha* (CAD 108 – 2013), lch 175.

- go gcuireann siad iallach ar bhreithiúna, ar ionchúisitheoirí agus ar dhlíodóirí cosanta ‘an ceartas a idirbheartú’.[5]

Ar an mbonn sin, d’aontaigh an tIontaobhas leis an tuarascáil ón gCoimisiún um Athchóiriú an Dlí á rá gur ceart an reachtaíocht lena ndéantar foráil maidir le pianbhreitheanna íosta toimhdean a aisghairm agus gur ceart roghanna malartacha ar ghearradh pianbhreitheanna íosta toimhdean, mar a mhol an Coimisiún, a thabhairt isteach chun aghaidh a thabhairt ar ábhair imní a bhaineann le comhsheasmhacht, trédhearcacht agus intuarthacht na gcleachtas gearrtha pianbhreitheanna.

7.3 An Grúpa Athbhreithnithe ar an mBeartas Pionóis (2014)

Sa bhliain 2014, d’fhoilsigh an Grúpa Athbhreithnithe ar an mBeartas Pionóis, a bunaíodh chun athbhreithniú straitéiseach uilechuimsitheach a dhéanamh ar an mbeartas pionóis sa Stát, an tAthbhreithniú Straitéiseach ar an mBeartas Pionóis: Tuarascáil Chríochnaitheach. Mar chuid den athbhreithniú sin, rinne an Grúpa Athbhreithnithe scrúdú ar phianbhreitheanna sainordaitheacha. Sa tuarascáil ón nGrúpa, ní cheistítear ná ní bhréagnaítear conclúidí na tuarascála a d’fhoilsigh an Coimisiún um Athchóiriú an Dlí sa bhliain 2013, agus ní thugtar aon fhianaise ach oiread lena bhféadfaí bonn eolais a chur faoi bhréagnú den sórt sin, a mhéid a bhaineann leis an moladh sonrach chun aisghairm a dhéanamh ar reachtaíocht lena ndéantar foráil maidir le pianbhreitheanna íosta toimhdean i ndáil le cionta iomchuí arm tine nó drugaí.

Dá réir sin, ar aon dul leis na conclúidí ón gCoimisiún um Athchóiriú an Dlí, mhol an Grúpa Athbhreithnithe nár cheart aon phianbhreitheanna íosta toimhdean eile a thabhairt isteach agus d’iarr sé go ndéanfaí athbhreithniú ar leanúint de na pianbhreitheanna toimhdean a bhí ann cheana féin.[6]

Rinne an Grúpa Formhaoirseachta iomchuí ar Chur Chun Feidhme an t-athbhreithniú sin a liostú mar ghníomh lena chur i gcrích aige. Tugadh faoi deara sa 7ú tuarascáil ón ngrúpa sin, agus í ar an leagan is déanaí den sórt sin, go raibh an t-athbhreithniú le foilsiú sa tríú ráithe den bhliain 2018. Tuigtear nár cuireadh aon athbhreithniú den sórt sin i gcrích de réir an mholta sin.

[5] Iontaobhas na hÉireann um Athchóiriú an Chórais Choiriúil, *Páipéar Seasaimh 3: Gearradh Pianbhreitheanna Sainordaitheacha*, lch 6
[6] An Grúpa Athbhreithnithe ar an mBeartas Pionóis, *An tAthbhreithniú Straitéiseach ar an mBeartas Pionóis: Tuarascáil Deiridh* (2014), lch 99.

8. Taighde Nuashonraithe

Tar éis na tuarascála a d'fhoilsigh an Coimisiún um Athchóiriú an Dlí sa bhliain 2013, agus tar éis na moltaí a rinne an Grúpa Athbhreithnithe ar an mBeartas Pionóis sa bhliain 2014, féachadh san athbhreithniú seo le sainaithint a dhéanamh ar thaighde ceannródaíoch i réimse na bpianbhreitheanna íosta (pianbhreitheanna íosta toimhdean agus pianbhreitheanna íosta sainordaitheacha), a mhéid a bhaineann siad leis na réimsí sonracha ceartais choiriúil is iomchuí sa dlínse seo. Féachadh ann freisin le breithniú a dhéanamh ar chomparáidí idirnáisiúnta le dlínsí eile. Tá sampla táscach den taighde sin curtha i láthair anseo.

Tríd is tríd, fuarthas amach gur tháinig méadú ar an úsáid a bhaintear as pianbhreitheanna íosta i mórán dlínsí éagsúla, mar thoradh, i mórán cásanna, ar an iarracht atá ar bun aghaidh a thabhairt ar dhearcthaí an phobail go gcaitheann na cúirteanna go róbhog leis an gcoireacht thromchúiseach nó go mbíonn torthaí ar ghearradh pianbhreitheanna dothuartha agus neamhchinnte. Sa chomhthéacs sin, meastar go dtugann pianbhreitheanna íosta cinnteacht agus gur léiriú ar chaighdeáin an phobail iad.[7]

Cé go dtugtar aird ann ar an méadú sin agus ar an inspreagadh a sainaithníodh a bheith taobh thiar de, tugtar arís agus arís eile sa chuid is mó den taighde ceannródaíoch le déanaí fianaise ar fud raon tosca lena dtacófaí, tríd is tríd, leis an moladh ón gCoimisiún um Athchóiriú an Dlí maidir le reachtaíocht a aisghairm lena ndéantar foráil maidir le gearradh pianbhreitheanna íosta toimhdean, go háirithe i ndáil le cionta drugaí.

Agus measúnú á dhéanamh ar an úsáid mhéadaithe a bhaintear as gearradh pianbhreitheanna íosta i gCeanada, mar shampla, fuarthas amach go léirítear an méid seo a leanas i dtaighde: *"punitive sentencing does not lead to safer communities. Instead of deterring potential offenders, mandatory minimums result in excessive, harsh penalties that increase the likelihood of recidivism"*.[8] Agus aghaidh á tabhairt ar stair agus iomadú na bpianbhreitheanna íosta sa dlínse sin, léiríodh i dtaighde comhlántach freisin go leanann forálacha den sórt sin de shrian an-mhór a chur le hábaltacht bhreithimh *"to ensure proportionality, which is the fulcrum of the sentencing process"*.[9]

Maidir le húsáid drugaí, fuarthas amach, tar éis scrúdú a dhéanamh ar thabhairt isteach na bpianbhreitheanna íosta i Stáit Aontaithe Mheiriceá a bhaineann le cnagchócaon agus púdar cócaoin, gur tharla an méid seo a leanas beag beann ar na pianbhreitheanna íosta toimhdean a bheith níos troime do chnagchócaon ná do phúdar cócaoin: *"crack use declined less than powder cocaine, and even less than drugs not included in sentencing policies"*. Thángthas ar

[7] Gray, Anthony, "Mandatory sentencing around the world and the need for reform", *New Criminal Law Review* 20.3 (2017): 391-392.
[8] Mangat, Raji, *More than we can afford: The cost of mandatory minimum sentencing*, BC Civil Liberties Association (2014), lch 5.
[9] Chaster, Sarah, "Cruel, unusual, and constitutionally infirm: Mandatory minimum sentences in Canada", *Appeal: Review of Current Law and Law Reform* 23 (2018): 119.

an gconclúid go dtugtar an méid seo a leanas le tuiscint sna fionnachtana sin: *"mandatory minimum sentencing may not be an effective method of deterring cocaine use"*.[10]

Maidir leis an gcoireacht drugaí i gcoitinne sna Stáit Aontaithe, fuarthas amach i staidéir gur theip ar thabhairt isteach na bpianbhreitheanna íosta ciontú a bhaineann le drugaí a dhíspreagadh. Áiríodh sna staidéir sin mionanailís ar na hiarrachtaí a rinneadh i dtrí stát – Nua-Eabhrac, Michigan, agus Florida. Fuarthas amach sa mhionanailís sin nár tháinig aon laghdú substaintiúil ar gháinneáil ar dhrugaí ná ar an gcoireacht a bhaineann leis an trádáil drugaí d'ainneoin na n-iarrachtaí a rinneadh na coireanna sin a dhíspreagadh agus gur tháinig méadú suntasach an tráth céanna ar dhaonraí príosúin faoi seach.[11]

Sainaithníodh i roinnt staidéar an caidreamh idir pianbhreitheanna íosta, méadú gaolmhar i ndaonraí príosúin, agus méadú dá éis sin ar an gcoireacht. Mar shampla, féachtar i staidéar ar leith ar phianbhreitheanna íosta a bhaineann le drugaí agus ar an daonra príosúin agus sainaithnítear ann go dtagann méadú, seachas laghdú, ar an ráta coireachta nuair a thagann méadú beag ar an daonra príosúin:

> "*Specifically, a 1 percent increase in the prison population results in a 0.28 percent increase in the violent crime rate and a 0.17 percent increase in the property crime rate. This counter-intuitive result suggests that incarceration, already high in the U.S, may have now begun to achieve negative returns in reducing crime*".[12]

Sa staidéar sin, inar bailíodh sonraí ó 50 Stát sna Stáit Aontaithe thar thréimhse 40 bliain, tugtar le tuiscint nach é amháin go bhféadfadh pianbhreitheanna íosta bheith míchóir, agus go mbaineann siad rogha bhreithiúnach gan ghá, ach go bhféadfadh sé go bhfuil siad ag déanamh níos mó díobhála, go gníomhach, don tsochaí freisin, rud a théann i gcoinne na céille coitinne.

Níltear ar aon fhocal, áfach, maidir leis an argóint in aghaidh úsáid pianbhreitheanna íosta. Á rá gur gá cur chuige iomlánaíoch níos leithne a ghlacadh i leith ardrátaí príosúnaithe sna Stáit Aontaithe, maítear an méid seo a leanas i dtaighde:

> *"Abolishing mandatory or guideline sentencing would not reduce prison numbers significantly. Moreover, prescriptive sentencing practices are essential in order to ensure transparency, consistency, and fairness in sentencing. Mandatory sentencing grids have received considerable criticism, but only because the sanctions that they prescribe are generally too harsh. If the severity of those sanctions is moderated, the problems associated with mandatory sentencing will dissipate. Indeed, there is a sound doctrinal*

[10] Walker, Lauryn Saxe, agus Mezuk, Briana, "Mandatory minimum sentencing policies and cocaine use in the U.S., 1985-2013", *BMC International Health and Human Rights* (2018): 18:43.
[11] Newburn, Greg, agus Sal Nuzzo, "Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned, Paths Ahead", *James Madison Institute* (ar líne), 2019.
[12] Dhondt, Geert, "The Effect of Prison Population Size on Crime Rates: Evidence from Cocaine and Marijuana Mandatory Minimum Sentencing", *American Review of Political Economy* 12.1 (2018).

basis for reducing the hardship of most penalties, namely, the principle of proportionality".[13]

D'ainneoin an mhaímh sin, is annamh a dhéantar argóintí i bhfabhar pianbhreitheanna íosta a choimeád agus, mar atá luaite thuas, bíonn na hargóintí sin bunaithe ar phrionsabail a bhaineann le cinnteacht agus ar chaighdeáin phoiblí a chur in iúl. Ní argóintí fianaisebhunaithe iad agus ní thugtar aird chuí iontu ach oiread ar phrionsabail a bhaineann le pionósú comhréireach nó le hathshlánú, ar treoirphrionsabail iad san *Athbhreithniú ar Roghanna Beartais le haghaidh Athchóiriú Príosúin agus Pionóis, 2022-2024*, arna fhormheas ag an Rialtas i mí Lúnasa 2022.[14]

Cé gur díríodh go príomha i dtaighde le déanaí ar shaincheisteanna ginearálta a bhaineann le pianbhreitheanna íosta nó, i mórán cásanna, ar a mhéid a bhaineann siad le cionta a bhaineann le drugaí, measúnaítear san athbhreithniú seo an bonn fianaise is líonmhaire a bheith i bhfabhar pianbhreitheanna íosta a aisghairm.

9. Tionchar na bPianbhreitheanna Íosta

9.1 Spriocanna Beartaithe na bPianbhreitheanna Íosta

Bhí sé mar aidhm le rith an Achta um Cheartas Coiriúil, 1999, lena ndéantar foráil maidir leis na pianbhreitheanna íosta i leith cionta drugaí atá faoi bhreithniú anseo, an beartas a bhí ag an Rialtas ag an am a léiriú, eadhon: *"zero tolerance towards crime, particularly, but not exclusively, drug trafficking ... as a response to those who inflict such harm on our community"*. Cé gur aithin sé an gá a bhí le haghaidh a thabhairt ar laghdú éilimh, labhair an tUas. John O'Donoghue, an tAire Dlí agus Cirt ag an am, faoin bhfreagracht ar leith a bhí air i ndáil le taobh an tsoláthair den fhadhb drugaí agus mheas sé go raibh sé de dhualgas air bearta a thabhairt ar aghaidh lena gcuirfí isteach a mhéid ba mhó ab fhéidir ar na daoine a ghabhann do gháinneáil ar dhrugaí, ar trádáil mharfach í.[15] Glactar leis i gcoitinne go raibh na bearta sin mar fhreagairt pháirteach ar a laghad don fhadhb mhéadaitheach drugaí, go háirithe mí-úsáid hearóine, in Éirinn sna 1990í, go háirithe i limistéir a bhí faoi mhíbhuntáiste sóisialta agus eacnamaíoch.[16]

Bhí sé mar aidhm le rith an Achta um Cheartas Coiriúil, 2006, lena ndéantar foráil maidir leis na pianbhreitheanna íosta i leith cionta arm tine atá faoi bhreithniú anseo, raon leathan forálacha a achtú chun cur isteach ar eagraíochtaí coiriúla agus chun cumhachtaí an Gharda

[13] Bagaric, Mirko, Gabrielle Wolf & Daniel McCormack, "Nothing seemingly works in sentencing: not mandatory penalties; not discretionary penalties – but science has the answer", *Indiana Law Review* 53 (2020), lch 543.

[14] Athbhreithniú ar Roghanna Beartais le haghaidh Athchóiriú Príosúin agus Pionóis 2022-2024.

[15] An tUas. John O'Donoghue, "An Bille um Cheartas Coiriúil (Uimh. 2), 1997: An Dara Céim". Oireachtas.ie <https://www.oireachtas.ie/en/debates/debate/seanad/1997-12-09/5/>.

[16] Chun críocha tagartha, féach *An Chéad Tuarascáil ó Thascfhórsa an Aire maidir le Bearta chun an tÉileamh ar Dhrugaí a Laghdú* (1996) <https://www.drugsandalcohol.ie/5058/>.

Síochána a mhéadú, de réir mar ba chuí. I gcás roinnt de na forálacha den Acht, díríodh go hiomlán leo ar an gcoireacht eagraithe, lenar áiríodh míniú nua a thabhairt ar 'eagraíocht choiriúil', agus ar chionta nua a thabhairt isteach i ndáil le rannpháirtíocht i ngníomhaíochtaí drong eagraithe nó i ndáil le cuidiú leis na gníomhaíochtaí sin. Ba sa chomhthéacs sin a tugadh isteach na bearta gearrtha pianbhreitheanna, a nglactar i gcoitinne leis go raibh siad mar fhreagairt pháirteach ar a laghad don mhéadú braite i bhforéigean drongchoirpeachta a raibh cionta arm tine i gceist leis, go háirithe an foréigean sin a bhain le 'achrann Chromghlinne-Dhroimeanaigh', mar a thugtar air de ghnáth. Mar a scríobh Sadhbh Byrne:

> *"In the late 1990s to early 2000s in Ireland, general public consciousness was hyper-aware of gangland activity, in particular murder perpetrated by gang members. Organised crime and its related gangland killings was a very recent introduction to Ireland … and a sense of crisis permeated the fabric of society, spurred on by the escalating nature of the problem."*[17]

9.2 Na Daoine Aonair a nImrítear Tionchar orthu: Iompróirí Drugaí agus Ciontóirí 'Íseal-Leibhéil'

Is faoi dhea-rún a tugadh isteach na hachtacháin ar leith sin, agus iad ceaptha chun sprioc-dhíriú ar na daoine ar na leibhéil ab airde den choireacht eagraithe, a chomhordaigh an dáileadh drugaí nó a stiúir na cionta méadaitheacha arm tine mar chuid den fhoréigean drong-choirpeachta. Tháinig sé chun solais le himeacht ama, áfach, gur ciontóirí íseal-leibhéil a bhíonn i gcuid mhór de na daoine a n-imríonn tabhairt isteach na bpianbhreitheanna íosta an tionchar is mó orthu. Cé go bhfaightear iad ciontach sna cionta faoi seach, is minic a bhíonn na ciontóirí íseal-leibhéil sin soghonta agus faoi réir comhéigin.

Shainaithin an Coimisiún um Athchóiriú an Dlí an méid sin sa bhliain 2013. Maidir le hiompróirí drugaí, luaitear sa tuarascáil uaidh:

> *"Tugann an Coimisiún faoi deara gur mó a fhéadfar iompróirí drugaí íseal-leibhéil a ghabháil faoi alt 15A nó alt 15B den Acht um Mí-Úsáid Drugaí, 1977, ná barúin drugaí ardleibhéil. Ar an gcéad dul síos, tugadh faoi deara gur daoine soghonta agus i mbarr a gcéille, agus ní coirpigh chruthanta, a bhíonn i bhformhór na n-iompróirí drugaí, ar daoine iad a ndéanann na daoine sin ag barr an tslabhra drugaí dúshaothrú orthu. Dá bhrí sin, is lú seans go mbeidh siad inniúil ar bhrath a sheachaint, agus tugadh faoi deara go*

[17] Sadhbh Byrne, "Irish Organised Crime and the Motivation Behind Gangland Killings", *Student Psychology Journal* 2013, 1-14. Féach, freisin, L. Campbell, "The culture of control in Ireland: Theorising recent developments in criminal justice", *Journal of Current Legal Issues* 2008, 1.

> *gcuirtear iad go díreach ar an líne lámhaigh uaireanta chun aird a dhíriú ó chineálacha eile iompair."*[18]

Agus taighde á shainaithint aige, agus tagairt á déanamh aige don athbhreithniú uaidh féin sa réimse seo, d'aontaigh an Coimisiún leis an mbarúil gur *"iompróirí drugaí íseal-leibhéil, agus ní barúin drugaí ardleibhéil, a bhíonn i bhformhór na ndaoine sin a mbíonn pianbhreith á gearradh orthu faoin gcóras um ghearradh pianbhreitheanna toimhdean"*.[19]

Mar atá mínithe ag an Lárionad Faireacháin Eorpach um Dhrugaí agus um Andúil i nDrugaí, is é is iompróir drugaí ann cúiréir drugaí a íoctar, a chomhéignítear nó ar a mbuailtear bob chun drugaí a iompar trasna teorainn idirnáisiúnta ach nach bhfuil aon leas tráchtála eile acu sna drugaí.[20] Ar fud an domhain, tá ceangal soiléir idir iompróirí drugaí agus íospartaigh na gáinneála ar dhaoine, mar atá sainaitheanta agus mionsonraithe ag Oifig na Náisiún Aontaithe um Dhrugaí agus Coireacht:

> *"Many victims of human trafficking are used to ferry drugs across international borders. Popularly known as 'drug mules', the victims are made to swallow balloons containing illicit drugs and are then transported across borders. Once they have reached their destination, these balloons are retrieved from the victim's body."*[21]

Is annamh a bhíonn iompróirí drugaí ina mbaill den eagraíocht choiriúil, agus is ar an gcúis sin a roghnaítear iad. Mar sin, i mórán cásanna, ach ní sna cásanna uile, is íospartaigh shoghonta iad iompróirí drugaí, a d'fhéadfadh a bheith i mórbhaol pearsanta agus nach bhfuil aon leas tráchtála acu féin sna drugaí. I bhfianaise na tuisceana sin, is cosúil go bhfuil éagothromaíocht shuntasach ann idir sprioc na bpianbhreitheanna íosta faoi seach, barúin drugaí, agus na daoine a n-imrítear an tionchar is mó orthu, eadhon iompróirí drugaí. Mar a luaigh an Coimisiún mar fhocal scoir: *"dealraíonn sé é a bheith míchóir go mbíonn na gníomhaithe uile a ghabhann do gháinneáil ar dhrugaí faoi réir an aon chórais amháin um ghearradh pianbhreitheanna toimhdean, beag beann ar a leibhéal ciontaíola morálta ná a leibhéal rannpháirtíochta"*.[22]

Agus na cionta iomchuí arm tine á bplé aige, tugann an Coimisiún faoi deara, ós rud é gur samhaltaíodh na hachtacháin ar an gcóras gearrtha pianbhreitheanna toimhdean faoin *Acht um Mí-Úsáid Drugaí, 1977,* gurb amhlaidh atá feidhm ag cuid mhór de na tuairimí a cuireadh in iúl i ndáil leis an *Acht um Mí-Úsáid Drugaí, 1977*, maidir le hAchtanna na nArm Tine freisin,

[18] An Coimisiún um Athchóiriú an Dlí, Tuarascáil maidir le Pianbhreitheanna Sainordaitheacha (CAD 108 – 2013), lch 141.
[19] Ibid, lch 141.
[20] An Lárionad Faireacháin Eorpach um Dhrugaí agus um Andúil i nDrugaí, "A definition of 'drug mules' for use in a European context" (2012) <https://www.emcdda.europa.eu/publications/thematic-papers/drug-mules_en>.
[21] Oifig na Náisiún Aontaithe um Dhrugaí agus Coireacht, "Drug mules: Swallowed by the illicit drug trade", <https://www.unodc.org/southasia/frontpage/2012/october/drug-mules_-swallowed-by-the-illicit-drug-trade.html>.
[22] An Coimisiún um Athchóiriú an Dlí, Tuarascáil maidir le Pianbhreitheanna Sainordaitheacha (CAD 108 – 2013), lch 175.

go háirithe i ndáil le haidhmeanna a bhaineann le díspreagadh, le pionósú agus leis an ngné cháinte den chóras gearrtha pianbhreitheanna.[23]

Agus scrúdú á dhéanamh aige ar airm thine 'a shealbhú' nó 'a rialú', tugann an Coimisiún aghaidh arís eile ar nithe a bhaineann le cumhacht agus le ciontaíl mhorálta:

> *"Ar thaobh amháin den scála, is ann do chiontóirí ardleibhéil a d'fhéadfadh a bheith i gceannas oibríochtaí. D'fhéadfaí a rá go bhfuil seilbh inchiallaithe acusan, toisc go bhfuil rialú deiridh acu orthusan a shealbhaíonn na hairm thine nó an lón lámhaigh thar a gceann. Ar an taobh eile den scála, is ann do chiontóirí íseal-leibhéil a d'fhéadfadh, mar shampla, gur comhéigníodh iad nó a bhféadfadh gur buaileadh bob orthu chun airm thine nó lón lámhaigh a cheilt do dhuine éigin eile. D'fhéadfaí a rá go bhfuil seilbh iarbhír acu ar na hairm thine nó ar an lón lámhaigh toisc go bhfeidhmíonn siad rialú fisiciúil ar na hairm thine nó ar an lón lámhaigh."*[24]

Na ciontóirí 'íseal-leibhéil' sin, a bhféadfadh nach mbeidís ina mbaill d'eagraíocht choiriúil, mar atá mínithe, nó a d'fhéadfadh a bheith soghonta agus a d'fhéadfadh gur comhéigníodh iad chun a bheith páirteach, is ionann, cosúil le hiompróirí drugaí, an córas gearrtha pian-bhreitheanna a bhfuil siad faoina réir agus an córas sin a bhfuil na ceannairí is sinsearaí d'eagraíocht choiriúil faoina réir faoi láthair, ar ceannairí iad a stiúrann gníomhartha na mball den eagraíocht.

9.3 Cás-Staidéir

Ní ann faoi láthair do stór cuí cás-staidéar a bhaineann le cionta sonracha agus, mar sin de, tá sé doiligh teacht ar chásanna lena léirítear tionchar na bpianbhreitheanna íosta ar bhealach nach sainaithnítear daoine aonair, ar daoine iad a chríochnaigh a bpianbhreitheanna ina n-iomláine i mórán cásanna, agus nach gcuirtear faoi mhionscrúdú pearsanta neamh-riachtanach iad. Dá ainneoin sin, is féidir roinnt cásanna a shainaithint lena mbaineann daoine aonair ar gearradh pianbhreitheanna suntasacha orthu faoi na hachtacháin reatha ach a bhfuil fianaise shoiléir ann ina leith nárbh iad na daoine aonair sin spriocanna beartaithe na n-acht-achán iomchuí.

I mí na Bealtaine 2021, gearradh pianbhreith phríosúnachta ocht mbliana go leith ar dhuine aonair mar gheall ar chainníocht mhór channabais a allmhairiú isteach i gCalafort Bhaile Átha Cliath ón Ríocht Aontaithe sa bhliain 2017. Bhí an duine aonair sin, a bhí pósta agus a raibh beirt leanaí air, ina thiománaí leoraí ó bhí an bhliain 2000 ann. Cé gur mhór an méid cannabais a allmhairíodh, ghlac an Breitheamh leis nach raibh sa duine aonair ach cúiréir. Níor tugadh aon fhianaise á léiriú gur ghníomh tráthrialta ag an duine aonair a bhí ann, agus d'aontaigh

[23] An Coimisiún um Athchóiriú an Dlí, Tuarascáil maidir le Pianbhreitheanna Sainordaitheacha (CAD 108 – 2013), lch 177-178.
[24] An Coimisiún um Athchóiriú an Dlí, Tuarascáil maidir le Pianbhreitheanna Sainordaitheacha (CAD 108 – 2013), lch 142.

an Garda Síochána nach raibh aon fhianaise ann á léiriú nach raibh stíl mhaireachtála an duine aonair ag teacht le stíl mhaireachtála tiománaí leoraí agus nár thángthas ar aon fhianaise go raibh aon sócmhainní breise aige. Mheas an breitheamh freisin nár dhóigh go dtiocfadh an duine aonair os comhair na cúirte choíche i ndáil le ní chomh tromchúiseach sin sa todhchaí.

I gcás den chineál céanna, gearradh pianbhreith phríosúnachta sé bliana ar dhuine aonair i mí Aibreáin 2016 mar gheall ar chainníocht hearóine a allmhairiú isteach sa Stát i mí Lúnasa 2015. Cé gur cuireadh in iúl go soiléir sa chás go raibh €8,000 le tabhairt don duine aonair as a ról sna drugaí a allmhairiú, chreid an duine aonair gur chainníocht channabais a bhí ann. Luaigh sé freisin gur aontaigh sé leis an ngníomh sin a dhéanamh mar gheall ar na brúnna airgeadais a bhí air de dheasca a idirscartha óna pháirtnéir, rud a chuir air iasachtaí airgeadais a thógáil amach ó 'dhaoine neamhscrupallacha', ar iasachtaí iad ar cuireadh brú ollmhór air iad a aisíoc.

I mórán cásanna, tagann iompróirí drugaí isteach sa Stát trí Aerfort Bhaile Átha Cliath, ar ábhar é a scrúdaigh *The Irish Times* sa bhliain 2013:

> *Shay Doyle, customs manager at Dublin Airport, says that … a significant number have no choice. …*
>
> *"There was an engineer from South Africa caught bringing cannabis in," says Doyle. "He couldn't get a job because he was on the very lowest rung of people to get a job due to the societal structure out there. He said he did it to buy a birthday present for his child.*
>
> *"There was also a retired schoolteacher who was caught and put in jail. She was actually then teaching in Mountjoy. She was offered early release but didn't want to take it because she would have had to give up her teaching.*
>
> *"A lot of them are actually very relieved when they are caught, particularly the international ones, because it means they are taken out of that whole cycle.*[25]

Gearradh pianbhreith phríosúnachta cúig bliana ar dhuine aonair as an Afraic Theas sa bhliain 2009 mar gheall ar channabas ab fhiú breis agus €100,000 a allmhairiú trí Aerfort Bhaile Átha Cliath ina bagáiste. Ní raibh aon chiontuithe roimhe sin ag an duine aonair sin agus d'admhaigh sí go ndeachaigh sí i bhfiacha mar gheall ar chaiteachais liachta agus go raibh €1,000 le híoc léi as na drugaí a sheachadadh. Le linn an cháis, chuir an Garda Síochána in iúl go soiléir gur measadh an duine aonair a bheith ag céim an-íseal de dhréimire na trádála drugaí agus nár dhóigh go dtiocfadh sí os comhair na gcúirteanna choíche.

Sa bhliain 2019, gearradh pianbhreith phríosúnachta dhá bhliain go leith ar Bhrasaíleach mar gheall ar 1.5 kg de chócaon a allmhairiú laistigh dá corp, tar éis di pacáistí a dhíleá agus pacáistí a chur i bhfolach ina faighin. Cuireadh luach €37,000 ar na drugaí. Máthair bheirte

[25] https://www.irishtimes.com/news/crime-and-law/when-drug-mules-land-in-ireland-1.1518638

nach raibh aon chiontuithe roimhe sin aici agus ar rugadh an chéad leanbh di nuair a bhí sí 16 bliana d'aois, agus ar rugadh ise dá máthair féin nuair nach raibh a máthair ach 13 bliana d'aois, ba ea an duine aonair sin. D'aithin an breitheamh go raibh sí ina hiompróir drugaí saonta a ghlac páirt i ngníomh baothdhána ar son luach saothair airgeadais.

Is féidir dinimic dá samhail – dinimic éadóchais agus ionramhála ag daoine aonair eile – a fheiceáil i gcásanna lena mbaineann cionta arm tine iomchuí. I mí Iúil 2022, gearradh pianbhreith phríosúnachta sé bliana go leith ar dhuine aonair i mBaile Átha Cliath mar gheall ar shealbhú airm tine i mí Dheireadh Fómhair 2021. Bhí ciontuithe coiriúla roimhe ag an duine aonair sin, agus d'aontaigh na páirtithe uile go raibh fadhb andúile ag an duine le fada. Áitíodh gur aontaigh an duine aonair leis an arm tine a iompar chun fiach drugaí a ghlanadh. Cé gur chion a bhí sa ghníomh sin, níor déileáladh leis an duine aonair a bhí i gceist mar bhall d'aon drong choiriúil.

I mí Aibreáin 2022, gearradh pianbhreith phríosúnachta cúig bliana ar dhuine aonair i mBaile Átha Cliath mar gheall ar shealbhú drugaí, meaisínghunna agus gunna láimhe. Oibrí cúraim a bhíodh ina chónaí lena thuismitheoirí agus a thosaigh ag mí-úsáid cócaoin tar éis dóibh bás a fháil ba ea an duine aonair sin. Chruinnigh sé fiach drugaí de thart ar €6,000 agus cuireadh iallach air na drugaí agus na hairm thine a stóráil. Chomhoibrigh an duine aonair le cuardach an tí agus chuir pléadáil chiontach isteach, á áitiú gurbh amhlaidh, tar éis dóibh aire a thabhairt dá dtuismitheoirí go dtí go bhfuair siad bás, a lean siad conair féinscriosta sular gabhadh iad. Ní raibh de chiontuithe roimhe sin acu ach dhá chion tráchta bóthair.

Ar fud na gcás-staidéar sin go léir, is amhlaidh, toisc nach raibh aon oibleagáid ar an mbreitheamh a dhearbhú go follasach cé na himthosca eisceachtúla a bhféadfadh go mbeadh feidhm acu agus conas a ualaíodh cur i bhfeidhm na n-imthosca eisceachtúla sin, nach féidir teacht ar léargas soiléir ar chineál cruinn an tionchair atá ag pianbhreitheanna íosta toimhdean ar rogha bhreithiúnach.

10. Treoirlínte maidir le Gearradh Pianbhreitheanna

B'ionann tabhairt isteach na n-achtachán lena ndéantar foráil maidir le pianbhreitheanna íosta toimhdean agus iarracht arna déanamh ag an Rialtas chun comhsheasmhacht a chinntiú ar fud na bpianbhreitheanna uile a thugtar i ndáil leis na cionta iomchuí, ar bhealach a léireodh tromchúis na gcionta sin go cuí. Mar gheall ar chineál na n-achtachán sin lena ndéantar foráil maidir le pianbhreitheanna íosta toimhdean, seachas pianbhreitheanna íosta sainordaitheacha, aithníodh freisin gur ghá rogha bhreithiúnach a urramú agus go bhféadfadh tosca maolaitheacha eisceachtúla údar a thabhairt le pianbhreith ar lú í ná an phianbhreith íosta toimhdean a thabhairt.

Tugtar le fios sna sonraí a fuarthas ó Sheirbhís Phríosúin na hÉireann agus ón tSeirbhís Chúirteanna go bhfuil an rogha bhreithiúnach sin fós ar cheann amháin de na príomhthosca

cinntitheacha agus na pianbhreitheanna sin á dtabhairt. Ar fud na gcionta iomchuí uile, tugadh pianbhreitheanna ar lú i bhfad iad agus ar mó i bhfad iad ná an phianbhreith íosta toimhdean, agus iad bunaithe ar fhiúntas an cháis mar a bhreithnigh an breitheamh a bhí ag gearradh na pianbhreithe é.

Más rud é nach n-aisghairfear pianbhreitheanna toimhdean, is féidir go mbeidh Coiste Chomhairle na mBreithiúna um Threoirlínte maidir le Gearradh Pianbhreitheanna ag iarraidh, in am trátha, treoirlínte maidir le gearradh pianbhreitheanna a fhorbairt chun aird a thabhairt ar na himthosca eisceachtúla ina ndéantar fad na pianbhreithe a laghdú faoi bhun na pianbhreithe íosta toimhdean. Is féidir go soláthrófar trédhearcacht le treoirlínte den sórt sin agus go n-éascófar leo gearradh comhsheasmhach pianbhreitheanna lena gcinntítear go ngearrtar pianbhreith chuí ar na daoine a dhéanann na cionta is tromchúisí.

11. Achoimre agus Conclúidí

San am i láthair, déantar foráil le hachtacháin sa Stát maidir le pianbhreitheanna íosta toimhdean i ndáil le dhá chion drugaí, i ndáil le sé chion arm tine agus i ndáil le roinnt athchionta. Ní ann sa dlínse seo a thuilleadh d'aon phianbhreitheanna íosta sainordaitheacha i leith an chéad chiona ná i leith athchionta. Cé go ndéantar foráil maidir le pianbhreitheanna lán-sainordaitheacha i ndáil le dúnmharú, i ndáil le dúnmharú breithe báis agus i ndáil le tréas, is lasmuigh de raon feidhme an athbhreithnithe seo atá na nithe sin.

Moladh sa tuarascáil a d'fhoilsigh an Coimisiún um Athchóiriú an Dlí sa bhliain 2013 go n-aisghairfí na forálacha reachtacha uile maidir leis na pianbhreitheanna íosta toimhdean a bhaineann le cionta drugaí agus cionta arm tine. San Athbhreithniú Straitéiseach ar an mBeartas Pionóis a foilsíodh sa bhliain 2014, níor easaontaíodh leis an moladh sin. Chuir Iontaobhas na hÉireann um Athchóiriú an Chórais Choiriúil in iúl go soiléir go bhfuil sé i bhfách leis an moladh ón gCoimisiún um Athchóiriú an Dlí, agus níor aimsíodh san athbhreithniú seo ach oiread aon fhianaise a foilsíodh le déanaí lena gcuirfí go dóthanach in aghaidh na moltaí a rinneadh roimhe seo.

De réir taighde a foilsíodh le déanaí, ní bhíonn pianbhreitheanna íosta ina ndíspreagadh éifeachtach i leith iompair choiriúil, agus ní mó ach oiread an tsábháilteacht pobail a ghabhann leo ná í sin a ghabhann le pianbhreitheanna a ndéantar foráil maidir leo faoin gcóras traidisiúnta, áit a n-úsáidtear rogha bhreithiúnach agus a gcuirtear ar chumas cúirte pianbhreith a thabhairt, lena n-áirítear an phianbhreith is mó faoin bhforáil reachtach iomchuí.

Mar a thugtar le fios sa taighde, cé go bhféadfaí a thabhairt le tuiscint le pianbhreitheanna íosta go nglacann Stát seasamh an-láidir i leith cionta ar leith, is amhlaidh, i ndáiríre, a bhíonn siad de chineál róphionósach. Gan rogha a fheidhmiú, is é an toradh a bhíonn ar phianbhreitheanna íosta a ghearradh go gcuirtear pionós díréireach ar dhaoine aonair soghonta imeallaithe, rud a tharlaíonn go minic i gcás cionta drugaí.

Tá sé soiléir go dtuigtear sa dlínse seo cineál pionósach na bpianbhreitheanna íosta agus go leanann breithiúna lena rogha féin a úsáid, nuair is féidir, agus pianbhreith á gearradh acu. Tugtar le fios san anailís ar na sonraí a sholáthair Seirbhís Phríosúin na hÉireann agus an tSeirbhís Chúirteanna gur lú i bhfad formhór na bpianbhreitheanna a thugtar i leith na gcionta iomchuí ná na pianbhreitheanna íosta faoi seach a ndéantar foráil maidir leo.

Ní hionann sin agus a rá nach gcoinnítear cuntasach na daoine sin a dhéanann coireanna tromchúiseacha. Áirítear le tacair sonraí Sheirbhís Phríosúin na hÉireann agus na Seirbhíse Cúirteanna roinnt cásanna inarbh é an toradh a bhí ar rogha bhreithiúnach a fheidhmiú gur tugadh pianbhreitheanna ar mhó i bhfad iad ná na pianbhreitheanna íosta a ndéantar foráil maidir leo, lena n-áirítear pianbhreitheanna saoil.

Aimhrialtacht sa chóras reatha um ghearradh pianbhreitheanna sa Stát is ea pianbhreitheanna íosta. Níl pianbhreitheanna íosta iomchuí ach i leith dornán cionta, agus cuireann siad oibleagáid ar na breithiúna plé leis an ngníomh gearrtha pianbhreitheanna ar mhodh atá difriúil leis an modh a phléitear le hábhair thraidisiúnta ghearrtha pianbhreitheanna. Mar sin, d'fhéadfaí féachaint orthu mar rud a chuireann lena chasta atá sé pianbhreith a ghearradh ar dhaoine i leith na gcionta sin seachas mar rud a imríonn tionchar dearfach ina leith sin. Mar atá leagtha amach roimhe seo, go háirithe i ndáil le 'iompróirí drugaí', is gnách go ndéanann pianbhreitheanna íosta difear díréireach do dhaoine eile seachas na daoine dár dearadh iad.

Níl aon tairbhe shoiléir ag baint go fóill leis na hachtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta a choimeád. Bunaithe ar an bhfianaise ar an úsáid leanúnach a bhaintear as rogha bhreithiúnach agus pianbhreitheanna a bhaineann leis na cionta sin á dtabhairt, mar a fhoráiltear sa reachtaíocht iomchuí, meastar freisin gur beag seans go n-imreodh aisghairm na bpianbhreitheanna sin aon tionchar mór ar phatrúin reatha ghearrtha pianbhreitheanna.

12. Moltaí

Cé gur de chineál tromchúiseach na coireanna iomchuí, tá sé soiléir go dtugann éirim na tuarascála ón gCoimisiún um Athchóiriú an Dlí le tuiscint gur cheart bogadh ar shiúl ó phianbhreitheanna íosta toimhdean a ghearradh ar mhaithe le rogha bhreithiúnach a chosaint. Meastar an seasamh sin a bheith réasúnach agus ar aon dul leis an bhfianaise agus an taighde a foilsíodh le déanaí sa réimse seo. Ina theannta sin, tá cruthú Chomhairle na mBreithiúna agus a Coiste um Threoirlínte maidir le Gearradh Pianbhreitheanna ina bhforbairtí a tharla le déanaí agus arb ionann iad agus imeacht soiléir ón tírdhreach a bhí ann tráth tugtha na bhforálacha reachtacha sin isteach.

Tá bearnaí sna sonraí go fóill, áfach, agus, d'ainneoin na n-iarrachtaí a rinneadh san athbhreithniú seo chun dul i ngleic le taighde a foilsíodh le déanaí, ní féidir teacht ar aon seasamh cinntitheach maidir le haon áit fhéideartha inchosanta do phianbhreitheanna íosta toimhdean i gcóras ceartais choiriúil na hÉireann.

Ar an mbonn sin, ní mholtar san athbhreithniú beartais seo go n-aisghairfí achtacháin lena ndéantar foráil maidir le pianbhreitheanna íosta toimhdean. Mar sin féin, i bhfianaise na tuisceana ar éagóir fhéideartha na bpianbhreitheanna sin, mar atá mionsonraithe thuas, moltar san athbhreithniú seo go n-aisghairfí na hachtacháin uile a bhaineann le neamh-incháilitheacht daoine aonair ar tugadh pianbhreitheanna íosta toimhdean dóibh dá mbreithniú le haghaidh scaoileadh sealadach agus le haghaidh parúil, faoi rialacháin atá le cur i bhfeidhm faoi alt 24 den Acht Parúil, 2019. Na neamhréireachtaí reatha a fhágann go mbeidh duine éigin ar a ngearrtar tréimhsí príosúnachta níos faide incháilithe ach go bhfanfaidh duine éigin ar a ngearrtar an phianbhreith íosta toimhdean neamh-incháilithe, is ionann iad agus teip pionós cothrom comhréireach a chinntiú i leith cionta. Ina theannta sin, cuireann neamh-incháilitheacht threallach den sórt sin isteach ar an acmhainneacht dhearfach atá ag an gcóras um scaoileadh sealadach agus ag an bpróiseas parúil – nach bhfuil ar fáil ach do chiontóirí a mheastar a bheith dea-iomprach agus i mbaol íseal an athchiontaithe – athimeascadh a éascú agus dóchúlacht an atitimeachais a laghdú agus, sa tslí sin, sábháilteacht an phobail a mhéadú.

AGUISÍN I

Sceideal 2 a ghabhann leis an Acht um Cheartas Coiriúil, 2007

1. Dúnmharú

2. Cion faoi aon cheann de na forálacha seo a leanas den Acht um Chionta Neamh-Mharfacha in aghaidh an Duine, 1997:

a) alt 4 (díobháil thromchúiseach a dhéanamh);
b) alt 5 (bagairtí duine a mharú nó díobháil thromchúiseach a dhéanamh);
c) alt 15 (príosúnú neamhdhleathach).

3. Cion faoi aon cheann de na forálacha seo a leanas den *Explosive Substances Act 1883*:

a) alt 2 (*causing explosion likely to endanger life or damage property*);
b) alt 3 (*possession, etc., of explosive substances*);
c) alt 4 (*making or possessing explosives in suspicious circumstances*);

4. Cion faoi alt 15 (seilbh ar airm teine le hintinn duine do chur i gcontabhairt bháis) d'Acht na nArm Teine, 1925.

5. Cion faoi aon cheann de na forálacha seo a leanas d'Acht na nArm Tine, 1964:

a) alt 26 (airm tine a bheith ag duine agus é ag tógáil feithicle gan údarás);
b) alt 27 (toirmisctear airm tine a úsáid chun comhrac in aghaidh gabhála nó cabhrú le héalú);
c) alt 27A (arm tine nó lón lámhaigh a shealbhú in imthosca amhrasacha);
d) alt 27B (arm tine a iompar le hintinn choiriúil).

6. Cion faoi alt 12A (bairille gunna gráin nó raidhfil a ghiorrú) d'Acht na nArm Tine, 1990.

7. Cion faoi alt 13 (trombhuirgléireacht) den Acht um Cheartas Coiriúil (Cionta Gadaíochta agus Calaoise), 2001.

8. Cion gáinneála ar dhrugaí de réir bhrí alt 3(1) den Acht um Cheartas Coiriúil, 1994.

9. Cion faoi aon cheann de na forálacha seo a leanas den Acht um Cheartas Coiriúil, 2006:

a) alt 71 (cion comhcheilge);
b) alt 72 (coireacht eagraithe);
c) alt 73 (cion a dhéanamh thar ceann eagraíochta coiriúla).

10. Cion faoi alt 17 (dúmhál, sracadh agus airgead a éileamh go bagrach) den Acht um Cheartas Coiriúil (Ord Poiblí), 1994.

AGUISÍN II

An Sceideal a ghabhann leis an Acht um an Dlí Coiriúil (Cionta Gnéasacha) (Leasú), 2019

1. Cion faoi alt 1 den *Punishment of Incest Act* 1908 (ciorrú coil ag fireannaigh).

2. Cion faoi alt 2 den *Punishment of Incest Act* 1908 (ciorrú coil ag baineannaigh atá 17 mbliana d'aois nó os a chionn).

3. Cion banéigin de réir bhrí alt 1 den Acht um an Dlí Coiriúil (Banéigean), 1981.

4. Cion faoi aon fhoráil de na forálacha seo a leanas den Acht um an Dlí Coiriúil (Banéigean) (Leasú), 1990:

a) alt 2 (ionsaí gnéasach);
b) alt 3 (tromionsaí gnéasach);
c) alt 4 (banéigean faoi alt 4 den Acht sin).

5. Cion faoi aon fhoráil de na forálacha seo a leanas den Acht um Chionta Gnéasacha (Dlínse), 1996:

a) alt 2 (cionta gnéasacha a dhéantar lasmuigh den Stát);
b) alt 3 (cion arb éard é duine a iompar chun a chumasú cion lena mbaineann alt 2(1) den Acht sin a dhéanamh);
c) alt 4 (cion arb éard é faisnéis a fhoilsiú ar dóigh di déanamh ciona lena mbaineann alt 2(1) den Acht sin a chur chun cinn etc.).

6. Cion faoi aon fhoráil de na forálacha seo a leanas den Acht um Gháinneáil ar Leanaí agus Pornagrafaíocht Leanaí, 1998:

a) alt 3 (gáinneáil ar leanaí agus leanbh a ghabháil, etc., chun teacht i dtír gnéasach a dhéanamh air nó uirthi);
b) alt 4 (cead a thabhairt leanbh a úsáid le haghaidh pornagrafaíochta leanaí);
c) alt 4A (striapachas leanaí nó táirgeadh pornagrafaíochta leanaí a eagrú etc.);
d) alt 5 (pornagrafaíocht leanaí a tháirgeadh, a dháileadh, etc.);
e) alt 5A (páirteachas linbh i dtaibhiú pornagrafaíochta);
f) alt 6 (pornagrafaíocht leanaí a shealbhú).

7. Cion faoi alt 249 d'Acht na Leanaí, 2001 (cion gnéasach ar leanbh a chur faoi deara nó a spreagadh).

8. Cion faoi aon fhoráil de na forálacha seo a leanas den Acht um an Dlí Coiriúil (Cionta Gnéasacha), 2006:

a) alt 2 (leanbh atá faoi bhun 15 bliana d'aois a thruailliú);
b) alt 3 (leanbh atá faoi bhun 17 mbliana d'aois a thruailliú);
c) alt 3A (cion ag duine i gcáil údaráis).

9. Cion faoi alt 5 den Acht um an Dlí Coiriúil (Gáinneáil ar Dhaoine), 2008 (sireadh nó tathant d'fhonn striapach a dhéanamh de dhuine ar a ndearnadh gáinneáil).

10. Cion faoi aon fhoráil de na forálacha seo a leanas den Acht um an Dlí Coiriúil (Cionta Gnéasacha), 2017:

a) alt 3 (leanbh a fháil, a sholáthar etc., chun teacht i dtír gnéasach a dhéanamh air nó uirthi);
b) alt 4 (cuireadh etc., chun tadhaill ghnéasaigh);
c) alt 5 (gníomhaíocht ghnéasach i láthair linbh);
d) alt 6 (cur faoi deara do leanbh breathnú ar ghníomhaíocht ghnéasach);
e) alt 7 (casadh le leanbh chun teacht i dtír gnéasach a dhéanamh air nó uirthi);
f) alt 8 (teicneolaíocht faisnéise agus cumarsáide a úsáid chun teacht i dtír gnéasach ar leanbh a éascú);
g) alt 21 (gníomh gnéasach le duine faoi chosaint);
h) alt 22 (cion in aghaidh duine iomchuí ag duine i gcáil údaráis).

AGUISÍN III

Caibidil 6: Achoimre ar Mholtaí

Tuarascáil ón gCoimisiún um Athchóiriú an Dlí: Pianbhreitheanna Sainordaitheacha (CAD 108-2013)

6.01 Is mar a leanas atá na moltaí a rinne an Coimisiún sa Tuarascáil seo:

6.02 Tá an Coimisiún i bhfách leis na moltaí a rinneadh sa bhliain 2000, agus a rinneadh arís eile sa bhliain 2011, á rá go dtabharfaí de chumhacht do Chomhairle Breithiúna treoir oiriúnach nó treoirlínte oiriúnacha maidir le gearradh pianbhreitheanna a fhorbairt agus a fhoilsiú, ar treoir í nó ar treoirlínte iad lena léireofaí aidhmeanna ginearálta na smachtbhannaí coiriúla agus na prionsabail um ghearradh pianbhreitheanna atá pléite sa Tuarascáil seo. Molann an Coimisiún freisin go dtabharfaí aird ar na nithe seo a leanas sa treoir nó sna treoirlínte sin: (i) an treoir agus na treoirlínte maidir le gearradh pianbhreitheanna atá ar fáil ó bhreitheanna ón gCúirt Uachtarach agus ón gCúirt Achomhairc Choiriúil (lena n-áirítear na cinn atá pléite sa Tuarascáil seo); (ii) na tosca géaraitheacha agus maolaitheacha, agus saintréithe ciontóirí aonair, atá sainaitheanta sa *Tuarascáil maidir le Gearradh Pianbhreitheanna* a d'fhoilsigh an Coimisiún sa bhliain 1996 agus atá forbartha ag na cúirteanna ón mbliain 1996 i leith; agus (iii) faisnéis i mbunachair sonraí iomchuí, lena n-áirítear, go háirithe, Córas na hÉireann um Fhaisnéis maidir le Gearradh Pianbhreitheanna (CÉFGP). [mír 1.128]

6.03 Molann an Coimisiún, le tromlach, go gcoimeádfaí an phianbhreith shainordaitheach saoil i leith dúnmharaithe. [mír 3.76]

6.04 I gcás ina gciontófar ciontóir i ndúnmharú agus, dá bhrí sin, go ngearrfar príosúnacht saoil ar an gciontóir, molann an Coimisiún gur ceart a fhoráil sa reachtaíocht go bhféadfaidh an breitheamh téarma íosta a bheidh le cur isteach ag an gciontóir a mholadh. [mír 3.84]

6.05 Molann an Coimisiún go mbunófaí an Bord Parúil ar bhonn reachtúil neamhspleách, agus fáiltíonn sé roimh an togra ón Rialtas reachtaíocht a thabhairt isteach chun déanamh amhlaidh. [mír 3.86]

6.06 Molann an Coimisiún go n-aisghairfí na nithe seo a leanas: (i) an córas um ghearradh pianbhreitheanna íosta toimhdean is infheidhme i leith cionta drugaí faoi alt 27(3C) den *Acht um Mí-Úsáid Drugaí, 1977;* agus (ii) an córas um ghearradh pianbhreitheanna íosta toimhdean is infheidhme i leith cionta arm tine faoi alt 15 d'*Acht na nArm Teine, 1925*; alt 26, alt 27, alt 27A agus alt 27B d'*Acht na nArm Tine, 1964*; agus alt 12A d'*Acht na nArm Tine agus na nArm Ionsaitheach, 1990*. Molann an Coimisiún freisin nach ceart úsáid na gcóras um ghearradh pianbhreitheanna íosta toimhdean a leathnú chuig cionta eile. [mír 4.238]

6.07 Molann an Coimisiún freisin go gcuirfeadh córas treoirbhunaithe níos struchtúrtha um ghearradh pianbhreitheanna (mar atá samhlaithe sna moltaí a rinneadh i gCaibidil 1) rogha mhalartach chuí ar na forálacha sin ar fáil. I gcomhthéacs coireacht a bhaineann le drugaí, measann an Coimisiún freisin go bhféadfaí iarrachtaí fhorfheidhmiú an dlí a fhorlíonadh go tairbhiúil le tionscnaimh eile, amhail na cinn atá pléite sa taighde a sheol an Bord Taighde Sláinte agus an earnáil oibre um Mí-Úsáid Drugaí de Chomhairle na Breataine-na hÉireann. [mír 4.239]

6.08 Molann an Coimisiún go n-aisghairfí na nithe seo a leanas: (i) an córas um ghearradh pianbhreitheanna toimhdean is infheidhme i leith athchionta tromchúiseacha faoi alt 25 den *Acht um Cheartas Coiriúil, 2007*; (ii) an córas um ghearradh pianbhreitheanna íosta sainordaitheacha is infheidhme i leith athchionta drugaí faoi alt 27(3F) den *Acht um Mí-Úsáid Drugaí, 1977;* agus (iii) an córas um ghearradh pianbhreitheanna íosta sainordaitheacha is infheidhme i leith athchionta arm tine faoi alt 15(8) d'*Acht na nArm Teine, 1925*; alt 26(8), alt 27(8), alt 27A(8), agus alt 27B(8) d'*Acht na nArm Tine, 1964*; agus alt 12A(13) d'*Acht na nArm Tine agus na nArm Ionsaitheach, 1990*. Molann an Coimisiún freisin nach ceart úsáid na gcóras um ghearradh pianbhreitheanna íosta toimhdean agus sainordaitheacha a leathnú chuig cineálacha eile athchiontaithe. [mír 5.133][26]

6.09 Molann an Coimisiún freisin go gcuirfeadh córas treoirbhunaithe níos struchtúrtha um ghearradh pianbhreitheanna (mar atá samhlaithe sna moltaí a rinneadh i gCaibidil 1) rogha mhalartach chuí ar na forálacha sin ar fáil. [mír 5.134]

[26] Tabhair do d'aire go raibh na hachtacháin sa mholadh seo ina n-ábhar don bhreithiúnas a thug an Chúirt Uachtarach sa bhliain 2019 dá dtagraítear thuas in Alt 5 den tuarascáil seo agus gur aisghaireadh san Acht um Cheartas Coiriúil (Leasú), 2021, iad.

An Roinn Dlí agus Cirt
Department of Justice

Report on a review of enactments providing for the imposition of minimum sentences

s.29 Judicial Council Act 2019

Table of Contents

1. Background

Section 29 of the Judicial Council Act 2019 provides that

> *The Minister shall—*
>
> > *(a) not later than 2 years after the coming into operation of this section, commence a review of enactments which provide for the imposition of minimum sentences for offences and without prejudice to the generality of the foregoing the Minister may, as part of the review, consider—*
> >
> > > *(i) whether the continued imposition of such minimum sentences through the operation of such provisions is appropriate in respect of all offences to which such provisions apply, and*
> > >
> > > *(ii) the extent to which in practice such minimum sentences are imposed in accordance with such provisions,*
> >
> > *and*
> >
> > *(b) not later than 12 months after the commencement of that review, make a report to each House of the Oireachtas on any findings of that review.*

The Judicial Council Act 2019 was enacted on 13 December 2019. As provided for under s.29 (a), a review of such enactments was commenced on 13 December 2021. This report, laid before the Houses of the Oireachtas, meets the Minister for Justice's statutory obligation, per s.29 (b).

2. Terms of Reference

The terms of reference for the review are:

1. To identify all current enactments which provide for the imposition of minimum sentences for offences;
2. To provide information on the extent to which such minimum sentences are imposed in accordance with such provisions;
3. To examine these enactments, within the context of previous reviews of same, to establish whether they remain appropriate in respect of all offences to which such provisions apply; and
4. To complete a report on the review to recommend a preferred policy option, for consideration by the Houses of the Oireachtas.

3. Minimum Sentences

Enactments which provide for criminal offences commonly stipulate a maximum penalty or sentence that may be handed down on conviction. In such instances, judicial discretion is facilitated, in line with Article 34 of the Constitution, so that the seriousness of the crime and its impact can be considered alongside mitigating factors during the sentencing process. This is to ensure that a fair and just sentence be handed down.

In contrast to this, the State has previously introduced a small number of targeted enactments for specific criminal offences which stipulate the minimum sentences that must be served on conviction.

3.1 Presumptive Minimum Sentences

A presumptive minimum sentence obliges a judge to hand down a minimum sentence, as specified in the relevant enactment, on conviction. The sentencing judge can increase this sentence, as considered appropriate.

In principle, such presumptive minimum sentences are intended to underline the seriousness of the criminal offence and to rule out the consideration of mitigating factors that might lessen the length of the sentence.

However, relevant current enactments in this State do provide for a potential decrease of the sentence below the relevant presumptive minimum in truly exceptional circumstances.

For example, Section 27(3C) of the Misuse of Drugs Act 1977 (inserted by Section 5 of the Criminal Justice Act 1999) provides for a presumptive minimum sentence of 10 years for possession of drugs equal to or above the value of €13,000. In amending the Misuse of Drugs Act 1977, the 1999 Act also inserts a description of the 'exceptional circumstances':

> *(3C) Subsection (3B) of this section shall not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of the offence, which would make a sentence of not less than 10 years imprisonment unjust in all the circumstances and for this purpose the court may have regard to any matters it considers appropriate, including—*
>
> *(a) whether that person pleaded guilty to the offence and, if so,*
>
> *(i) the stage at which he indicated the intention to plead guilty, and*

(ii) the circumstances in which the indication was given,

and

(b) whether that person materially assisted in the investigation of the offence.

In such cases, no obligation exists for the sentencing judge to detail exactly which 'exceptional and specific circumstances relating to the offence' apply when handing down a sentence, nor how such circumstances are weighted to calculate the final length of sentence. Consequently, no reliable data exists in relation to the use of such considerations and no coherent analysis on same can be produced at present.

Relatedly, in such circumstances the Director of Public Prosecutions retains the right to appeal any decision by a trial judge not to hand down a presumptive minimum sentence. The DPP's Annual Reports publish data relating to appeals they have taken regarding sentences imposed that were considered in law unduly lenient, with the most recent Annual Report published being from 2021.[1] However, the DPP's annual reports do not capture the subset, if any, of those appeals which relate to situations where presumptive minimum sentences applied.

The DPP has not published data on the specific offences and sentences handed down which were subject to these applications, and as such no conclusions can be drawn from their published data which is relevant to presumptive minimum sentences.

At present, presumptive minimum sentences are provided for in relation to specific criminal acts regarding drugs and firearms offences.

3.1.1 Drugs offences (presumptive minimum sentences)

Offence	*Sentence*	*Provision*	*Introduced*
Possession of drugs with value of €13,000 or more	Life with 10 year minimum (some discretion)	s.15A Misuse of Drugs Act 1977	s.5, Criminal Justice Act 1999 (amending s.27 in 1977 Act)

[1] Results of Applications by Year Heard, Office of the Director of Public Prosecutions Annual Report 2021, p.35.

Importation of controlled drugs in excess of certain value	Life with 10 year minimum (some discretion)	s.15B Misuse of Drugs Act 1977	s.5, Criminal Justice Act 1999 (amending s.27 in 1977 Act)

3.1.2 Firearms offences (presumptive minimum sentences)

Offence	*Sentence*	*Provision*	*Introduced*
Possession of firearms with intent to endanger life	Life with 10 year minimum (some discretion)	s.15 Firearms Act 1925	s.42 Criminal Justice Act 2006
Possession of firearm while taking vehicle without authority	14 years with 5 year minimum (some discretion)	s. 26 Firearms Act 1964	s.57 Criminal Justice Act 2006
Prohibition of use of firearms to resist arrest or aid escape	Life with 10 year minimum (some discretion)	s. 27 Firearms Act 1964	s.58 Criminal Justice Act 2006
Possession of firearm or ammunition in suspicious circumstances	14 years with 5 year minimum (some discretion)	s. 27A Firearms Act 1964	s.59 Criminal Justice Act 2006
Carrying firearm with criminal intent	14 years with 5 year minimum (some discretion)	s. 27B Firearms Act 1964	s.60 Criminal Justice Act 2006
Shortening barrel of shotgun or rifle	10 years with 5 year minimum (some discretion)	s. 12A Firearms and Offensive Weapons Act 1990	s.65 Criminal Justice Act 2006

3.2 Mandatory Minimum Sentences

Like presumptive minimum sentences, mandatory minimum sentences oblige a judge to hand down a minimum sentence, as specified in the relevant enactment, on conviction. The sentencing judge can increase this sentence, as considered appropriate.

However, unlike presumptive minimum sentences, mandatory minimum sentences cannot be decreased in exceptional circumstances.

There are currently no mandatory minimum sentences provided for in Irish law, and consequently discussion of same falls outside the remit of this report.

3.3 Repeat Offences

3.3.1 Presumptive Minimum Sentences for Repeat Offences

Section 25 of the Criminal Justice Act 2007 provides for minimum terms of imprisonment regarding the commission of subsequent offences within a given period. To qualify for this, the first offence must have been one of a specific list identified in Schedule 2 of the 2007 Act, and the sentence for the first offence must have been at least 5 years in length. The second offence must also be identified in Schedule 2, and the second offence must have occurred within 7 years of the conviction for the first offence. For Schedule 2, see **APPENDIX I** below.

In such circumstances, the courts are obliged to hand down a sentence of imprisonment of "*a term of not less than three quarters of the maximum term of imprisonment prescribed by law in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years*".

The obligation to impose a minimum term can be disapplied in a number of contexts. Relevant offences to fall under this provision, as included in Schedule 2, include murder, non-fatal offences against the person, explosives offences, firearms offences, aggravated burglary, drug trafficking offences, and organised crime.

Section 4 of the Criminal Law (Sexual Offences) (Amendment) Act 2019 provides a similar obligation in relation to repeat sexual offenders. To qualify for this, the first offence must have been one of a specific list identified in the Schedule of the 2019 Act, and the sentence for the first offence must have been at least 5 years in length. The second offence must also be identified in the Schedule, and the second offence must have occurred within 10 years of the conviction for the first offence. For the full Schedule of offences, see **APPENDIX II** below.

In such circumstances, the courts are obliged to hand down a sentence of imprisonment of "*a term of not less than three quarters of the maximum term of imprisonment prescribed by law*

in respect of such an offence and, if the maximum term so prescribed is life imprisonment, the court shall specify a term of imprisonment of not less than 10 years".

Again, this obligation may be disapplied in a number of contexts.

In line with previous reviews of minimum sentences, most notably the 2013 report by the Law Reform Commission (details below), presumptive minimum sentences for repeat offences are considered to fall within the remit of the current review provided for under Section 29 of the Judicial Council Act 2019.

3.3.2 Mandatory Minimum Sentences for Repeat Offences

A mandatory minimum sentence for second or subsequent offences provides a minimum sentence which must be handed down, and which does not provide the possibility for this obligation to be disapplied.

Mandatory minimum sentences for repeat offences have been deemed unconstitutional (see *5. Previous Enactments*, below), and relevant enactments have been repealed. Consequently, discussion of same falls outside the remit of this report.

3.4 Minimum Sentences and Temporary Release

All enactments which provide for minimum sentences in this jurisdiction also accompany enactments with specific provisions relating to the sentenced individual's eligibility for temporary release.

Temporary release refers to a provisional release from prison for a determined period of time. The legislative basis for temporary release is set out in the Criminal Justice Act 1960, as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003. A form of structured temporary release will often be considered towards the end of an individual's sentence, if the individual is considered eligible. Decisions in this context have regard to the nature of the offence committed, the behaviour of the individual while in prison, the potential threat posed to public safety, and the extent to which such temporary release would facilitate successful reintegration into society.

In the case of those sentenced under the enactments which provide for minimum sentences, the enactments regarding ineligibility for temporary release apply only to those who have been sentenced to the full presumptive minimum sentence for the relevant offence. This is to say that, for example, in the case of an offence under s.15A of the Misuse of Drugs Act 1977,

should an offender be handed down a sentence of 10 years, in line with the presumptive minimum, they will be considered ineligible for temporary release.

However, should the individual be handed down a sentence of less than or greater than the presumptive minimum, they will become eligible for temporary release when they meet the other eligibility criteria. In this instance, an individual who is sentenced to a longer period of imprisonment, such as 11 years, would have committed an offence which is deemed to be greater in seriousness than someone sentenced to the presumptive minimum of 10 years, but the offender sentenced to 11 years will eventually become eligible for consideration for temporary release, whereas the individual sentenced to 10 years will never be eligible for consideration for temporary release.

The matter is complicated further when an individual is sentenced to the presumptive minimum of 10 years, for example, with some of the sentence suspended. In the 2013 case of Kavanagh v The Minister for Justice, Equality and Law Reform,[2] the High Court decision points out that;

> *"The revocation of the order suspending the sentence is not automatic but rather is subject to the courts consideration of the circumstances of the case. The applicant cannot be required to serve … suspended years of his sentence without a further court order. The original sentence is only required to be served after revocation pursuant to s.99 of the [Criminal Justice Act 2006]."*

Further;

> *"The plain and ordinary meaning of a suspended sentence of 10 years of imprisonment with the final 3 years suspended is that there are 7 years to be served."*

In such instances then, while noting part of the sentences may be suspended, an individual sentenced to a presumptive minimum, with part of the sentence suspended, does not become ineligible for temporary release.

There is an inconsistency in relation to the eligibility of individuals sentenced under these enactments to access temporary release. This inconsistency, and the very fact that some offenders are considered ineligible for what is a progressive process to facilitate reintegration and decrease the likelihood of recidivism, raises questions over the appropriateness of these enactments relating to temporary release and greater consistency and fairness is needed.

[2] Kavanagh v The Minister for Justice, Equality and Law Reform, [2013] IEHC 626.

3.5 Minimum Sentences and Parole

Similar to the provisions relating to temporary release, s.24 of the Parole Act 2019 contains a number of provisions indicating that those sentenced to minimum sentences under relevant enactments are to be ineligible for parole before the expiry of such minimum terms.

At present, this matter is not immediately relevant, as the Minister has yet to enact regulations under s.24 to provide for eligibility of those serving determinate sentences to apply for parole. However, once these regulations are introduced, work which the Minister has committed to commencing in the Review of Policy Options for Prison and Penal Reform 2022-2024, this will give rise to a number of matters to be considered parallel to those raised in relation to eligibility for temporary release.

There is a need for consistency between the eligibility for temporary release and eligibility for parole. Relatedly, there is a need to ensure consistency and fairness, so that those serving minimum sentences are not unduly punished, particularly when compared against those convicted of the same offences but whose sentences may have exceeded the minimum sentence provided for in the relevant enactments. Finally, and again similar to the matter relating to temporary release, there is a need to consider the impact eligibility for parole may have in relation to encouraging or facilitating rehabilitation and reintegration, and decrease the likelihood of recidivism

4. Entirely Mandatory Sentences

An entirely mandatory sentence is one which must be handed down in relation to specific offences and the length of which cannot be revised by the sentencing judge, either upwards or downwards.

There are only three entirely mandatory sentences in Irish law, for the offences of murder, capital murder, and treason, respectively.

Entirely mandatory sentences are not forms of minimum sentences, and as such fall outside the scope of this review.

It should be noted that, in line with Action 6.2 of the *Review of Policy Options for Prison and Penal Reform 2022-2024*, work has commenced reviewing life sentences, including mandatory life sentences, with a view to examining introducing minimum periods of imprisonment, and related parole matters. This work is taking place outside of the remit of this current review.

5. Previous Enactments

The Criminal Justice Act 2006 introduced mandatory minimum sentences for certain repeat firearms offences and drugs offences. Unlike the provisions of the Criminal Justice Act 2007 and the Criminal Law (Sexual Offences) (Amendment) Act 2019, which provided for presumptive minimum sentences for repeat offences which could be lowered in exceptional circumstances, the Criminal Justice Act 2006 included no such provision, rendering such sentences as truly mandatory.

In 2019, the Supreme Court judgment in the case of Ellis v Minister for Justice and Equality & ors [2019] IESC 30 determined the relevant enactments of the Criminal Justice Act 2006 to be unconstitutional. These enactments were adjudged to cross the divide in constitutional separation of powers in seeking to determine the minimum penalty which must be imposed by a court only on a limited group of offenders identified by one particular characteristic, namely that such offenders had previously committed one or more of listed offences.

In effect, the Supreme Court judgment rules that truly mandatory minimum sentences for second offences are “repugnant to the constitution”.

To address this matter, the Criminal Justice (Amendment) Act 2021 was enacted in December 2021. This Act repealed the relevant enactments of the Criminal Justice Act 2006 which were deemed to be unconstitutional, namely:

Offence	*Sentence*	*Introduced*	*Repealed*
Subsequent drugs offences under s.15A or s.15B of Misuse of Drugs Act 1977	10 year minimum	s.84, Criminal Justice Act 2006 (amending s.27 in 1977 Act)	Criminal Justice (Amendment) Act 2021
Subsequent firearm offences under Firearms Act 1925	life with 10 year minimum	s.42 Criminal Justice Act 2006	Criminal Justice (Amendment) Act 2021

The Criminal Justice (Amendment) Act 2021 also dealt with older Acts contained in pre 1922 legislation that is still in force in Ireland. These older Acts had unusual provisions with a type of mandatory minimum sentence for repeat offenders and these too were in conflict with the judgment in the Ellis case and were amended accordingly.

These older Acts were:

1. Dublin Police Magistrates Act 1808
2. Illicit Distillation (Ireland) Act 1831
3. Refreshment Houses (Ireland) Act 1860

As clarified in 3.3.2 above, given these previous enactments have been repealed, they now fall outside the scope of this review.

6. Imposition of Minimum Sentences

According to s.29 (a) (ii) of the Judicial Council Act 2019, this review of minimum sentences should address the extent to which in practice such minimum sentences are imposed in accordance with relevant enactments. To this end, data relating to these offences has been sought from the Irish Prison Service, on committal data, and the Courts Service, on sentencing data.

In August 2022, the Irish Prison Service provided a dataset relating to committals under offences relevant to this report. The dataset from the Irish Prison Service included both active sentences and suspended sentences, ranging from 2003 to 2021 inclusive.

In August 2022 the Courts Service shared with the Department of Justice data on relevant sentences available, ranging from January 2014 to the end of June 2022. Appeals were excluded from the data, and it was not considered feasible to access reliable data relating to second or subsequent offences. Two important notes accompanied this data:

- The data report primarily derives from the statement of offence field in the ICMS system, which is a text field containing considerable variation in how offences are specified.

- To reduce the scope for error/imprecision, the text was cleaned and standardised where possible. However, it is not possible to account for every variation in text entered by offices across the country and, therefore, the data should not be considered comprehensive.

Given the variance between committal data and sentencing data, the relative health warnings for both datasets, the different time ranges of the datasets provided, and the reported difficulty in tracking repeat offences in particular, it is not possible to provide a fully comprehensive report on the extent to which in practice such minimum sentences are imposed in accordance with relevant enactments.

To address this, the decision has been made to isolate data points from both the IPS and Courts Service datasets that refer to active sentences only, to collate these data points into a

single dataset, and to present the data points across the range of sentence lengths per offence, in the charts below.

Acknowledging the limitations of this approach, born from recognition of the difficulties in collecting the primary data, this serves to provide both a sense of the relative scale of the offences when compared alongside one another, and a general indication of the spread of data points, or fully active sentences, handed down, as identifiable on the available records.

6.1 Minimum Sentences Data

Possession for sale or supply of drugs with a value of over €13,000

10 year minimum sentence

(1,521 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	41	129	169	285	271	208	122	112	76	17	91

Importation of controlled drugs in excess of certain value

10 year minimum sentence

(21 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	0	0	7	3	4	1	1	3	2	0	0

Possession of a firearm with intent to endanger life

10 year minimum sentence

(288 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	14	26	38	50	24	40	16	17	13	8	47

Possession of a firearm while taking a vehicle without authority

5 year minimum sentence

(0 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	0	0	0	0	0	0	0	0	0	0	0

Use of firearms to resist arrest or aid escape

10 year minimum sentence

(53 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	2	1	6	3	1	24	0	12	2	0	2

Possession of a firearm or ammunition in suspicious circumstances

5 year minimum sentence

(565 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	32	58	102	110	60	98	45	39	7	6	6

Carrying a firearm with criminal intent

5 year minimum sentence

(377 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	8	18	18	157	156	18	4	5	2	0	6

Shortening barrel of shotgun or rifle

5 year minimum sentence

(2 active sentences)

Sentence Length (years)	<1	1-<2	2-<3	3-<4	4-<5	5-<6	6-<7	7-<8	8-<9	9-<10	10+
TOTAL	0	0	0	2	0	0	0	0	0	0	0

6.2 Data Conclusions

Examination of the datasets provided by the Irish Prison Service and the Courts Service identifies that, in relation to all offences for which enactments provide minimum sentences, the vast majority of sentences handed down are below such minimums.

In the case of three offences which carry a minimum sentence of 10 years, namely the offence of possession for sale or supply of drugs of a value of over €13,000, the offence of the possession of a firearm with intent to endanger life, and the offence of the use of firearms to resist arrest or aid escape, the majority of sentences handed down are considerably lower than the minimum sentence, and very small percentages of offences lead to minimum sentences being handed down. However, particularly in relation to the offence of possession for sale or supply of drugs of a value of over €13,000, a number of sentences have also been handed down which far exceed the minimum sentence provided for.

These datasets evidence the extent to which the judiciary utilises judicial discretion to hand down appropriate sentences to address the specific nature of individual cases before them. Despite the minimums provided for in specific enactments, these sentences range from less than one year to life.

What cannot be extrapolated from this data is the reasoning behind the variance of sentences, particularly regarding the use of exceptional circumstances to result in the decrease of the sentence below the presumptive minimum. This is a matter which may in due course benefit from consideration by the Judicial Council's Sentencing Guidelines Committee.

7. Previous reviews and reports

7.1 Law Reform Commission (2013)

In 2013, The Law Reform Commission (the Commission), an independent statutory body with a principal role to keep the law under review and to make proposals for reform, published a report on mandatory sentences. This report, which followed the 2011 publication of the Commission's *Consultation Paper on Mandatory Sentences*,[3] was prepared at the request of the then Attorney General, under s.4(2)(c) of the Law Reform Commission Act 1975:

> *"to examine and conduct research and, if appropriate, recommend reforms in the law of the State, in relation to the circumstances in which it may be appropriate or beneficial to provide in legislation for mandatory sentences for offences."*

Chapter 6 of this report provided a summary of a number of relevant recommendations, including:

> *6.03 The Commission, by a majority, recommends that the mandatory life sentence for murder be retained.*
>
> *6.06 The Commission recommends that the following be repealed: (i) the presumptive minimum sentencing regime applicable to drugs offences under section 27(3C) of the Misuse of Drugs Act 1977, and (ii) the presumptive minimum sentencing regime applicable to firearms offences under section 15 of the Firearms Act 1925; section 26, section 27, section 27A and section 27B of the Firearms Act 1964; and section 12A of the Firearms and Offensive Weapons Act 1990. The Commission also recommends that the use of presumptive minimum sentencing regimes should not be extended to other offences.*
>
> *6.08 The Commission recommends that the following be repealed: (i) the presumptive sentencing regime applicable to serious repeat offences under section 25 of the Criminal Justice Act 2007; (ii) the mandatory minimum sentencing regime applicable to repeat drug offences under section 27(3F) of the Misuse of Drugs Act 1977; and (iii) the mandatory minimum sentencing regime applicable to repeat firearms offences under section 15(8) of the Firearms Act 1925; section 26(8), section 27(8), section 27A(8), and section 27B(8) of the Firearms Act 1964; and section 12A(13) of the Firearms and Offensive Weapons Act 1990. The Commission also recommends that the use*

[3] Law Reform Commission, *Consultation Paper on Mandatory Sentences* (LRC CP 66-2011).

> *of presumptive and mandatory minimum sentencing regimes should not be extended to other forms of repeat offending.*

In effect, the Law Reform Commission's report recommends the repeal of all minimum sentences that existed at the time of their report, presumptive and mandatory for first or repeat offenders, while also recommending retaining the entirely mandatory sentence for murder. It also recommends that no new minimum sentences of any kind should be introduced.

The recommendations of the report also include the empowering of a Judicial Council to develop and publish suitable guidance or guidelines on sentencing, which has since been provided for under the Judicial Council Act 2019. For a complete list of the summary recommendations, see **APPENDIX III**.

On the rationale behind these recommendations, in relation to drugs offences, the Commission noted that this use of presumptive sentences was unlikely to act as a deterrent in any consequential way, and that it was unjust for offenders to receive the same punishment without due regard to individual moral culpability, and that the offenders most likely to be the subject of presumptive minimum sentencing would be 'drug mules', whose criminal activity would have been incited through exploitation and coercion.[4] In relation to firearms offences, the Commission reached the same conclusion with regard to issues relating to ineffectiveness as a deterrent and matters relating to relative culpability of offenders.

7.2 Irish Penal Reform Trust (2013)

In 2013, the Irish Penal Reform Trust (IPRT), a non-governmental organisation campaigning for the rights of people in prison and the progressive reform of Irish penal policy, published a position paper on mandatory sentencing which broadly aligned with the LRC report. While the IPRT acknowledged the emotional appeal of presumptive minimum sentencing, and the strong message such sentencing sends out, it concluded with reference to evidence from other jurisdictions that mandatory sentences

- can lead to unjust punishment and breaches of human rights standards in the administration of justice;
- are ineffective as a deterrent;
- impact negatively on imprisonment rates; and
- force judges, prosecutors, and defence lawyers to 'negotiate justice'.[5]

On this basis, the IPRT supported the LRC report that legislation providing for presumptive minimum sentences should be repealed, and that alternatives to presumptive minimum

[4] Law Reform Commission, *Report on Mandatory Sentences* (LRC 108 – 2013) p.175.
[5] Irish Penal Reform Trust, *Position Paper 3: Mandatory Sentencing*, p.6

sentencing, as proposed by the LRC, should be introduced to address concerns relating to consistency, transparency, and predictability of sentencing practices.

7.3 Penal Policy Review Group (2014)

In 2014, the Penal Policy Review Group (PPRG), established to conduct an all-encompassing strategic review of penal policy in the State, published the Strategic Review of Penal Policy: Final Report. As part of this review, the PPRG examined mandatory sentences. The PPRG report does not challenge or contradict the conclusions of the Law Reform Commission's 2013 report, and provides no evidence which may inform such a contradiction, on the specific recommendation to repeal legislation that provides for presumptive minimum sentences in relation to relevant firearms or drugs offences.

In line with the conclusions of the Law Reform Commission then, the PPRG recommended that no further presumptive minimum sentences should be introduced, and called for a review of the continuation of existing presumptive sentences.[6]

This review was listed as an action by the relevant Implementation Oversight Group. The 7th report of this group, being the most recent such report, noted the review was due to be published in Q3 2018. It is understood that no such review was completed in line with this recommendation.

8. Updated Research

Following the 2013 Law Reform Commission report, and the 2014 recommendations of the Penal Policy Review Group, this review has sought to identify leading research in the area of minimum sentences (presumptive minimum and mandatory minimum), as they pertain to the specific criminal justice areas of relevance in this jurisdiction, and to consider international comparisons with other jurisdictions. An indicative example of such research is presented herein.

Generally, it has been found that there has been an increase in use of minimum sentences across various jurisdictions, often to address community perceptions that courts may be too soft on serious crime, or that sentencing outcomes are unpredictable and uncertain. In this context, minimum sentences are considered to provide certainty and to be reflective of community standards.[7]

[6] Penal Policy Review Group, *Strategic Review of Penal Policy: Final Report* (2014), p.99.
[7] Gray, Anthony, "Mandatory sentencing around the world and the need for reform", *New Criminal Law Review* 20.3 (2017): 391-392.

While attendant to this increase and the motivations identified as driving it, the vast majority of recent leading research consistently provides evidence across a range of considerations that would generally support the Law Reform Commission's recommendation regarding the repeal of legislation providing for presumptive minimum sentencing, particularly in relation to drugs offences.

In assessing the increased use of minimum sentencing in Canada, for example, research has been found to show "that punitive sentencing does not lead to safer communities. Instead of deterring potential offenders, mandatory minimums result in excessive, harsh penalties that increase the likelihood of recidivism".[8] Addressing the history and proliferation of minimum sentences in this jurisdiction, complementary research has also found that such provisions continue to "severely constrain a sentencing judge's ability to ensure proportionality, which is the fulcrum of the sentencing process".[9]

On drug use, the introduction of minimum sentences in the United States of America relating to crack and powder cocaine has been examined to find that, despite harsher presumptive minimum sentences being introduced for crack rather than powder cocaine, "crack use declined less than powder cocaine, and even less than drugs not included in sentencing policies". It has been concluded that these findings "suggest that mandatory minimum sentencing may not be an effective method of deterring cocaine use".[10]

More generally on drug crime in the United States, studies have found that the introduction of minimum sentences failed to deter drug-related offending, including a detailed analysis of efforts in three states, New York, Michigan, and Florida, which found that efforts to deter drug trafficking and crime associated with the drug trade provided no substantial decrease in these crimes, while seeing a considerable increase in respective prison populations.[11]

The relationship between minimum sentences, a related increase in prison populations, and a subsequent increase in crime, has been made across a number of studies. For example, a particular study looks at drugs-related minimum sentences and prison population to identify that the marginal addition of a prisoner results in a higher, not lower crime rate:

> "*Specifically, a 1 percent increase in the prison population results in a 0.28 percent increase in the violent crime rate and a 0.17 percent increase in the property crime rate. This counter-intuitive result suggests that incarceration, already high in the U.S, may have now begun to achieve negative returns in reducing crime*".[12]

[8] Mangat, Raji, *More that we can afford: The cost of mandatory minimum sentencing*, BC Civil Liberties Association (2014), p.5.
[9] Chaster, Sarah, "Cruel, unusual, and constitutionally infirm: Mandatory minimum sentences in Canada", *Appeal: Review of Current Law and Law Reform* 23 (2018): 119.
[10] Walker, Lauryn Saxe, and Mezuk, Briana, "Mandatory minimum sentencing policies and cocaine use in the U.S., 1985-2013", *BMC International Health and Human Rights* (2018): 18:43.
[11] Newburn, Greg, and Sal Nuzzo, "Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned, Paths Ahead", *James Madison Institute* (online), 2019.
[12] Dhondt, Geert, "The Effect of Prison Population Size on Crime Rates: Evidence from Cocaine and Marijuana Mandatory Minimum Sentencing", American Review of Political Economy 12.1 (2018).

This study, which gathered data from 50 US States over 40 years, suggests that minimum sentences may not only be potentially unjust, and remove judicial discretion unnecessarily, but counter-intuitively may actively be doing more harm to society.

The argument against the use of minimum sentences is not unanimous. Arguing in relation to a need to adopt a broader, holistic approach to high incarceration rates in the United States, research has contended that

> *"Abolishing mandatory or guideline sentencing would not reduce prison numbers significantly. Moreover, prescriptive sentencing practices are essential in order to ensure transparency, consistency, and fairness in sentencing. Mandatory sentencing grids have received considerable criticism, but only because the sanctions that they prescribe are generally too harsh. If the severity of those sanctions is moderated, the problems associated with mandatory sentencing will dissipate. Indeed, there is a sound doctrinal basis for reducing the hardship of most penalties, namely, the principle of proportionality".*[13]

Despite this claim, arguments in favour of retaining minimum sentences are rare, and as noted above, are orientated around principles of certainty and conveying public standards, rather than being evidence-informed or taking due regard of principles of proportionate punishment or rehabilitation, which are guiding principles in the *Review of Policy Options for Prison and Penal Reform 2022-2024*, approved by Government in August 2022.[14]

While recent research has tended to focus primarily on more general issues relating to minimum sentences, or often as they pertain to drugs related offences, this review assesses the predominant evidence-base to side in favour of repealing minimum sentences.

9. Impact of Minimum Sentences

9.1 Intended Targets of Minimum Sentences

The passing of the Criminal Justice Act 1999, which provides for the minimum sentences for drug offences under consideration here, sought to represent the then Government "policy of zero tolerance towards crime, particularly, but not exclusively, drug trafficking …. as a response to those who inflict such harm on our community". While acknowledging the need to address demand reduction, the then Minister for Justice Mr John O'Donoghue noted his "particular responsibility in relation to the supply side of the drugs problem" and considered it incumbent on him "to bring forward measures which will disrupt to the greatest extent possible

[13] Bagaric, Mirko, Gabrielle Wolf & Daniel McCormack, "Nothing seemingly works in sentencing: not mandatory penalties; not discretionary penalties – but science has the answer", *Indiana Law Review* 53 (2020), p.543.

[14] Review of Policy Options for Prison and Penal Reform 2022-2024.

those who engage in the deadly trade of drug trafficking".[15] These measures, it is generally accepted, were in response in part at least to the escalating drugs problem, particularly heroin abuse, in Ireland in the 1990s, particularly in areas of social and economic disadvantage.[16]

The passing of the Criminal Justice Act 2006, which provides for the minimum sentences relating to firearms offences under consideration here, sought to enact a wide range of provisions to interrupt criminal organisations and increase the powers of An Garda Síochána as appropriate. A number of the provisions of the Act focused entirely on organised crime, including providing a new definition of 'criminal organisation', and introducing new offences relating to participation in or assisting the activities of organised gangs. It is in this context the sentencing measures were introduced, and which are generally accepted as a response in part at least to the perceived escalation of gangland violence featuring firearms offences, particularly that relating to what is popularly referred to as the Crumlin-Drimnagh feud. As Sadhbh Byrne notes:

> *"In the late 1990s to early 2000s in Ireland, general public consciousness was hyper-aware of gangland activity, in particular murder perpetrated by gang members. Organised crime and its related gangland killings was a very recent introduction to Ireland … and a sense of crisis permeated the fabric of society, spurred on by the escalating nature of the problem."*[17]

9.2 Impacted Individuals: Drug Mules and 'Low-Level' Offenders

The introduction of these particular enactments were well meant, intending to target those at the highest levels of organised crime who coordinated the distribution of drugs or who directed the escalating firearm offences as part of the gangland violence. However, it has become clear over time that many of those most impacted by the introduction of minimum sentences are individuals who, while found guilty of the respective offences, are low-level offenders, often vulnerable and subject to degrees of coercion.

The Law Reform Commission identified this in 2013. Writing on drug mules, the report states:

> *"The Commission observes that low-level drug mules are more susceptible to being caught under section 15A or section 15B of the Misuse of Drugs Act 1977 than high-level drug barons. First, it has been noted that drug mules are generally vulnerable and desperate people who have been exploited by those higher up the drugs chain rather*

[15] Mr John O'Donoghue, "Criminal Justice (No. 2) Bill, 1997: Second Stage". Oireachtas.ie <https://www.oireachtas.ie/en/debates/debate/seanad/1997-12-09/5/>.
[16] For reference, see *First report of the Ministerial Task Force on Measures to Reduce the Demand for Drugs* (1996) <https://www.drugsandalcohol.ie/5058/>.
[17] Sadhbh Byrne, "Irish Organised Crime and the Motivation Behind Gangland Killings", *Student Psychology Journal* 2013, 1-14. See also; L. Campbell, "The culture of control in Ireland: Theorising recent developments in criminal justice", *Journal of Current Legal Issues* 2008, 1.

> *than hardened criminals. They are thus less likely to be adept at evading detection and it has been noted that they are sometimes placed in the direct line of fire in order to divert attention from other transportations."*[18]

Identifying research and referencing its own review in this area, the Commission agreed with the observation that "the majority of those being sentenced under the presumptive sentencing regime are low-level drug mules rather than high-level drug barons".[19]

As defined by the European Monitoring Centre for Drugs and Drug Addiction, a drug mule is "A drug courier who is paid, coerced or tricked into transporting drugs across an international border but who has no further commercial interest in the drugs".[20] Globally, there is a clear overlap between drug mules and victims of human trafficking, as identified and detailed by the United Nations Office on Drugs and Crime:

> *"Many victims of human trafficking are used to ferry drugs across international borders. Popularly known as 'drug mules', the victims are made to swallow balloons containing illicit drugs and are then transported across borders. Once they have reached their destination, these balloons are retrieved from the victim's body."*[21]

Drug mules tend not to be members of the criminal organisation, and are chosen for that very reason. They are thus often, though not always, vulnerable victims in their own right, who may be in significant personal danger, and who have no commercial interest in the drugs themselves. In light of this understanding, there seems to be a significant disparity between the target of the respective minimum sentences, drug barons, and those most impacted, drug mules. As the Commission concludes; "it would seem unjust that the range of actors involved in drug trafficking should be subject to the same presumptive sentencing regime regardless of their level of moral culpability or involvement".[22]

In discussing the relevant firearms offences, the Commission notes that, given the enactments were "modelled on the presumptive sentencing regime under the *Misuse of Drugs Act 1977*, many of the comments made in relation to the *Misuse of Drugs Act 1977* also apply to the Firearms Acts", particularly in relation to aims relating to deterrence, punishment, and the denunciatory aspect of the sentencing regime.[23]

When examining the nature of 'possession' or 'control' of firearms, the Commission addresses matters of power and moral culpability once again:

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[18] Law Reform Commission, Report on Mandatory Sentences (LRC 108 – 2013) p.141.
[19] Ibid, p.141.
[20] European Monitoring Centre for Drugs and Drug Addiciton, "A definition of 'drug mules' for use in a European context" (2012) < https://www.emcdda.europa.eu/publications/thematic-papers/drug-mules_en>.
[21] United Nations Office on Drugs and Crime, "Drug mules: Swallowed by the illicit drug trade", <https://www.unodc.org/southasia/frontpage/2012/october/drug-mules_-swallowed-by-the-illicit-drug-trade.html>.
[22] Law Reform Commission, Report on Mandatory Sentences (LRC 108 – 2013) p.175.
[23] Law Reform Commission, Report on Mandatory Sentences (LRC 108 – 2013) p.177-178.

> *"At one end of the scale there are the high-level offenders who may be in charge of operations. These may be described as having constructive possession as they have ultimate control over those who possess the firearms or ammunition on their behalf. At the other end of the scale there are the low-level offenders who may, for instance, have been coerced or tricked into hiding firearms or ammunition for someone else. These may be described as having actual possession of the firearms or ammunition as they exercise physical control over the firearms or ammunition."*[24]

Much like the drug mules, these 'low-level' offenders, who may not be members of a criminal organisation as defined, or who may be vulnerable and coerced into participation, are at present subject to the same sentencing regime as the more senior leaders of a criminal organisation directing the actions of the organisation's membership.

9.3 Case Studies

An appropriate repository of case studies relating to specific offences does not currently exist, and so it is difficult to source cases which illustrate the impact of minimum sentences in a manner which does not identify individuals, who have often already completed their sentences in full, and place them under unnecessary personal scrutiny. Nevertheless, it is possible to identify a number of cases of individuals who received significant sentences under the current enactments but with clear evidence that these individuals were not the intended targets of the relevant enactments.

In May 2021 an individual was sentenced to 8.5 years for importing a large quantity of cannabis from the UK into Dublin Port in 2017. This married father-of-two had been a lorry driver since 2000, and while the amount of cannabis imported was substantial, it was accepted by the Judge that his role was one of courier only. No evidence was provided that this was a regular act on the part of the individual and An Garda Síochána agreed that there was no evidence the lifestyle of the individual was inconsistent with that of a lorry driver and no evidence of any further assets were uncovered. The judge also considered it unlikely that the individual would ever come before the court on such a serious matter in future.

In a similar case, in April 2016 an individual was sentenced to 6 years for importing a quantity of heroin into the State in August 2015. While the case made it clear that the individual was to receive €8,000 for his role in the importation of the drugs, he believed it to be a quantity of cannabis, and underlined that his agreement to carry out this act was due to his suffering financial pressures as a result of separation from his partner which obliged him to take out financial loans from 'unscrupulous persons', for which he was put under immense pressure to repay.

[24] Law Reform Commission, Report on Mandatory Sentences (LRC 108 – 2013) p.142.

Drug mules often come to the State through Dublin Airport, a matter examined by the Irish Times in 2013:

> *Shay Doyle, customs manager at Dublin Airport, says that … a significant number have no choice. …*
>
> *"There was an engineer from South Africa caught bringing cannabis in," says Doyle. "He couldn't get a job because he was on the very lowest rung of people to get a job due to the societal structure out there. He said he did it to buy a birthday present for his child.*
>
> *"There was also a retired schoolteacher who was caught and put in jail. She was actually then teaching in Mountjoy. She was offered early release but didn't want to take it because she would have had to give up her teaching.*
>
> *"A lot of them are actually very relieved when they are caught, particularly the international ones, because it means they are taken out of that whole cycle.*[25]

An individual from South Africa was sentenced to five years in 2009 for importing through Dublin Airport over €100,000 worth of cannabis in her suitcase. This individual had no previous convictions and admitted that she had run into debt because of medical expenses and was to be paid €1,000 for delivering the drugs. During the case, An Garda Síochána made it clear that that the individual was considered very low down the ladder of the drugs trade, and was very unlikely to come before the courts again.

In 2019 a Brazilian individual was sentenced to two and a half years for importing 1.5kg of cocaine inside her body, having digested packages and secreted packages within her vagina. The drugs were valued at €37,000. This individual, a mother-of-two who had no previous convictions, whose first child was born when she was 16, and whose mother had given birth to her when she was only 13, was recognised by the judge as a naïve mule engaged in a desperate escapade for financial reward.

Similar dynamics of desperation and manipulation by others are evident in cases involving relevant firearms offences. In July 2022 an individual in Dublin was sentenced to six and a half years for possession of a firearm in October 2021. This individual had previous criminal convictions, and it was agreed by all parties that they had a long-standing issue with addiction. The individual maintained that they had agreed to transport the firearm in order to pay off a drug debt. While this action was an offence, the individual in question was not dealt with as a member of any organised criminal gang.

In April 2022 an individual in Dublin was sentenced to five years for possession of drugs and a machine gun and a handgun. This individual, a care-worker who had been living with his parents, began abusing cocaine after their deaths, had built up a drug debt of approximately €6,000, was forced to store the drugs and firearms. The individual cooperated with the search

[25] https://www.irishtimes.com/news/crime-and-law/when-drug-mules-land-in-ireland-1.1518638

of the house, and submitted a guilty plea, maintaining that, having nursed their parents up until their deaths, they took a path of self-destruction before their arrest. Their only previous convictions were for two road traffic offences.

Across all of these case studies, due to the absence of any obligation on the judge to explicitly declare the exceptional circumstances which may apply and how their application has been weighted, it is not possible to have a clear picture of the exact nature of the impact presumptive minimum sentences have on judicial discretion.

10. Sentencing Guidelines

The introduction of enactments providing for presumptive minimum sentences represented an attempt on the part of the Government to ensure consistency across the sentences handed down in relation to the relevant offences which adequately reflected the seriousness of these offences. Due to the nature of these enactments providing for presumptive minimum sentences, rather than mandatory minimum sentences, there was also a recognition that judicial discretion needed to be respected, and that exceptional mitigating factors may justify handing down a sentence lower than the presumptive minimum.

The data received from the Irish Prison Service and the Courts Service indicates this judicial discretion remains a key determining factor in the handing down of these sentences. Across all relevant offences, sentences considerably lower and considerably higher than the presumptive minimum have been handed down, informed by the merits of the case as considered by the sentencing judge.

Should presumptive sentences not be repealed, the Judicial Council's Sentencing Guidelines Committee may, in due course, be minded to develop sentencing guidelines to take account of the exceptional circumstances which lead to a decrease in the length of sentence below the presumptive minimum. Such guidelines may provide transparency and facilitate consistent sentencing which ensures that those who commit the most serious offences are sentenced appropriately.

11. Summary and Conclusions

At present, enactments in the State provide for presumptive minimum sentences in relation to two drugs offences, six firearms offences, and a number of repeat offences. There are no longer any mandatory minimum sentences in this jurisdiction, for first or repeat offences. Entirely mandatory sentences are provided for in relation to murder, capital murder, and treason, though these are outside the scope of this review.

The 2013 Law Reform Commission report recommends the repeal of all legislative provisions for the presumptive minimum sentences relating to drugs and firearms offences. The 2014 Strategic Review of Penal Policy did not disagree with this recommendation. The Irish Penal Reform Trust has made their support for the Law Reform Commission's recommendation clear, and this current review has found no recent evidence which would sufficiently counter the previous recommendations made.

According to recent research, minimum sentences are neither an effective deterrent for criminal behaviour, nor do they increase community safety any more than sentences which are provided for under the more traditional system which utilises judicial discretion and enables a court to pass a sentence which may extend to the fullest extent of the relevant legislative provision.

As the research indicates, minimum sentences may act to signal a State takes a particularly strong view of particular offences, but in effect they are overly punitive in nature. Without the exercise of discretion, minimum sentences function to disproportionately punish vulnerable and marginalised individuals, and this is particularly acute in relation to drugs offences.

It is clear that in this jurisdiction, the punitive nature of minimum sentences is understood, and judges continue to use their discretion at sentencing where possible. Analysis of the data provided by the Irish Prison Service and the Courts Service indicates the majority of the sentences handed down under the relevant offences are appreciably below the respective minimum sentences provided for.

This is not to be mistaken for not holding accountable those who commit serious crimes. The Irish Prison Service and Courts Service datasets include a number of cases where judicial discretion led to the handing down of sentences which far exceeded the minimum sentences provided for, up to and including a life sentence.

In practice, minimum sentences are an anomaly in the prevalent system of sentencing in the State. Relevant to only a handful of offences, they oblige the judiciary to approach the act of sentencing from a different perspective than traditional sentencing matters, and in this manner may be considered more of a complication than a positive force in the practice of sentencing people for these offences. As outlined previously, particularly in relation to 'drug mules', they tend to disproportionately affect people other than those they were designed to tackle.

There remains no clear benefit to retaining the enactments which provide for minimum sentences. Given the evidence of the ongoing use of judicial discretion when it comes to handing down sentences relating to these offences, as provided for in relevant legislation, it is also considered highly unlikely that their repeal would have any major impact on current sentencing patterns.

12. Recommendations

While the relevant crimes are serious in nature, it is clear the thrust of the Law Reform Commission's report indicates a move away from presumptive minimum sentences to protect judicial discretion. This position is found to be reasonable, and in line with recent evidence and research in the area and the creation of the Judicial Council and its Sentencing Guidelines Committee are recent developments which are a marked departure from the landscape which existed at the time of the introduction of these legislative provisions.

However, gaps in the data remain, and despite the efforts made in this review to engage with recent research, no definitive position can be reached regarding any potential justifiable place for presumptive minimum sentences in the Irish criminal justice system.

On this basis, this policy review does not recommend the repeal of enactments providing for presumptive minimum sentences. However, in light of the understanding of their potential unfairness, detailed above, this review recommends the repeal of all enactments relating to the ineligibility of individuals handed down presumptive minimum sentences to be considered for temporary release and parole, under regulations to be put in place under s.24 of the Parole Act 2019. The present inconsistencies which mean someone sentenced to longer periods of imprisonment will be eligible, whereas those sentenced to the presumptive minimum will remain ineligible, represents a failure to ensure fair and proportionate punishment for offences. Further, such arbitrary ineligibility interferes with the positive potential for the temporary release system and the parole process, which are only available to offenders considered of good behaviour and at low-risk of reoffending, to facilitate reintegration and decrease the likelihood of recidivism, thus increasing public safety.

APPENDIX I

Criminal Justice Act 2007 Schedule 2

1. Murder

2. An offence under any of the following provisions of the Non-Fatal Offences Against the Person Act 1997:

a) section 4 (causing serious harm);
b) section 5 (threats to kill or cause serious harm);
c) section 15 (false imprisonment).

3. An offence under any of the following provisions of the Explosive Substances Act 1883:

a) section 2 (causing explosion likely to endanger life or damage property);
b) section 3 (possession, etc., of explosive substances);
c) section 4 (making or possessing explosives in suspicious circumstances).

4. An offence under section 15 (possession of firearm with intent to endanger life) of the Firearms Act 1925.

5. An offence under any of the following provisions of the Firearms Act 1964:

a) section 26 (possession of firearms while taking vehicle without authority);
b) section 27 (prohibition of use of firearms to assist or aid escape);
c) section 27A (possession of firearm or ammunition in suspicious circumstances);
d) section 27B (carrying firearm with criminal intent).

6. An offence under section 12A (shortening barrel of shotgun or rifle) of the Firearms Act of 1990.

7. An offence under section 13 (aggravated burglary) of the Criminal Justice (Theft and Fraud Offences) Act 2001.

8. A drug trafficking offence within the meaning of section 3(1) of the Criminal Justice Act 1994.

9. An offence under any of the following provisions of the Criminal Justice Act 2006:

a) section 71 (offence of conspiracy);
b) section 72 (organised crime);

c) section 73 (commission of offence for criminal organisation).

10. An offence under section 17 (blackmail, extortion and demanding money with menaces) of the Criminal Justice (Public Order) Act 1994.

APPENDIX II

Criminal Law (Sexual Offences) (Amendment) Act 2019 Schedule

1. An offence under section 1 of the Punishment of Incest Act 1908 (incest by males).

2. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over the age of 17 years).

3. A rape offence within the meaning of section 1 of the Criminal Law (Rape) Act 1981.

4. An offence under any of the following provisions of the Criminal Law (Rape) (Amendment) Act 1990:

a) section 2 (sexual assault);
b) section 3 (aggravated sexual assault);
c) section 4 (rape under section 4 of that Act).

5. An offence under any of the following provisions of the Sexual Offences (Jurisdiction) Act 1996:

a) section 2 (sexual offences committed outside the State);
b) section 3 (offence of transporting person for purpose of enabling offence to which section 2(1) of that Act relates to be committed);
c) section 4 (offence of publishing information likely to promote etc. commission of offence to which section 2(1) of that Act relates).

6. An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998:

a) section 3 (child trafficking and taking, etc., child for sexual exploitation);
b) section 4 (allowing child to be used for child pornography);
c) section 4A (organising etc. child prostitution or production of child pornography);
d) section 5 (producing, distributing, etc. child pornography);
e) section 5A (participation of child in pornographic performance);
f) section 6 (possession of child pornography).

7. An offence under section 249 of the Children Act 2001 (causing or encouraging sexual offence upon a child).

8. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2006:

a) section 2 (defilement of child under 15 years of age);
b) section 3 (defilement of child under 17 years of age);
c) section 3A (offence by person in authority).

9. An offence under section 5 of the Criminal Law (Human Trafficking) Act 2008 (soliciting or importuning for purposes of prostitution of trafficked person).

10. An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2017:

a) section 3 (obtaining, providing etc. a child for purpose of sexual exploitation);
b) section 4 (invitation etc. to sexual touching);
c) section 5 (sexual activity in presence of child);
d) section 6 (causing child to watch sexual activity);
e) section 7 (meeting child for purpose of sexual exploitation);
f) section 8 (use of information and communication technology to facilitate sexual exploitation of child);
g) section 21 (sexual act with protected person);
h) section 22 (offence against relevant person by person in authority).

APPENDIX III

Chapter 6: Summary of Recommendations

Law Reform Commission Report: Mandatory Sentences (LRC 108-2013)

6.01 The recommendations made by the Commission in this Report are as follows:

6.02 The Commission supports the recommendations made in 2000, and reiterated in 2011, that a Judicial Council be 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 discussed in this Report. The Commission also recommends that such guidance or guidelines should have regard to: (i) the sentencing guidance and guidelines available from decisions of the Supreme Court and the Court of Criminal Appeal (including those discussed in this Report); (ii) the aggravating and mitigating factors, and individual offender characteristics, identified in the Commission's 1996 *Report on Sentencing* and developed by the courts since 1996; and (iii) information in relevant databases including, in particular, the Irish Sentencing Information System (ISIS). [paragraph 1.128]

6.03 The Commission, by a majority, recommends that the mandatory life sentence for murder be retained. [paragraph 3.76]

6.04 The Commission recommends that 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. [paragraph 3.84]

6.05 The Commission recommends that the Parole Board be established on an independent statutory basis, and welcomes the Government's proposal to introduce legislation bringing about this effect. [paragraph 3.86]

6.06 The Commission recommends that the following be repealed: (i) the presumptive minimum sentencing regime applicable to drugs offences under section 27(3C) of the *Misuse of Drugs Act 1977*, and (ii) the presumptive minimum sentencing regime applicable to firearms offences under section 15 of the *Firearms Act 1925*; section 26, section 27, section 27A and section 27B of the *Firearms Act 1964*; and section 12A of the *Firearms and Offensive Weapons Act 1990*. The Commission also recommends that the use of presumptive minimum sentencing regimes should not be extended to other offences. [paragraph 4.238]

6.07 The Commission also recommends that a more structured, guidance-based sentencing system (as envisaged in the recommendations made in Chapter 1) would provide an appropriate alternative to these provisions. In the context of drug-related crime, the Commission also considers that law enforcement efforts may be beneficially supplemented by

other initiatives, such as those highlighted in the research conducted by the Health Research Board and the Misuse of Drugs work sector of the British-Irish Council. [paragraph 4.239]

6.08 The Commission recommends that the following be repealed: (i) the presumptive sentencing regime applicable to serious repeat offences under section 25 of the *Criminal Justice Act 2007*; (ii) the mandatory minimum sentencing regime applicable to repeat drug offences under section 27(3F) of the *Misuse of Drugs Act 1977*; and (iii) the mandatory minimum sentencing regime applicable to repeat firearms offences under section 15(8) of the *Firearms Act 1925*; section 26(8), section 27(8), section 27A(8), and section 27B(8) of the *Firearms Act 1964*; and section 12A(13) of the *Firearms and Offensive Weapons Act 1990*. The Commission also recommends that the use of presumptive and mandatory minimum sentencing regimes should not be extended to other forms of repeat offending. [paragraph 5.133][26]

6.09 The Commission also recommends that a more structured, guidance-based sentencing system (as envisaged in the recommendations made in Chapter 1) would provide an appropriate alternative to these provisions. [paragraph 5.134]

[26] Note, the enactments in this recommendation were the subject of the 2019 Supreme Court judgment referenced above in Section 5 of this report, and were repealed in the Criminal Justice (Amendment) Act 2021.