Submission from: Association for Criminal Justice, Research & Development Ltd

www.acjrd.ie

To: The Interdepartmental Group to examine the issue of people with mental illness coming into contact with the Criminal Justice System

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Patron: THE HON. MR. JUSTICE MICHAEL MORIARTY

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The Association for Criminal Justice Research and Development Ltd {ACJRD) seeks to promote reform, development and effective operation of the criminal justice system and herewith submits a submission to the above Interdepartmental Group reporting on persons with mental health issues coming into contact with the criminal justice system.

It is opportune for ACJRD to comment as the association recently launched the 14th Annual Conference (2011) papers on *Mental Health in the Criminal Justice System- The Deliverables of the Governments 'Vision for Change'*. The theme of the Conference placed the government policy cited in the terms of reference of this Interdepartmental Group:'*Vision for Change: Report of the Expert Group on Mental Health Policy'* (2006) at the heart of its presentations and discussions and examined what worked and what could be improved in the delivery of services in Ireland and in other jurisdictions.

In response to a request, earlier this year, from the Department of Justice and Equality ACJRD made submissions regarding the practical operation of the Criminal Justice (Insanity) Acts 2006 & 2010 in the areas of mental health as it impacted the individual, its implementation in legal proceedings and interagency engagement. That submission is attached herewith, given the analogous content which may assist the work of the instant Interdepartmental discussions.

The '*Vision for Change'* sets out a key message to the key sectors of mental health service delivery with an emphasis therein that for those persons who have a mental illness, engagement with the criminal justice system should be employed only as a means of last resort, where there is no legal facility the treatment of those persons elsewhere.

It is hoped that in drawing on some of the key issues and themes arising from the 2001 ACJRD Conference papers that broadly include papers on interagency engagement, current practices and future changes, diversion, research and lessons from other jurisdictions, that they will inform discussion by the Interdepartmental Group with reference to its nine terms of reference. Additionally, it is hoped that other commentary and related research will be of assistance to the discourse at hand.

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1. 'Mental Health and the Criminal Justice System – Working Together'

[J. Martin, Dept. Justice & Equality, Bairbre Nic Aongusa, Dept. Health]

This joint presentation by senior management in the Department of Justice & Equality and Health, covered the key area of interdepartmental/inter-agency co-operation in what was described as Cross-Sectoral Teams. The focus is putting the person (requiring a service) in the criminal justice system at the centre, and the engagement by the key agencies in delivering a service in detention and on release from detention into the community. There have been positive developments from the Memorandum of Understanding between An Garda Siochana and the HSE, in particular, the key role of the Gardai in the community, liaising with the HSE and the opportunities for knowledge acquisition and increased awareness of the needs of people with mental health issues and the potential for escalation of certain behaviours into a categorisation of criminal incidents.

2. (i) 'Severe Mental Illness – Vision for Change in the Criminal Justice System '
(ii) 'Prison In-reach and Court Liaison Services in Ireland'

[Prof. H. Kennedy & Dr. C. O' Neill, Central Mental Hospital]

(i) The presenter referred to Penrose's Law, which showed that that there is an inverse relationship between the number of psychiatric beds and the number of prison places. As the number of psychiatric places goes down, the number of prison places goes up. The research indicates that this correlation is more pronounced in Ireland (Prof. B. Kelly, 2007). The research in St. Patrick's Institution of young offenders (aged 16-20) has shown that in screening one in three new committals, demonstrates a high psychosis rate influenced by alcohol problems, the use of cannabis and poly drug use. The use of High Support Units in prison has been proved successful, as an interim placement prior to transfer to the Central Mental Hospital (CMH) or as a stabilisation option. A WHO award for Health Innovation in Prison Health Services (2011) was presented in recognition of the combined teams from Mountjoy Prison and CMH forensic mental health. It is suggested that management of prison mental health issues requires ownership by one agency, the HSE, with other agencies in a supporting role, facilitating allocation of service on a population based need.

(ii) An interesting Irish study (2004) has shown that 7.6% of male remand prisoners' demonstrated indicia of psychotic illness, a rate ten times higher than the community average. Between 3% and 4% of new remands demonstrate active psychosis symptoms on committal. It is widely accepted that prisons are inappropriate places for prisoners with mental health problems. The Cloverhill Project, a new innovative idea, is a diversionary project managed by the CMH with the assistance of various agencies.

3.'Mental Health in the Criminal Justice System – The Perspective from the IPS'

[F. Black, Irish Prison Service]

The presenter stated that primary care is the linchpin of the prison healthcare system. Within mental health, there is an expectation that up to 90% can be treated at a primary care level. The IPS has invested significantly over the last number of years in relation to drug treatment in prisons. There is a significant amount of people in the prisoner population who suffer from mental illness. In relation to the outlying prisons, with a high remand rate, the IPS would like to see, in conjunction with the HSE, the development of a more robust arrangement in potentially diverting more people to appropriate community services. The ideal service would be the transfer of patients from the CMH, to the community, to provide follow up and access the risks subsequent to discharge, providing an intensive social model to ameliorate the possibilities of relapse.

The IPS is clear that prison is not a hospital setting. Therefore there are limitations to meeting health needs in that prison setting as a prison is not a therapeutic environment. It is accepted that effective collaboration with the National Forensic Mental Health Services, however the relationship with community-based teams is more fragmented where arising support issues that are non-clinical. It is suggested that community health teams need to see prisoners as part of their catchment areas in what is a continuum of care. There is a template example in Cork in the provision of that safe transition from prison to the community with the involvement of the key agencies in what the prison service call 'an equivalence of care' (the delivery of prison healthcare). Overall, there is a requirement to focus on good integration, co-operation and support between the prison and the community in delivering effective services for mental health prisoners/patients. The UK policy has been to give the lead responsibility to the Department of Health, where prisoners are recognised as part of the community. In Ireland this practice could be considered in the context of the community role of the HSE. Another factor that impacts the IPS now and in the future is the policy change in the HSE in reducing the numbers of their acute psychiatric beds and the increase in the prison population, thus ending up with a disproportionate number of prisoners with mental health issues.

4. 'Mental Health in Prisons – Because you're worth it'

[Dr. A. Fraser, Scottish Prison Service]

The presenter referred to 'a whole prison approach' as regards mental health in Scotland. Dealing with mental health and addiction enables prisoners to get to the starting gate for rehabilitation. Self worth is seen as a foundation for wellbeing, recovery and reducing the risk of re-offending. What is really important in Scotland is community based forensic mental health care; it is regarded as vital because it provides a valve that releases the pressure on mental healthcare and forensic mental health in hospitals. Mental health in prisons presents as a systems issue, which is

augmenting as a pressure on resources. Prison health care responses are improving in partnership with community based health systems. There are many challenges ahead but the best successes will come when alternatives to prison, in the community, have the capability and appetite to integrate mental health care and support justice programmes.

5. Workshop Feedback – Key Points:

(i) 'Child and Adolescent Psychiatry-Interface with the Criminal justice System' [Dr. K. Holmes]

There is no scientific rationale for subdividing Child and Adolescent Mental Health Services into services for younger children and youth mental health services. It makes little sense to limit the services to 18 year olds. The obstacle from a service delivery is the child-adult legal boundaries.

(ii) 'Girls Behind Bars: Female Experiences of Criminal Justice' [E. McDougall]

There were positive outcomes for prisoners in having prison staff with basic training knowledge in mental health. The presenter outlined the difficulties in prison when observing other prisoners self-harming etc., the isolation and the overall psychological impact and the therapeutic benefits of dealing with trauma through Art.

(iii) 'Making the Vision Visible' [M. Rogan]

The 'Vision for Change' aimed to re-focus and adapt an archaic system into one that demonstrated modernity and relevance. The project had a realistic timeframe of seven to ten years but the current economic situation will reduce the opportunity for the progressive delivery of all of the goals. Stark statistics were presented regarding the general population's mental health. The prison population is rising and concerns exist regarding acute bed capacity reducing in conjunction with a dearth of mental health teams having the required numbers of key professionals.

(iv) 'Recovery and Growth within the Criminal Justice System' [M. Kerrigan et al]

The mission of GROW is to nurture mental health personal growth, prevention and full recovery from all kinds of mental illness. GROW is supported by the Probation Service in prisons. It is a resource for prisoners living with mental health difficulties, coping with the stress of imprisonment and working towards making real and sustainable changes. A prisoner's testimonial was presented where he outlined the benefits of involvement with the services that GROW facilitate.

(iv) 'A Northern Perspective on Mental Health Care and Legislation' [Dr. I. Bownes]

There is a focus on mental health reform in Northern Ireland where the evidence gathered indicates that there is a high rate of mental disorder in those persons who come in contact with the criminal justice system. The Bamford Review made a number of recommendations, including the need for timely interventions, the adoption

of capacity based legislation and the transfer of healthcare responsibility to the Department of Health. A number of recent decisions of the European Court of Human Rights have placed a focus on the individual's rights to be involved in their treatment and related-issues.

(v) Mental Health Law & The Criminal Justice System – When Two Worlds Collide' [N. Nolan]

The Mental Health Acts 2001-2008 are primarily concerned with civil detention; however, there are many issues for the criminal justice systems flowing from said legislation. It is notable that 25% of all applications from civil detentions are undertaken by An Garda Siochana. The issue that arises is whether Garda doctors are adequately equipped to apply these provisions of the Mental Health Acts. The High Court has recently expressed "certain disquiet" about the manner in which the Garda doctor conducted an examination, which led to the making of a recommendation for an involuntary admission. Thus informal or improper examinations of persons suffering from mental health difficulties while detained in Garda stations can lead to further problems with the admissibility of evidence for the prosecutor at trial, if a criminal prosecution in fact ensues. Issues were also raised with regard to fitness to be tried under the Criminal Justice (Insanity) Act 2006. The requirement to having a 24/7 on call psychiatric liaison officer available to the Gardai was emphasised. Prosecutions could be derailed, if the necessary medical safeguards are not in place.

(vii) 'Youth Mental Health: Prevention & Early Intervention' [Dr. J. Duffy]

The Clonmel Project and the pilot phase of My World were examined by the Headstrong organisation (2007). It was noted that a person from a vulnerable group who ended up in prison is likely to be an early school leaver and male. There are a number of distinct groups where the risk of developing mental health issues increases including: males, those economically disadvantaged, travellers, people with learning difficulties, people who are currently experiencing or who have experienced abuse as children, offenders, asylum seekers and early school leavers. The focus in Ireland has been on mental illness and not mental health. By focusing on resilience and developing the young person's ability to cope in general terms, and by encouraging access to mental health services (e.g. Jigsaw project), the current focus may shift to promoting positive mental health. Headstrong provide services to the Probation Service and HSE.

6. <u>Children/Young People with Mental Health Issues (in care/in detention):</u>

In the 'Report of the Commission to Inquire into Child Abuse, (2009) – Implementation Plan, there is a specific reference to mental health problems and access to specialist services for children in care and detention within a context of out-of-home placement and the associated poor outcomes such as low educational attainment, living in poverty and dependence on State assistance in adulthood. Thus, children in care need access to support and specialist services while in care or in detention, as well as access to aftercare services on leaving (p. 21). It is clear that it is

the continuum of care and availability of the necessary support services that allows the opportunity for positive outcomes.

It is noted that the Irish Youth Justice Service and HSE are working together to progress a number of the actions on the Ryan Implementation Plan (see www.iyjs.ie). The development by the HSE of the Child and Adolescent Mental Health Services (in line with the Vision for Change) and the Assessment, Consultation and Therapy Service should be progressed for those children in detention. These services, if fully delivered, would allow for the best outcomes for children/young people in the juvenile justice system.

7. Relevant Research

1. Dublin Children Court (2005) – A Pilot Study (see www.acjrd.ie)

2. The Children Court; A National Study (2007). This research covering 400 young people concluded that persistent offenders suffer from personal and structural disadvantages including the levels of education, difficult family circumstances and delays in the Court process. Many of the disadvantages mentioned in this research resonate with both the plenary and workshops presentations mentioned in the 14th Annual ACJRD Conference (see www.acjrd.ie)

3. A 2007 study by Dr. Jennifer Hayes and Dr. Gary O'Reilly, UCD ('Emotional Intelligence, Mental Health & Juvenile Delinquency') examined a cohort of children/young males (under 16 years) in detention centres and identified a number of common trends. The research was based on comparisons with children/young people in the community requiring mental health services and those children/young people not requiring services. The research indicated that approx. eight out of ten boys in the detention system would meet diagnostic criteria for at least one psychiatric disorder. High rates of co-morbidity (multiple psychiatric problems) were also identified with an average of 3.1 psychiatric disorders being experienced by detainees. (see www.ucd.ie/news/may07_research-det.html.).

8. Northern Ireland Report (2010)

This report by the Criminal Justice Inspection Northern Ireland, *'Not a Marginal Issue – Mental Health and the criminal justice system in Northern Ireland'*, had a number of key recommendations that could be of practical benefit in this jurisdiction.

- A police training module on mental health
- The Courts Service should arrange for judges to have access to expert advice in interpreting psychiatric reports and handing issues, which involve mental health issues.

- The Prosecution Service could devote more space to questions of fitness to plead and possible non-responsibility by virtue of mental incapacity or mental disorder.
- The Prosecution Service should be pro-active in flagging to the Courts, mental health issues that might affect the conduct of a case.
- The Health Service should be held accountable for the delivery of the programme of improvements to mental healthcare in prisons.
- A joint health and criminal justice programme should be created to bring together all relevant organisations to develop a clear approach to the needs of mentally disordered offenders.

The forward of Dr. M. Maguire, Chief Inspector of Criminal Justice in Northern Ireland, makes a number of interesting points. Dr. Maguire stated, " *The treatment of people with mental disorders presents enormous challenges to the criminal justice system. Earlier screening and assessment is critical. The strategic objective should then be to divert, whenever appropriate, more offenders away from custodial care. Prisons are not therapeutic environments and generally make mental health matters worse. For those who are imprisoned, the quality of care within the system needs to be improved. In addition, more effort should be made to successfully re-integrate people in to the community when they emerge from the justice system. A stronger relationship between justice and health is an important foundation for moving forward".*

Conclusion

In conclusion, the delivery of 'Vision for Change' in the criminal justice system will be benchmarked on the key headings and recommendations, as follows:

1. Relationship with catchment area specialist mental health teams.
2. Court diversion.
3. Framework for forensic mental health services.
4. Children and adolescents.

The 14th Annual Report of the ACJRD on Mental Health should add to the plethora of practitioner knowledge that will inform this Interdepartmental Group.

The Mental Health Working Group, the Council Members and the membership of the ACJRD commend the Interdepartmental Group on its work and hope that our submission will be of some assistance in the formulation of recommendations to the Minister for Justice and Equality and Minister for Health for consideration by the Government.

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