



mediating the human impact of crime

Briefing Paper to Senator Conway

27th November 2012

Forward

The short-term sub-committee on penal reform, which will shortly produce its final report, is focused on issues around temporary release, remission, and other aspects of the pre- and post-release period for prisoners. Submissions to the committee to date have not covered the area of restorative justice and so Senator Conway was specifically asked to write a short report outlining restorative justice issues relevant to this particular part of the prison system.

These is Facing Forward submission to Senator Conway which the Senator may incorporate in his document. He will credit Facing Forward for their input in his document.

Please note that this is not a Facing Forward submission, but background material which the Senator and his staff may use in the preparation of his own document.

Prepared by Nadette Foley, Marie Williams with contribution from and I have worked on this together, and Jacinta De Paor and , Barbara Walshe and Sr Imelda Wickham

Current Restorative Justice work in Ireland:

The current Restorative Justice work in the Republic of Ireland funded by the Probation Service is limited to crimes for which there would be a non-custodial sentence or crimes which would warrant a sentence of up to one year if the offender did not participate in an RJ event. This approach focuses on diversion from custodial sentences and reparation to the community. Along with 98% of restorative work internationally, these processes tend to be initiated by those working with the offender, with the aim of supporting him or her to desist from criminal behaviour. This work can involve victim empathy, meeting victim advocates and in some cases a meeting with the direct victim. The Probation Service and the Tallaght, Nenagh and Limerick RJ projects are working to further develop their relationships with victim support organizations.

Restorative Justice in Prisons:

International research has shown that **“in general, RJ [Restorative Justice] seems to reduce crime more effectively with more, rather than less, serious crimes”**.¹ It is our contention that work should commence to introduce restorative practices in the area of serious crime, including work with prisoners before and after release. In general, restorative work at this level begins after sentencing and conviction. When dealing with serious crime, restorative practice internationally takes a survivor-centred

¹ Sherman, L. and Strang H (2007). *Restorative Justice: The Evidence*. Available at http://www.sas.upenn.edu/jerrylee/RJ_full_report.pdf

approach. This means that only the victim or survivor can initiate the process, and we would recommend that this be adhered to in Ireland. This approach allows the restorative facilitator to explore the victim or survivor's unmet needs, to assess their readiness to participate in a restorative process, and to ensure that the survivor is not subject to further victimisation by the person who has offended.

International research and practice shows that survivors of serious crime may feel the need to express the impact of the harm on their lives and may have questions that only the person responsible for the crime could answer. Prisoners may have a need to express remorse directly to the survivor and to take responsibility for the harmful impact of their crime. Prisoners facing release may also need to feel that they will be accepted back into their community as someone who is willing to change their behaviour. Chaplains and others engaged with prisoners have seen the need for restorative work, and have indicated that there is a readiness for such processes to be introduced in Irish prisons.

While direct victim-offender dialogue depends on the interest and participation of the actual victim, an alternative to 'survivor initiated' restorative work in a prison-based programme is to invite victims of similar crimes to engage in restorative dialogue through circle work. A circle is a restorative process that brings together those harmed by crime and those responsible for the harm, members of the community and other stakeholders. In the circle process, each participant is given the opportunity to tell their story and the impact that the crime has had on them. Survivors of crimes similar to those committed by the prisoners participating in the circle are prepared in advance so that they can safely express the impact of the crime on them and their families. Representatives from the community are also included in order to recognise the ripple effect of crime. Circles involve prisoners who are engaged in personal development and victim empathy work. These survivors would be supported beforehand so that they feel safe to speak in detail about the effects the crimes have had on their lives and their families and communities. This model is based on an understanding of the ripple effect of crime on families, friends and communities around the individual survivors.

A restorative model that has proved successful in the United States is the use of re-entry circles as part of a structured pre- and post-release reintegration strategy. This could involve a series of sessions for prisoners prior to release and a follow up series once they are living back in the community. Again this work would involve members of the community and those who have experienced similar crimes going into the prison to dialogue with prisoners and work with them in the process of reintegration. This approach could be piloted with the IPS Community Return programme which is being proposed for those sentenced to up to 8 years.

Parole Board:

An important element of a more structured approach to prisoner releases would for the Parole Board to be an independent entity with a statutory basis. The right to independent legal representation for prisoners at Parole Board hearings and the right to appeal negative decisions should be guaranteed. The voice of the victim would also need to be heard in these proceedings. If the engagement of the Parole Board with victims/survivors was to be deepened and expanded, it could provide an opportunity to explain to survivors what a restorative process could offer them. The Parole Board could therefore become a point of contact for restorative programmes to reach victims/survivors.

Rights and Needs of Victims/Survivors:

While Facing Forward strongly advocates for the introduction of restorative practices within the prison system, it is critical that the rights and need of victims be paramount in this work. The forthcoming *EU Directive on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime* will require the Irish Government to take account of the protection needs of victims/survivors. The Directive states that:

“Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent any further victimisation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm.”²

The Directive sets out standards and safeguards for Restorative Justice as follows:

- “1. Member States shall *take measures* to safeguard the victim from intimidation or further victimisation, to be applied when providing restorative justice services, *if any*. Such *measures shall ensure that the victim, who chooses to participate in restorative justice processes, has access to safe and competent restorative justice services and shall* as a minimum include the following:
 - (a) restorative justice services are used only if they are in the interest of the victim, *subject to any safety considerations, and shall be based on the victim's free and informed consent; this consent may be withdrawn at any time;*
 - (b) before agreeing to participate in the process, the victim is provided with full and unbiased information about the process and the potential

outcomes as well as information about the procedures for supervising the implementation of any agreement;

- (c) the offender must have *acknowledged the basic facts of a case*;
- (d) any agreement should be arrived at voluntarily and *could* be taken into account in any further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.”

Restorative Approaches in Prison:

We have outlined some of the benefits of introducing the various forms of restorative dialogue into Irish prisons. However, restorative practices can also have a wider application. Restorative approaches internationally include changing the way prisoners and their families are treated. In one UK prison, prisoner numbers have been removed from cell doors and prison staff use inmates names instead. The position of computers and office equipment has been changed to encourage more interaction between prison officers and prisoners. This kind of restorative initiative can support the efforts of educational, vocational and reintegration programmes. This approach could be integrated with the current proposals on giving prisoners more responsibility and a different living environment for their last six months in prison, while offering them opportunities for community work on day release.

The embedding of restorative practices in a structured way in prison will in turn make the introduction of restorative dialogue and victim offender dialogue much easier.

The recent Irish Penal Reform Trust report outlined the effects on children and families of prisoners of the current prison disciplinary system, which restricts visiting rights as punishment for breaking prison rules. A restorative approach would recognise the rights of children and families to maintain positive links with prisoners so that they can support them on release. Research shows that prisoners who have stable family relationships find it easier to refrain from reoffending on release.

The issue of release for the funerals of close family members could also benefit from a restorative approach. Currently, while most prisoners are allowed time to view the remains of deceased family members, permission is not always granted for prisoners to attend the funerals of close family members. While the wishes of family members would



need to be taken into account, again a restorative approach would support prisoners being allowed to join family to be part of a communal grieving process at such a crucial time. Facilitating a prisoner to take part in an event that could have a crucial psychological impact could enhance their reintegration on release. The long-term negative impact of a young prisoner being denied a chance to attend the funeral of a parent can have a profoundly damaging effect.

In the area of sex offending, the *Building Better Lives* programme in Arbour Hill could provide an opportunity for people who have begun to understand the impact of their crimes to engage in restorative practice. Once the model of restorative dialogue using circle work has been tested in the Irish Prison Service with serious crime, it will then be possible to consider how it might be used with sex offenders. Again, international best practice would indicate the use of restorative circles with survivors of similar crimes.

