

LAW SOCIETY SUBMISSION



SUBMISSION ON THE PAROLE BILL 2016

DEPARTMENT OF JUSTICE AND EQUALITY
MARCH 2017

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

Contents

1.	Introduction.....	4
2.	Summary of Recommendations.....	5
3.	Conditions of Parole	6
4.	Impact of plea on parole	6
5.	Recall of parolee.....	7
6.	Procedural Rights	8
7.	Balancing of rights	8
8.	Role of Parole Board.....	9
9.	Conclusion	9

1. Introduction

- 1.1. The Law Society of Ireland, through its Human Rights Committee and its Criminal Law Committee welcomes the opportunity to submit its observations to the Department of Justice and Equality (hereinafter the “Department”) on the Parole Bill 2016 (hereinafter “the Bill”). The Society is pleased that the Bill will place the Parole Board on a statutory footing and bring greater clarity, coherence and transparency to the Irish parole system.
- 1.2. This submission will address issues arising out of the Bill, which warrant further examination. The Society is available to meet with the Department to expand on and clarify points raised within this submission.
- 1.3. The views expressed in this submission do not purport to reflect the views of the Parole Board (its members or Chair). The submission is drafted by members of the Human Rights and Criminal Law Committees based on their experience as solicitors in this area of law. Certain members of the Human Rights Committee have specific expertise in this area of law namely Shane McCarthy, Solicitor, who is also a member of the Parole Board.

2. Summary of Recommendations

The Society recommends the following observations be included in the ongoing consideration of the Bill:

- 2.1. Any future statutory Parole Board should have the power to grant parole and/or temporary release to all long-term prisoners, where appropriate in all the circumstances.
- 2.2. Parole should be available to all long-term prisoners irrespective of whether they have admitted guilt for the crime for which they have been imprisoned.
- 2.3. A clear statutory test should exist to determine who is eligible for parole and temporary release. Any revocation of parole should be decided via an independent review hearing, which is subject to appeal. The Society believes that any decisions in relation to revocation should be clear, reasonable and proportionate and legal representation should be available for such hearings. In the interests of transparency, redacted precedent decisions should be made available, as guidance for legal representatives and parolees.
- 2.4. The procedural protections contained within the Bill should be extended to include prisoners other than long-term prisoners.
- 2.5. The role of the victim in the parole hearing should be carefully weighed to ensure that it does not result in an undue prejudicial effect on the possibility of parole for a prisoner. All evidence should be disclosed to the person whose parole is being considered, before a review to ensure credibility and transparency.
- 2.6. The Parole Board should retain the power to make recommendations and referrals in individual cases, with consideration given to the re-examination of unimplemented decisions in future reviews of parole.

3. Conditions of Parole

- 3.1. The Society notes that currently tariffs imposed on prisoners in the United Kingdom who are repatriated have been held not to be determinative by the Irish Courts. However, the Society considers that the establishment of an independent Parole Board would provide repatriated prisoners with the possibility of being released before the end of their tariff and offer an opportunity for rehabilitation. Tariffs could be incorporated into the Bill as a factor to be taken into account at the time of sentencing and could be treated as part of the sentence to be served i.e. a minimum period. The Society suggests that, if such a system was to be introduced, prisoners who were then released could remain on parole until the end of the tariff, with the tariff being served in the community with conditions of immediate return if breached.
- 3.2. The Society suggests that any future statutory Parole Board should have the power to grant parole to all long-term prisoners. For example, under section 15a of the Misuse of Drugs Act 1977, as amended, which provides for a mandatory minimum sentence, offenders sentenced under this section are not normally eligible for parole. Therefore, there is little incentive for convicted persons to engage with services and rehabilitation programmes as it will not result in a reduction of their sentence. It is counter-intuitive that parole/temporary release should be available for a person convicted of murder but unavailable for a person serving a sentence for possession of drugs.

Recommendation: The Society recommends that any future statutory Parole Board should have the power to grant parole and/or temporary release to all long-term prisoners, where appropriate in all the circumstances.

4. Impact of plea on parole

- 4.1. Difficulties frequently arise where prisoners maintain their innocence in respect of offences for which they are imprisoned. The Probation Service is unable and/or unwilling to deal with prisoners in such circumstances and their programmes are not tailored to deal with them, as many programmes are predicated on the offender accepting his/her involvement in the crime for which they are imprisoned. Therefore, a situation may arise where people feel compelled to accept their guilt against their own wishes to ensure that they can move forward within the system. This issue is not merely limited to those involving murder.
- 4.2. The Society is concerned that people may face double penalisation for maintaining their innocence as they are unable to avail of services and programmes, which mean that they are in turn unable to avail of parole. Some prisoners may be allowed to participate in certain offender courses but this may only occur where they accept their guilt of a lesser charge, i.e. if they accept they should have been convicted of manslaughter as opposed to the murder conviction they may have received. Notably, statistics from other

jurisdictions indicate that prisoners who maintain their innocence often end up serving proportionally longer sentences.¹ It is vital that prisoners are not inadvertently punished for maintaining their innocence and that greater flexibility may be needed in such cases. Studies in the United States have shown that no correlation exists between accepting guilt for an offence and the risk of future re-offending. Moreover, one study in the United Kingdom found that those who had pleaded guilty were in fact more likely to re-offend.²

Recommendation: The Society recommends that parole should be available to all long-term prisoners irrespective of whether they have admitted guilt for the crime for which they have been imprisoned for.

5. Recall of parolee

- 5.1. The Society considers that it is essential within the parole process that, a presumption exists in favour of release and that conditions regarding the recall of a prisoner need to be carefully reviewed and adjusted. It is of note that the largest category of inmates in U.S. prisons is parole violators. Internationally, there is a much higher rate of recall of prisoners who are subject to parole supervision compared to prisoners who are released and are not subject to supervision.³
- 5.2. Any newly-established parole system must have rules to ensure that all prisoners who are subjected to a revocation of their parole are entitled to a further review by the Parole Board within a defined period of time. In addition it is recommended that a clear statutory test should exist for assessing the further release of prisoners.
- 5.3. The Society is aware that, currently, revocation of parole can arise not only from further convictions and but also in cases assessed to involve 'risky behaviour'. It would appear from anecdotal evidence that 'risky behaviour' may be interpreted widely as behavior indicating an increased likelihood of committing a crime at some unknown date in the future, and where no crime is in fact committed. Any revocation of parole should be decided by means of an independent review hearing, at which the parolee is entitled to legal representation, which is subject to appeal. Decisions in relation to revocation should be clear, reasonable and proportionate.
- 5.4. Currently, the tests for parole or temporary release are not clearly set down. The Society considers that temporary release should be afforded to prisoners who have served an appropriate period of imprisonment. A presumption in favour of granting temporary release should arise once an appropriate period has been served by the prisoner and there is no good reason not to do so. It is recommended that this process should be independent of both the prison management and the Department of Justice, and be transparent with all due process.
- 5.5. In light of the potential impact of decisions regarding recall of parole, consideration should be given to having legal representation present, with the possibility of free legal

representation where resources permit. It is suggested that the system currently in place under the Mental Health Commission might be utilised as a model for the parole system, whereby cases are automatically assigned to an available solicitor within a specified timeframe. Further, it is submitted that in the interests of transparency, redacted precedent decisions should be made available, as guidance for legal representatives and parolees.

Recommendation: The Society recommends that a clear statutory test should exist to determine who is eligible for parole and temporary release. Any revocation of parole should be decided via an independent review hearing, which is subject to appeal. Any decisions in relation to revocation should be clear, reasonable and proportionate and consideration should be given to the right to legal representation at such hearings. In the interests of transparency, redacted precedent decisions should be made available, as guidance for legal representatives and parolees.

6. Procedural Rights

- 6.1 The Society supports the introduction of procedural rights for prisoners within the Bill, including the provision of a written decision and the right to have legal representation available at a parole hearing. It is the Society's view that such procedural rights should not only be limited to long-term prisoners.

Recommendation: The Society recommends that the procedural protections contained within the Bill should be extended to include prisoners other than long-term prisoners.

7. Balancing of rights

- 7.1 The Society is keenly aware of the necessity to ensure that the rights of victims are respected and upheld, particularly in light of the Victims' Rights Directive. The rights of the prisoner must be equally respected and upheld and both parties should be fully informed regarding the parole process. However, in doing so, it is important for the legislation to be clear on what role the victims have in the parole process and why they are being involved.

- 7.2 Currently, section 16(3) of the Bill provides that a victim may attend a parole hearing to make submissions and the person whose parole is being considered may not be present unless the victim and the Board agree to their remaining in the room. Care must be taken to ensure that the role of the victim in parole hearings does not result in an undue prejudicial effect on the possibility of parole for a prisoner. Furthermore, fairness demands that any evidence being given in relation to a person's application for parole should be given in that person's presence to enable them to ensure any erroneous information can be corrected.

- 7.3 At present, the Parole Board issues a recommendation on parole to the Minister for Justice, who can decide whether or not to follow this. The Society is also aware of additional 'soft information' that may also partly inform the decision of the Minister but of which the person whose parole is being considered may not be aware. In the interests of credibility and transparency, all evidence should be disclosed to both the person whose parole is being considered and the victim, before a review and no additional material should be allowed. The Society also recommends that the final decision as to whether parole should be granted should be made by the Parole Panel.

Recommendation: The Society recommends that the role of the victim in the parole hearing should be carefully weighed to ensure that it does not result in an undue prejudicial effect on the possibility of parole for a prisoner. All evidence should be disclosed to both the person whose parole is being considered and the victim before a review to ensure credibility and transparency.

8. Role of Parole Board

- 8.1 Currently, the Parole Board can make recommendations and suggestions for referrals to training units or open prisons. This vital function should be retained within the remit of the statutory Parole Board. The Board must retain its flexibility and power to respond on a case-by-case basis to individual situations. The Society also suggests that where recommendations are unimplemented, there should be a possibility for consideration of these recommendations in future review decisions regarding parole.

Recommendation: The Parole Board should retain the power to make recommendations and referrals in individual cases, with consideration given to the re-examination of unimplemented decisions in future reviews of parole.

9. Conclusion

- 9.1 Overall, the Society welcomes the introduction of the Parole Bill 2016 as ensuring a coherent, fair and transparent system of parole in Ireland. The Society hopes that the above recommendations will assist the Department in finalising the Bill and ensuring that everyone's rights within the system are equally respected and upheld.

¹ See Her Majesty's Prison Service Instruction Manual, PSI 36/2010, issued on the 2nd of July 2010 at p. 201.

² Medwed, D. S., "The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings", 93 Iowa Law Review, [2008] 491 at p. 537

³ See Stroker, R., "Imposing Conditions Driven by Evidence Based Practices", Paper delivered at Association of Paroling Authorities International Annual Conference, Providence 21st of May 2013 at p. 16

For further information please contact:

Cormac O Culain
Public Affairs Executive
Law Society of Ireland
Blackhall Place
Dublin 7
DX 79

Tel: 353 1 6724800
Email: c.oculain@lawsociety.ie