



**LAW REFORM**  
COMMISSION/COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ

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**LAW REFORM COMMISSION PUBLISHES  
REPORT ON SUSPENDED SENTENCES**

Monday 31st August 2020: The Law Reform Commission has today published its Report on Suspended Sentences. The Report follows on from the Commission's 2017 Issues Paper on Suspended Sentences and is based upon intensive research and extensive consultation with interested parties, practitioners, experts and relevant non-governmental organisations.

The Commission's Report examines the legislation and the principles that underpin the operation of the suspended sentence and makes a number of practical proposals as to how the suspended sentence might be used more effectively.

The Report explores:

- the origin and development of the penalty;
- its perception among members of the public and members of the judiciary;
- where in the hierarchy of criminal penalties the suspended sentence should rank;
- how the suspended sentence can advance the various purposes of punishment recognised in Irish law, particularly retribution, deterrence (specific and general) and rehabilitation;
- the avoidance of prison as a sentencing rationale;
- general principles including proportionality and the principle of imprisonment as a last resort, the various factors which may be relevant to sentencing courts when (1) determining whether a custodial sentence is justified, (2) fixing the length of the custodial sentence and (3) deciding whether the custodial sentence may be suspended;
- the distinction between the part-suspended sentence and the fully suspended sentence (how they differ in their structure and in terms of the penal objectives they aim to advance);
- how the Parole Act 2019, when commenced, may affect a sentencing court's jurisdiction to impose a part-suspended sentence in circumstances where the offender will also be eligible for parole during the currency of the sentence;

- the categories of offences which are the subject of a presumption of an immediate custodial sentence (including drug-dealing, rape and certain firearms offences as well as manslaughter) and the circumstances in which a fully suspended sentence might be imposed in such cases;
- the suspended sentence in the context of sentencing child offenders;
- procedural and practical issues associated with suspended sentences, in particular the monitoring and enforcement of conditions of suspension;
- suspended sentences in the context of white-collar offending;
- combining suspended sentences with other orders, such as Community Service Orders and fines.

## Recommendations

The recommendations in the Report seek to complement and improve the principles that have already been developed through the case law of the Irish courts.

### Judicial discretion

The Commission recommends that the current broad statutory discretion afforded to sentencing judges in choosing the conditions of suspension, as well as the length of the operational period of the suspended sentence, be maintained. However, the Commission also recommends that this discretion be constrained by the principle that the operational period and the conditions of suspension be proportionate and reasonable, affording the offender a reasonable prospect of compliance, based on his or her personal circumstances.

### Child Offenders

In the context of the juvenile justice system, the Commission recommends that legislative provision should not be made for the suspension of sentences of detention imposed on children in light of the need for offences and punishments to be closely linked in time in the context of child offenders. The Commission acknowledges that there is merit in a sentencing court having at its disposal sentencing options that are similar to the part-suspended sentence and, in that regard, the Commission makes some observations regarding the "ageing out" problems associated with the sentencing options available for child offenders.

### Data management and analysis

To ensure the effective and efficient operation of the suspended sentence and, in particular, the monitoring and enforcement of conditions of suspension, the Commission recommends that consideration be given to providing each relevant agency within the criminal justice system the necessary resources for the establishment of dedicated data management and analysis units. This would, in the Commission's view, facilitate the collection, collation and dissemination of data in relation to the criminal justice system generally, and the operation of the suspended sentence in particular.

## ICT architecture within the criminal justice system

The Commission notes a number of initiatives aimed at greater co-operation and collaboration in the Irish criminal justice system. The Commission recommends that the ICT architecture underpinning court processes be examined, and that consideration be given to streamlining and modernising the ICT systems in each agency of the criminal justice system, and ensuring their interoperability, so as to facilitate a collaborative and efficient approach to the operation of the criminal justice system.

## Sentencing Guidance

The Commission also recommends that the newly-established Sentencing Guidelines and Information Committee (SGIC) (established under the Judicial Council Act 2019) might usefully formulate sentencing guidance in relation to suspended sentences generally, and in respect of particular categories of offender and offences.

**For further information / interview with Commissioner Tom O'Malley or another Commission spokesperson contact: Winifred McCourt, McCourt CFL T: 087-2446004**

## Background Notes for Editors

The Law Reform Commission is an independent statutory body. The purpose of the Commission is to keep the law under independent, objective and expert review; to make recommendations for law reform and to make current law accessible for all.

To be successful, law reform must be an inclusive process. As such, the consultation process is of central importance to the Commission's work. Consultation takes several forms:

- preparing Issues Papers to stimulate debate and discussion on the issues under consideration;
- receiving and considering submissions made in response to Issues Papers;
- hosting seminars, roundtable discussions and meetings with interested parties, experts, practitioners and representatives of interest groups.

Our aim is to develop and reform the laws of Ireland to ensure that they are equitable, modern, fair and efficient. We pursue this aim through the production of our consultative Issues Papers (including related public consultative events), final Reports, and our work on Access to Legislation (comprising the maintenance of the Legislation Directory, a collection of over 380 Revised Acts and the Classified List of In-Force Legislation). Approximately 70% of our Reports have influenced the content of enacted legislation. Our research work is also frequently cited in court decisions and in academic commentary.