

# ASSESSING METHODOLOGICAL APPROACHES TO SENTENCING DATA & ANALYSIS REPORT 1: IRELAND

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## Key Points

### Interim Report One

- To assist with the discharge of its functions, the Sentencing Guidelines and Information Committee of the Judicial Council of Ireland commissioned independent academic research to “assess the methodological approaches to sentencing data collection and analysis in Ireland, as well as evaluation of the utility of methodologies employed in other jurisdictions.”
- This document is the first interim report submitted by the international academic team commissioned by the Sentencing Guidelines and Information Committee (SGIC) to assess methodological issues in sentencing data and analysis.
- This first report explores the kinds of statistical information necessary to support guideline construction and guideline monitoring.
- The second interim report will provide a review and analysis of the range of data methodologies adopted in some other broadly comparable jurisdictions where a body equivalent to the SGIC has been established.
- The third interim report will provide recommendations on the methodological framework which can be employed to ensure sentencing data of the highest quality.
- The final (fourth) report will combine the findings of the three interim reports.

## Aims & Methods

- This draft first interim report sets out what is known about sentencing practices in Ireland. It has identified several significant gaps in the data.
- It scrutinises the primary sources of sentencing data available in Ireland: statistical data derived from administrative datasets, research by the Judicial Researchers' Office, academic research, and the Irish Sentencing Information System.
- As well as drawing on published sources, we conducted a small number of semi-structured interviews with individuals who have particular knowledge and experience of using and interpreting sentencing data in Ireland.

## Interim Findings

- *Quality of Data about Sentencing Practices.* Data relevant to sentencing is available in Ireland, but it is not currently sufficiently detailed or comprehensive to provide an accurate portrait of current sentencing practices.
- *Data on District Courts.* There are notable information deficits with regard to the sentencing practices in the District Courts, which hear the overwhelming majority of cases that proceed to court.
- *Administrative Data.* Criminal justice agencies collect administrative data as part of fulfilling their functions, and it is from this administrative data that official statistics are derived. Yet, while undoubtedly useful for some purposes, the available official statistical data are inadequate for the specific purpose of elucidating a meaningful or accurate picture of actual judicial sentencing practices. The kind of reliable, comprehensive and up-

to-date data needed to identify, for example, sentencing patterns for particular offences is absent.

- *Prison Service Data.* Of the different agencies, each collecting administrative data for the discharge of their own functions, the statistical data included in the Prison Service annual reports comes closest to providing information that is relatively helpful from the perspective of understanding sentencing practices involving custody. In making this observation, however, it should be remembered that custodial sentences are only a small fraction of all sentences passed. Yet, even that data, for the most part, lacks the degree of specificity needed to draw accurate and definitive conclusions about the realities of current custodial sentencing practice. For instance, it shows the total number of persons sentenced to imprisonment in 2020: categorised by offence type and length of the prison sentence. However, from the perspective of providing information about sentencing practices, there are three problems. Firstly, the offence categories used are very broad, and it is not clear which kinds of conduct might be included within them. Secondly, the figures themselves reveal nothing about the nature or circumstances of the offences or about any offender-related variables, such as the pleas entered or previous convictions. Thirdly, there is the significant problem that multi-conviction cases appear to be poorly represented in the data.
- The third interim report will make specific recommendations considering practices elsewhere. However, presently, it can be suggested that existing data collection, for example, in the Prison Service, could and should be developed further to include the additional information and level of detail about case characteristics.
- *Improving Administrative Data.* Administrative data held by different agencies is fragmented and often incommensurable. This impedes insight into how cases progress through the criminal

justice system. For understandable reasons, each agency uses its own case-counting, recording and categorisation rules and practices. These fundamental problems mean that combining the datasets of different agencies is a long-term ambition and one, which is dependent on the different agencies agreeing and operationalising common standards of definition and recording practices. At least for the foreseeable future, 'joining up' administrative datasets in any comprehensive and systematic way is unlikely to provide the desired insights into real-world sentencing practices.

- *Undertaking Routine Research.* The former Judicial Research Office (JRO) (now the Research Support Office) conducted occasional analyses of sentencing practices that could be used to assist judges in fulfilling their functions. It may be helpful if a synergy develops between the research offices of the Courts Service and the Judicial Council so that they can share relevant information and data. However, that would be a matter for discussion between the Service and the Council. Regardless, in any event, the SGIC itself will likely require a research office to collect and analyse data and thereby enable the Committee and the Judicial Council to fulfil their statutory functions.
- *Court Guidance and Data Taxonomies.* Consideration in this report is also given to the development of court guidance. Although sentencing guidelines about what ought to happen cannot reveal what is happening in terms of the reality of first-instance sentencing practices on the ground, that guidance can offer an invaluable way of informing the design of data collection taxonomies (i.e. what and how to categorise, classify and record information relevant to understanding sentencing practices).
- *Depth Research Studies.* The report considers occasional academic and other research studies. The strength of such research is that while it is less comprehensive than say official administrative data,

it tends to prioritise depth. By examining a particular question, academic research provides a depth of data and explanation which official administrative data, for example, simply cannot. In this way, academic research is an invaluable supplement to more comprehensive but less in-depth data. This approach may be particularly important in examining the effects of sentencing guidelines or reforms, or the realities of sentencing practices in areas that may be the subject of particular policy, public, media or other concern.

- *Learning from the Irish Sentencing Information System.* In moving forward, the SGIC may also wish to reflect upon Ireland's own Sentencing Information System (ISIS). The ISIS project contended with many of the limitations of sentencing data currently at issue. Even if the resources to revitalise ISIS are not forthcoming, the project still offers substantial insights into how meaningful sentencing data could be collected in the Irish context.

## Chapter 1: Introduction

This first interim report provides a survey of existing sentencing data in Ireland, drawing mainly on published reports of the various criminal justice agencies. We draw attention to the limitations of this data, but also to the potential for developing innovative collection and analytical practices to render the data more practically useful for sentencing purposes. We shall deal with this matter further in our final report, especially in light of the practices and experiences of the other jurisdictions (the subject of our second interim report).

In this first interim report, we also note the very impressive body of appellate case law, mainly from the Court of Appeal, on a wide range of sentencing issues, including some important guideline judgments. When drawing up this report, we consulted with some leading criminal justice scholars within Ireland to get their perspective on the utility of the currently available data. These consultations proved to be very helpful.

### 1.1 The Importance of Sentencing Data

Whether to improve public understanding of sentencing or to develop and assess policy, reliable, comprehensive and up-to-date information about sentencing is essential. The creation of effective and meaningful official sentencing norms (such as guidelines), whether by statute, case law, or other body such as a commission depends on and must be informed by systematic and reliable knowledge about sentencing practices in real cases. While individual practitioners, judges, and lawyers build up a personal sense of 'normal' practices, inevitably, this can only be a partial view of national reality. Without reliable empirical data, there is the ever-present danger of creating norms that are semi-detached from the reality of differing and varying practices on the ground. The development of reliable, comprehensive and up-to-date information about what is happening (including, for example, how official norms play out in real cases) affords a greater chance of sentencing policies and practices being effective and helps to contribute overall to a more genuinely

consistent and just approach. This point, to understand practices so as to improve them, is well made in a recent lecture:

*We as a nation are entitled to demand the best from our judges. From our perspective, self-analysis carries a higher chance of improvement than being informed by mere opinion... From the perspective of an ordinary judge, the right attitude is to do one's best to gather the materials and do the studies that will make sentencing in serious crime more predictable and more consistent." (Hon. Mr Justice Peter Charleton and Lisa Scott).<sup>1</sup>*

Understanding sentencing practices in Ireland poses several challenges. Sentencing in Ireland is highly discretionary.<sup>2</sup> When sentencing, judges are subject to relatively few constraints, and there is little in the way of formal guidance compared to some other jurisdictions. However, judicial discretion is controlled, in the first instance, by the statutory maximum sentence attaching to the offence of conviction and, in the case of the District Court, by the general jurisdictional limit to which that court's sentencing powers are subject. Sentencing judges must also have regard to the general sentencing principles, established and endorsed by the superior courts. Foremost among these is the principle of proportionality which enjoys a constitutional status in Ireland. Further, there is a growing number of formal and informal guideline judgments from the Court of Appeal and Supreme Court to which regard must be had and which provide valuable guidance for the sentencing of the offences to which they relate.<sup>3</sup>

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<sup>1</sup> Peter Charleton and Lisa Scott, "Throw Away the Key: Public and Judicial Approaches to Sentencing-Towards Reconciliation The Martin Tansey Memorial Lecture" (The Martin Tansey Memorial Lecture, 2013), 22, [https://acjrd.ie/images/PDFs/martin-tansey/Throw\\_Away\\_the\\_Key.\\_Public\\_and\\_Judicial\\_Approaches\\_to\\_Sentencing\\_-\\_Towards\\_Reconciliation\\_3.pdf](https://acjrd.ie/images/PDFs/martin-tansey/Throw_Away_the_Key._Public_and_Judicial_Approaches_to_Sentencing_-_Towards_Reconciliation_3.pdf).

<sup>2</sup> Niamh Maguire, "Consistency in Sentencing," *Judicial Studies Institute Journal* 2 (2010): 14–54; D Healy and I O'Donnell, "Crime, Consequences and Court Reports," *Irish Criminal Law Journal* 20, no. 1 (2010): 2–7.

<sup>3</sup> John Edwards, "Sentencing Methodology - Towards Improved Reasoning In Sentencing Title," *Irish Judicial Studies Journal* 3 (2019): 41.

While flexibility in sentencing is important in Ireland, concerns over disparity and inconsistency<sup>4</sup> have been longstanding and never entirely assuaged. Importantly, in the 1990s, the Law Reform Commission noted that “intuitively, the existence of inconsistency here is a certainty.”<sup>5</sup> Even today, sentencing data in Ireland remains limited, making it difficult to find out the answers even to relatively simple questions about Irish sentencing practices.

While other jurisdictions have created Sentencing Councils (some long-established) and other similar bodies, Ireland has only recently followed suit as the Judicial Council Act 2019 established the basis for the Sentencing Guidelines and Information Committee (SGIC). Ireland’s new foray into this area is perhaps emblematic of the limited sentencing data reform seen in the country.<sup>6</sup>

All jurisdictions that move to develop meaningful sentencing guidelines require sufficiently detailed sentencing statistics. While court guidance can be used to inform the creation of normative guidelines (see Chapter 0), monitoring the impact of guidelines on trial court (i.e. first-instance)<sup>7</sup> sentencing practices require additional data. Where existing data is insufficient, jurisdictions will need to improve this otherwise the impact of guidelines will be unknowable.<sup>8</sup>

However, it should be noted that guideline creating bodies have not *necessarily* improved sentencing data in and of themselves. For example, the Sentencing Guidelines Council (SGC) of England and Wales did not greatly improve sentencing data. This resulted in limitations that the subsequent Sentencing

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<sup>4</sup> In a nutshell, genuine consistency in sentencing means treating similar cases similarly; inconsistency or disparity means treating similar cases differently (for example on the basis of which individual judge is passing sentence).

<sup>5</sup> “Consultation Paper on Sentencing” (Dublin, March 1993), para. 2.32, [https://www.lawreform.ie/\\_fileupload/consultation papers/cpSentencing.htm](https://www.lawreform.ie/_fileupload/consultation%20papers/cpSentencing.htm).

<sup>6</sup> The Irish Sentencing Information System is a notable exception (see Chapter Chapter 5:).

<sup>7</sup> Throughout this report we refer to sentencing by ‘trial courts’ as meaning ‘first-instance’ sentencing to differentiate it from appellate court sentencing practices. By ‘trial courts’ we mean all sentencing at first instance, regardless of whether or not a case went to a contested trial or was sentenced (as is the case in the overwhelming majority) following a guilty plea.

<sup>8</sup> Report 3 will detail recommendations for how data can be enhanced.

Council had to address.<sup>9</sup> Thus, while it is possible guidelines can be created in the absence of data, this can be problematic.

In fulfilling its functions, the SGIC can, amongst other things, collect data on sentencing. In this regard, the novelty of the SGIC places Ireland in an interesting position. Ireland may have been slower than some other jurisdictions such as England and Wales in moving to introduce sentencing guidelines, but it now has the advantage of being able to learn from the experiences of jurisdictions that have adopted guidelines or are in the process of doing so.<sup>10</sup>

## 1.2 Sentencing Data Sources in Ireland

In Ireland, there are three main sources of data on sentencing practice:

- *Administrative data from criminal justice organisations used to produce criminal justice statistics.*
- *Data collected by the former Judicial Research Office (JRO).*
- *Data stemming from research that has been carried out in Ireland.*

While these are the main sources of data available to officials, two other notable resources are:

- *The Irish Sentencing Information System (ISIS)*
- *Court guidance*

Regarding ISIS, Ireland pioneered an innovative sentencing information system (with the now in hindsight somewhat unfortunate acronym). While ISIS has not been maintained, meaning much of its data is now out of date, the project tackled many of the challenges (specifically in the Irish context) our reports

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<sup>9</sup> See our second report, forthcoming.

<sup>10</sup> Maguire, "Consistency in Sentencing," 16.

highlight. As such, the methodological considerations underpinning ISIS are still relevant – regardless of whether it is desired to revitalise ISIS.

Concerning court guidance, one might also note various guidelines that have been issued by the senior appeal courts in Ireland. Guidance of this nature provides valuable insight into a range of issues that arise at sentencing, as well as being obviously valuable to trial judges. Indeed, guidance might be described as providing an “interpretative context” in that while it is not empirical data about practice in trial courts, it can aid our understandings of statistics pertaining to practice. This interim report, therefore, examines court guidance.

## Chapter 2: Criminal Justice Statistics

In our final report, we will discuss in detail the nature and quality of criminal justice statistics that are desirable, indeed necessary, for the purposes of identifying existing sentencing practices and producing guidelines that either reflect or modify those practices. In this chapter, we provide a review of statistical information that is now publicly available. We assess this statistical information's utility and limitations, and the extent to which it provides a reliable basis for identifying the sentences imposed for particular offences or on certain categories of offenders. Section 2.1 covers the various statistics on recorded crime. Sections 2.2-0 offer further critical analysis of the available data.

All the available information is provided by different criminal justice agencies, except for recorded crime statistics which are produced by the Central Statistics Office (CSO), though these, in turn, are furnished by the Garda Síochána. Two exemplar extracts are provided in the appendix: one from the Court Service and one from the Prison Service.<sup>11</sup>

Criminal justice agencies necessarily collect administrative data as part of fulfilling their functions, and it is from this administrative data that statistics are derived. Yet, as will be apparent from the remainder of this chapter, our general conclusion is that the available statistical data, while undoubtedly useful for some purposes, are inadequate for the specific purpose of identifying judicial sentencing practices with sufficient precision. They do fulfil this role to some limited extent by, for example, broadly indicating the frequency with which the criminal courts deploy various sentencing options (on which there is some information in the Courts Service's annual reports). However, the kinds of data needed to identify sentencing patterns for particular offences are lacking.

The statistical data included in the Prison Service's annual reports comes closest to answering this need, but even that, for the most part, lacks the degree of

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<sup>11</sup> "Courts Service Annual Report 2020," July 28, 2021, <https://www.courts.ie/annual-report>; "Probation Service Annual Report 2020," July 29, 2021, <http://www.justice.ie/en/JELR/Pages/IPS-Annual-Report-2020>.

specificity required to draw accurate conclusions about sentencing practice. Our observations on the limitations of the data in the various reports considered here should not, of course, be interpreted as a criticism of the agencies that produced them. The production of such annual reports is an exercise in public accountability. Their predominant purpose is to describe the performance of the relevant agencies during the year under review, to account for the funding provided to them, etc. We are viewing them through a sentencing lens, and our sole concern is to assess the usefulness of the data they provide for sentencing purposes and for the development of guidelines.

## 2.1 Statistics on recorded crime

At first sight, recorded crime data may not seem particularly germane to an analysis of sentencing practice. Yet, reliable information about the incidence and prevalence of particular kinds of offending, and about changing patterns of offending, is essential for making projections about the extent and nature of the future workloads of the various criminal courts. Obviously, only a certain percentage of recorded crime will result in prosecutions, and only a certain percentage of that again will result in conviction and sentence. However, at the level of policymaking, regard must always be had to the capacity of the criminal justice system, and of the various institutions within that system, to cope with present and projected demands.

For instance, figures published in June 2021 by the CSO show a sharp fall in the recorded incidence of certain offences during the year to March 2021. Recorded burglaries declined by 45% and thefts by 31%. This, in all probability, was due to the profound social changes caused by COVID-19 and may therefore be a temporary phenomenon. Still, it illustrates the utility of having such information, given the likely impact of such occasional fluctuations in the volume of cases (in respect of certain offences at least) that will come up for sentence.

### 2.1.1 General Analyses published by CSO

The CSO also publishes analyses of re-offending rates periodically. For instance, it has recently published a valuable report on Prison Re-Offending Statistics 2011-2018. This report provides re-offending estimates of individuals released from prison in 2015 (3-year re-offending) as well as estimates for those released in 2018 (1-year re-offending). It records, for example, that 6 out of 10 individuals released from prison in 2015 re-offended within three years of release. The CSO has also produced Probation Re-Offending Statistics. However, it is beyond the scope of the present report to consider these analyses in any detail beyond pointing to their clear relevance for the purpose of sentencing policymaking.

Going forward, there may well be opportunities for the Sentencing Guidelines and Information Committee to work collaboratively with the CSO in terms of exploring possibilities for further research, especially on matters that have a bearing on sentencing practice. Sentencers and agencies developing guidelines need to have an accurate idea of the relative re-offending rates of different offences.

### 2.1.2 Office of the Director of Public Prosecutions

The Director of Public Prosecutions (DPP) has published an annual report since 1999, the most recent, at the time of writing, being for 2019. As might be expected, this report is concerned with the work of the DPP's office for the year under review. It includes a good deal of detailed statistical information on the outcomes of cases prosecuted on indictment in the various criminal courts.

However, no information is provided on sentencing, apart from a brief statistical summary of applications for review of sentences on the grounds of undue leniency. But, beyond indicating the number of applications that were successful and the refused, the report reveals nothing further about the nature or level of the sentences involved or the categories of offence for which they were imposed.

### 2.1.3 The Courts Service

The Courts Service was established by statute in 1998, and it has produced an annual report since 2000. This report, unlike the others mentioned so far, does

provide some statistical information on sentencing, but of a very general nature for the most part. The format in which this information is presented has varied somewhat over the years, so we shall concentrate here on the Annual Report for 2020.

The Annual Report for 2020 includes reasonably detailed statistics on the outcome of cases prosecuted in the various criminal courts, including the nature of the penalties imposed or orders made. However, it merely sets out the total number of such penalties or orders for broad categories of offences. Thus, in 2020, more than 15,000 drugs offences were dealt with summarily in the District Courts. Of these, about 2,500 resulted in a fine, 403 in imprisonment, 504 in a suspended sentence, and (rather unhelpfully for the present purpose) more than 4,300 in “other” disposal. A similar pattern is followed in respect of convictions in the Circuit Court. Again, the offence categories are very broad, e.g., “Road Traffic”, “Drugs”, “Sexual”, “Larceny/Fraud/Robbery” and “Assault.”<sup>12</sup>

The raw data on sentencing outcomes in the District and Circuit Courts, the two key criminal courts in terms of case volume, is of little practical use for present purposes, beyond indicating in broad terms the relative use of the various sentencing options. No information is given on the level of fines or the length of prison terms. Additionally, the offence categories, as already noted, are very broad in any event. Indeed, the generally limited data pertaining to the District Courts is of particular note given the high proportion of offences it deals with.<sup>13</sup>

Somewhat more detailed information is provided on sentences imposed in the Central Criminal Court. It is clearly more viable to gather this information given the limited number of offences (primarily murder, rape and aggravated sexual assault) within the exclusive jurisdiction of this court. The number of cases with

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<sup>12</sup> It is surprising to see a reference to “larceny” 20 years after the enactment of the Criminal Justice (Theft and Fraud Offences) Act 2001.

<sup>13</sup> Of 225,776 offences resolved in 2020, 194,796 were in the District Court. See the “Courts Service Annual Report 2020,” 39.

which it has to deal, at least when compared with the District and Circuit Courts, is relatively low.

The 2020 Report sets out both the nature of the penalties provided for the offences that resulted in convictions in the Central Criminal Court and the lengths of the prison sentences imposed. Obviously, all murder convictions resulted in life sentences. But it is useful to know that in respect of rape, no fully suspended sentence was imposed, although there were 50 partly suspended sentences as well as 114 unsuspended sentences of imprisonment. Of the prison sentences imposed (including partly suspended sentences), 22 were for terms of 2 to 5 years, 30 for terms of 5 to 10 years and 114 for more than 10 years. This is reasonably helpful though, of course, no information is provided about the circumstances of the cases, the pleas entered, the offenders' previous records and other relevant factors. The next category for which such information is given (in the Central Criminal Court) is simply "Sexual Offences". This probably consists mainly of sexual assaults, but it is still too broad to enable any useful conclusions about sentencing practices to be drawn from it.

#### 2.1.4 The Probation Service

The Probation Service is a key agency within the criminal justice system. It discharges a range of important functions, which include the preparation of court reports, the supervision of offenders within the community and providing various services for prisoners in custody. The Irish Probation Service produces an annual report with much useful information but, again, not of a kind that permits reliable conclusions to be drawn about judicial sentencing practices.

Some of the global statistics in this report indicate the extent of the contribution made by the Probation Service to the criminal justice process. In 2020, for instance, it dealt with more than 15,500 offenders in the community and completed more than 9,000 probation reports. The 2020 Report also includes general information on the number of court orders which required supervision of some kind by the Probation Service: e.g. 1,698 community service orders and

more than 1,300 fully or partially suspended sentences with supervision.<sup>14</sup> There is also a great deal of other information but, unfortunately for present purposes, scarcely any on the offences or categories of offenders in respect of which the various kinds of orders were made. There is one table entitled “Offence Breakdown of all Referrals and Orders made 2020”, but this is largely uninformative.<sup>15</sup> It merely indicates the percentage of orders (probation supervision and community service orders) made in respect of different offences. For example, 20.9% of probation orders were for drug offences, 21.2% for theft and so forth.

### 2.1.5 The Prison Service

The annual report of the Irish Prison Service is by far the most useful of all the reports considered here in terms of indicating sentencing patterns.<sup>16</sup> The statistical data in this report may be divided into two broad categories. First, there is a good deal of general data on matters such as the overall number of committals for the year under review, the age profile of prisoners, the ethnic origin of the offender, the population of the different prison establishments, patterns over time in the average daily population and so forth. These statistics represent a good point of departure for a more comprehensive portrait of current sentencing practices.

Secondly, and most relevant for our present purposes, there is a snapshot of the prison population on a given date, usually towards the end of the year. In the 2020 report, two appendices are of particular value. Appendix II sets out the length of the sentence being served by those in custody under sentence on 30 November 2020, categorised by offence type.<sup>17</sup> Appendix V shows the total

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<sup>14</sup> "Probation Service Annual Report 2020," July 29, 2021, <http://www.justice.ie/en/JELR/Pages/IPS-Annual-Report-2020>, 54.

<sup>15</sup> "Probation Service Annual Report 2020," July 29, 2021, <http://www.justice.ie/en/JELR/Pages/IPS-Annual-Report-2020>, 64.

<sup>16</sup> "Irish Prison Service: Annual Report 2020," July 20, 2021, [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-web-FINAL.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-web-FINAL.pdf).

<sup>17</sup> "Irish Prison Service: Annual Report 2020," July 20, 2021, [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-web-FINAL.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-web-FINAL.pdf), 59.

number of persons sentenced to imprisonment in 2020, categorised by offence type and length of sentence.<sup>18</sup> This information is potentially of considerable value in identifying sentencing patterns. However, it is limited in two ways.

The first limitation is that some of the offence categories are very broad, and it is not even clear which kinds of conduct might be included within them. For example, it is helpful and practically useful to know that in 2020, 261 persons were committed for “Burglary and related offences” and the lengths of sentences imposed. The same applies to “Robbery, extortion and hijacking offences”, as it is highly probable that most of those in this category (the number being 60 in 2020) were convicted of robbery. However, other categories, e.g. “Sexual Offences” are so broad that one cannot draw any useful conclusions. The same applies to the penultimate category, “Offences against Government, Justice Procedures and Organisation of Crime”, for which there were 552 committals in 2020. It is by no means clear what kind of conduct is encompassed under this general heading.

The second limitation which, admittedly, is common to most statistical data, is that the figures themselves reveal nothing about the nature or circumstances of the offences or about any offender-related variables, such as the pleas entered or previous convictions. As will be seen in the subsequent report in this project, these variables are incorporated in most foreign sentencing databases – recognition of their importance. The 2020 Prison Service Report shows that there were 716 committals for “Theft and related offences.” Rather predictably, most of those (510 or 71%) were for terms of 12 months or less. It is safe to assume, therefore, that most of the thefts involved were fairly minor in nature, but the apparently high rate of imprisonment may be explained by the previous record of the offenders. Many, for example, may have been recidivist shoplifters. As it happens, the next category in both Appendices is entitled “Fraud, deception and related offences.” There could well be some overlap, in terms of conduct, between this and “Theft and related offences.”

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<sup>18</sup> “Irish Prison Service: Annual Report 2020,” July 20, 2021, [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/IPS-Annual-Report-web-FINAL.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-web-FINAL.pdf), 62. See appendix

Finally, there is, of course, the “principal offence” phenomenon which is discussed below. Many of those committed to prison or serving sentences of imprisonment will have been convicted of more than one offence. This may well have influenced the sentence, though that would not be apparent from the statistics themselves.

## 2.2 The Fragmented Character of Administrative Data

As mentioned at the beginning of this chapter, each of the relevant agencies collects and publishes data that reflects its own particular functions and responsibilities, as is entirely understandable. However, this means that, when considered cumulatively and assessed in terms of their utility for deriving reliable conclusions about criminal justice decision-making, including sentencing, the available data are highly fragmented. It is difficult, if not impossible, to engage in “follow-through” by tracing, even within fairly broad parameters, the progress of cases from the point of initial reporting or detection to final disposition.

For example, “the computer systems of police, courts, prisons and probation stand alone and are not configured to share details of offences or offenders.”<sup>19</sup> This is one reason different sources of data cannot presently be joined up to provide better insights. Beyond computer systems, there are also distinct elements in how each agency records and classifies events. For instance, the offence categories in the Courts Service Reports are different from those in the Prisons Reports, and those in the Probation Report are different again.

It would seem to be a good start if all the agencies could agree on a uniform categorisation of offences. Projects such as the Irish Crime Classification System

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<sup>19</sup> Ian O’Donnell, Eric P Baumer, and Nicola Hughes, “Recidivism in the Republic of Ireland,” *Criminology & Criminal Justice* 8, no. 2 (2008): 124.

(ICCS) have attempted to create a more integrative system.<sup>20</sup> It might also be noted more generally that the Department of Justice has a data and research strategy that, while light on substantive details, indicates some focus on research and data.<sup>21</sup> However, for the time being, the fragmented character of administrative data limits the insights that are possible.

### 2.2.1 Case-Counting Rules

If/when Ireland moves towards a more cohesive system of data collection and reporting across various institutions, coding and classification issues will likely need to be addressed. The aforementioned variations in offence categories may prove to be one issue. Another key issue to consider that has implications for administrative data is case-counting rules.

Different case-counting rules can present rather different portrayals of criminal justice matters:

*Over time, different ways of classifying crime incidents (or offences) have been used in the various organisations involved in the criminal justice area. For instance, a robbery offence involving four offenders may be classified as a single event by the Gardai. It may, however, result in four separate referrals to the Director of Public Prosecutions. Thus, what may be classified as one event by one organisation may be classified as more than one event (or unit) by another.<sup>22</sup>*

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<sup>20</sup> The ICCS was the result engagement between the Central Statistics Office and An Garda Síochána. It was assisted by advice from the Advisory Group on Crime Statistics.

<sup>21</sup> "Data & Research Strategy 2018-2020: Supporting Delivery of 'A Safe, Fair and Inclusive Ireland,'" June 2018, [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_and\\_Equality\\_Data\\_and\\_Research\\_Strategy\\_2018-2021.pdf/Files/Department\\_of\\_Justice\\_and\\_Equality\\_Data\\_and\\_Research\\_Strategy\\_2018-2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_and_Equality_Data_and_Research_Strategy_2018-2021.pdf/Files/Department_of_Justice_and_Equality_Data_and_Research_Strategy_2018-2021.pdf). (Note that the report itself is dated 2018-2020 but the online material uses the dates of 2018-2021).

<sup>22</sup> "Irish Crime Classification System (ICCS)," April 17, 2008, para. 1.2, <https://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/current/crimeclassification.pdf>.

Even in this report counting issues must be considered. For instance, the IPRT study noted below<sup>23</sup> counts individual defendants rather than offences. This complicates comparisons between official figures on offences and the research (given that a single defendant may be charged with more than one offence).

#### 2.2.1.1 How to Count Offences and Orders

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Generally, recording and representing cases involving multiple charges and convictions (common in the District Courts) is a particular challenge in all justice systems (one that, as is discussed below, ISIS attempted to address).<sup>24</sup>

One common approach adopted in Ireland and other jurisdictions in multiple offences is to record what is known as the “principal offence.”

*A "Principal Offence Rule" means that where more than one offence is committed at the same time by the same perpetrator(s), only the most serious offence is recorded. For example, where it appears that a homicide and robbery have been committed simultaneously, under a principal offence rule, only the most serious offence - the homicide - would be recorded in crime statistics.*<sup>25</sup>

In recording the principal offence only, a single offence is selected to be recorded – often the most serious offence or the one that attracts the longest sentence.<sup>26</sup> However, the principal offence approach to recording sentencing data can mean that the record poorly reflects the actual case that was sentenced by a judge. In addition, when sentencing statistics are created and published

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<sup>23</sup> Aaron Hunter, Claire; Hamilton, and Rick Lines, “Research Brief: Sentencing in the District Courts, 2003,” 2005, [https://www.iprt.ie/site/assets/files/6122/patterns\\_of\\_sentencing\\_research\\_brief\\_2003.pdf](https://www.iprt.ie/site/assets/files/6122/patterns_of_sentencing_research_brief_2003.pdf).

<sup>24</sup> See Recommendations Report.

<sup>25</sup> “Crime and Criminal Justice Statistics - Methodological Guide for Users,” May 2017, 33–34, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime\\_and\\_criminal\\_justice\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_and_criminal_justice_statistics). See also “Crime and Criminal Justice (Crim): Reference Metadata in Euro SDMX Metadata Structure (ESMS),” July 19, 2021, [https://ec.europa.eu/eurostat/cache/metadata/en/crim\\_esms.htm](https://ec.europa.eu/eurostat/cache/metadata/en/crim_esms.htm).

<sup>26</sup> The most serious offence would usually be thought to attract the longest sentence but there may be exceptions (e.g. when considering the previous record of the offender or when different offences are of relatively similar seriousness).

following the Most Serious Offence or Most Severe Sentence rule, the portrait of sentencing is distorted. The less severe sentences such as a fine will be under-reported if multiple sentences are imposed, and only the one associated with the most serious offence is recorded. Moreover, there are also important questions to be addressed concerning headline sentences and effective sentences<sup>27</sup> and how this ought to be addressed in terms of data collection.

Finally, in terms of our brief overview of counting rules, we can note the fact that a court can make multiple orders when disposing of a case. As the Courts Service's Annual Report notes, "there can be more than one order made in respect of an offence. For example, in respect of a road traffic offence, a person may receive a fine, an imprisonment and a disqualification."<sup>28</sup> These various disposals also pose challenges for recording and representing cases in official data.

## 2.3 The Quality of Administrative Data in terms of Sentencing

We have already touched on some of the limitations of administrative data in terms of sentencing. However, it is worth elaborating on these limitations further to show that there is relatively little that might provide meaningful insights into sentencing practices.

One problem worth highlighting is that the offence categories in the statistical tables are often very broad or ill-defined. To take one example, the tables in the Annual Prison Service Reports have one category for "Sexual Offences"<sup>29</sup> which can obviously cover a wide range of conduct, and another for "Offences against Government, Justice Procedures and Organisation of Crime." It is far from clear

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<sup>27</sup> In this specific the term 'effective sentence' refers to the reality of the sentence which a person will serve (taking account for example of different sentences passed for different convictions but which may be require by the court to be served simultaneously).

<sup>28</sup> "Courts Service Annual Report 2020," 86.

<sup>29</sup> See Figure 2 in Appendix 1.

what kind of conduct is included under this heading. Many other examples could be given.

There are further limitations to administrative data. Notably, the recorded crime data produced by the CSO are generally presented as “Under Reservation”, which means that they do not meet the standards required of official statistics published by the CSO:

*These statistics are categorised as Under Reservation. This categorisation indicates that the quality of these statistics do not meet the standards required of official statistics published by the CSO.<sup>30</sup>*

These issues are profound. For example, at present, there is an ongoing review by An Garda Síochána (AGS) into the recording of homicide incidents and whether these are accurate. While some discrepancies due to different recording conventions might be expected, this example is nonetheless striking and provides a further hindrance to ambitions that administrative data, as it currently stands, can provide meaningful insight into sentencing. This is obviously a matter of some concern.

### 2.3.1 The Utility of Existing Sentencing Data for Sentencing Purposes

There are matters of concern with various official administrative data. As well as the fragmented nature and sometimes questionable quality of administrative data, it can also be ambiguous and quite difficult to follow at times.

However, for present purposes, it may be noted that some broad offending patterns may still be deduced from the data that can be of some value for planning purposes. For example, the CSO presents recorded crime data under 15 broad headings, (e.g., “Homicide and related offences”, “Sexual Offences,” “Dangerous and Negligent Acts”). Initially, these may not seem very helpful, but supplementary tables provide greater detail. Thus, “Sexual Offences” has sub-headings for rape, defilement of a child, sexual offences against mentally

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<sup>30</sup> For more information see the CSO FAQ page: <https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/>

impaired persons, aggravated sexual assault, sexual assault, and other sexual offences.

Yet, while some broad planning may be possible, it is currently the exception rather than the norm for current administrative data to provide useful (or even remotely useful) insight into patterns of sentencing practice. Below an example of how statistical data has been used is provided, along with two complications to consider in terms of the meaningfulness of statistical data to sentencing practice.

### 2.3.2 Use of statistical data in sentence appeals

The Court of Appeal and Supreme Court have been receptive to submissions including statistical data on existing sentencing practice, provided they are satisfied as to its reliability. For instance, in *People (DPP) v Casey and Casey* [2018] IECA 121; [2018] 2 I.R. 337, the DPP's submissions to the Court of Appeal included data drawn from the Irish Prison Service Annual Reports on committals to prison for "burglary and related offences" for the years 2013 to 2016. This set out the number of committals by sentence length. Thus, for example, 21.5% of committals were for two to five years, 3.6% for five to ten years, and 0.54% for more than ten years. Obviously, the presentation of this data had to be heavily qualified as there was no indication as to the circumstances of the offences or the offenders, the pleas entered or other decisive factors. This still permitted some broad conclusions to be drawn about existing sentencing patterns for burglary.

Likewise, in *People (DPP) v Sarsfield* [2019] IECA 260, a leading authority on the sentencing for s. 15A drug dealing offences, the Court of Appeal was presented with data on existing sentencing practice for that offence. On this occasion, the data was drawn, not from official reports, but from an analysis undertaken by counsel for the DPP of 104 sentence appeals in s.15A cases decided by the Court of Appeal and its predecessor, the Court of Criminal Appeal. The Court recorded this information in its judgment and clearly found it of some assistance.

### 2.3.3 Headline Sentences and Ultimate Sentences

When recording and using research data based on decided cases in order to identify sentencing practice for particular offences, it is important to identify if the sentences recorded in respect of those cases were the sentences ultimately imposed or the headline sentences (which would, of course, in most cases be further adjusted to reflect offender circumstances). Older data may not record headline sentences as it is only in relatively recent times, mainly at the prompting of the Court of Appeal, that the identification of headline sentences has become more or less standard practice. Yet when dealing with data based on ultimate sentences, it must be recalled that they reflect any mitigating factors connected with the offender's personal circumstances which must be taken into account under the second limb of the proportionality principle.

In so far as the objective is to compile information that will be useful for future sentencing, it is likely that substantial focus will be upon the "headline" sentence (though there may also be interest in other aspects of sentencing). As set out in a paper by O'Malley for the State Solicitors Seminar,<sup>31</sup> it is now all but mandatory for courts to begin by identifying headline sentences in all cases. Court of Appeal judgments are now very useful for identifying headline sentences that have been deemed appropriate or inappropriate, as the case may be, for certain kinds of offences (see Chapter 0). However, to draw conclusions solely from the sentences ultimately imposed could be quite misleading.

Indeed, a recurring observation made in the preceding paragraphs is that, even where some relevant statistics are provided (as in the Prison Reports), they do not reveal anything about the nature and circumstances of the offences, the pleas entered or the legally relevant characteristics of the offenders. Granted, statistics in general, no matter how detailed, cannot readily convey this kind of information in any detail. One must generally look to other sources, such as analyses of trial (or first-instance) court or appeal court sentencing decisions, for more qualitative information of this nature. However, the statistics themselves could be rendered more useful for this purpose if the offence categories were narrowed so that the nature of the criminal conduct reflected in each of them

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<sup>31</sup> Thomas O'Malley, "Sentencing Methodology And Sentencing Guidelines: Recent Developments," 2021.

was reasonably patent, even allowing for the inevitable difficulty posed by the “principal offence” method of counting.

### 2.3.4 Sentencing of Children

Worth special note, the sentencing of children (persons under the age of 18 years) is apt to be forgotten in discussions about sentencing practice. Yet, a significant number of children appear before the criminal courts each year. Most are dealt with in the Children Court (the District Court), but within the past few years, an increasing number of children have been convicted of serious offences, including murder, attempted murder and rape, and have therefore been sentenced in the higher criminal trial courts. The Annual Report of the Courts Service for 2020 has a section devoted to “Juvenile Crime” and shows that in that year, 3,236 orders were made in respect of children in the District Court, including 182 detention orders.

Once more, the general terms in which the data are presented render it difficult to draw any conclusions about sentencing practice. The relatively low number of detention orders presumably reflects the statutory requirement (Children Act 2001, s.96) that detention must always be a sanction of last resort. Children sentenced to detention are held at the Oberstown Campus. Oberstown produces an annual report, but this includes very little statistical information. During 2020, 122 children were held in Oberstown (119 male; 3 female), with 55 in detention and 67 on remand. The average daily population was 36 (24 in detention, 12 on remand). In light of the very small numbers involved, it should be possible to obtain information about the offences for which children were detained and the terms of judicially imposed detention, categorised by the offence in a format similar to that in the Prisons Report.

## 2.4 Conclusions on Administrative Data

Currently, administrative data is unlikely to offer the desired insights into real-world sentencing practices. Perhaps in the future, it will be possible to link existing datasets in ways that are not currently possible. However, this is likely to be a long-term and difficult project that will require different agencies to record and share more information according to common standards.

It might also be noted that there exists administrative data that are collected by criminal justice organisations but not routinely published (e.g. the Prisoner Records Information System (PRIS)). These systems may contain data that can be analysed in ways the published data cannot. To date, the authors of this report have not had sight of this data and are consequently limited in what we know about it.

Precisely what insights this data may (if scrutinised) yield are unknown in the absence of fuller details concerning what variables are recorded, how they are recorded, etc. Presently, these details are not public and knowledge of them seemingly only resides within the respective institutions. We do note that this data has occasionally been used in academic and other research. From this other research and the reporting of the variables, we offer some cautious speculation on what insights this data might provide (see 4.1). However, it must be stressed that our speculation of what insights may be possible are severely constrained. Indeed, an obvious recommendation would be for a much more rigorous examination of this existing data to gather basic information such as the variables recorded.

Even if it is possible to make better use of *existing* administrative data, this is unlikely to be a panacea to the data gap regarding sentencing. Beyond what are possibly inherent limitations of the current unpublished administrative data, using it in new ways will likely raise technical challenges (e.g. data flows between organisations) and possibly legal matters to consider (e.g. GDPR). Yet, before these challenges can begin to be addressed, more background on the data held (metadata) is needed.

To summarise, while a fair amount of data relevant to sentencing is available in Ireland, it is not currently sufficiently detailed or comprehensive to provide an accurate portrait of current sentencing practices. Existing data collection, particularly in the Prison Service, could and should be developed further to include the additional variables and level of detail about case characteristics.

## Chapter 3: The Former Judicial Research Office

Until 2020, the Judicial Research Office (JRO) conducted occasional analyses of sentencing practices that can be used to assist judges in fulfilling their functions.<sup>32</sup> The JRO has now been replaced by the Research Support Office within the new Legal Research and Library Service. However, given the new status of the Research Support Office, it is worth noting the data generated by its predecessor and how it operated.<sup>33</sup> Certainly, it seems that the JRO has played a role in furnishing courts with information useful for guideline judgments.<sup>34</sup> For example, in *Mahon*, the court noted one development in data facilitating guidance was that “sentencing research has been conducted on several major offences by the Judicial Researchers’ Office” (judicial guidance is discussed further below).<sup>35</sup> The JRO also provided information relevant to certain (typically more serious) offences.<sup>36</sup>

Moving forward, it is not yet clear how the Research Support Office will differ from the JRO. Given that the Judicial Council now exists as a separate entity with its own staff, it should not be assumed that Research Support Office staff will be able to devote substantial time and resources in the future to the collection of data that may be seen as the concern of the Council. The SGIC may seek cooperation and it may be helpful if a synergy develops between the research offices of the Courts Service and the Judicial Council so that they can share

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<sup>32</sup> Eoin Guilfoyle and Ian D Marder, “Using Data to Design and Monitor Sentencing Guidelines: The Case of Ireland,” *Common Law World Review*, 2020, 1473779520975193; Edwards, “Sentencing Methodology - Towards Improved Reasoning In Sentencing Title.” See also, Ruadhan Cormaic, “Using Complex Data to Answer a Simple Query: How Do Judges Decide on Sentences?,” *The Irish Times*, June 4, 2013, <https://www.irishtimes.com/news/crime-and-law/using-complex-data-to-answer-a-simple-query-how-do-judges-decide-on-sentences-1.1416005>.

<sup>34</sup> Edwards, “Sentencing Methodology - Towards Improved Reasoning In Sentencing Title,” 46.

<sup>35</sup> *People (DPP) v Mahon* [2019] IESC 24 para 36

<sup>36</sup> Lisa Scott, “DEVELOPMENTS IN IRISH SENTENCING,” *Irish Judicial Studies Journal* 1 (2017): 4, [https://www.ijsj.ie/assets/uploads/documents/pdfs/2017-Edition-01/Recent Developments in Irish Sentencing Law Lisa Scott.pdf](https://www.ijsj.ie/assets/uploads/documents/pdfs/2017-Edition-01/Recent%20Developments%20in%20Irish%20Sentencing%20Law%20Lisa%20Scott.pdf).

relevant information and data. However, that would be a matter for discussion between the Service and the Council. In any event, the SGIC will almost certainly need its own research office to collect and analyse data and thereby enable the Committee and the Judicial Council to fulfil their statutory functions.

## Chapter 4: Academic and Other Research

As Ireland is a relatively small jurisdiction, there is a smaller body of research than is generated in larger jurisdictions. However, though the quantity is limited, there has been some empirical research published on Irish sentencing.<sup>37</sup>

Given the paucity of official sentencing data in Ireland, one goal of research and scholarship has been to set out the many data gaps and to scope out where the “dragons be” in our knowledge and understanding.<sup>38</sup> In charting the limitations to existing data (such as the notable knowledge gap pertaining to the District Courts),<sup>39</sup> research can also provide valuable snapshots of practice. The strength of research is that it can prioritise depth of breadth. By examining a particular question, research provides a depth of data and explanation which administrative data, for example, simply cannot. In this way, research can be seen as an invaluable supplement to more comprehensive but less in-depth data. This approach may be particularly important in examining the effects of reforms, or the realities of sentencing practices in areas that are subject to particular public or media concerns.

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<sup>37</sup> To take just a few indicative examples, there is work relevant to various aspects of sentencing, including the effect of pre-sanction reports on sentencing (Maguire, Niamh, and Nicola Carr. "Individualising justice: pre-sentence reports in the Irish criminal justice system." (2017)); disparities in sentencing (Brandon, Avril Margaret, and Michael O'Connell. "Same crime: different punishment? Investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system." *The British Journal of Criminology* 58, no. 5 (2018): 1127-1146); links between sentencing and recidivism (O'Donnell, Ian, Eric P. Baumer, and Nicola Hughes. "Recidivism in the Republic of Ireland." *Criminology & Criminal Justice* 8, no. 2 (May 2008): 123-46. <https://doi.org/10.1177/1748895808088991>); gender (Lyons, A., and P. Hunt. "The effects of gender on sentencing: A case study of the Dublin Metropolitan Area District Court." *Whose law and order* (1983)); socio-economic deprivation (Bacik, Ivana, A. Kelly, M. O'Connell, and H. Sinclair. "Crime and Poverty in Dublin: an analysis of the association between community deprivation, District Court appearance and sentence severity." *Irish Criminal Law Journal* 7, no. 2 (1997): 104-133); prison populations (O'Donnell, Ian. "Ireland's shrinking prison population." *Irish Criminal Law Journal* 27, no. 3 (2017): 70-77); CSAM offences (O'Donnell, I. and Milner, C., 2012. *Child pornography: Crime, computers and society*. Willan.); and various works on sentencing law and policy (e.g. Campbell, Liz. "Reconstituting sentencing policy in the Republic of Ireland." *N. Ir. Legal Q.* 59 (2008): 291). Readers should note, however, that this is an indicative non-exhaustive list.

<sup>38</sup> Claire Hamilton, "Sentencing in the District Court:" Here Be Dragons", *Irish Criminal Law Journal* 15, no. 3 (2005): 9-15.

<sup>39</sup> Healy and O'Donnell, "Crime, Consequences and Court Reports."

Research in Ireland has drawn on several methods such as utilising official data from criminal justice organisations, court observations, interviews, and analyses of newspaper reports. Each of these methods has strengths and limitations in terms of the data they provide and the demands they place on researchers' resources.

## 4.1 Research Using Official Administrative Data

Using official data (unless it is publicly available) and relying on interviews requires researchers to gain access to courts, databases, etc. For various reasons, this can be challenging: GDPR concerns, concerns over resources, low prioritisation of research in the face of time demands on practitioners, etc.

One source of data that research could theoretically use is DAR – the system for recording audio in courts. Audio recordings could provide a promising source of data on a particular case, though extracting this would be time-intensive (albeit less so than court observations). Indeed, the JRO appears to have made use of DAR. However, for other researchers, access to DAR is governed by statutory provisions and conditions that appear to create difficulties in terms of utilising this as a resource.

Difficulties related to conducting empirical research with the cooperation of criminal justice organisations could also limit the potential for research to help close the knowledge gap in Ireland. However, where access is obtained, some interesting results can emerge. For example, research into recidivism (a likely consideration of many judges when determining a sentence) has been enabled through the use of official (but not publicly available) data - such as that held by the prison service:

*In 2000, however, the Irish Prison Service began to phase in a new computer system, known as the Prisoner Records Information System (PRIS), which centralized in electronic format a large amount of information including the reason for custody (remand or sentence), principal offence committed, recent criminal history, amount of time served under sentence, sex, age, address, marital status, education level,*

*employment status and nationality. The data collected for our research mark the first time that researchers were granted access to PRIS.<sup>40</sup>*

For the purposes of this report, it seems that there is not a comprehensive list of the variables contained in systems such as PRIS (and their counterparts in other criminal justice agencies – notably the Courts Service) in the public domain. This will be examined further for the final report, but presently the lack of detail on variables precludes us from ascertaining exactly what data and which variables are available, for what level of court, what period of time, etc (see 0). For example, it would appear from the limited details we have from the above research that PRIS is potentially a good resource for examining the predictors of custodial sentence lengths but not for determining what predicts a custodial sentence in the first place (the “custodial threshold”). However, at present, we lack a sufficient basis to speculate further here.

## 4.2 Court Observations

Court observations of public proceedings (COVID-19 measures notwithstanding) do not require the same degree of formal access permissions. Yet, court observations are time-consuming, and without the provision of basic documentation about the cases, these too pose challenges for researchers and have limitations. Indeed, when court observations were used for ISIS data collection, access to court documents was available:

*In addition to their attendance at the sentencing hearings, the relevant case files in the Circuit Court Office are available to the researchers in cases where this has been necessary to fill any gaps in the information available from the oral evidence tendered before the Court.<sup>41</sup>*

However, the costs of court observation mean that they are confined to covering a small sample of cases as it is unfeasible to utilise this data gathering method

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<sup>40</sup> O'Donnell, Baumer, and Hughes, “Recidivism in the Republic of Ireland,” 127.

<sup>41</sup> Brian Conroy and Paul Gunning, “The Irish Sentencing Information System (ISIS): A Practical Guide to a Practical Tool,” *Judicial Studies Institute Journal* 1 (2009): 39.

on a large scale. As noted, DAR may offer a less resource-intensive way to gather similar data on cases, but access to this has proved challenging.

### 4.3 Newspaper Reports: The Last Resort?

In the absence of alternatives, newspaper reports can offer the only source of information in many instances. While research has used such reports, it ought to be stressed that, while newspapers may be all that is available, they are far from an ideal source of sentencing data and no substitute for reliable, comprehensive and up-to-date information from official sources.

Newspaper and media reports have a number of limitations. The media report upon only a very small selection of cases, even of those involving serious offences. Often, the decision to report and the amount of attention they devote to a case will depend on whether, for example, one of the parties is a well-known person or there is some strong human interest element to the case.

Media bias (in terms of being unrepresentative) can have significant consequences for public confidence in sentencing - leading to misperceptions of sentencing and sentencing trends. Moreover, most newspapers do not report as many cases now as they did in the past. Therefore, there can be no guarantee that sentences imposed in cases reported in the media are typical or characteristic of the sentences imposed for the offence in question more generally.

Healy and O'Donnell have noted the possible utility of newspapers, with the caveat being this is in light of the dearth of other data:

*There is very little information available about what goes on in Irish courtrooms, especially at District Court level. In the absence of official data, newspaper reports of criminal cases offer a largely untapped resource, containing information about offences, trials and outcomes, including remarks made by defendants, victims, judges, solicitors and Gardaí. But the data is unlikely to be representative and is likely to be of*

*limited detail. Thus, all methods have their limitations and in practice a combination of methods may be necessary.*<sup>42</sup>

Again, it should be stressed that this is not a source of data upon which it is desirable to rely.

The extent of reliance on newspapers may be better understood as reflecting the paucity of other available data (notably official statistical data). It may also serve to highlight the need for more official data as, in the absence of official data, the public (and others) may draw on problematic sources leading to misperceptions of sentencing and sentencing trends – with potentially dire consequences for public confidence.

#### 4.4 Examples of Research

A few examples of research help to illustrate what use has been made of the data sources noted above. Starting with court observations, research in Ireland has been carried out by academics and organisations. For instance, in 2003, the Irish Penal Reform Trust (IPRT) conducted research in the District Courts using court observations.<sup>43</sup> In total, the cases of 356 individual defendants were observed. This relatively small sample (compared to the total number of District Court cases) nonetheless provides a rare glimpse into sentencing in the lower courts.<sup>44</sup> There is also work that examines District Courts and matters such as how deprivation may be linked to sentencing.<sup>45</sup>

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<sup>42</sup> Healy and O'Donnell, "Crime, Consequences and Court Reports," 2.

<sup>43</sup> Hunter, Hamilton, and Lines, "Research Brief: Sentencing in the District Courts, 2003."

<sup>44</sup> The study utilised a principal offence method of classification and is therefore limited in terms of depicting multiple offences.

<sup>45</sup> Ivana Bacik et al., "Crime and Poverty in Dublin: An Analysis of the Association between Community Deprivation, District Court Appearance and Sentence Severity," *Irish Criminal Law Journal* 7, no. 2 (1997): 104–33.

Looking at official administrative data, research has used prison data to search for racial disparities in sentencing.<sup>46</sup> There have also been some commentaries by the IPRT on other official data, such as imprisonment rates. However, the limited detail provided by administrative data remains an issue. To work around this, some research has used a combination of sources whereby administrative data, newspapers, unpublished official data, and interviews are all combined.<sup>47</sup> Yet, even so, there remain gaps that could be better filled by more comprehensive and routinely available official data.

## 4.5 The Limitations of Research

From the above, it can be seen that there are substantial impediments to research in Ireland. Perhaps the biggest impediment is the lack of reliable, comprehensive and up-to-date official data. The lack of such official data has meant that problematic sources (in that they are not ideally suited) such as newspapers are relied on at times. In other instances, the lack of official data has also meant that ad-hoc data requests have been used. Indeed, the IPRT noted the importance of good working relationships with criminal justice organisations is beneficial here. However, it would still be preferable, for several reasons, if more data were routinely published.

If some of these impediments could be resolved (e.g. a formal application process for criminal justice research combined with a receptive attitude to research or a more comprehensive publication of official data), then Ireland may be better able to capitalise on its existing expertise to generate new insights into sentencing. The ability of organisations to respond to requests by organisations such as the IPRT may suggest there is potential for a thorough and structured approach to collecting and publishing data.

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<sup>46</sup> Avril Margaret Brandon and Michael O’Connell, “Same Crime: Different Punishment? Investigating Sentencing Disparities between Irish and Non-Irish Nationals in the Irish Criminal Justice System,” *The British Journal of Criminology* 58, no. 5 (2018): 1127–46.

<sup>47</sup> Ian O’Donnell and Claire Milner, *Child Pornography: Crime, Computers and Society* (Willan, 2012), col. 4.

## Chapter 5: Irish Sentencing Information System (ISIS)

As noted above, the fact that there are substantial limitations to sentencing data in Ireland has long been recognised.<sup>48</sup> However, it seems that there has rarely been sufficient impetus to take action to correct the knowledge deficit. The main exception to this, prior to the newly formed SGIC, was the Irish Sentencing Information System.

The ISIS project was a pilot that involved researchers observing cases in court. The focus of ISIS was mainly on the Circuit Court in Dublin. The researchers would record the details of a case on a standardised template, and this would be added to the database.<sup>49</sup> An effort was also made to record data on District Court cases. However, this was impractical given the setup at the time. Interestingly, data from the ISIS project was publicly available and accessible online.<sup>50</sup>

Although no longer actively maintained, the Irish Sentencing Information System is still worth discussion as it may, in principle, represent one way forward. Several points are worth noting. Firstly, in some small way, the work of ISIS lived on in the work of the JRO (now replaced by the Research Support Office), which updated some of the figures that were accessible through the ISIS website.<sup>51</sup> This, perhaps, speaks to the continuing utility of the types of data available on the ISIS website. Moreover, the utility of ISIS appears to have been recognised by the courts themselves:

*General guidance is to be obtained from a number of sources. In the recent Martin Tansey lecture published in the Irish Probation Journal, Mr Justice*

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<sup>48</sup> “Consultation Paper on Sentencing.”

<sup>49</sup> For examples of the recorded data, see Conroy and Gunning, “The Irish Sentencing Information System (ISIS): A Practical Guide to a Practical Tool,” 42–51.

<sup>50</sup> At the time of writing, the site (<http://irishsentencing.ie>) appears inoperable. However, it can be accessed using archive tools.

<sup>51</sup> Edwards, “Sentencing Methodology - Towards Improved Reasoning In Sentencing Title,” 46.

*Peter Charleton has provided some valuable and stimulating insight into the question of sentencing, particularly the question of consistency of sentencing. He points out, that there is a significant degree of information now available through the ISIS Project (Irish Sentencing Information System Project) in relation to different types of offences and when available it should be brought to the attention of the sentencing judge. As has been observed, this is slow and painstaking work, but immensely valuable. This information, especially where it is synthesised in a lucid and accessible way is an essential step in understanding what range of sentence is being applied in respect of some offences, and identifying or allowing developments in the approach to sentencing for particular offences.*<sup>52</sup>

In the past, there was a link between the work of the JRO and ISIS. Indeed, it seems that (at one point) it was envisaged that ISIS would take the work of the JRO further to enhance understandings of sentencing and facilitate the creation of guidance.<sup>53</sup>

As will be discussed below, there have been numerous judicial decisions on sentencing since this lecture. However, despite the praise, ISIS has not played its envisaged role, and it is effectively mothballed. Moreover, ISIS was of limited use in collecting sentencing data in the District Court and its comparatively vast number of cases.

Additionally, ISIS data recording was, in general, a labour-intensive process. This means that the sustainability of an ISIS type system, in the absence of sufficient funding, would be problematic. Theoretically, there is the possibility that, in the future, the sentencing judge or court staff could complete a standard template to collect sentencing data at a reduced cost (perhaps a revised version of the

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<sup>52</sup> *DPP v O’Byrne* [2013] IECCA 93.

<sup>53</sup> Charleton and Scott, “Throw Away the Key: Public and Judicial Approaches to Sentencing-Towards Reconciliation The Martin Tansey Memorial Lecture,” 21–22.

ISIS template).<sup>54</sup> However, as it operated, the costs of ISIS had a determinantal effect on its longevity.

## 5.1 The Suspension of ISIS

The mothballing of ISIS was largely related to resource issues, which were exacerbated by the financial crises of the time. In this way, it is perhaps unfortunate ISIS has languished given the hurdles it was able to overcome. However, the “idea behind it” remains useful. Presently, in terms of data collection methodologies, the ISIS project considered many of the issues identified in this interim review and how they might be addressed in the Irish context. As the practical guide to ISIS notes:

*The pilot system now in place does not simply imitate one of the various sentencing schemes created abroad, but rather aims to take what is considered to be the best aspects of each and combine these with modifications to suit the Irish legal landscape.*<sup>55</sup>

For example, how to record multiple convictions is a serious challenge for those deliberating sentencing data collection methodologies. Yet, this is one challenge ISIS addressed:

*For the sake of clarity, it was decided that separate matters should be dealt with in separate entries on the database. Accordingly, where two accuseds are being sentenced on the same bill of indictment, two separate entries are made on the database. Similarly, where an accused is being sentenced under multiple bills of indictment, separate entries are made in respect of each bill, but not in respect of each count on the bill. However, to ensure that anyone reading the data is made aware of the full picture*

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<sup>54</sup> This possibility bears similarities to the Court Sentencing Servery (CCSS) previously used in England and Wales and will be noted in future reports.

<sup>55</sup> Conroy and Gunning, “The Irish Sentencing Information System (ISIS): A Practical Guide to a Practical Tool,” 38.

*considered by the sentencing judge, the fact that the accused was sentenced on another bill of indictment on the same date or that another accused was sentenced on the same bill is noted on the database entry, and an electronic link to the relevant entry or entries is provided.<sup>56</sup>*

Consequently, whether or not a commitment is made to funding something like ISIS in the future, the conceptual framework behind how ISIS collected data is worth considering.

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<sup>56</sup> Conroy and Gunning, “The Irish Sentencing Information System (ISIS): A Practical Guide to a Practical Tool,” 40–41.

## Chapter 6: Appeal Court Guidance

When drafting their guidelines, sentencing commissions and councils around the world have tended to begin by first reviewing the existing appellate jurisprudence relating to the offence for which a guideline is being drafted. Thus, recent appellate sentencing judgments may be taken to provide a point of departure for the drafting of guideline sentence ranges for categories of seriousness. If the proposed guidelines include 'starting point' sentences, then appellate decisions also provide a particularly useful steer for the guidelines authority. In addition, appellate judgments normally highlight or enumerate the most important aggravating and mitigating factors relevant to the offence in question. This then typically forms the basis of the lists of sentencing factors contained in the guidelines issued for consultation.

Appellate judgments thus provide a normative framework for guideline construction and the guideline is then crafted to promote the approach to sentencing already affirmed by the Court of Appeal. However, it is vital first to note that, by their nature, appellate judgments cannot yield systematic and reliable knowledge about the patterns of first-instance sentencing practices. If such knowledge is made available, the impact of appellate judgements (or other rule-like norms such as guidelines) will be greatly enhanced in two ways.

Firstly, it will become possible to know, in a systematic and reliable way, how first-instance sentence practices are patterned in different kinds of cases – and thus pinpoint areas that may benefit from reform or clarification. Secondly, only the availability of high-quality systematic data can allow a proper assessment of how such norms (or reforms more generally) play out in practice.

Thus, both to determine current sentencing practice and to monitor the operation of guidelines, it is essential to have high-quality information about the patterns of sentencing in different cases. Having made this key point, we now consider how the development of appellate court jurisprudence can inform the structuring of the collection of such data. The following sections elaborate on these points in the Irish context.

## 6.1 Developments in Ireland: Appellate Jurisprudence

From an empirical and analytical perspective, a new sentencing landscape is now taking shape, one that has the potential to produce a body of knowledge from which useful normative principles, including indicative headline sentences for a wide range of offences, can be derived. This has implications for the conduct of future research on the sentencing of serious offences in that it may provide interpretative context for empirical data.

Historically in Ireland, the courts were hesitant to specify indicative sentencing tariffs, starting points or sentence ranges, with the court refusing to do so in *People (DPP) v Tiernan*.<sup>57</sup> The concerns of the court in *Tiernan* related to the need for individualised sentencing and poor data on sentencing practice. Consequently, the courts focused on descriptive guidance and the principles of sentencing. Indeed, as O'Malley notes:

*This remained the orthodoxy for the next quarter of a century although, during that period, both the Supreme Court and the former Court of Criminal Appeal produced a substantial body of case law on general sentencing principles with a special emphasis on proportionality. They did not offer any guidance in the form of tariffs, starting points or sentence ranges for particular offences, although indications of appropriate sentence levels for certain offences might be inferred from some of their judgments.*<sup>58</sup>

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<sup>57</sup> [1988] IR 250 (SC).

<sup>58</sup> O'Malley, "Sentencing: A Modern Introduction." Forthcoming.

In 2014 there was a “quiet revolution.”<sup>59</sup> The former Court of Criminal Appeal issued guideline judgments and noted that a “broad level of consistency” is desirable and that:

*It is part of the function of this Court, as a Court of Appeal, to attempt to establish not only the broad legal principles by reference to which any sentencing exercise should be conducted but also to give, where possible, some guidance as to the broad range of sentences which should be imposed, all else being equal, across the spectrum of severity applicable to an offence under consideration.*<sup>60</sup>

This revolution has been significant. It has now become standard practice for the Court of Appeal to indicate the appropriate headline sentences in individual cases, whether by approving or varying those identified by trial (i.e. first-instance) courts and specifying a headline sentence where the trial court failed to do so. For the period 2005 to 2013, the average annual number of Court of Criminal Appeal judgments on the Courts Service website was 30. By contrast, the number of judgments (both civil and criminal) posted by the Court of Appeal from its establishment in 2014 to the end of August 2021 ran to 2,550, an average of 320 a year. It is safe to assume that at least half of these, and perhaps more, are criminal cases – though it would be preferable that the split was quantified on the website.

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<sup>59</sup> O'Malley, “A quiet revolution occurred this month: sentencing guidelines were introduced.” (2014) <https://www.irishtimes.com/news/crime-and-law/a-quiet-revolution-occurred-this-month-sentencing-guidelines-were-introduced-1.1741707>. See also Scott, “DEVELOPMENTS IN IRISH SENTENCING.”

<sup>60</sup> *People (DPP) v Ryan* [2014] 2 I.L.R.M. 98. Para 1.2.

## 6.2 Establishing Knowledge about Existing Sentencing Practice

Under the terms of the Judicial Council Act 2019 (s. 91(3)), the SGIC, in preparing or amending draft guidelines, must have regard to a number of factors, including “sentences that are imposed by the courts.” Even in the absence of such a provision, the collection of data on existing practice would be necessary in any event if the guidelines are to reflect and/or shape that practice, at least to some appreciable degree. The Committee will doubtless have to consider strategies for collecting data on trial (i.e. first-instance) court sentencing practice. Such an exercise will also be necessary in the long run by virtue of s.23(2) of the 2019 Act, which requires the SGIC to “monitor the operation of sentencing guidelines.” It bears mentioning that bodies charged with developing guidelines in other jurisdictions have undertaken extensive research on existing practice. For instance, the United States Sentencing Commission analysed more than 10,000 past cases when it was drafting the original federal guidelines between 1985 and 1987.<sup>61</sup> The English Sentencing Council now also routinely undertakes detailed analyses of existing practices when developing new guidelines or amending existing ones. However, it must also be noted that relevant data, at least in statistical form, are more readily available in those jurisdictions and elsewhere than they are here.

Appeal court judgments cannot, of course, provide comprehensive and reliable data about trial (i.e. first-instance) court sentencing practice. While the appellate courts offer normative guidance, examining the *ought* of sentencing, that is a distinct (albeit complementary) endeavour from presenting a complete picture of what *is* happening in the daily reality of first-instance sentencing across the country. As such, without ready access to systematic information about the empirical reality of sentencing practices on the ground, guidelines are limited to engaging with sentencing at the level of the ought and, specifically, cases that are appealed. Moreover, to examine compliance with official

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<sup>61</sup> Stephen Breyer, “The Federal Sentencing Guidelines and the Key Compromises on which They Rest” (1988) 17 *Hofstra Law Review* 1 at 7. The author, now a Justice of United States Supreme Court, was a member of the original Sentencing Commission.

guidance, one needs systematic data on cases and the patterns of sentences imposed in different kinds of cases.

No more than a fraction of the sentences imposed at first instance by trial courts are appealed. In fact, it is rare for a sentence involving anything other than immediate custody to be appealed. An even more fundamental consideration is that District Court sentences (and sentences imposed by the Circuit Court on appeal from the District Court) cannot be appealed to the Court of Appeal. However, the sheer volume of Court of Appeal sentencing judgments now so readily available can usefully be mined for various kinds of thinking about normative sentencing principles and headline sentences. For instance, it appears (though we say this very tentatively) that a significant proportion of sentences imposed for serious sexual offences are appealed to the Court of Appeal, whether by way of defence appeals or undue leniency applications, and it may be possible to derive some useful information from those.

### 6.2.1 General Sentencing Principles

The SGIC's remit is not confined to preparing offence-specific guidelines. Guidelines may also relate to "sentencing generally."<sup>62</sup> The Committee may therefore decide to develop guidelines on matters such as the general procedure to be followed when selecting a sentence (similar perhaps to the recent guideline produced by the Scottish Sentencing Council),<sup>63</sup> and on other general matters such as the reduction for a guilty plea, the use of concurrent and consecutive prison sentences, and the relevance of previous convictions.

Here, the existing jurisprudence of the Court of Appeal and, indeed, of the Supreme Court will be tremendously useful not least, for example, in informing the structure of future data collection and empirical research into first-instance

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<sup>62</sup> Judicial Council Act 2019, s. 91(1).

<sup>63</sup> Scottish Sentencing Council, *The Sentencing Process: Sentencing Guideline* (effective from 22 September 2021). For an in-depth analysis of this Scottish guideline and its utility in an Irish context, See also Tom O'Malley, [A New Scottish Sentencing Guideline – The Sentencing Process](https://sentencingcrimeandjustice.wordpress.com) (5 October 2021) [sentencingcrimeandjustice.wordpress.com](https://sentencingcrimeandjustice.wordpress.com)

sentencing practices. For example, in relation to the sentence decision-making process, Court of Appeal case law on the desirability of first specifying a headline sentence in every case will be most valuable.<sup>64</sup>

## 6.2.2 Headline Sentences

The identification of appropriate headline sentences is critical to the development of a coherent and principled sentencing system. As just noted, the Court of Appeal, since its establishment, has frequently reiterated the importance of specifying in each case the appropriate headline sentence based on the objective gravity of the offence, before adjustments are made for offender-related factors which, for this purpose, include matters such as a guilty plea and co-operation with law enforcement authorities. The Court has stopped short of holding that failure to specify a headline sentence will, of itself, amount to an error of principle but it has left trial courts in no doubt that the two-step approach to sentence selection is the best and most desirable practice. It is reasonable to infer from more recent judgments of the Court that, by and large, trial judges sentencing at first-instance may now be adopting this practice.

General guidance on headline sentences, like that offered in formal guideline judgments such as *People (DPP) v Casey and Casey*,<sup>65</sup> is, of course, authoritative. But useful information about appropriate headline sentences can be derived from other judgments as well. After all, most of the Court's judgments record the headline sentence specified by the trial judge for the offence of conviction. In some cases, that headline sentence is approved; in others, it is varied. In either event, the headline sentences ultimately approved by the Court of Appeal provide significant guidance for trial courts sentencing at first instance on the appropriate starting points for many offences. Needless to say, only a very small proportion of the Court's judgments include formal, or even informal, guidelines. In all the others, the approved headline sentence is specific to the facts of the case under appeal. However, in many instances, trial judges will be

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<sup>64</sup> Leading cases on this topic include *People (DPP) v Flynn (Davin)* [2015] IECA 290; *People (DPP) v Molloy (Raymond)* [2018] IECA 37 and *People (DPP) v Joyce* [2021] IECA 124.

<sup>65</sup> [2018] IECA 121; [2018] 2 I.R. 337.

able to extrapolate from those what the appropriate headline sentences should be in cognate, though probably not identical, cases.

This body of case law should also be of great value to the SGIC when it embarks on the preparation of offence-specific guidelines. At present, we do not know what form those guidelines are likely to take. But if, for example, the Committee were to opt for structure somewhat similar to that of the English and Welsh sentencing guidelines, it would begin by identifying levels of seriousness for the relevant offence and then, perhaps, indicate appropriate sentence ranges and/or starting points for the identified categories. Court of Appeal case law on headline sentences would obviously be of great value for this purpose, though it can be supplemented with any up-to-date information that becomes available on existing trial court practice.

### 6.3 Court Of Appeal Sentencing Judgments

The Court of Appeal has recently made available to us a spreadsheet of 830 of its sentencing judgments, delivered between November 2014 (when the Court first began hearing cases) and August 2021. This is an extraordinarily useful resource and one that is clearly crucial for the future work of the SGIC. The database includes guideline judgments, both formal and informal in the sense identified by the Court in *People (DPP) v O'Sullivan* [2020] IECA 331, as well as hundreds of others that elucidate and develop general principles of sentencing, including the approach to be adopted when sentencing individual offences. Many of the cases included in the database are also of great value in indicating appropriate headline sentences, a topic to which we shall return below.

This spreadsheet can contribute to the accomplishment of tasks that may be undertaken by the SGIC. First, it should indirectly assist, though admittedly to a limited extent, in identifying current sentencing practice by showing what sentences the appeal courts dispense. Secondly, it provides an extensive body of modern, authoritative case law on general sentencing principles. Thirdly, it is most useful for the purpose of identifying appropriate headline sentences for particular offences.

We offer one final observation about the sentencing judgments spreadsheet compiled by the Court of Appeal. It is very conveniently presented in spreadsheet format, which permits the inclusion of additional information in respect of the individual cases. While it is of great value as it stands, it would probably be even more useful to judges, practitioners, scholars and others if it included an indication of the principal subject matter of each case, e.g., “robbery”, “residential burglary”, “discount for guilty plea”, etc.

## Chapter 7: Conclusions

This report has outlined the main sources of data currently available in Ireland. In doing so, it has drawn attention to the limitations that hinder insights into sentencing practices. The report also discussed developments in senior appeal court guidance, which is now far more abundant. This guidance is a valuable resource in itself in terms of elucidating norms and providing direction. It can also serve a complementary role when seeking to improve data on sentencing practices in trial courts.

Over time, there has been some modest progress concerning the data on trial court sentencing practices. Where progress has occurred, for example with ISIS, it has typically been the result of judicial initiatives. However, despite some progress, sentencing data in Ireland still has profound limitations. These limitations include the lack of a large scale, offence specific database, or an annual release of key sentencing indicators, as is the case in some other jurisdictions. The limited data is problematic because it is only when reliable information is available that useful guidelines (that are likely to be respected by trial courts) can be drawn up. For example, guidelines for certain offences, such as defilement and other forms of child sexual abuse, cannot realistically be drawn up without a thorough examination of the many variables that occur in such cases – as was effectively recognised by the Court of Appeal in *McD*.<sup>66</sup>

Better sentencing information would also appear necessary to support efforts to bolster public confidence. As noted here, in the absence of official data, newspapers have played a distinct role as a source of information that is concerning. In various jurisdictions, there is over 50 years of research showing newspaper reports of sentencing can be hugely problematic in terms of the selection of cases, presentation of cases facts, etc. That research shows that

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<sup>66</sup> [2021] IECA 31. For the contributions research can make, see also O'Donnell and Milner, *Child Pornography: Crime, Computers and Society*.

biased media coverage is largely responsible for the huge public misperceptions of sentencing and sentencing trends.

Unfortunately, such are the issues with sentencing data that presently:

*The penal policy arena in Ireland is characterised by a collection of lacks...*

*The extent to which the criminal justice system operates in the absence of informed comment, research and critical scrutiny is striking. Often, the good quality information that is required to allow a sensible discussion simply does not exist. Substantial data deficits remain at every level and progress linking systems from the different agencies is slow. There are still far too many simple questions that cannot be answered. For example, what is the average sentence for a first-time burglar (or robber or shoplifter or car thief or violent offender)?<sup>67</sup>*

As is clear from earlier sections of this report, information on sentencing practices in all Irish courts has limits, but these are particularly acute in the District Courts. Of course, the sheer volume and range of offences with which the District Court must deal will render it difficult to devise a system for the regular collection of detailed sentencing data. According to the Courts Service Annual Report for 2020, the Court dealt with about 154,000 summary offences and 41,000 indictable offences that year. A further 21,538 orders were made sending persons forward for trial in respect of various indictable offences.<sup>68</sup>

As well as a significant caseload, the District Court also has significant sentencing powers: it may impose up to two years' imprisonment in certain circumstances. A rational and coherent sentencing system is, therefore, just as important in the District Court as in the other trial courts. However, there are relatively infrequent opportunities for the Court of Appeal and Supreme Court to issue

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<sup>67</sup> Ian O'Donnell, "Penal Policy in Ireland: The Malign Effect of Sustained Neglect," *Studies: An Irish Quarterly Review* 102, no. 407 (2013): 315 and 319.

<sup>68</sup> As the Report explains, when considering the global figure of 194,796 offences dealt with by the Court itself that year, it must be recalled that this figure refers to orders made, and more than one order may be made in respect of a single offence. However, even with this qualification, the District Court clearly has an enormous criminal case workload. This is further borne out by another statistic in the Report, namely that in 2020 the Court had 382,455 incoming cases involving 226,081 defendants.

sentencing guidance on the cases and issues commonly encountered in the District Courts. Thus, quite understandably, court issued guidance has tended not to focus on the District Courts. For these reasons, the Sentencing Guidelines and Information Committee may wish to address information gaps at the level of the District Court sentencing in particular.

We have suggested (and will explain in our second interim report) that many of these issues are not unique to Ireland. For example, in Scotland and in England and Wales, data on the lower courts are also (in their own ways) not without serious limitations. The relevant Sentencing Councils have not been entirely successful in addressing this, and Interim Report 2 will examine this. This could, however, suggest grounds for optimism in the case of Ireland. The SGIC's decision, as one of its first priorities, to take a hard look at the quality of sentencing data in Ireland and around the world means that it can learn from the successes and failures of other jurisdictions. Moreover, in moving forward, the SGIC may also wish to reflect upon Ireland's own Sentencing Information System (ISIS). The ISIS project contended with many of the limitations of sentencing data identified here. Even if the resources to revitalise ISIS in its previous form are not forthcoming, the project nevertheless offers substantial insights into how meaningful sentencing data could be collected in the Irish context.

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## Appendix

Criminal Business: District Court	Incoming		Resolved: offences: orders made		
	Offences	Defendants	Summary	Indictable dealt with summarily	Sent forward for trial*
Road traffic	214,056	134,350	107,838	573	221
Drugs	38,635	22,750	1,313	15,143	2,750
Sexual	3,411	618	29	111	3,470
Larceny/fraud/robbery	35,354	14,553	4	17,555	6,013
Public order/assault	48,823	26,084	24,185	1,981	2,585
Other	42,176	27,726	20,595	5,469	6,499
<b>Total</b>	<b>382,455</b>	<b>226,081</b>	<b>153,964</b>	<b>40,832</b>	<b>21,538</b>

\* Note: There is usually only one order made when an offence is being sent forward for trial

Summary Offences: Outcomes: Orders Made: District Court													
	Dis	S/O	TIC	Fine	Bond	Disq	C/S	Prob	Imp*	Susp	Other	Fixed	Total
Road traffic	2,384	39,145	11,984	21,308	34	7,405	245	508	1,025	1,037	13,706	9,057	107,838
Drugs	46	204	107	367	3	330	5	48	38	29	136	0	1,313
Sexual	1	2	1	8	1			2	8	4	2	0	29
Larceny/ fraud/ robbery	0	2	0	0	0	0	0	1		0	1	0	4
Public order/ assault	701	6,056	5,023	4,286	290	2	194	2,042	1,131	710	3,750	0	24,185
Other	724	7,051	2,797	5,034	85	232	73	1,075	747	527	2,250	0	20,595
<b>Total</b>	<b>3,856</b>	<b>52,460</b>	<b>19,912</b>	<b>31,003</b>	<b>413</b>	<b>7,969</b>	<b>517</b>	<b>3,676</b>	<b>2,949</b>	<b>2,307</b>	<b>19,845</b>	<b>9,057</b>	<b>153,964</b>

Figure 1 (extract from Court Service Annual Report 2020)

Report 1: Assessing Approaches to Sentencing Data: Ireland

Offence	<3 Mths	3 to <6 Mths	6 to <12 Mths	1 to <2 Yrs	2 to <3 Yrs	3 to <5 Yrs	5 to <10 Yrs	10+ Yrs	Life	Total
GP01 Homicide Offences	0	0	0	2	3	10	36	10	348	409
GP02 Sexual Offences	0	1	5	23	19	71	170	128	10	427
GP03 Attempts/Threat to Murder, Assaults, Harassments and Related Offences	4	18	40	75	98	149	88	19	2	493
GP04 Dangerous or Negligent Acts	0	0	12	11	14	14	16	1	0	68
GP05 Kidnapping and Related Offences	0	0	0	2	5	11	24	13	0	55
GP06 Robbery, Extortion and Hijacking Offences	0	0	3	10	15	37	25	1	0	91
GP07 Burglary and Related Offences	0	4	20	49	48	101	77	15	0	314
GP08 Theft and Related Offences	5	40	54	86	69	134	83	12	0	483

Figure 2 (extract from IPS Annual Report 20)

## Authors of this Interim Report

This research is led by the Centre for Law, Crime & Justice, University of Strathclyde in collaboration with an international team of experts.

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**Tom O'Malley, LL.M** is Tom O'Malley is a Member of the Inner Bar of Ireland and Associate Professor of Law, NUI Galway. A recent member of the Irish Law Reform Commission, he is also a practising Barrister. Acknowledged as Ireland's most eminent sentencing scholar, he is frequently invited to speak to judicial, policy and practice audiences in Ireland and abroad and he has served on numerous committees and working groups at national and international level. Tom is the author of numerous works on sentencing in Ireland often drawing on comparison with other jurisdictions. He is currently working on a new book on *Sentencing Guidelines*.

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**Professor Julian Roberts, PhD** is Professor of Criminology at the University of Oxford. One of the world's leading sentencing scholars, Julian was a Member of

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**Dr Jay Gormley**, is post-doctoral researcher at the Centre for Law, Crime & Justice, University of Strathclyde. Specialising in criminal justice and sentencing, he has worked with several guideline-creating bodies and critical policy influencers in various jurisdictions, including the Scottish Sentencing Council, the Sentencing Academy, and Community Justice Scotland. His most recent publication (with Cyrus Tata) is 'Sentencing and Remorse in a World of Plea Bargaining' in *Remorse & Criminal Justice* (eds S Tudor et al, 2022 Routledge); and his article 'The Inefficiency of Plea Bargaining' will appear in the *Journal of Law & Society* in spring 2022.