

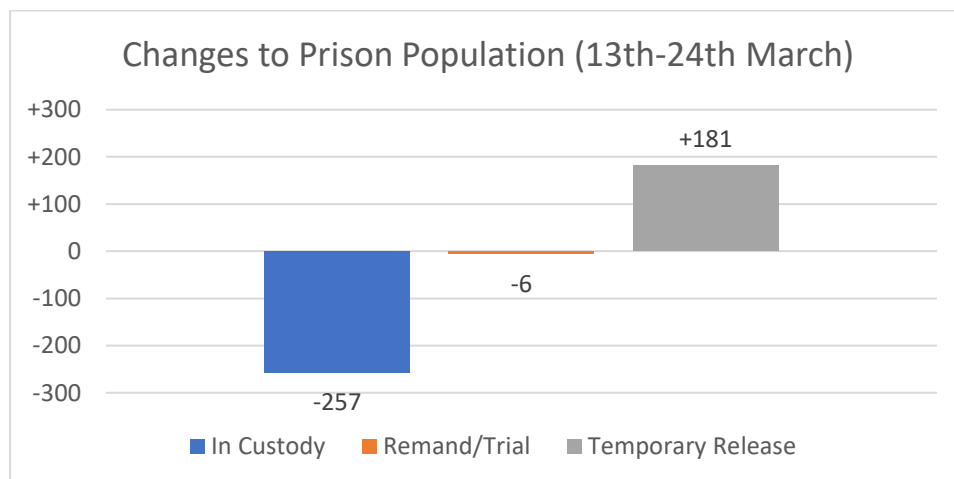


## **Covid-19: Reducing Remand Population**

### **Introduction**

In the midst of the ongoing Covid-19 pandemic, the ongoing work of the Irish Prison Service (IPS) and the Department of Justice and Equality (DJE) must be acknowledged. Since March 13<sup>th</sup> (when IPS published initial contingency measures), the total number in custody has been reduced by 257 prisoners (see Figure 1).<sup>1</sup> The reduction of the prison population under sentence by 257 represents almost a third of an initial recommendation by the Jesuit Centre for Faith and Justice (JCFJ) of the 800 required. However, there has been no commensurate reduction in the remand/trial population in order to meet the JCFJ recommendation of reducing the remand/trial population by 400 people. The remand population has only decreased by six people in this time.

From March 13<sup>th</sup> to March 24<sup>th</sup>, the number in custody has reduced from 4,167 to 3,910. This is still some way from the “one person, one cell” model for incarceration called for by the JCFJ,<sup>2</sup> requiring a reduction of 1,200 in the prison population, but it is credible progress.



*Figure 1: Changes to Prison Population (13th-24th March).*

Reduction of the remand population is a crucial component of any overarching strategy to reduce prison numbers to a level where the spread of Covid-19 can be realistically delayed and mitigated.

<sup>1</sup> Irish Prison Service, ‘Prisoner Population on Friday 13th March 2020’ (Dublin, 2020), [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/13-March-2020.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/13-March-2020.pdf); Irish Prison Service, ‘Prisoner Population on Tuesday 24th March 2020’ (Dublin, 2020), [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/24-March-2020.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/24-March-2020.pdf).

<sup>2</sup> Jesuit Centre for Faith and Justice, ‘Covid-19 and Prisons: Emergency Policy Responses’ (Dublin, 18 March 2020), <https://www.jcfj.ie/wp-content/uploads/2020/03/COVID-19-and-Prison-Emergency-Policy-Responses-JCFJ.pdf>.

Prison populations rise and fall based on the number of people being committed daily but also the number leaving as sentences expire and various forms of temporary release and parole are granted.

### Outline of Policy Briefing

1. Recent Changes in Prison Population as response to Covid-19
2. Why the Remand Population Needs to Decrease Immediately
3. Four Policy Responses to Reduce Remand Population

### Recent Changes in Prison Population as Response to Covid-19

Figure 2 highlights how the reduction in overall prison population has been distributed among Irish prisons. Of the closed prisons, the larger male institutions – Cork (-44); Wheatfield (-43); Mountjoy (-39); Castlerea (-36) – have seen the largest absolute decrease of numbers in custody.

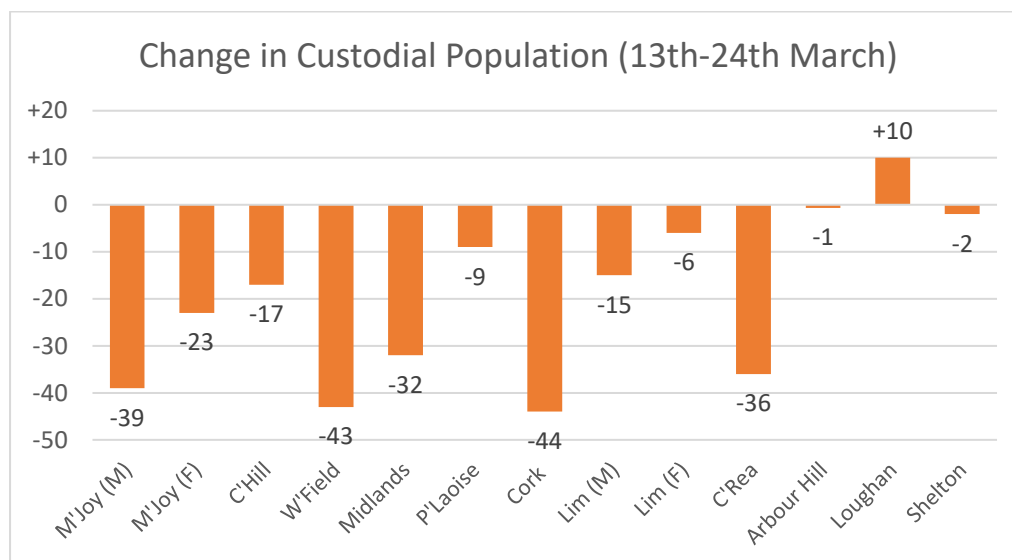


Figure 2: Change in Custodial Population, by Prison (13th-24th March).

In *Policy Briefing 1*,<sup>3</sup> five male prisons - Midlands, Cloverhill, Cork, Wheatfield and Castlerea – were identified as being at increased risk due to reliance on cell-sharing. These population reductions will create some space and additional capacity to isolate symptomatic prisoners but none of the high-risk prisons are close to 'one person, one cell'. Cloverhill prison, the remand prison for Dublin, only had a reduction of 17 in its custodial population over the period. This is of pressing concern as Cloverhill had the highest prisoner-to-cell differential<sup>4</sup> of 240<sup>5</sup> as the majority of its cells are triples.<sup>6</sup>

However, when considering the percentage decrease of individual prison populations (see Figure 3), only two of the male institutions – Cork (-14%); Castlerea (-10.7%) – have had a reduction of greater

<sup>3</sup> Jesuit Centre for Faith and Justice, <https://www.jcfj.ie/wp-content/uploads/2020/03/COVID-19-and-Prison-Emergency-Policy-Responses-JCFJ.pdf>.

<sup>4</sup> Prisoner-to-cell differential is a figure generated by the Jesuit Centre for Faith and Justice based on cell occupancy reports. In essence, it is the difference between utilised and available cells and the total population.

<sup>5</sup> Jesuit Centre for Faith and Justice, 'Covid-19 and Prisons: Emergency Policy Responses'.

<sup>6</sup> Irish Prison Service, 'Monthly Information Note - January 2020' (Dublin, 2020), [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/January-2020.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/January-2020.pdf).

than 10%. Both female prisons – Limerick (-18.8%); Mountjoy (-15.8%) – have had notable reductions in their custodial populations but this was long overdue as Limerick Female prison had been officially recorded at 132% bed capacity in recent weeks.

Again, of concern when converted to percentages, the population of Cloverhill prison has only decreased by 4.2%. Though the Midlands prison has reduced its population by 32, due to its large capacity of 886 prisoners,<sup>7</sup> it has actually only decreased by 3.6%. The prisoner-to-cell differential for the Midlands prison was 294.<sup>8</sup>

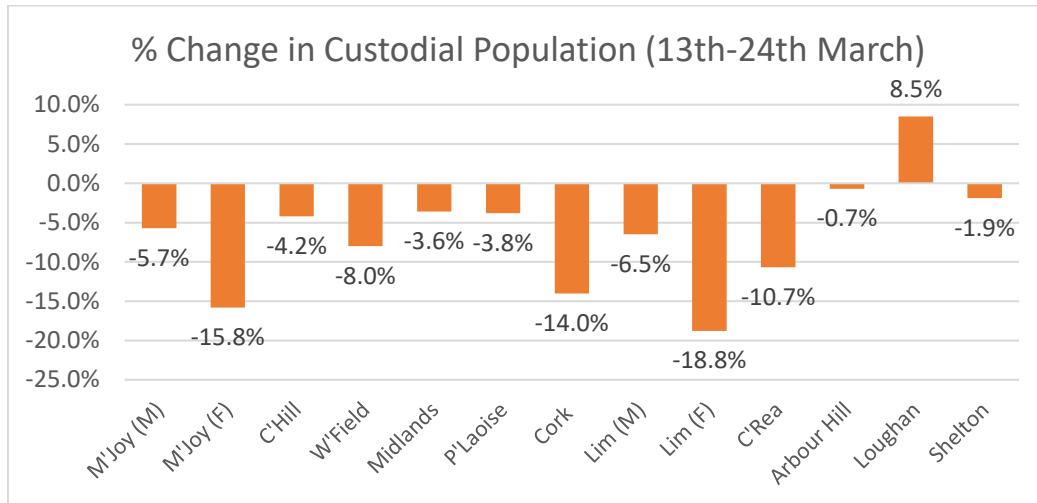


Figure 3: % Change in Custodial Population, by Prison (13th-24th March).

Temporary release has been the primary mechanism used to reduce the prison population. Figure 4 underlines where it has been used to most effect, particularly in Cork (+34) and Wheatfield (+32).

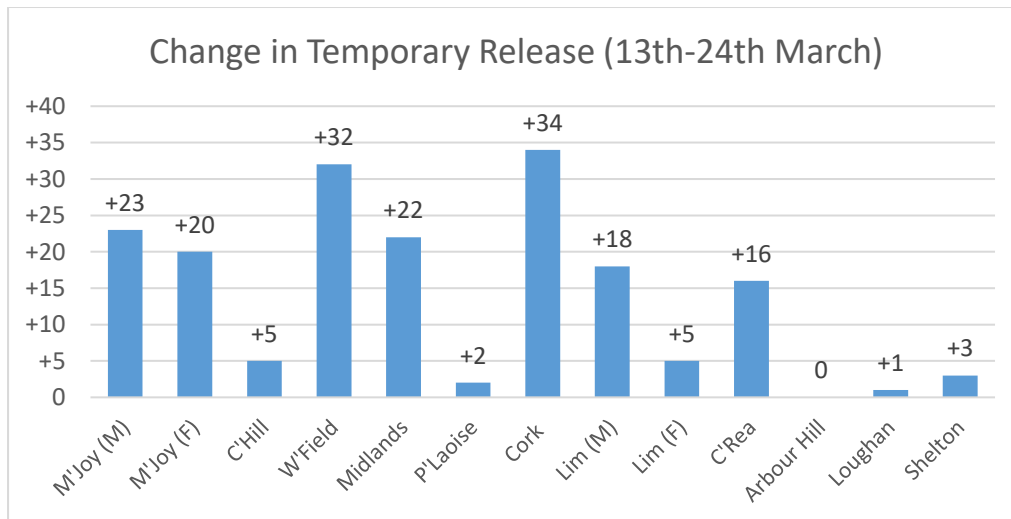


Figure 4: Change in Temporary Release (13th-24th March).

**Why the Remand Population Needs to Decrease Immediately?**

<sup>7</sup> Irish Prison Service, 'Prisoner Population on Tuesday 24th March 2020'.

<sup>8</sup> Jesuit Centre for Faith and Justice, 'Covid-19 and Prisons: Emergency Policy Responses'.

On 13<sup>th</sup> March, there were 791 people on trial or remand within Irish prisons, representing 18.9% of the overall prison population.<sup>9</sup> With the population under sentence being reduced by 257 prisoners but the remand/trial population remaining level, with a minimal decrease of six over the time period from the 13<sup>th</sup> to 24<sup>th</sup> of March, the proportion of people on remand increased to 20.0% of overall population.<sup>10</sup> For eight of the official daily population censuses, the remand/trial population was over 800 people, representing a sizeable flow of new people into the prison system.

With the overall remand/trial population decreasing by six people, Figure 5 breaks down the remand population by prison to identify increases and decreases. The general trend is for small increases – Mountjoy Male, Cork, Limerick Female – and small decreases – Mountjoy Female, Wheatfield, Midlands – but there are two seeming outliers. Firstly, Limerick Male prison has reduced its remand/trial population by 19 people. Secondly, Cloverhill prison has increased its remand/trial population by 29 people and essentially absorbed all the reductions in the other prisons.

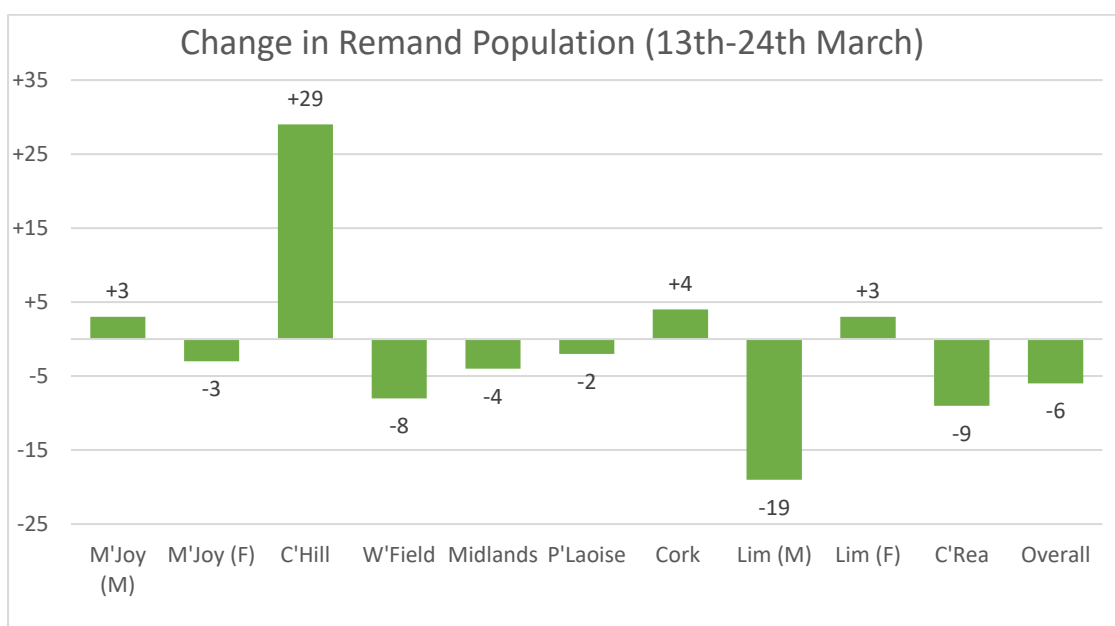


Figure 5: Change in Remand Population (13th-24th March).

As discussed in *Policy Briefing 1*, a high flow of people, on custodial remand, entering or leaving a prison increases the risk of transmitting to the prison community, or wider community respectively. Cloverhill prison had previously been identified as the largest risk in this regard.<sup>11</sup> This volume of committals and subsequent acquittals or transfers to other prisons is also indicative of the risk posed by COVID-19 (See Figure 6).

<sup>9</sup> Irish Prison Service, 'Prisoner Population on Friday 13th March 2020'.

<sup>10</sup> Irish Prison Service, 'Prisoner Population on Tuesday 24th March 2020'.

<sup>11</sup> Jesuit Centre for Faith and Justice, 'Covid-19 and Prisons: Emergency Policy Responses'.

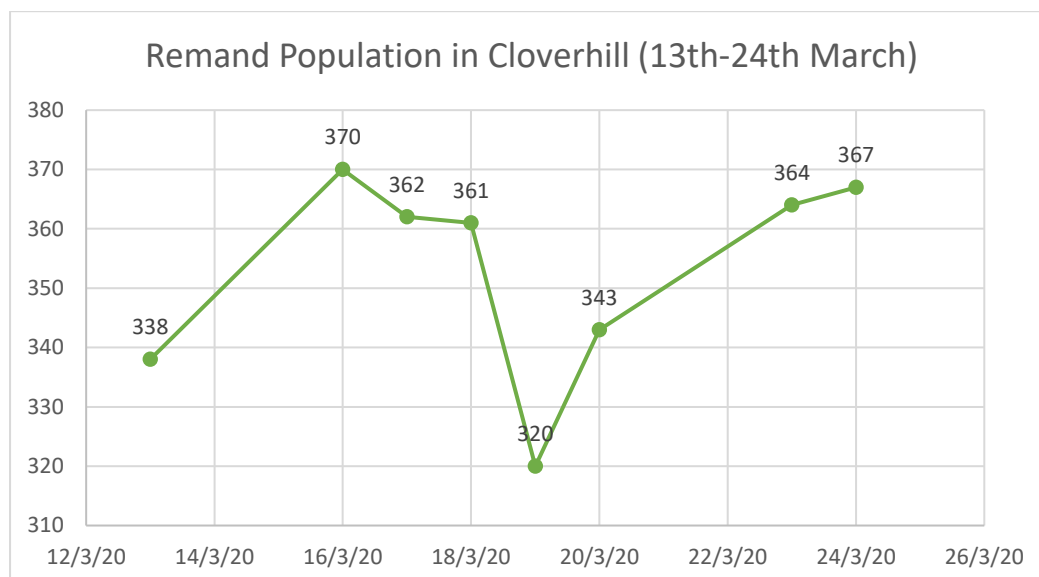


Figure 6: Remand Population in Cloverhill (13th-24th March).

The remand/trial population is different from the prison population committed under sentence as they have not been found guilty of a crime. Unjustified and excessive pre-trial detention can impact on the right to liberty and the presumption of innocence.<sup>12</sup> A proportion of people who serve custodial remand sentences will be acquitted. The moral imperative surrounding custodial remand becomes even more serious in an extraordinary public health crisis as sending a non-convicted person to a place of detention may increase their risk of contracting Covid-19 if the prison becomes a cluster-zone for infection. To reduce the population on custodial remand is to protect the health and well-being of the population under sentence, and the general public.

At present, the Presidents of the High Court, the Circuit Court and the District Court have notified their respective courts of protocols effective from Monday 18<sup>th</sup> March. In the High Court, no new cases or trials will begin, and judges will sit in the Criminal Courts of Justice to deal with bail matters.<sup>13</sup> The Circuit Court was issued the following directives: ongoing jury trials will continue to conclusion; no new jury trials will commence for remainder of term; and custody sentencing cases to be dealt with as usual.<sup>14</sup> The District Court will continue to hear urgent matters in relation to criminal law such as where the accused is in custody and cases where people are charged with new offences.<sup>15</sup> These necessary court delays will increase the time people spend in prison, with almost 791 people on custodial remand. The postponement of normal court activity and new cases will significantly extend the period of time those on remand spend in prison, despite not having been convicted or sentenced.<sup>16</sup>

<sup>12</sup> Irish Penal Reform Trust, 'IPRT Position Paper 11: Bail and Remand' (Dublin), accessed 24 March 2020, [https://www.iprt.ie/site/assets/files/6363/iprt\\_position\\_paper\\_11\\_on\\_bail\\_and\\_remand\\_sml.pdf](https://www.iprt.ie/site/assets/files/6363/iprt_position_paper_11_on_bail_and_remand_sml.pdf).

<sup>13</sup> Courts Service of Ireland, 'NEWS & ANNOUNCEMENTS / Notices:Statements of the Presidents of Each Jurisdiction - Covid 19', accessed 17 March 2020, <http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/CFBD614F393A630880258494003A8B40?opendocument>.

<sup>14</sup> Courts Service of Ireland.

<sup>15</sup> Courts Service of Ireland.

<sup>16</sup> Scottish Prisoner Advocacy, 'Too Late, Too Vague – Where Is the Detailed Transparent COVID-19 Plan for Scottish Prisons? A Disaster Waiting to Happen', *Scottish Prisoner Advocacy & Research Collective (SPARC)* (blog), 17 March 2020, <https://scottishprisoneradvocacy.com/2020/03/17/too-late-too-vague-where-is-the-detailed-transparent-covid-19-plan-for-scottish-prisons-a-disaster-waiting-to-happen/>.

## **Four Policy Responses to Reduce Remand Population by 400 People**

### **1. Homelessness or “No Fixed Abode” is Not Justification for Remand Sentence**

The status of homelessness or having “No Fixed Abode” must not be used as a deciding factor on whether to impose a custodial remand sentence. In such cases, conditions or a court order must be attached where the Department for Housing, Planning and Local Government or the Dublin Regional Homeless Executive must provide suitable accommodation so the person can be placed on bail prior to trial.

### **2. Retrospective Review of Remand Sentences Imposed by Courts**

With the postponement of normal court activity, additional capacity may be currently available within the judicial system to review cases where custodial remand was imposed. The judiciary are required to play a significant role in lessening the number of prisoners which the prisons are required by law to receive. Should cases of custodial remand be identified as a result of “No Fixed Abode”, then retrospective action is required to remedy this injustice.

Priority should also be focused on those awaiting jury trials, as no new jury trials will begin in the foreseeable future, in order to prevent lengthy remand sentences. If a person is deemed to pose no threat to public safety, then they must not be required to undergo custodial remand prior to a jury trial. An examination of pre-trial detainees in order to release as many as possible should prioritise those with health concerns and old age.<sup>17</sup> Pre-trial detention orders should not be extended, due solely to the postponement of jury trials, without exploring other alternatives to a remand sentence.

In the Netherlands, if pre-trial detention is deemed necessary, the judge can suspend pre-trial detention under specific conditions.<sup>18</sup> Justice is currently being deferred so there is a strong case for deferring the remand sentence.

### **3. District Courts in Dublin Need to Limit Use of Remand for Serious and Violent Crimes**

Cloverhill prison, as outlined in detail above, is a key area to decrease the remand population due to the high proportion in two- or three-person cells. With the increasing number of remand sentences in Cloverhill absorbing any reductions in other prisons, there is strong correlative evidence that Dublin District Courts are issuing a higher proportion of custodial remand sentences.

Custodial remand needs to be limited for people arraigned for serious and violent crimes who pose a clear danger to the public. Those arraigned for less serious, non-violent crimes should be released on bail. Judges need to be provided with the best possible information on programmes as alternatives to pre-trial detention.<sup>19</sup> Peter Dawson, Director of UK-based Penal Reform Trust, urges “not sending anyone to prison for all but the most serious alleged or proved offending, and not recalling people to prison in all but the most dangerous of circumstances.”<sup>20</sup>

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<sup>17</sup> ‘A Measure of Last Resort?’, Fair Trials, 26 May 2016, <https://www.fairtrials.org/publication/measure-last-resort>.

<sup>18</sup> Jan Crijns, Bas Leeuw, and Hilde Wermink, ‘Pre-Trial Detention in the Netherlands: Legal Principles versus Practical Reality’ (Leiden: Universiteit Leiden, March 2016).

<sup>19</sup> Justice Committee, ‘An Inquiry into the Use of Remand in Scotland’ (Scotland: The Scottish Parliament, June 2018).

<sup>20</sup> Penal Reform Trust, ‘Prison Reform Trust Comment: Early Release of Prisoners’, 25 March 2020, <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/828>.

#### 4. Judges to Fully Utilise Bail Conditions or Postponement of Remand Sentences

District Court judges need to avail of the full range of conditions<sup>21</sup> which they can impose on a person who receives bail. Individualised conditions should be explored which, in reality, result in the equivalent of house arrest as the defendant is not to leave their home or place of residence.<sup>22</sup> Signing on monthly, coupled with Garda checking on curfews, would provide a similarly effective alternative to remand for low-risk individuals. The proposed monthly signing on is in line with the conditions for temporary release outlined by the Department of Justice and Equality in light of the current public health crisis.<sup>23</sup>

For higher risk individuals or those facing more serious charges (e.g. for those released on bail pending delayed circuit court hearings), a mobile phone condition in conjunction with a curfew would strengthen the conditions of bail. In such a case, the individual would be required to have a fully charged mobile phone at all times and to answer a call from Garda Síochána when required. Similar to ongoing temporary release being used by the IPS, stringent bail conditions will lead to a person returning directly to prison if additional offences occur or conditionality of bail is not satisfied.

#### Conclusion

Reduction of the remand population is a crucial component of any overarching strategy to reduce prison numbers to a level where the spread of Covid-19 can be realistically delayed and mitigated. Since March 13<sup>th</sup> (when IPS published initial contingency measures), the total number in custody has been reduced by 257 prisoners yet the remand population has only decreased by six people in this time. The Department of Justice and Equality need to take concrete steps to stem the high flow of people, on custodial remand, entering and exiting Irish prisons, thereby reducing the risk of transmitting Covid-19 to the prison community or wider community.

The Jesuit Centre for Faith and Justice propose four recommendations to reduce the remand population: Homelessness or “No Fixed Abode” is Not Justification for Remand Sentence; Retrospective Review of Remand Sentences Imposed by Courts; District Courts in Dublin Need to Limit Use of Remand for Serious and Violent Crimes; and Judges to Fully Utilise Bail Conditions or Postponement of Remand Sentences. To reduce the population on custodial remand is to protect the health and well-being of the existing prison population under sentence and the general public.

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<sup>21</sup> Irish Penal Reform Trust, ‘IPRT Position Paper 11: Bail and Remand’.

<sup>22</sup> Susanna Marietti, ‘Alternatives to Prison in Europe: Italy’ (Rome: European Prison Observatory, 2015).

<sup>23</sup> The Department of Justice and Equality, ‘Information Regarding the Justice Sector COVID-19 Plans’, The Department of Justice and Equality (The Department of Justice and Equality), Ireland, accessed 26 March 2020, [http://www.justice.ie/en/JELR/Pages/Information\\_regarding\\_the\\_Justice\\_Sector\\_COVID-19\\_plans](http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans).