

Sentencing Guidelines and Information Committee

Note on Community Sanctions in Ireland with Particular Reference to the District Court

November 2024

Table of Contents

1. Introduction	3
2. Language and Terminology	3
3. Definitions	5
4. Community Sanctions in Ireland	9
5. Community Sanctions as Alternatives to Custodial Sentences	15
6. Community Sanctions in the Children Court	16
7. Community Sanctions – Domestic Violence and Abuse	18
8. Conclusion	20
Appendix 1: Statistics - Community Sanctions in the District Court	22
Appendix 2: Number of court orders imposed in the District Court & District Court Appeals for the year 2022 for Section 17 (1) of the Domestic Violence Act, 1996 & Section 33 (1) of the Domestic Violence Act 2018	25
Appendix 3: Number of court orders imposed in the District Court & District Court Appeals for the year 2023 for Section 17(1) of the Domestic Violence Act, 1996 & Section 33 (1) of the Domestic Violence Act 2018	26

1. Introduction

Judges have a wide range of sentencing options available to them in criminal matters, ranging from dismissal, through unsupervised and supervised community-based sanctions, to custodial sanctions and indeed ‘hybrid’ sanctions that combine custodial and community-based elements, including part-suspended sentences. Legislation providing for the structured management and delivery of community sanctions, and specifically for probation supervision of persons guilty of having committed criminal offences, has been in place in Ireland since the commencement of the Probation of Offenders Act, 1907. For many years, probation supervision was provided primarily, if not exclusively within that legal provision established in 1907. Over the decades that followed, evolving judicial practice led to the increased use of an additional form of supervised community sanction – *supervision during deferment of penalty* (see Section 4 below). This latter form of supervision has often been used by Courts as a ‘testing period,’ where the person concerned is supervised by the probation officer, who then reports back to the Court after a specified period of time, before a final decision on sentence or other disposition is made by the Judge. The supervised person’s progress or otherwise during their time on supervision while penalty has been deferred forms part of the factors considered in the judicial decision on disposition of the relevant matter. For many decades, these two forms of probation supervision – the more ‘formal’ Probation Order and less formal Supervision During Deferment of Penalty – were the two mainstays of probation supervision used by the Irish Courts in relevant cases. From the 1960s on, and especially over more recent decades, legislation providing for an increasing array of options for immediate Court-ordered supervision of persons by the Probation Service has been enacted, in addition to the development of supervision options to follow periods of time someone may spend on a custodial sentence. The various options have their respective characteristics and were put in place to address specific issues in certain ways, often incorporating distinct ways of applying sanctions for offending with rehabilitative opportunities, under the supervision of the Probation Service. These options will be considered further below. While the use of the various sanctions discussed in this paper are by no means confined to the District Court, this note sets out to discuss community sanctions and related issues only insofar as they *are* used by the District Court. The paper will also specifically consider the application of community-based sanctions to offences under Domestic Violence legislation

2. Language and Terminology

The issue of language and terminology in probation is not without its challenges. A variety of terms and terminology is used, often interchangeably, with a certain level of lack of clarity resulting at times. What started off simply as *probation* (and *parole*) over a century ago has evolved in many countries, including Ireland, to incorporate a number of different interventions and programmes. These range from probation orders as originally comprehended in the Probation of Offenders Act 1907, through supervision during deferment of penalty, to community service, to a number of iterations of what might be described as ‘hybrid’ or ‘combination orders’ and on to various forms of suspended sentences and post-custody supervision. Some commentators describe everything probation offers in its various

programmes as *probation work*, in the sense that all such programmes are aimed at providing proportionate penalties, reducing risk of reoffending and harm, making good the harm caused by crime, and the reintegration of those who have offended in the community. Other terms such as *community sanctions* or *community-based sanctions* have gained in popular usage, as a way to encapsulate under one heading the variety of programmes operated by probation services in the modern world.

The term ‘probation’ itself has evolved to mean different things, depending on where and how it is used. Probation can mean: the probation bond/order made under the 1907 Act, or generic Probation Service practice – i.e. ‘what probation officers do;’ or it can refer to the organisational system in question.¹ In many respects, the term: ‘Probation is symbolically loaded. It is a brand name that has international recognition.’² Similarly, the word *community* can give rise to challenges. In some countries for example, the term ‘community’ may be viewed with caution, sometimes because of a history of inter-community conflict in those jurisdictions. In others, ‘community’ may have a very specific meaning, such as designating specific local or regional governmental authorities. In others, including Ireland, ‘community’ can be a somewhat ‘loaded’ – albeit generally positive – term, usually implying positive local connections and solidarity when it is used or incorporated in a descriptor. As a result though, a lack of clarity can result, such as when we use terminology such as *community sanction* (a general descriptor) and *community service* (a very specific and bounded legal sanction) in close proximity; one result may be to conflate these terms in certain usage.

In addition, community-based sanctions are sometimes described as ‘alternatives to custody’ or ‘non-custodial sanctions.’ Some commentators argue, with a certain amount of justification, that describing community sanctions such as probation, as non-custodial measures or alternatives to custody, places sanctions such as probation in an inferior and somewhat devalued set of sanctions when compared with what they are depicted as being an alternative to – i.e. custody, which is then implicitly seen to be the default penalty. Nevertheless, it is probably fair to acknowledge that some community sanctions are clearly alternatives to custody: for example fully suspended sentences with conditions of supervision, or Community Service Orders. In both these instances, the sentencing Court decides on an appropriate custodial sentence and then substitutes an alternative, community-based sanction. In both examples, the custodial sanction to be implemented in the event of failure to comply with the alternative in the community has been specified at the point of the sentencing decision. Community-based sanctions may also be either *supervised* (e.g. probation, community service) or *unsupervised* (e.g. fine, suspended sentence without supervision); and *immediate* (e.g. Probation Order or Community Service Order) or *delayed*³ (e.g. Part-Suspended Sentence, Post-Release Supervision Order – see below).

¹ Geiran, V. and McCarthy, S. (2022) *Probation and Parole in Ireland: Law and Practice*, Dublin: Clarus Press, pp.81-86.

² Burnett, R. (2007), ‘Probation,’ cited in Canton, R. and Hancock, D. *Dictionary of Probation and Offender Management*, Cullompton, UK: Willan.

³ In this context, ‘delayed’ means that the community-based element of the sentence does not come into effect until the first (custodial) element in such cases is completed.

According to its current strategic plan,⁴ the role and the work of the Probation Service is concerned with:

- Ensuring that court ordered supervision is implemented in a way that protects the public, holds people to account, and supports rehabilitation,
- Delivering effective interventions with individuals subject to community sanctions, to reduce the risks associated with offending and support their rehabilitation and reintegration, and
- Delivering opportunities for people to make good on the harm caused by crime through reparation work and restorative justice.

In considering the issues and challenges of terminology, as well as the underlying principles in relation to the delivery and management of community sanctions, it is useful to reflect on the relevant definitions, terminology and standards generated by key international bodies.

3. Definitions

There are two primary sources of international definitions and standards regarding community-based sanctions – the relevant United Nations rules and Council of Europe Recommendations. The United Nations (UN) Tokyo Rules,⁵ addressing the scope of ‘non-custodial measures,’ states that:

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

Regarding sentencing dispositions at the trial and sentencing stage, the Tokyo Rules suggest that:

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

⁴ *Probation Service Statement of Strategy 2024-2026*, available at: [https://www.probation.ie/EN/PB/0/80A67DA2934C4AE180258B6B00485596/\\$File/PS%20Statement%20of%20Strategy%2024-26.pdf](https://www.probation.ie/EN/PB/0/80A67DA2934C4AE180258B6B00485596/$File/PS%20Statement%20of%20Strategy%2024-26.pdf).

⁵ United Nations Standard Minimum Rules for Non-custodial Measures (*The Tokyo Rules*) Adopted by General Assembly resolution 45/110 of 14 December 1990.

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

The Tokyo Rules also suggest that community-based sanctions be available at both the Pre-Trial (diversion) and Post-Sentencing (including supervised early release and parole) stages.

There are two primary sources for the Council of Europe standards on community-based sanctions⁶: the European Probation Rules and the European Rules on Community Sanctions and Measures.⁷ The latter defines community sanctions and measures as:

... sanctions and measures which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

The European Rules on Community Sanctions and measures differentiates between:

The expression **“deciding authorities”** means a judicial, administrative or other authority empowered by law to impose or revoke a community sanction or measure or to modify its conditions and obligations.

The expression **“implementing authorities”** means the body or bodies empowered to decide on, and with responsibility for, the practical implementation of a community sanction or measure. In many countries, the implementing authority is the probation service.

⁶ Both these Council of Europe standards documents, as well as the Recommendation on Restorative Justice, referenced further below, are to be found in the Council of Europe Compendium of Conventions, Recommendations and Resolutions Relating to Prisons and Community Sanctions and Measures, at: <https://rm.coe.int/compendium-e-2021/1680a4bdd9>.

⁷ Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures, (Adopted by the Committee of Ministers on 22 March 2017, at the 1282nd meeting of the Ministers' Deputies).

The European Probation Rules⁸ define probation and community service as follows:

Probation: relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

These European Rules go on to clarify that:

55. [probation] Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders. It shall be combined, where relevant, with other interventions which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment.

A differentiation is made in relation to community service, which is defined as follows:

47. Community service is a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders.

An additional approach, in terms of responding to offending behaviour, that has been gaining in popularity in many jurisdictions over recent years is Restorative Justice (RJ). The Council of Europe has developed standards⁹ for the use of RJ as part of the criminal trial and sanctions system, defining RJ in such contexts as:

3. “Restorative justice” refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the “facilitator”).

4. Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals

⁸ Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member States on the Council of Europe Probation Rules, (Adopted by the Committee of Ministers on 20 January 2010, at the 1075th meeting of the Ministers’ Deputies).

⁹ Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, (Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers’ Deputies).

and members or representatives of affected communities. Hereinafter, the participants in restorative justice are referred to, for the purpose of this Recommendation, as “the parties”.

5. Depending on the country in which it is being used and the manner in which it is administered, restorative justice may be referred to as victim-offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, *inter alia*.

6. Restorative justice may be used at any stage of the criminal justice process. For example, it may be associated with diversion from arrest, charge or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed. Referrals to restorative justice may be made by criminal justice agencies and judicial authorities, or may be requested by the parties themselves.

7. The need for judicial supervision is greater if restorative justice will have an impact on judicial decisions, as when the discontinuation of prosecution depends on an acceptable settlement, or when the agreement is put to court as a recommended order or sentence.

For the sake of clarity, it is important to state that in the context of the present discussion and this paper, the focus is primarily, if not exclusively, on *supervised* community sanctions rather than unsupervised sanctions; and the relevant authority implementing supervision in this regard is the *Probation Service*. It is also important to note that while supervision of an individual by a probation officer can in certain situations be initiated by a body other than a Court (e.g. by an executive decision to release someone from a custodial sentence on Temporary Release, or a Parole Board decision to release a person on parole), the focus in this paper is on *Court-ordered supervision*, whether that supervision is *immediate* – as in the case of a Probation Order or a Community Service Order, for example – or whether the supervision in the community will be activated *sometime after the Court decision itself*, which provides for that supervision (e.g. part-suspended sentence or Post-Release Supervision Order), is made.¹⁰ In addition, the focus here is on orders for supervision of persons made in the District Court.

¹⁰ See following section of this paper for more on this.

4. Community Sanctions in Ireland

Government policy has established that custodial sentences should be the sanction of last resort.¹¹ The Law Reform Commission,¹² in its report on suspended sentences, has set out a hierarchy of sanctions for criminal offending in Ireland, as follows.

1. Immediate imprisonment.
2. Part-suspended custodial sentence.
3. Fully-suspended custodial sentence.
4. The deferred sentence.
5. Community Service Order.
6. Fine.
7. Conditional discharge.¹³
8. Dismissal.

The Probation Service can have a role in assessing and supervising persons subject to any of the above, with the exception in general of 8 above – dismissal.¹⁴ Some of the penalties above may incorporate probation supervision as a condition of the court order, however others may not incorporate such supervision (e.g. fully or part-suspended custodial sentences, or conditional discharges under the 1907 Probation Act, without supervision).

Supervised community-based sanctions can be standalone orders (e.g. Probation Order, CSO), part of a broader sentence (e.g. Part-Suspended Sentence) or as an additional component to a sentence (e.g. Post-Release Supervision Order), as well as possibly being implemented completely separately to the original sentencing decision (e.g. Temporary Release or Parole). Legislative and other provisions allow for the use of a range of supervised community sanctions and measures or interventions in Ireland. It is worth noting that the distinction between *community-based* and *custodial* sanctions may not be as clearcut as we might wish. To some extent, such definitions may differ on the basis of the perspectives of different commentators. For example, while a fully suspended custodial sentence with supervision conditions might be viewed from a probation perspective as a clear and immediate community-based sanction, in terms of its effect and implementation, from a legal perspective it is a custodial sentence, a view confirmed by the Irish Courts, among others.¹⁵ That said, the term of imprisonment in such cases will not be served as long as there is compliance with the terms of the supervision of the community-based alternative sanction. In reality, while supervised community-based sanctions can *all* be substituted by custodial alternatives in the event of non-compliance with supervision and / or by reoffending, some community sanctions such as Probation Orders and Supervision During Deferment of Penalty, could probably be described as sanctions where the reality of a prison sentence does not come into existence at

¹¹ Including in the *Strategic Review of Penal Policy Report* (2014) available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/137203/a2f65a3d-9402-490e-98d7-3d154661acae.pdf#page=1>.

¹² Law Reform Commission [2020] *Report: Suspended Sentences* [LRC 123], Dublin: LRC.

¹³ This includes the provision for the imposition of a Probation Bond/Order, supervised by a probation officer.

¹⁴ It is possible for a person to have court-ordered involvement or supervision – e.g. supervision during deferment – *prior* to that matter being dismissed by the presiding judge.

¹⁵ Law Reform Commission [2020] *Report: Suspended Sentences* [LRC 123], Dublin: LRC, p.36.

the time of the decision to impose Court-ordered supervision of the individual in question. For the purposes of the present paper, the definition of community-based sanctions will include those that are legally defined as custodial in nature (e.g. suspended sentence) as well as those that are more identifiable as immediately community-based (e.g. Probation Bond).

The supervised community sanctions and measures – *immediate* and *delayed*¹⁶ – that may be ordered by the District Court (as well as other Courts) include the following:

No.	Name	Basis	Parameters	Notes
1	Family Conference	Children Act, 2001	Court requests Probation Service to convene a Family Conference to address offending-related issues and bring forward a plan.	If successful, possible that no further penalty imposed.
2	Supervision During Deferment of Penalty (Often referred to, in daily practice, as <i>adjourned supervision</i>)	Common law / precedent	Court places defendant under probation supervision before final decision made.	Depending on outcome of the supervision on deferment, court may dismiss, adjourn further or make another order – e.g. probation order, custodial.
3	Probation Order / Bond	Probation of Offenders Act, 1907	Offender is placed under probation supervision for up to three years (District Court – can be longer in Circuit Court)	If person is compliant with supervision, no further action once term completed.
4	Recognizance under the Misuse of Drugs Acts	Misuse of Drugs Acts, 1977 (S.28)	Offender may be placed under probation supervision as condition of the recognizance	Probation supervision similar to that at 3 above, but with specific focus on drug-related issues.
5	Community sanctions to be used with children	Children Act, 2001	Includes orders for: probation, CSO, day centre, training or activities,	District Court sitting as Children Court and dealing with criminal matters

¹⁶ Those that follow a custodial element of a sentence.

			intensive supervision, residential supervision, care and supervision, family support, restriction on movement, and dual orders.	involving children.
6	Deferred Sentence	Criminal Justice Act, 2006, S.100.	In certain cases, a Court may impose a fine and defer a prison sentence for up to six months, pending payment of the fine and compliance with any other conditions, which include being of good behaviour and keeping the peace and may also include supervision in the community. ¹⁷	Anecdotal evidence would indicate that while this provision has been used in a small number of cases since enactment, the inclusion of probation supervision in such deferred sentence orders is virtually unknown in practice now.
7	Community Service Order (CSO)	Community Service Act, 1983, as amended.	A direct alternative to a specified prison sentence, for those 16 years and over. Person must complete 40-240 hours (30-100 hours for non-payment of a fine on summary conviction). unpaid work in the community.	A CSO is a recorded conviction.
8	Fully Suspended Sentence (with supervision by PO)	Criminal Justice Act, 2006	A specific custodial sentence is suspended on condition of	Failure to comply with supervision and / or reoffending, can result in the

¹⁷ Community-based supervision by the Probation Service is not specifically referenced in the legislation but could form part of the conditions of such an order.

			cooperation with probation supervision.	custodial sentence being activated.
9	Part-Suspended Sentence (with supervision by PO)	Criminal Justice Act, 2006	A portion of a specific custodial sentence is suspended (at point of sentencing) on condition of cooperation with probation supervision.	Failure to comply with supervision and / or reoffending, can result in the custodial sentence being activated.
10	Detention-Supervision Orders	Children Act, 2001	Available for those between 16-18 years of age.	The first half of the order is spent in detention and the second under probation supervision in the community.

Item 1 (Family Conference) above is used in only a handful of cases per annum.¹⁸ Item 10 (Detention-Supervision Orders) is used in very small numbers¹⁹ but is probably only potentially applicable in similarly small numbers. Item 4 (Recognizance under the Misuse of Drugs Act) and item 6 (Deferred Sentence – with probation supervision) appear to be rarely, if ever used.²⁰ The other items above, involving Court-ordered supervision of persons by the Probation Service, are used extensively by the courts on an ongoing basis. Nevertheless, in the past the trend over series of years in the use of some disposals such as Community Service has varied considerably from time to time, for various reasons. Such reasons, according to some members of the Judiciary, can include *inter alia* delays in availability of Community Service Assessments and lack of available work to do in the community in certain areas or at particular times.²¹ Delays in the availability of pre-sanction reports in general, and particularly in those that are often referred to as ‘Probation Reports,’²² can also be an issue.

At the time of writing the present report, anecdotal evidence indicated that it can take up to eighteen weeks for preparation of pre-sanction assessments by probation officers, in some

¹⁸ One in 2022 – source: Probation Service Annual Report, 2022.

¹⁹ Nine young persons in 2022.

²⁰ None specifically identified in the Probation Service Annual Report, 2022.

²¹ See: Maguire, N. and Carr, N. (2024) *Community or Custody: A Review of Evidence and Sentencers’ Perspectives on Community Service Orders and Short-Term Prison Sentences*, Department of Justice, available at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/311051/2f038ca5-68f5-4b08-a770-0a856aa1c482.pdf#page=null>.

²² Assessments for Community Service are quite focused and relatively short (usually taking around four weeks to complete), compared to ‘Probation Reports,’ which can often include consideration of complex issues such as addiction or mental health, as well as assessment of risk of reoffending, all of which can take around eight weeks at best. Where there are Probation staff shortages, Probation Reports may (currently take much longer than usual to complete). Where probation officers and appropriate interviewing facilities are available at District Court sittings, the probation officer may complete ‘same-day assessments’ for Community Service. 273 same-day assessments were carried out in 2022, while the figure for 2023 was 391.

parts of the country, including in the Criminal Courts of Justice in Dublin City Centre. In cases where further issues arise in the course of an assessment, additional adjournments may be sought, adding to the delay in completing the assessment report. Such delays are likely to have a bearing on the use of such sanctions by Courts where time taken for assessment are extended due to Probation Service resourcing issues and managing demands for services. Another factor impacting the number of supervised community-based sanctions imposed by the Courts is what is sometimes referred to as the *conversion rate* of assessments to supervision orders. For example, in 2022 1,670 Community Service Assessment Reports were completed by probation officers and 1,288 Community Services Orders were made. This represents a conversion rate of 77%. The reasons why the 23% of assessments completed did not convert into Community Service Orders could incorporate a range of reasons. These might include failure by the individual concerned to cooperate with the assessment, previous failures to comply with supervision, or because they were found to be unavailable or unsuitable due to health, mental health or addiction issues, or for some other reason, such as other matters before the Courts overtook the assessment for community service.²³

Restorative Justice (RJ) responses to offending (defined in Section 3 above) have gained in popularity and usage in recent times, including in the District Court. The dedicated Restorative Justice and Victim Services Unit of the Probation Service “...provides leadership and support for the consistent and integrated provision a range of restorative justice models, including family / restorative conference, offender reparation panel, victim offender mediation (VOM) and bespoke restorative interventions.”²⁴ The Probation Service has also established a Community Based Organisation Restorative Justice network,²³ comprising the following community and voluntary organisations, which are funded by the Department of Justice through the Probation Service:

- Restorative Justice Services (RJS) – operating in Dublin, Kildare, Meath and Wicklow,
- Restorative Justice in the Community (RJC) – in Laois, Offaly and Tipperary,
- Cornmarket Project – in Wexford and
- Le Chéile – (for 16-24 year olds) – in Clare, Limerick and Cork.

Relevant statistics for the level of referrals from the Courts to these four programmes is provided in Appendix 1 of this paper. It should be noted that the statistics related to the four organisations do not form part of the Probation Service annual statistics as presented in the Service’s annual report. In addition, while probation officers do use RJ interventions and approaches as part of their work in appropriate cases, these interventions are not made explicit in their annual report, but rather are incorporated or subsumed under the statistical headings regarding Court requests for assessments and orders for supervision in the community. Furthermore, it is possible that other community based organisations are called

²³ It should be noted that neither previous failure to cooperate with supervision nor current health, mental health or addiction issues *per se* rule someone out of suitability for community service; if the individual concerned demonstrates a commitment to comply now and that issues such as addiction are stabilised and being managed appropriately and would not be likely to militate against their ability to undertake supervised work in the community.

²⁴ Probation Service (2024) *Annual Report, 2023*, p.25:
[https://probation.ie/EN/PB/0/3D48C2CC30BDD9F580258BC000325086/\\$File/Probation%20Service%20Annual%20Report%202024%20English%20Final.pdf](https://probation.ie/EN/PB/0/3D48C2CC30BDD9F580258BC000325086/$File/Probation%20Service%20Annual%20Report%202024%20English%20Final.pdf) .

upon by the Courts and the Probation Service from time to time, in terms of provision of restorative justice interventions in other appropriate cases, including as part of community based sanctions or diversionary measures.

The annual usage statistics in respect of post-custody supervision is also numerically relatively low annually.²⁵ These are also not the concern or focus of the present paper but are included here by way of presenting a complete picture of community-based sanctions – immediate and delayed²⁶ – supervised by the Probation Service.

No.	Name	Basis	Parameters	Notes
10	Supervised Temporary Release (from prison)	Criminal Justice Act, 1960	May be supervised in specific cases by probation officer.	Failure to comply with supervision will result in temporary release being withdrawn.
11	Post-Release Supervision Order	Sex Offenders Act, 2001	The sentencing judge may include a period of post-release supervision when imposing a custodial sentence under this Act.	Applicable only to those convicted of an offence scheduled under the 2001 Act.
12	Parole Order	Parole Act, 2019	Parole always has a condition of probation supervision attached.	Currently only available to those serving life sentences.

It should be noted that while some supervised community-based sanctions, such as Probation Orders and Community Service Orders, are definitive and final decisions of the Court in the matters at hand, others such as Family Conferences (under the Children Act 2001), Supervision during Deferment of Penalty, or referrals by a Court for a Restorative Justice intervention, may or may not represent a ‘final’ decision in a criminal matter. In some such cases, a Court may proceed to impose a different penalty, including the possibility of imposing for example a Probation Order, or a dismissal of the matters on the merits.

²⁵ In 2022: 176 persons granted supervised Temporary Release from prison as part of the Community Return programme (item#10 above); 535 persons convicted of a sexual offence supervised in the community (#11 above); and 122 persons serving a life sentence, supervised in the community (#12 above).

²⁶ Those that follow a custodial element of a sentence.

5. Community Sanctions as Alternatives to Custodial Sentences

Concern is frequently expressed by many criminal justice researchers and policy commentators at the phenomenon of *net-widening*, which has been defined²⁷ as:

Net-widening starts when well-meaning criminal justice reforms are enacted to divert people who are prison-bound into alternatives to incarceration (like probation), or release people from prison early into an alternative (like parole). If, instead of diverting truly prison-bound individuals, such “alternatives” add restrictions to liberty, and later, incarceration for technical violations, for people *who would not otherwise be incarcerated*, that’s net-widening.

In this context and in order to avoid net-widening, it is considered that supervised community-based sanctions such as probation supervision and Community Service, should be targeted at those persons who might otherwise been at risk of receiving a custodial sentence, rather than those who might have been dealt with by a disposal. By definition, those at risk of receiving a relatively short prison sentence therefore comprise a prime target group for community-based sanctions aimed at rehabilitation and as alternatives to custody. Short prison sentences are also considered to be particularly disruptive to those receiving them. Those serving short sentences may have limited or no access to appropriate rehabilitative services while in custody²⁸ and in addition, those service short prison sentences tend to have higher rates of reoffending compared to those receiving longer sentences and especially compared to those who receive supervised community sanctions.²⁹

There are around 7,000 committals of persons (aged 18 years and over) to prison in Ireland each year. The figure for 2022 was 7,043 committals to prison, representing 5,801 persons. In terms of the number of those committals that might have potentially substituted by an immediate community-based sanction, it is reasonable to focus on those committals for custodial sentences of two years and under, and particularly on sentences of one year and under. In 2022, the last full year for which relevant statistics are available at the time of writing, these statistics are as follows:

²⁷ Schiraldi, V. (2023) *Mass Supervision: Probation, Parole and the Illusion of Safety and Freedom*, New York: The New Press, p.74.

²⁸ See: Irish Penal Reform Trust (2010) *Position Paper 8, Community Sanctions*, available at: <https://www.iprt.ie/alternatives-to-custody/iprt-position-paper-8-community-sanctions/> and Maguire, N. and Carr, N. (2024) *Community or Custody: A Review of Evidence and Sentencers’ Perspectives on Community Service Orders and Short-Term Prison Sentences*, Department of Justice, at: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/311051/2f038ca5-68f5-4b08-a770-0a856aa1c482.pdf#page=null> .

²⁹ See reports by the Central Statistics Office (CSO) at: <https://www.cso.ie/en/releasesandpublications/ep/p-pros/prisonre-offendingstatistics2021/prisonre-offendingfrequentlyaskedquestions/> .

Custodial sentence length	Number of committals (on sentence up to 2 years)	Sub-total sentences of up to 12 months
Under three months	971	3,095
Three months and under six months	1,288	
Six months and under twelve months	836	
One to two years	393	
Total	3,488	

These are the cohort comprising those receiving custodial sentences and who might have been more likely to be considered for immediate community-based sanctions as an alternative to custody. A breakdown of how many of these were dealt with in the District Court is not given in the Prison Service Annual Report. It is clear though that almost half (49.5%) of all committals to imprisonment in 2022 were for sentences of two years or less. This is not to imply that there were not good reasons for the imposition of custodial sentences in these matters. In addition, an unspecified proportion of those receiving those sentences may have already been in custody and indeed serving custodial sentences in relation to other matters. A further potential sub-group might have included some who had a part-suspended sentence imposed and who may come under Probation supervision in the community having served the custodial portion of their sentence. Nevertheless, it is reasonable to assume that a significant percentage of those represented in the above numbers were sentenced by the District Court or indeed in the Circuit Court, on appeal from a District Court decision, to custodial sentences *simpliciter*. It is also reasonable to assume that particularly within the group sentenced to twelve months or less (3,095 in 2022), a proportion might have been considered and/or have been suitable for a supervised community-based sanction, notwithstanding that in some of those cases a community-based sanction may have been considered and a decision to impose a custodial sentence made, for whatever reason. What can be said, with any degree of certainty, is that it is from the cohort who did in fact receive short custodial sentences that any additional decisions to impose immediate supervised community sanctions, and particularly at District Court level, might or should come.

6. Community Sanctions in the Children Court

The Children Act 2001 contains a definition of community sanctions as they apply to children in Ireland:

115.—In this Part, “community sanction” means any of the orders referred to in *paragraphs (a) to (j)* which may be made by a court on being satisfied that a child is guilty of an offence—

(a) in the case of a child of 16 or 17 years of age, a community service order under section 3 of the Act of 1983,

- (b) an order under [section 118](#) (a day centre order),
- (c) an order under section 2 of the Act of 1907 (a probation order),
- (d) an order under [section 124](#) (a probation (training or activities) order),
- (e) an order under [section 125](#) (a probation (intensive supervision) order),
- (f) an order under [section 126](#) (a probation (residential supervision) order),
- (g) an order under [section 129](#) (a suitable person (care and supervision) order),
- (h) an order under [section 131](#) (a mentor (family support) order),
- (i) an order under [section 133](#) (a restriction on movement order), or
- (j) an order under [section 137](#) (a dual order).

Under Section 99 of the Children Act, a Court sitting as the Children Court and considering the imposition of a community sanction or a sentence of detention on a young person must request a pre-sanction report from a probation:

99.—(1) Subject to *subsections (2) and (3)*, where a court is satisfied of the guilt of a child, it—

- (a) may in any case, and
- (b) shall, where it is of opinion that the appropriate decision would be to impose a community sanction, detention (whether or not deferred under [section 144](#)) or detention and supervision, adjourn the proceedings, remand the child and request a probation and welfare officer to prepare a report in writing (a “probation officer's report”) which—
 - (i) would assist the court in determining a suitable community sanction (if any) or another way of dealing with the child, and
 - (ii) would contain information on such matters as may be prescribed, including any information specifically requested by the court.

There is no such statutory requirement on a Court making comparable decisions in relation to adults (18 years of age and older) being sentenced.

In 2023, the relevant statistical reports show that there was a total of 2,426 offences by young persons dealt with in the District (Children) Court, with 948 of these (i.e. 39%) being dealt with by way of a community sanction. It is not clear from the Courts Service statistics whether the community based sanctions were supervised or not but it is reasonable to presume that the figure represents a mixture of supervised and unsupervised sanctions. A total of 619 young persons were placed by the Courts on immediate supervision by the Probation Service in 2023. In circumstances where 948 community based sanctions in total were imposed in the Children Court, and where some individual young persons may have been subject to more than one sanction, 619 individual young persons would appear to represent a significant percentage who received supervised community-based sanctions.

7. Community Sanctions – Domestic Violence and Abuse

Domestic, Sexual and Gender-Based Violence is a significant concern in society and a significant area of focus for government policy, legislation and services, as well as for the Sentencing Guidelines and Information Committee. In February 2024 *Cuan*, the statutory body dedicated to tackling and reducing domestic, sexual and gender-based violence (DSGBV), was established.³⁰ In terms of counting and ‘tracking’ the response by various criminal justice bodies to DSGBV there has long been a concern in relation to how this is done and whether there are appropriate levels of statistical transparency. Since 2008, the Irish criminal justice agencies use sixteen offence categories of the Irish Crime Classification System (ICCS) to record and present statistics on the offending by those individuals in their care or under their control. The adoption of the ICCS has ensured a level of consistency in recording, counting, analysing and presenting data across the criminal justice system, whereby ‘like’ can be compared with ‘like’ in the sense that the different organisations use the same counting categories. In a context where there is considerable attention and focus on a specific area of offending such as Domestic Violence and Abuse (DVA), analysis of relevant statistics and tracking the application of specific penalties for such offending requires more finely-tuned focus.

A desktop research exercise was carried out recently in the Courts Service on behalf of the Sentencing Guidelines and Information Committee, addressing how matters associated with convictions under two pieces of legislation: Section 17 (1) of the Domestic Violence Act, 1996 and Section 33 (1) of the Domestic Violence Act, 2018 were dealt with in the District Court and District Court Appeals. Detailed reports on these are at Appendix 2 and Appendix 3 of the present paper and summarised as follows:

³⁰ Under the Domestic, Sexual and Gender-Based Violence Agency Act, 2023.

District Court

Year	Total DVA Cases ³¹	Immediate Custody ³²	Immediate Supervised Community Sanction ³³	Other Decisions
2022	3,742	263	91	3,388
2023	4,694	280	137	4,277

Regarding the number of DVA matters included in the statistics above and in more detail in Appendices 2 and 3, a relatively small proportion are finalised by way of either immediate custodial or supervised community sanctions combined (9.5% in 2022 and 9% in 2023). In fact, a wide range of judicial decisions are shown in such cases in Appendices 2 and 3, with a notably high proportion recorded as resulting in: ‘dismissal,’ ‘strike-out,’ ‘withdrawn,’ or ‘taken into consideration,’ as well as other disposals such as fines and suspended sentences recorded. Further analysis and research would be required to explore the circumstances of such outcomes.

The issue of delays in preparation and presentation of pre-sanction assessments for the District Court has been considered in Section 4 (pp.10-11) above. In a context where, because of Probation Service resource issues in some parts of the country, it can take up to eighteen weeks (and in some instances even longer) to complete a pre-sanction report, this may have an additional bearing in DVA matters that may be considered particularly sensitive and requiring to be progressed as promptly as possible. In addition, where a probation officer is completing a pre-sanction assessment in a DVA-related matter, they will generally apply the relevant risk assessment instrument used by the Probation Service – the Spousal Assault Risk Assessment (SARA)³⁴ as standard procedure – in compiling an individual’s risk of reoffending and of causing further harm. Application of the SARA risk assessment, where required, may in certain cases add to the length of time to complete the pre-sanction report. Delays in completion of pre-sanction assessments, where they occur, may contribute to the attrition rate in referral of such cases to the Probation Service.

A further issue arises in relation to some offences, which may be committed in a DVA context but where prosecution may not be undertaken under domestic violence legislation or necessarily have a DVA ‘tag’ attached to them where they are recorded by bodies such as the Probation Service or Irish Prison Service. For example, such perpetrators may be charged with assault, Public Order Act or criminal damage violations and not show up in official statistics as being DVA-related *per se*. This would have the effect of under-counting the number and range of cases in which domestic violence and abuse were at the centre of incidents of offending.

³¹ Section 17 (1) of the Domestic Violence Act, 1996 and Section 33 (1) of the Domestic Violence Act, 2018 .

³² Including Part-Suspended Sentences but excluding suspended custodial sentences.

³³ Including Probation Orders and Community Service Orders, but excluding orders such as Suspended Sentences and ‘Dismiss Probation Act,’ for example, which may have incorporated some probation supervision in some cases.

³⁴ The Spousal Assault Risk Assessment (SARA) is a structured guide for completing risk evaluations regarding the risk the individual poses to their spouse, child / children, other family member or any other individual involved, in terms of likelihood, imminence and severity.

For that reason, it may be worth reviewing and exploring the current state of play regarding the management of matters of DVA in the District Court and District Court Appeals, not confining that exploration to matters prosecuted under specific domestic violence and abuse legislation so as to progress implementation of an appropriate level of recording, tracking and analysis of such cases.

8. Conclusion

There is widespread acceptance that social good would be generally better served by less – or more parsimonious – use of imprisonment. This is for a number of reasons, including the detrimental effects of imprisonment on individuals, families and society; imprisonment itself being a risk factor for future reoffending; the particularly higher rates of reoffending by those sentenced to short prison sentences; and the financial costs of imprisonment. The fact that sentencing decisions can be complex and influenced by a range of factors has been illustrated by a number of elements of the present paper. Statistical recording, tracking and analysis is also an important issue in itself. It should be noted that the Probation Service and the Courts Service statistics do not always count the same things (e.g. ‘cases’ v ‘persons’). There is also a need for greater clarity in terms of terminology. For example, what the Courts Service records as ‘Bonds’ might include Peace Bonds as well as Probation Bonds. Furthermore, in counting Probation Bonds, that might include unsupervised as well as supervised Probation Bonds, all of which does not help in achieving maximum clarity and consistency in statistics, data and any analysis arising. As shown in the statistics in this paper, it is clear that community-based sanctions are used to a significant extent by the District Court in Ireland, taking into account the percentage of matters dealt with by the District Court and where such sanctions might be a feasible option.

There were 8,616 referrals from the Criminal Courts to the Probation Service in 2022, representing 7,508 distinct persons. The District Court accounted for 69% of all referrals to the Probation Service in 2022. A total of 7,425 Court orders for probation supervision of one sort or another were made by the Courts, with the majority of such orders made by the District Court.³⁵ Outside cases involving mandatory sentences and convictions for more serious offences, especially those involving violence and that are more likely to attract custodial penalties, there is well-established practice of utilising sanctions that provide opportunities for rehabilitation and reintegration of the person convicted where possible. The extent to which community based sanctions and specifically those involving supervision by a probation officer, are used can be influenced by a range of factors, aside from the gravity and impact of the offence and the circumstances of the offence and of the convicted person. Nevertheless, there is clearly scope for *some* expansion in the use of supervised community-based sanctions, as alternatives to custodial sentences and without the risk of inappropriate *net-widening*.

³⁵ Specific breakdowns regarding supervision orders, by Court jurisdiction, is not provided in the Probation Service Annual Reports. The 2022 Annual Report for the Probation Service does record that 69% of all referrals (including both for assessment *and* for supervision) by Courts to the Service came from the District Court. That percentage rose to 72% in 2023,

Prison overcrowding might be one factor leading to increased focus on what community-based alternatives may have to offer. Resourcing issues in the Probation Service –nationally and especially at local levels – can have an impact on the availability of programmes and the capacity to complete pre-sanction assessments in an acceptable timeframe, as well as to provide supervision of individuals in the community, for example. This may have a bearing on ‘attrition rates’ among the group of individuals who might be considered for a supervised community sanction. In practical terms, immediate court-ordered supervised community-based sanctions such as probation orders and community service, are most applicable to those guilty of offending at the lower end of the offending ‘scale.’ That said, a small but significant proportion of those receiving prison sentences are afforded the opportunity of Probation-assisted reintegration at the latter part of their custodial sentences.

The judiciary have considerable flexibility in relation to sentencing, within certain parameters. In that respect, it is critical that the available range of community based sanctions have the trust and confidence of the judiciary, in terms of how the sanctions are managed and administered and provided that the Probation Service is resourced to deliver them consistently across the country. While observations and comments in this paper are supported by the available statistics where possible, there is a need for further data analysis and research on these issues. Regarding offences committed in a context of domestic violence and abuse, an increased and concerted effort is required to ensure, from the perspective of sentencing and sentence management, that offending attracting such a level of societal concern and the focus of Government policy is appropriately visible across the data systems of relevant bodies, as a priority.

Appendix 1: Statistics - Community Sanctions in the District Court

A. Courts Services Reports

2023 Courts Service Annual Report

According to the Courts service annual Report 2023 the ‘community sanctions’ used in the District Court for summary offences were

1. Probation (5,427)
2. Community Service (570)
3. Bond (possibly peace bond) (508)
4. Suspended sentence (3,359) (*It is unclear how many of the suspended sentences were suspended conditional on co-operation with the probation service*).

Total of Summary offences resulting in a conviction (141,380 this includes 96,106 Road Traffic offences of a summary nature)

In relation to indictable offences dealt with summarily for the same year

1. Probation (5,651)
2. Community Service (626)
3. Bond (359)
4. Suspended Sentence (3,645)

Total of indictable offences dealt with summarily resulting in a conviction 40,119.

Juvenile Crime

In 2023 the ‘community sanctions’ used in the District Court for juvenile criminal offences were :-

1. Probation (809)
2. Community Service (63)
3. Bond (possibly peace bond) (39)
4. Suspended sentence (37)

The total number of offences for juvenile crime in the District Court resulting in a conviction was 2,427.

2022 Courts Service Annual Report

Summary Matters

1. Probation (5,416)
2. Community Service (621)
3. Bond (576)
4. Suspended sentence (3,291)

The total number of Summary Convictions in 2022 was 142,388 (includes 96,289 Road traffic offences)

Indictable offences dealt with summarily in 2022

1. Probation (4,878)
2. Community service (588)
3. Bond (396)
4. Suspended Sentence (3,294).

Total Convictions for indicatable offence dealt with summarily in 2022 was 36,883.

Juvenile Crime

In 2022 the ‘community sanctions’ used in the District Court for juvenile criminal offences were

1. Probation (893)
2. Community Service (63)
3. Bond (possibly peace bond) (44)
4. Suspended sentence (45)

The total number of offences for juvenile crime in the District Court resulting in a conviction was 2,723.

B. Probation Service Report

According to the Probation Service Annual Report 2022 there were 5,947 referrals to the Probation Service from the District Court (out of a total of 8,616).

It is of significance that in the annual report (statistics section / offence breakdown) there is no specific reference to Probation referral for domestic violence related offences.

In 2021 according to the annual report of that year there were 5,780 referrals from the District Court out of a total of 8,201.

C. Restorative Justice

Up to December 2023, the Probation Service funded/part funded four Community Based Organisations providing restorative justice services :-

- Restorative Justice Service (Dublin, Wicklow, Kildare and Meath);
- Le Chéile (young people up to the age of 24 only) Cork, Limerick and Clare;
- Restorative Justice in the Community (Laois , Offaly, North Tipperary);
- Cornmarket Project (Wexford).

In 2024 the Probation Service expanded the restorative justice programme to Tuam Community Training Centre and expressions of interest have also been sought to expand the service to:-

- the South West;
- Carlow/Kilkenny
- Donegal

According to figures released by Restorative Justice Strategy for Change (RSJ4C) led by Dr Ian Marder in Maynooth University :-

In 2023 there were 447 referrals to Restorative Justice Programmes;

- 81 were to the Probation Service direct (of which 71 were referred from the Courts);
- 245 were to the Restorative Justice Service (“RJS”)
- 77 were to Restorative Justice in the Community (“RJC”)
- 21 referrals were to Le Chéile mentoring
- 23 were to Cornmarket

-In 2022 there were 413 referrals to Restorative Justice Programmes.

- 63 were to the Probation Service direct
- 240 were to the Restorative Justice Service (“RJS”)
- 88 were to Restorative Justice in the Community (“RJC”)
- 12 referrals were to Le Chéile mentoring
- 10 were to Cornmarket

The primary source of referrals to the RJS , RJC and the Probation Service were mainly from the District Court .

While referrals to Le Chéile Mentoring and to Cornmarket were from a variety of sources (ie including the Probation Service) and at different stages of the criminal justice process. See statistics prepared by RJS4C <https://restorativejustice.ie/service-map/> and the RJS annual report for 2022-

https://rjs.ie/wp-content/uploads/2023/09/RJ-Annual-Report-2022_web.pdf.

Appendix 2: Number of court orders imposed in the District Court & District Court Appeals for the year 2022 for Section 17 (1) of the Domestic Violence Act, 1996 & Section 33 (1) of the Domestic Violence Act 2018

Section	Court Order	No of Offences
Section 17(1) of the Domestic Violence Act, 1996.	Community Service Order	1
	Dismiss	1
	Fine	1
	Imprisonment	10
	Imprisonment - Suspended	6
	Probation	5
	Strike Out ³⁶	21
	Strike Out - Not Served	10
	Taken Into Consideration	2
	Withdrawn	11
Section 33 (1) of the Domestic Violence Act 2018	Community Service Order	10
	Dismiss	369
	Dismiss Probation Act	166
	Fine	141
	Imprisonment	233
	Imprisonment - Part Suspended	20
	Imprisonment - Suspended	257
	No Order	44
	Other	5
	Peace Bond	27
	Poor Box	11
	Probation	76
	Sent Forward for Trial	1
	Strike Out ³⁶	1,453
	Strike Out - Not Served	64
	Taken Into Consideration	238
Withdrawn	559	
Total		3,742

³⁶ This category ('strike out') might include scenarios where the prosecution cannot proceed with the hearing, including situations where a witness does not attend Court.

Appendix 3: Number of court orders imposed in the District Court & District Court Appeals for the year 2023 for Section 17(1) of the Domestic Violence Act, 1996 & Section 33 (1) of the Domestic Violence Act 2018

Section	Court Order	No. of Offences
Section 17(1) of the Domestic Violence Act, 1996.	Imprisonment	3
	Imprisonment - Suspended	2
	Strike Out ³⁷	27
	Strike Out - Not Served	1
	Taken Into Consideration	1
	Withdrawn	2
Section 33 (1) of the Domestic Violence Act 2018	Community Service Order	10
	Dismiss	486
	Dismiss Probation Act	204
	Disqualification	1
	Fine	173
	Imprisonment	256
	Imprisonment - Part Suspended	21
	Imprisonment - Suspended	343
	No Order	67
	Other	7
	Peace Bond	29
	Poor Box	7
	Probation Order	127
	Strike Out ³⁷	1,708
	Strike Out - Not Served	116
	Taken Into Consideration	342
	Taken into consideration (other session)	9
Withdrawn	752	
Total		4,694

³⁷ This category ('strike out') might include scenarios where the prosecution cannot proceed with the hearing, including situations where a witness does not attend Court.