

## **Position Paper of SI on the Criminal Law (Insanity) Bill 2002**

The aim of this document is to respond to the Criminal Law (Insanity) Bill 2002 by recommending that the following amendments be implemented:

- 1. The definitions for mental illness and disorder should be the same in the Criminal Law (Insanity) Bill 2002 as in the Mental Health Act 2001 in order to ensure harmonisation of practice and consistency of implementation between agencies involved;**
- 2. The Criminal Law (Insanity) Bill 2002 should clearly stipulate that the provisions only apply to non-violent offenders, and that provision for violent offenders should await the creation of regional secure facilities within the health services; and**
- 3. The Criminal Law (Insanity) Bill 2002 should provide for the opportunity to treat an offender as an outpatient availing of services within the community.**

### Background

Schizophrenia Ireland (SI) welcomes the initiative of the Minister of Justice in pressing forward with much needed reform in this previously neglected area of criminal law. In doing so, SI acknowledges the objective of the Criminal Law (Insanity) Bill 2002 to address the many long held concerns of interested parties in the rights and well being of mentally ill offenders.

### Suggested Amendments

In regard to particular sections of the Bill, SI suggests the following amendments:

#### **1. Definitions for Mental Illness**

*The definitions for mental illness and disorder should be the same in this Bill as in the Mental Health Act 2001 in order to ensure harmonisation of practice and consistency of implementation between agencies involved.*

#### **2. Diversionary Systems**

In other jurisdictions where treatment diversion systems operate, it is solely for non-violent offenders, and the same should apply in Ireland. SI is of the view that mental health treatment facilities are currently not staffed or equipped to deal with violent offenders and the lack of regional forensic secure units makes this more pointed, as no alternative exists. *The Bill should clearly stipulate that the provisions only apply to non-violent offenders, and that provision for violent offenders should await the creation of regional secure facilities within the health services.*

The process of diverting offenders from prison into mental health services must be conducted with the collaboration and cooperation of the receiving services. The Bill as set out does not provide for this. This may result in misplacement of persons if the

recommendation of a psychiatrist not working in the service to which the person is being diverted is the sole advisor to the Court. It has the potential to cause serious difficulty leading to people being referred by the Courts to a centre where the appropriate services do not exist, especially given the documented significant variations in service provision between health boards. At all times the receiving service should be an active party to the assessment and diversion procedure and the consultant psychiatrist who will be responsible for the ongoing care of such individuals should also provide a medical recommendation for the Court prior to diversion. This will inform the Court to better ensure that the appropriate services are available.

The Minister should note that existing resources of mental health services are overstretched, most particularly, but not exclusively, in the Eastern Region where the prisoner population is greatest. The implementation of this Bill will place an even greater burden on these resources, and the Government should recognise and provide for the revenue and manpower implications accordingly.

### **3. Outpatient Treatment**

Crucially, the Bill does not provide for the opportunity to treat an offender as an outpatient availing of services within the community. Community based services including nursing, day hospital or centre, vocational rehabilitation, and addiction counselling can greatly benefit offenders, and are necessary in a holistic approach for mental health recovery. Consequently, the provisions are against the spirit and intent of the Mental Health Act 2001. The provisions of the Bill also contradict successive Irish government policies for the treatment of mental illness following the implementation of “Planning for the Future 1984.”

*The thrust of modern mental health treatment is such that care in the community is the preferred option, and inpatient care should only be a last resort.* In specifying inpatient care as the only form of care, the Bill is at odds with this central philosophy of mental health services and returns to circumstances where offenders are merely detained in mental hospitals rather than receiving treatment in the most appropriate setting. Historical examples evidence the failure of this model of treatment and it would be highly retrogressive to introduce it at this point.

To divert resources from people needing inpatient care further adds to the stigma and image of mental health centres as locations for the detention of undesirable social behaviour. Inpatient mental health facilities should exclusively be for people needing inpatient treatment as medically defined and should not be required to detain offenders when that is not appropriate. In modern mental health care, it is impractical to detain people not requiring inpatient care, as these centres are neither secure nor intended to be custodial. Against this backdrop, the Bill must provide for discretionary outpatient treatment when appropriate, for non-violent offenders.

John Saunders  
Director  
On behalf of Schizophrenia Ireland  
27 February 2003

**Circulated on 18/3/03 to**

**Minister for Justice Equality & Law Reform, Michael McDowell**

**All staff**

**College of Psychiatrists**

**IPA, Justin Brophy**

**IPRT, Dr. Valerie Bresniahn**

**Amnesty Ireland, Fiona Crowley**

**Aware, Geraldine Claire**

**DFI, John Dolan**

**MHAI,**

**Grow**

**All Facilitators of Groups + CM**

**Brid Clarke, Mental Health Commission**

**21/3/03**

**Minister Martin,**

**Minister O'Malley**

**Barbra Nic Aongusa**

**Dr. John Owens.**