Title: “Issues for LGBT Prisoners: An Ill-prepared Irish Prison System”

# Introduction

Penology and penality examine the impact that the prison and other elements of the wider penal and punishment systems have on those who have transgressed the criminal law. Within penology certain groups of prisoners have received particular attention, looking at their unique experiences of ending up in prison and their condition therein, such as female[[1]](#footnote-1), elderly[[2]](#footnote-2), and disabled[[3]](#footnote-3) prisoners. In Ireland, and also in the UK[[4]](#footnote-4) gay, lesbian, bisexual and transgender (LGBT) prisoners have been largely ignored by academics. Literature from other jurisdictions, particularly the US, confirms LGBT prisoners have very unique and different experiences in prison compared to their heterosexual counterparts,[[5]](#footnote-5) which warrants an examination in an Irish context. As Irish society becomes more liberal and more accepting of individuals identifying as LGBT, as evidenced by the progressive granting of rights to and protection of members of the LGBT community,[[6]](#footnote-6) more and more citizens within Ireland will ‘come out’ openly as LGBT. As the LGBT population increases in size comparable to the general population, the percentage of individuals within prison who identify as LGBT will correspondingly increase. Furthermore, there is reports that LGBT individuals are disproportionately represented in prisons.[[7]](#footnote-7) Furthermore, their prison experience can be adversely harsh for various reasons that pertain only to those who are LGBT. In Ireland, there has yet to be desk-bound or empirical research into, or a gathering of data on, the unique issues and challenges of LGBT prisoners. This essay attempts to spark the Irish discourse in this regard.

This essay relies heavily on the UK literature and data, given the dearth of both in an Irish context, and given the similarity between both societal and penal cultures of Ireland and the UK. The UK experience of dealing with LGBT prisoners will be indicative of the present and future state of the Irish prison experience for LGBT prisoners.

The essay itself is penological in nature, but borrows heavily from socio-legal analysis, sociology and criminology[[8]](#footnote-8). The essay is divided up into three sections. Section A begins by looking at the incidence of LGBT prisoners in Ireland, and then attempts to understand the reasons behind this purported disproportionate representation. Section B turns to the substantive focus of the essay, examining the unique issues and interests that affect LGBT prisoners predominantly or more harshly than heterosexuals. Section C then analyses the possible response of prison staff to such issues, and proposes practical policy changes, based on international best practice that the Irish Prison Service (IPS) consider adopting.

# SECTION A - Incidence

The term LGBT has come to indicate the broad range of sexualities, sexual identities, genders and preferences that are not heterosexual.[[9]](#footnote-9) When referring to LGBT prisoners, the author is discussing those prisoners who identify themselves[[10]](#footnote-10) as gay, lesbian, bi-sexual or transgender (this does not necessarily mean that they are openly ‘out’ as LGBT).

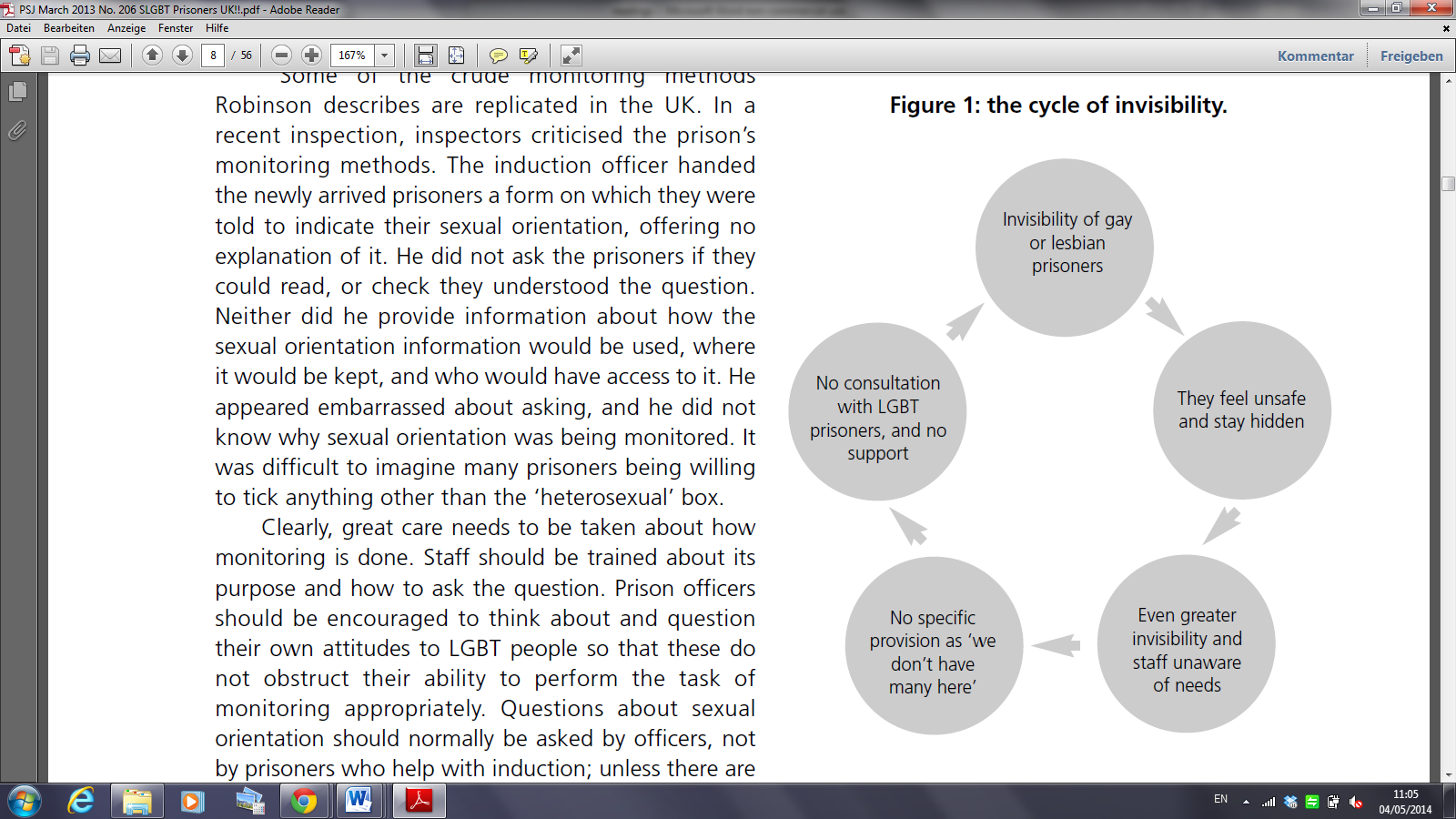
Through anecdotal research in the form of informal discussion by the author with prison guards, it is apparent that very few Irish prisoners are openly LGBT, with these prison guards knowing only two openly gay male prisoners in Ireland. In reviewing the relevant case law, the author found that there may be one more additional male prisoner who identifies himself as gay.[[11]](#footnote-11) Furthermore, recent reports of male prisoners requesting condoms would suggest than more homosexual prisoners are present in prison.[[12]](#footnote-12) There is no evidence of any female openly lesbian prisoners in the media or case law. However, during further anecdotal research conducted during a visit to the Dochás Centre, it was suggested by one of the female prisoners that a small number of women prisoners do identify as lesbian and have entered lesbian relationships in prison. As of 2009 there was an anecdotal report of at least two transgender prisoners in male Irish prisons.[[13]](#footnote-13)

The only reference to the LGBT community within prison on official prison or government documents or reports found was in Irish Prison Inspectorate’s report on Portlaoise Prison in 2002 where a doctor servicing the prison, in dialogue with the inspector of prisons ‘outlined that homosexuality was a problem but not a very common one.’[[14]](#footnote-14) Not only does this confirm that LGBT prisoners do exist in Irish prisons since at least 2002, the official response and language to LGBT as a ‘problem’ underlines the need for examination and policy development.[[15]](#footnote-15)

In terms of hard data, in 2006 the ESRI found that 2.7% of the Irish male and 1.2% of the women population self-identified as homosexual or bisexual.[[16]](#footnote-16) Applying the same percentages to the male prison population (3,353 in 2013) one would expect approximately 91 of these would be LGBT.

A number of UK studies can shed a light on the potential for estimating the extent of Irish LGBT prisoners. One study found that ‘3 and 5 per cent of prisoners identify themselves as being gay or lesbian.’ *[[17]](#footnote-17)* Dunn has also stated that homosexuality is ‘commonplace, and a feature of prison life’ in the UK. *[[18]](#footnote-18)* There is no reason to suggest that the Irish figures are radically different and the working assumption for the purposes of this essay that the percentage of LGBT prisoners is of the order of 2% to 5%.

Despite the anecdotal evidence and use of statistics outlined above, the extent of LGBT prisoners in Irish prison will remain largely unknown unless a specific sexual orientation data gathering or monitoring mechanism is enforced as part of a wider LGBT prison policy.

Despite the apparent minority of prisoners who identify as LGBT, the IPS has been reluctant or even ignorant to acknowledge this trend,[[19]](#footnote-19) and has failed to develop policies that deal with the unique needs of this cohort of prisoners in this regard. By failing to support the ‘coming-out’ by LGBT prisoners through such policies, the IPS are engaged in a cyclical process whereby the extent LGBT prisoners remain hidden and thus their unknown presence acts as a justification for the failure to develop the policies in the first place. Dunn describes this as the cycle of invisibility*[[20]](#footnote-20)*, and it is represented graphically in Figure 1. 

The IPS need to take a proactive step in developing such policies, which will break this cycle and remove the institutional homophobia that currently exists, encouraging prisoners to be open about their sexual orientation and gender, while unearthing the true extent of the LGBT population in the process. These policies would also meet the needs and interests of such LGBT prisoners.

#### Why LGBT people are disproportionately incarcerated?

Given the reports of a disproportionate amount of prisoners coming from the LGBT community[[21]](#footnote-21), one must question whether there is any particular reason for this. Historically in Ireland the criminalisation of homosexuality[[22]](#footnote-22) would have explained a higher proportion of gay prisoners. But this is questionable, given that this was rarely enforced in the latter years of its existence,[[23]](#footnote-23) and even more so today in the era of decriminalisation. However, it is indicative of the traditional attitudes of Irish society to homosexuality,[[24]](#footnote-24) and is a probable cause for the likely increased penalisation of LGBT citizens lies in the societal attitude to the LGBT community. The homophobic atmosphere for those who are not heterosexual can lead to societal and social isolation for LGBT citizens. Marie Mulholland has explained how being LGBT is akin to being a member of the poorer sections of society, where the LGBT community operates in Ireland as a non-spatial ghetto.[[25]](#footnote-25) The ghetto-like daily life for those who are LGBT underlines their minority status in Irish society. The societal disapproval associated with LGBT can be internalised and subsequently can develop into minority stress and can generate a sense of fear, self-loathing, and low self-esteem amongst the LGBT community.[[26]](#footnote-26) The mental health problems associated with LGBT individuals[[27]](#footnote-27) plays a significant role in the increased likelihood of LGBT people engaging in drugs[[28]](#footnote-28) and alcohol abuse[[29]](#footnote-29), and in criminal activity.[[30]](#footnote-30) The link between drugs and alcohol abuse and the penal system has been well documented in criminological field. [[31]](#footnote-31)

In addition to addiction problems, adverse societal attitudes and homophobia exist during discrimination in the employment, education and housing sectors. These three elements together represent some of the most important factors in determining the poverty risk of any individual. The enhanced poverty risk associated with LGBT citizens[[32]](#footnote-32) is not surprising given that those who identify as LGBT are at a higher risk: of leaving school before attaining their Leaving Cert than their heterosexual peers[[33]](#footnote-33); of being bullied at school[[34]](#footnote-34) and work[[35]](#footnote-35); of being unemployed; [[36]](#footnote-36) and at being prejudiced against during the purchase or renting of housing.[[37]](#footnote-37) In the context of this essay, this link between those who are LGBT and poverty is key.[[38]](#footnote-38) It has been well established in criminology that those who are in poverty or members of lower socio-economic groups are significantly more likely to engage in crime and be incarcerated.[[39]](#footnote-39) This, the author contends is the primary rationale for a possible disproportionate representation of the LGBT community in Irish prisons.

Another reason may be that homosexuals come out, turn homosexual due to ‘unavailability of women’.[[40]](#footnote-40)

# SECTION B - Uniqueness in prison: Interests & issues

## Homophobia

It appears that one of the most fundamental and clear differences in the experience of prison between LGBT prisoners and heterosexual prisoners is the presence of homophobia. Homophobia (and transphobia) exists to varying degrees both inside and outside prison walls. However, homophobia appears to be exacerbated in an incareral setting, particularly in the hyper-masculine setting of the male prison. [[41]](#footnote-41)

In an Irish context, the most reliable source for asserting that homophobia does indeed exist within Irish prisons walls is the recent 2013 High Court case taken by gay prisoner Samuel Connolly in *Connolly v Governor of Wheatfield Prison*[[42]](#footnote-42)*,* one of Ireland’s few overt homosexual prisoners. The severity of the homophobia experienced by Connolly was quite harrowing. Because of the prisoner’s sexual orientation, first ‘he was being threatened when placed in the general prison population’,[[43]](#footnote-43) and subsequently raped by a fellow prisoner.[[44]](#footnote-44) The rape and other interactions with prisoners made Connolly ‘wary of sharing a cell’.[[45]](#footnote-45) He was first placed (on request) in a single occupancy cell.[[46]](#footnote-46) Following fears of further homophobic victimisation, the prisoner requesting to be placed on solitary confinement. The High Court found that the 23 hour solitary confinement was not a breach of Mr Connolly’s constitutional rights.

This case provides clear support that homophobia of an extreme nature can and does exist in Irish prison. However, it is not known whether this is a one-off isolated example, or if homophobia exists on a more widespread basis.

Northern Irish prisoner, Brendí McClenaghan had a similar homophobic experience in Irish prison, describing it as ‘hostile and homophobic’ environment.[[47]](#footnote-47) Upon ‘coming-out’ in prison, McClenaghan soon became ‘isolated’ and ‘ostracised’,[[48]](#footnote-48) where ‘men would leave their sinks, showers or urinals’ and would leave a cell when McClenaghan would enter.[[49]](#footnote-49) McClenaghan goes on to state that the reactions of fellow prisoners varied ‘from blatant homophobia to solid support.’[[50]](#footnote-50) A UK prisoner argues that physical homophobic abuse has reached such an ‘endemic’ level,[[51]](#footnote-51) even the judiciary in the UK has acknowledged the vulnerability of LGBT prisoners to such physical assaults.[[52]](#footnote-52)

#### Reasons for homophobia in prison

But what are the reasons behind this fear and hatred of prisoners who identify as LGBT? Hanson, writing while in prison, believes there are three main reasons for increased homophobia in prison. The first is that other prisoners often have ‘an irrational fear of becoming the object of a homosexual prisoner's sexual desire. ‘[[53]](#footnote-53) The second fear, according to Hanson is more rational, in that the heterosexual prisoner, in his state of abstinence from sex may fear that he may be turned or converted by the gay prisoner into engaging in homosexual activity.[[54]](#footnote-54) If this fear was realised in prison, it would have starker consequences than in the outside world, with the prisoner being tainted as a ‘homosexual’ and facing the homophobic consequences of these labels outlined above. The third reason that Hanson give is the most understandable and rational of the three. Hanson explains that other prisoners will be fearful and discouraging of any homosexual activity based on the health dangers of any *bodily fluids left around in cells or wings.*[[55]](#footnote-55) However, this author would query, like the previous two reasons, the accuracy of this fear. Would the same fear and hatred then not apply with (heterosexual) masturbation? One key point to take from these reasons, are that homophobia breeds from an uneducated view and lack of knowledge of the LGBT community and that privacy[[56]](#footnote-56) (based on the third reason) may have a role to play in alleviating this homophobia.

The author now turns to a fourth possible reason for the homophobia that exists within prisons. Given that LGBT prisoners form a minority within prisons[[57]](#footnote-57), and given the stereotypical assumptions of gay people being considered weak and effeminate, the oppression of the LGBT minority serves as a method of reinforcing the other prisoners’ strength and heterosexuality. *[[58]](#footnote-58)* This source of homophobia is unique to male prisons, and can be explained by reference to the hyper-masculinity that operates and forms the basis for the hierarchy in prison life. [[59]](#footnote-59)

The final and perhaps most plausible reason for homophobia within prisons is simply that ‘prisons reflect the society that they belong to’.[[60]](#footnote-60) Homophobic attitudes towards LGBT individuals do not begin in prison, nor is it unique to prisons. While homophobia has found to be exacerbated in prison settings[[61]](#footnote-61) (most likely due to the reasons outlined above), its roots lie in society’s views of homosexuality.[[62]](#footnote-62)

The homophobia in Irish society, imbued with conservative Catholic Church ideology[[63]](#footnote-63), as recently as 1993 was expressed legally and culturally in the *de facto* criminalisation of male homosexuality under the Offences Against the Person Act 1861 and S 11 of the Criminal Law (Amendment) Act 1885.[[64]](#footnote-64) Admittedly in modern Ireland, the offences were rarely if ever implemented,[[65]](#footnote-65) but the stigmatisation remained nonetheless.[[66]](#footnote-66)

Another legal source or expression of societal homophobia is the finding of the Irish High Court In *Reynolds v Malocco[[67]](#footnote-67)* that the calling of another person as ‘gay’ is defamatory[[68]](#footnote-68) and would reduce the reputation of an individual in the eyes of the reasonable man.[[69]](#footnote-69)

The legal system can be seen as an expression of the societal values we hold. Indeed the homophobic notions put forward in both *Reynolds* and *Norris*, are reflective by the current homophobia and homophobic violence that has been found to exist in the day-to-day attitudes of Irish culture and citizens. Although ‘Irish attitudes toward sex between two people of the same gender have become more liberal over time’, even by ‘2005, almost a quarter of people still regarded consensual homosexual sex as ‘always wrong’’[[70]](#footnote-70) In 2006 homosexuality was still ‘widely stigmatised’ in Irish society.[[71]](#footnote-71) It is no surprise then that prisoners bring into prison with them a deeply imbedded societal homophobia that is compounded for the reasons outlined above.

## Health

While the provision of proper health service and the protection of the health of prisoners is a clear right for all prisoners[[72]](#footnote-72), the nature of the LGBT prisoners means they are more likely to experience problems in this area,[[73]](#footnote-73) often due to the uniqueness of their own health problems, in particular transgender prisoners.

Two particular concerns that affect the LGBT prison population disproportionately that this essay will deal with are sexual health (and AIDs/HIV), and mental health. The even more acute and unique concerns that pertain only to transgender prisoners alone will also be dealt with.

#### AIDs

The issue of HIV/AIDS and other sexually transmitted diseases has found to be a pertinent problem in prisons, in particular for LGBT prisoners given their opportunity to be engaged in sex (which is often unsafe) compared to heterosexual prisoners.[[74]](#footnote-74)

In regards to the extent of HIV/AIDs amongst Irish LGBT prisoners, the one Irish court case on record dealing with the treatment of an LGBT prisoner was HIV positive. [[75]](#footnote-75) The IPS must become aware of the real possibility that both homosexual and heterosexual prisoners may be at risk or indeed have HIV/AIDS, and preventative measures should be taken through the practice of safe sex and safe drug use.

#### Mental health

As with HIV/AIDS; while the risk of mental health issues will be common to all prisoners, LGBT prisoners are particularly at risk. Studies have proven that two particular categories in society have an increased risk of developing mental health problems compared to the general population – prisoners and individuals who identify as LGBT. For example 16% of prisoners were found to be currently experiencing a mental health illness in one Irish study.[[76]](#footnote-76) In relation to the LGBT community generally, an astounding 86% of Irish LGBT respondents experienced mental health problems during their life. [[77]](#footnote-77)

When we combine two vulnerable statuses (prisoner and LGBT) into one identity (the LGBT prisoner) these risks of mental health problems are compounded, especially taking into account the traumatic ‘hostile and homophobic’ experience that prison is for Irish LGBT prisoners.[[78]](#footnote-78)

Having reviewed and merged the available statistical data and anecdotal evidence[[79]](#footnote-79) available for prisoners and the LGBT population generally, a picture begins to form of the significant risk of mental health issues for LGBT prisoners. From an Irish perspective, similar mental health difficulties associated with coming out in an Irish prison are evident when McClenaghan describes how he ‘sometimes… cried alone in my cell’[[80]](#footnote-80)and ‘in desperation I contemplated suicide.’[[81]](#footnote-81) Again a failure to develop specific strategies on the LGBT prison population may lead to similar negative consequences as a result of the IPS not being aware of or treating the mental health difficulties that LGBT prisoners will be susceptible to.

#### Transgender

For reasons of the scope, this essay does not delve into the specific health matters that pertain solely to transgender prisoners. However, it must be briefly stated that both hormonal treatment and sex reassignment for transgender prisons have had a tendency in the US & UK to be inadequately provided for. [[82]](#footnote-82)Australia represents international best practice in this regard, and Ireland should base any transgender specific policies on their approach.[[83]](#footnote-83)

The UK’s specific policy on the treatment of trangender prisoners will also prove insightful in relation to the other unique needs of transgender prisoners.[[84]](#footnote-84) Another key issue (not specifically health related) for any transgender prisoner is whether they are housed in male or female prison. Internationally, this decision is strongly determined by the genital status of the prisoner at the time of committal. [[85]](#footnote-85) The UK and Australia for example locate prisoners according to their gender under the law.[[86]](#footnote-86) Difficulties can arise where transgender prisoners are in the transitionary stage between the two gender extremes. With this in mind, gender expression in prison is of importance. If the transgender prisoner has not fully complete their gender reassignment/change, they may want to outwardly express their desired gender[[87]](#footnote-87) and this may require specialised rules regarding clothing, hair, make-up and perhaps prosthetics.[[88]](#footnote-88) UK prisoners are also allowed to be called their gender-appropriate name by prison staff,[[89]](#footnote-89) to enter into individually tailored agreements on their needs,[[90]](#footnote-90) and have regular meetings with staff.[[91]](#footnote-91)

## Sex

Given that the focus of this essay is on the interests and protections of LGBT prisoners, the topic of sex in prison is beyond the scope of this essay. Nonetheless, it is an issue faced by homosexuals that cannot arise for those prisoners who identify as heterosexual, i.e. consensual sex, given that LGBT prisoners do have access to other prisoners the gender of whom they are attracted to. It is also topical currently in the UK with the establishment and research by the Commission of Sex in Prison. In the context of the current essay, sex will only be discussed briefly as it pertains to LGBT prisoners.[[92]](#footnote-92)

First, the prevalence of sex in both male[[93]](#footnote-93) and female[[94]](#footnote-94) Irish prisons needs to be identified. Based on the UK experience, with the Commission on Sex in Prison finding that ‘there is evidence to show that sex in prison does happen’,[[95]](#footnote-95) sex in prison is more than likely to exist in Irish prisons.[[96]](#footnote-96)

Prison guard attitudes to sex appear to be similar to that of homosexuality – a certain level of see-no-evil exists.[[97]](#footnote-97) The response of staff is only dealt with here to explain how staff attitudes can contribute negatively to the health and safety of LGBT prisoners. It has been reported anecdotally to the author that if lesbian prisoners who engage in sexual activity in the Dochás Centre are caught by the prison officers they are separated, often involving sending one of the prisoners to the Limerick women’s prison. It is interesting to note that in other separate discussions with the women prisoners, being sent to Limerick was deemed a punishment! Is this indicative of the deviant perception of homosexuality in prison? In any event, there is confusion over whether consensual activity between prisoners is actually a breach of prison rules. Sex is not explicitly prohibited or illegal. However, having said that, Schedule 1 to the Irish Prison Rules lists breaches of prison discipline under Rule 66 (1). One such breach is indecent language, acts or gestures. It is possible that this may be construed as to cover consenting sexual activity.[[98]](#footnote-98) Despite no explicit banning of sex between prisoners it appears that sex has been discouraged by prison staff, similar to the UK

The current state of discretionary and varied informal policy on sex in Irish prison, based on other jurisdictions, will have a negative impact on the sexual health, well-being and safety of Irish prisoners. The unclear and informal policy of discouraging sex, the fear of being separated, the stigma attached to homosexuality in prison, and perhaps the threat of it being a possible breach of prison discipline under rule 66 (1), means that prisoners are likely to keep sexual relationships secret from prison authorities.[[99]](#footnote-99) Given the difficulty in determining the consensual nature of sex in prison[[100]](#footnote-100) , it may leave prison authorities unaware of both consensual and non-consensual sex.[[101]](#footnote-101) It also tends to increase the likelihood of to riskier and unsafe sex practices,[[102]](#footnote-102) as many prisoners engaged in sexual activity will be reluctant to request condoms[[103]](#footnote-103) or dental dams.[[104]](#footnote-104)

A case-by-case informal and uncertain policy has begun recently in Ireland in regards to contraceptives, [[105]](#footnote-105) and presents a worrying trend has begun that the Irish authorities must curb. Prisoners are already at ‘greater risk than the general population of acquiring sexually transmitted infections’[[106]](#footnote-106) The main cause of which is unprotected sex,[[107]](#footnote-107) which has been widely practiced in the UK under a similar condom regime.[[108]](#footnote-108)

While the prison officers in Wheatfield Prison must be lauded for their provision of condoms to a prisoner upon request,[[109]](#footnote-109) a nationwide consistent policy must be adopted by the IPS whereby Irish prisoners should have access to condoms and other forms of contraceptives in a confidential and accessible manner,[[110]](#footnote-110) which has proved effective in Canada.[[111]](#footnote-111) Safe sexual practice not only protects the health of prisoners[[112]](#footnote-112) but also the general public who may become infected upon release.[[113]](#footnote-113)

#### Non Consensual Sex

While much has been written on the non-consensual nature of sex in prison,[[114]](#footnote-114)

as this essay is focused on the concerns of Irish LGBT prisoners, this section will only deal with two issues; the increasing sexual assaults in Irish prisons, and the higher risk of homophobic sexual attacks for LGBT prisoners.

While the author believes that prison rape and sexual abuse are ‘probably not as engrained’ in Ireland compared to US[[115]](#footnote-115) and even to the UK, [[116]](#footnote-116)it is clear from John Lonergan the former governor of Mountjoy Prison that it is a prevelance problem, [[117]](#footnote-117) and the media reporting would suggest that this problem is increasing.[[118]](#footnote-118)

Rape in prison has been found to be more about power strength and dominance rather than sexuality.[[119]](#footnote-119)LGBT as one of the most vulnerable groups[[120]](#footnote-120) in prison are at particular risk of being used as an object of power. In the US, rape of homosexual prisoners has been (paradoxically) used by male prisoners to reinforce heterosexual norms.[[121]](#footnote-121) It has been found that ‘Many of these attacks involve gay men being raped by prisoners who identify as heterosexual.’[[122]](#footnote-122)

In the UK there has been mixed reviews on the responses of prison staff to allegations of rape and sexual assault for LGBT prisoners. In the US, Tarzwell has argued that when LGBT prisoners are sexually assaulted or raped, it is assumed to be consensual by virtue of the prisoner being of a particular sexual orientation. Similar in the UK, Cahalane also reports on the response of a prison guard to a gay prison who alleged a rape had occurred by another prisoner allegation of rape ‘One gay prisoner told him that he reported being raped to a guard who replied: ‘Well you are gay aren't you, so what's the problem?’’[[123]](#footnote-123)

In an Irish context, the case of *Connolly v Governor of Wheatfield Prison,[[124]](#footnote-124)*provides eviedence of rape against a gay prisoner in Irish prison. While we do not know the substance of the claim, the Court accepted as fact the prisoner in question experienced a ‘violent rape by a cellmate’,[[125]](#footnote-125) yet the DPP failed toto bring a case. In order to discourage homophobic and other sexual assaults Human Rights Watch have recommended that prosecutions should be encouraged.[[126]](#footnote-126) Similar protections for LGBT prisoners have been put forward by Wortley, who like Lonergan, has recommended single cells which would reduce the opportunities for sexual assault and exploitation, [[127]](#footnote-127) in addition to enhanced awareness, training and supervision by staff.[[128]](#footnote-128)

# SECTION D - Future policy recommendations & staff reaction?

The role of prison guards and the policies and procedures that they operate under are key to meeting the needs of LGBT prisoners as outlined throughout the essay. The policy changes should be made in advance of any problems arising and be preventative in that regard, rather than reactionary to problems that may arise as a result of an ill prepared prison system incapable of adapting to meet the safety, health and other needs of a likely increase in the Irish LGBT population in prisoner.

## Specific Policy

The first and most important recommendation is the creation and implementation of a specific policy on the rights, protections and interests of LGBT prisoners. This can serve as a culture-changing initiative, and must be led from the top with resources invested, including the creation of an LGBT liaison officer who should engage in dialogue with all LGBT prisoners including an elected representative.*[[129]](#footnote-129)* Prison officers need to be made aware that they may have a greater duty to protect LGBT prisoners as vulnerable prisoners under may have ECHR law following the case law of *Rodic v. Bosnia*.*[[130]](#footnote-130)* Ironically prison staff due a lack of clear strategic direction and guidance, and perhaps to their own personal homophobia, may actually afford such prisoners less protection. By providing specific strategic and tactical direction, staff can learn how to deal with such prisoners.

A number of practical issues and concerns for LGBT have yet to be covered in the thus far thematic analysis. Any new policy developed for LGBT prisoners must be of practical benefit and meet the daily needs of LGBT prisoners, including the facilitation of a civil partnership between two LGBT prisoners,[[131]](#footnote-131) the maintenance of outside LGBT relationships (including equal access to and treatment in relation to correspondence[[132]](#footnote-132)and visitation[[133]](#footnote-133)), LGBT culture,*[[134]](#footnote-134)* and advice on ‘coming-out’ in prison.[[135]](#footnote-135)

## Prohibit homophobia on the part of prison officers

Homophobia on the part of the prison staff has yet to be reported in Ireland, but it has proven to be problematic in the UK. A UK prisoner has written that*’quite a few homophobic male prison officers’* [[136]](#footnote-136) We have already seen the staff’s reaction to assaults of a sexual nature, the inadequacy of which may be due to homophobic stigma around such assaults of LGBT prisoners. Homophobia can also manifest itself in the tendency of staff to overlook homophobic physical abuse and victimisation.*[[137]](#footnote-137)* In this way, if Irish staff follow a similar path, they maybe complicit in such victimisation.[[138]](#footnote-138) More overt examples of homophobic attitudes of prison staff in the UK include unfair penalties*[[139]](#footnote-139)* for physical expressions of compassion towards another prisoner that denotes homosexuality.[[140]](#footnote-140)

The first step is identifying that homophobia may exist amongst the staff, and then training the staff on awareness and respect for other sexual orientation.

## Training of staff

While Irish prison officers are trained on generic equality, diversity and human rights issues they receive no specific training to LGBT issues.[[141]](#footnote-141) *The IPS should* follow the UK’s training provisions in this regard and recommendations of academics in this regard.[[142]](#footnote-142) The IPS is at an advantage in that it has its own policy on LGBT issues for employees, with certain prisons having LGBT committees for employees. Knowledge of what it means to be LGBT can be built upon, and tolerance extended from colleagues to prisoners. In fact the LGBT employees can act as ‘visible positive role models’*[[143]](#footnote-143)* for LGBT prisoners.

## Prohibit and discourage homophobia on the part of other prisoners

Specific actions must be taken by prison staff to combat homophobiaamongst prisoners.*[[144]](#footnote-144)* - This may involve education, protection, [[145]](#footnote-145) added punitive sanctions for acts of violence motivated by the minority status of other prisoners.

## Monitoring

A common thread throughout this essay has been the dearth of data on LGBT prevalence in Irish prisons, and their subsequent invisibility. *[[146]](#footnote-146)* The IPS should begin to monitor such trends as recommended by Dunn,*[[147]](#footnote-147)* the information from which can be used as a need for change. During the training of officers on LGBT issues, lessons on how to implement sexual orientation monitoring should be included to avoid the scenarios that have developed in the UK[[148]](#footnote-148) and US[[149]](#footnote-149) where ineffective implementation of monitoring provides false and often underestimated data on the amount of LGBT prisoners. *[[150]](#footnote-150)*

# Conclusion

This essay is the first attempt in an Irish context to not only map the extent of LGBT prisoners within Irish prisoners, but to take a holistic approach, attempting to understand their unique experience of prison, and make practical recommendations to alleviate those unique concerns. While insufficient data exists to draw any concrete conclusion on the amount of LGBT prisoners, there are currently a small minority of LGBT prisoners in Irish prisoners, which will increase as Irish society becomes more liberal and tolerant. The IPS must be prepared to meet the increase in such prisoners, and must not continue to ignore this trend. LGBT prisoners have the same rights as all prisoners, and do not deserve harsher prison conditions by virtue of their sexual orientation. The suggested recommendations outlined in this essay should prove a starting point for the IPS. The unique problems that LGBT prisoners currently face (including institutional homophobia, unmet health needs and grave sexual and violent assaults) could be inhibited or prevented by the implementation of such recommendations. While the economic realities[[151]](#footnote-151) of the IPS should not be ignored with the IPS facing cuts; given that prison is indeed ‘a very difficult environment for someone to be openly gay’, [[152]](#footnote-152) the recommendations should be seriously considered a matter of priority.

1. Patricia Carmody and Mel McEvoy *A Study Of Irish Female Prisoners* (1996 Stationery Office) <http://www.drugsandalcohol.ie/5421/1/1670-1570_IJPM_Irish_Female_Prisioners.pdf> [↑](#footnote-ref-1)
2. A. Tarbuck ‘Health of elderly prisoners’, (2001) 30 *Age and Ageing* 369-370. [↑](#footnote-ref-2)
3. Michael Murphy and others, *A Survey of the Level of Learning Disability among the Prison Population in Ireland* (2000 Department of Justice, Equality and Law Reform). <http://www.iprt.ie/files/learning_disability_report.pdf> [↑](#footnote-ref-3)
4. Peter Dunn, ‘Slipping off the equalities agenda? Work with LGBT prisoners’ 2013 *Prison Service Journal* 206, 3. <http://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ%20March%202013%20No.%20206.pdf>. Accessed 24 March 2014 [↑](#footnote-ref-4)
5. While this essay does attempt to recognise and give practical weight to the rights of LGBT and ensure they are not treated comparatively worse than their heterosexual counterparts, the author acknowledges the point made by Poole, Whittle and Stephens that the criminal behaviour and necessary repercussions (be it in the form of rehabilitation, reform, individual deterrence or punishment) does still need to be addressed the same as all prisoners; regardless of their sexual orientation or gender status. L. Poole, S. Whittle, and P. Stephens, ‘Working with transgendered and transsexual people as offenders in the probation service’. 49 (2002) *Probation Journal*, <<http://prb.sagepub.com/content/49/3/227.refs>> accessed 21 March 2014. [↑](#footnote-ref-5)
6. Such as civil partnership (For example, 1,303 lesbian and gay couples have entered into Civil Partnerships up to the end of 2013 since their introduction in April 2011. Glen, ‘Over 2,600 people enter into Civil Partnerships in Ireland by the end of 2013’ <<http://www.glen.ie/news-post.aspx?contentid=27109>> accessed 06 May 2014), debate and consideration of adoption rights, the protection of LGBT employees from discriminatory practices on the basis of sexual orientation {S 5 Unfair Dismissals (Amendment) Act 1993; S 6(2) Employment Equality Act 1998} and the protection of consumers from same {S 3(2) Equal Status Act 2000}. [↑](#footnote-ref-6)
7. Regina Kunzel, *Criminal intimacy*: *Prison and the Uneven History of Modern American Sexuality.* (2010, The University of Chicago Press); Beth Richie, ‘Queering anti-prison work African-American lesbians in the juvenile justice system in Sudbury (ed.) *Global Lockdown: Race, Gender and the Prison-Industrial Complex* (2005 Taylor and Francis) <<http://www.blackandpink.org/wp-content/upLoads/queering-anti-prison-work.pdf>> accessed 01 April 2014. [↑](#footnote-ref-7)
8. Particularly in regards to why the LGBT community are disproportionately represented in the prison population [↑](#footnote-ref-8)
9. LGBT, ‘What Is LGBT?’. <<http://www.lgbt.ie/information.aspx?contentid=84>> accessed 07 May 2014. [↑](#footnote-ref-9)
10. A distinction can be made here between those who identify themselves as gay and those who are attracted to the same-sex {ESRI, *The Irish Study of Sexual Health and Relationships* (2006 the Crisis Pregnancy Agency and the Department of Health and Children), 124 <<http://www.esri.ie/UserFiles/publications/20061016131112/BKMNEXT084_Main%20Report.pdf>> accessed 27 April 2014} or indeed who engage in same-sex sexual activity, yet identify themselves as heterosexual. This phenomenon has been found to be particularly prevalent in prisons. Commission on Sex in Prison, *Consensual sex among men in prison: Briefing paper 1* (2013, The Howard League for Penal Reform),4. Sexual expression and orientation, and indeed gender in regard to transgender prisoners, in this regard are better represented as a continuum rather than as a binary or dichotomy of heterosexual and homosexual. ESRI (n 10) 124, [↑](#footnote-ref-10)
11. *Connolly v Governor of Wheatfield Prison* [2013] IEHC 334. [↑](#footnote-ref-11)
12. James Ward, “Irish prisoners given condoms for the first time to have protected sex behind bars” *The Irish Daily Mirror* February 19, 2014. <http://www.irishmirror.ie/news/irish-news/crime/irish-prisoners-given-condoms-first-3163613> accessed 01 March 2014. . [↑](#footnote-ref-12)
13. This was found to be case despite the fact that the then Minister for Justice stated that there was no known transgender prisoners in prison as of January 2009. Cat McIlroy, *Transphobia in Ireland: Research Report* (2009 ,Transgender Equality Network Ireland), 14. [↑](#footnote-ref-13)
14. Irish Prisons Inspectorate, *Portlaoise Prison 2002.* (Department of Justice, 2002) <<http://www.justice.ie/en/JELR/Portlaoise%20Prison%20inspection%200203.pdf/Files/Portlaoise%20Prison%20inspection%200203.pdf>> Accessed 08 April 2014. [↑](#footnote-ref-14)
15. Commission on Sex in Prison (n 10) 4. [↑](#footnote-ref-15)
16. ESRI (n 10) 126. Bearing in mind the difficulty in coming out as gay, and the fact that this stigma can be internalised, it is interesting that 5.3% of men in that study and 5.8% of women reported some same-sex attraction. A further 7.1% of men and 4.7% of women reported a homosexual experience some time in their life so far. ESRI (n 10) 126). These figures may be suggestive of why ‘heteroflexibility’ occurs in prison where are depraved of sexual contact with the opposite sex. While the substance of this essay is on ‘true’ homosexuals who identify themselves as homosexuals, a new sexual identify peculiar to the prison has emerged - the ‘Heteroflexible’. This term describes the behaviour of men in prison who identify as heterosexual but are flexible about having sex with men while in prison’ due to their sexual depravity. This is often the case with heterosexual men who do not see themselves as homosexual because they are not sexually penetrated. The ‘true’ homosexuals in prison culture are considered those who are sexually submissive. The development of the heteroflexible has found to be particularly acute amongst those serving longer sentences. This phenomenon may not occur in Ireland to the same extent, as traditionally prisoners in Ireland serve relatively short sentences , through which they can abstain from ‘resorting’ to homosexual sex to quench their sexual desires. Commission on Sex in Prison (n 10) 4.The heteroflexible nature of prison sex culture reflects the interesting aspect of how prison has failed to go along with the modern societal notion of sexual identity in this respect. Instead prison operates more around sexual behaviour rather than sexual orientation or status. Kunzel (n 7) 2 and 6. [↑](#footnote-ref-16)
17. Dunn (n 4) 7. [↑](#footnote-ref-17)
18. ibid 4. [↑](#footnote-ref-18)
19. On this point, one UK prisoner stated that the existence of an LGBT population within prisons is ‘ignored and regarded as unmentionable in the hope that it will somehow disappear on its own volition.’ Ken Hanson, ‘Prison and Homosexuality’, *insidetime* January 2007 <<http://insidetime.org/articleview.asp?a=147&c=prison_and_homosexuality>> accessed 27 February 2014. Another explained how ‘people just don’t want to talk about it.’; National Prison Radio, ‘Boy George Back Behind Bars’ *insidetime* August 2011 <<http://insidetime.org/articleview.asp?a=1015&c=boy_george_back_behind_bars&cat=Gay>> accessed 27 February 2014. [↑](#footnote-ref-19)
20. Dunn (n 4) 6. [↑](#footnote-ref-20)
21. Kunzel (n 7); Richie (n 7). [↑](#footnote-ref-21)
22. Under S 61 of the Offences Against the Person Act 1861 and S 11 of the Criminal Law (Amendment) Act 1885. [↑](#footnote-ref-22)
23. David Norris speech on passage of the Criminal Law (Seuxal Offences) Bill 1993, Second Stage Speech, 29 June 1993 in Íde O’Carroll and Eoin Collins (eds.,) *Lesbian and Gay Visions of Ireland : Towards the Twenty-first Century* ( 1995 Cassells) 18. [↑](#footnote-ref-23)
24. The targeting of the LGBT community by the police has been found in other jurisdictions as a major reason for the increased penalisation of LGBT individuals. Make the Road New York, *Transgressive Policing Police Abuse Of LGBT Communities Of Color In Jackson Heights* (2012, Make the Road New York ) <<http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf>> accessed 07 May 2014; Gavin Engelbrecht, ‘North-East police force denies it is targeting gay men in DNA swoop’ *The Northern Echo* Thursday 17th January 2013 [*http://www.thenorthernecho.co.uk/news/10170049.North\_East\_police\_force\_denies\_it\_is\_targeting\_gay\_men\_in\_DNA\_swoop/*](http://www.thenorthernecho.co.uk/news/10170049.North_East_police_force_denies_it_is_targeting_gay_men_in_DNA_swoop/)*>* accessed 07 May 2014}. It has been reported (albeit in another context of victimhood) that there is a mistrust between Irish LGBT people and the Gardaí. Conor Coughlan, *LGBT Hate Crime Report: Stop Hate Crimes In Ireland Campaign* (2006 Glen) 41. <<http://www.glen.ie/attachments/Johnny_Report.PDF>> accessed 17 April 2014. [↑](#footnote-ref-24)
25. In the LGBT ghetto, its members are defined by sexuality rather than socio-economic/religious or cultural identities Marie Mulholland ‘Ghetto-blasting’ in Íde O’Carroll and Eoin Collins (eds.,) *Lesbian and Gay Visions of Ireland : Towards the Twenty-first Century* (Cassells, 1995), 132. [↑](#footnote-ref-25)
26. Mayock and others *Supporting LGBT Lives: A Study Of The Mental Health And Well-Being Of Lesbian, Gay, Bisexual And Transgender People, (*2009Gay and Lesbian Equality Network (GLEN) and BeLonG To Youth Service), 30. This minority stress will be more acute in hyper-masculine institutions such as prisons, where the LGBT proportion of would be significantly less than the rest of the prison population. Hanson elsewhere has discussed the ‘dichotomy of normal heterosexual prisoners and (*minority)* abnormal homosexual prisoners.’ Hanson (n 19). [↑](#footnote-ref-26)
27. 25% of Irish LGBT people have engaged in self-harm. Mayock, Bryan, Carr & Kitching (n 26) 30. [↑](#footnote-ref-27)
28. Sarma has found that drug use was ‘widespread’ amongst the LGBT population in Ireland, with 65% of LGBT study participants having taken drugs some stage in their life (at 22), with a further 21% have used drugs on more than 60 occasions. (at 22) Another finding is perhaps more enlightening for this study that the ‘prevalence of drug taking is significantly higher amongst LGBT youth than the general youth population.’ (at 38) We can also see the linkages between societal and social isolation for the LGBT youh and drug taking .8% of participants blamed ‘issues to do with their sexuality’ for their drug-taking. (at 25) Furthremore, ‘Almost one in ten LGBT drug users first experimented with drugs because of some form of fear, or other negative psychological state, that was linked to their personal and sexual identity’. (at 38) Sarma expressed that while the ‘ LGBT youth may not perceive a direct link between alienation and drug taking, they feel that indirectly least, a lack of knowledge

    amongst Irish society of LGBT issues in some way plays a role. ‘ (at 34) She goes on to state that 80% eighty of ‘respondents felt that greater awareness in Irish society of LGBT issues would lead to reduced levels of drug taking amongst this community.’ K. Sarma, *Drug use amongst lesbian, gay, bisexual & transgender young adults in Ireland*. (2007, BeLonG To), 22, 25, 38, and 34. <<http://www.belongto.org/attachments/233_The_BeLonG_To_Drugs_Report.pdf>> accessed 30 April 2014. [↑](#footnote-ref-28)
29. One Irish study found that 38% of those identifying as LGBT engaged in ‘problem drinking’. Mayock, Bryan, Carr & Kitching (n 26) 82. Another Irish study found that 70% of prisoners were addicted to drugs or alcohol HG Kennedy, S Monks, K Curtin, B Wright, S Linehan, D Duffy, C Teljeur, A Kelly, *Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners*. (2005, National Forensic Mental Health Service), 84.

    <<http://www.drugsandalcohol.ie/6393/1/4338_Kennedy_Mental_illness_in_Irish_prisoners.pdf>.> accessed [↑](#footnote-ref-29)
30. Indeed, Samuel Connolly, who’s case will be dealt with in depth in this essay, expressed to the Court during his criminal trial of his mental health difficulties and suicidal tendencies. **Aoife Nic Ardghail,**  ‘Head shop binge man who glassed hero is jailed’– *The Evening Herald,* 17 December 2010 <http://www.herald.ie/news/courts/head-shop-binge-man-who-glassed-hero-is-jailed-27969190.html> Accessed 1 May 2014. [↑](#footnote-ref-30)
31. Again Mr Connolly was under the influence of drugs during the commission of his crime. **Nic Ardghail *ibid.*** [↑](#footnote-ref-31)
32. GLEN/Nexus, *Poverty-lesbians and gay men: The economic and social effects of discrimination*. (1995, Combat Poverty Agency). [↑](#footnote-ref-32)
33. Michael Barron and Simon Bradford, ‘Corporeal Controls: Violence, Bodies, and Young Gay Men's Identities’. 39 (2007) *Youth Society*, 244 [↑](#footnote-ref-33)
34. 82% of teachers in Ireland are aware homophobic bullying in Irish schools James Norman*, A Survey Of Teachers On Homophobic Bullying In Irish Second Level Schools*. (DCU, 2004) <<http://corkgayproject.com/files/2010/06/A-Survey-of-Teachers.pdf>> accessed 30 April 2014. [↑](#footnote-ref-34)
35. Conor Mc Guckin, Brenda O’Farrell, Christopher Alan Lewis, and Mark Shevlin *Homophobic Bullying in Irish Workplaces* (University of Ulster, 2000) [↑](#footnote-ref-35)
36. Mick Quinlan, The Health Needs of Gay and Bisexual Men (2004, National Conference Men’s Health) <http://hse.ie/eng/services/list/5/sexhealth/gmhs/research/The_Health_Needs_of_Gay_and_Bisexual_Men.pdf> [↑](#footnote-ref-36)
37. Combat Poverty Agency, *Poverty Lesbians And Gay Men* (Combat Poverty Agency, 1995) <http://www.combatpoverty.ie/publications/PovertyLesbiansAndGayMen_1995.pdf>, 14. [↑](#footnote-ref-37)
38. GLEN/Nexus (n 33). [↑](#footnote-ref-38)
39. Bacik, Kelly, O’Connell & Sinclair, ‘Crime and Poverty in Dublin: An Analysis of the Association between Community Deprivation, District Court Appearance and Sentence Severity’ in Bacik & O’Connell (eds), *Crime and Poverty in Ireland*. Dublin: Round Hall Sweet & Maxwell, 1998. [↑](#footnote-ref-39)
40. Sylvia Rhue and Thom Rhue ‘Reducing Homophobia in Africa-American Communities’ in Robert Staples, *Black Masculinity* (1982, Black Scholar Press), 127. [↑](#footnote-ref-40)
41. James Samuel Logan, *Good Punishment? Christian Moral Practice and U.S.*

    *Imprisonment* (2008, Wm. B. Eerdmands Publishing Co), 34. [↑](#footnote-ref-41)
42. (n 11). [↑](#footnote-ref-42)
43. (n 11) para 9. [↑](#footnote-ref-43)
44. (n 11) para 4. [↑](#footnote-ref-44)
45. (n 11) para 6. [↑](#footnote-ref-45)
46. ibid. [↑](#footnote-ref-46)
47. Brendí McClenaghan, ‘Letter from a Gay Republican: H-Block 5’ in Íde O’Carroll and

    Eoin Collins (eds.,) *Lesbian and Gay Visions of Ireland : Towards the Twenty-first*

    *Century* (1995 Cassells) pp. 122-130, 127. [↑](#footnote-ref-47)
48. ibid 127. [↑](#footnote-ref-48)
49. ibid 127. [↑](#footnote-ref-49)
50. ibid 128. [↑](#footnote-ref-50)
51. Hanson (n 19). [↑](#footnote-ref-51)
52. G*reen, R (on the application of) v Secretary of State for Justice,* para 42. [↑](#footnote-ref-52)
53. Hanson (n 19) [↑](#footnote-ref-53)
54. ibid. [↑](#footnote-ref-54)
55. ibid. [↑](#footnote-ref-55)
56. See recommendation for private cells. [↑](#footnote-ref-56)
57. Hanson (n 19). [↑](#footnote-ref-57)
58. Dunn (n 4) 4. [↑](#footnote-ref-58)
59. Logan (n 43) 34. [↑](#footnote-ref-59)
60. Dr Éamonn O’Moore, consultant in public health with Offender Health, speaking during the Commission on Sex in Prison’s Seminar on Sexual Health in Prisons, 4. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>. [↑](#footnote-ref-60)
61. Commission on Sex in Prison (n 10) 4; Angela Costetsos the Terrence Higgins Trust, speaking during the Commission on Sex in Prison’s Seminar on Sexual Health in Prisons, 5. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>. [↑](#footnote-ref-61)
62. Submission NAT (2013) quoted in Commission on Sex in Prison (n 10) 6. [↑](#footnote-ref-62)
63. While it must be said that the Roman Catholic Church’s teaching on homosexuality had a clear impact on the moral and legal view of homosexuality in Ireland in the past (McClenaghan (n 49) 123; and Norris (n 23) 17) and indeed perhaps explains the homophobic attitudes of certain segments of society, the declining influence of the Church has removed much of this religiously motivated stigma. [↑](#footnote-ref-63)
64. The prohibiting of both crimes against nature in the form of buggery in the 1861 Act and of ‘petty offences of minor indecencies’ in the 1885 Act represent the increasing social control and screening of sexuality by the State. Michel Foucault, *The History of Sexuality, Vol. 1: An* Introduction, (1990, Vintage), 30. In a different context, Pinello describes how such laws were not an explicit ban on homosexuality *per se*. ‘Gay rights and American law (*read here Irish law pre-1993*) are understood well through the prism of the penal regulation of same-sex sexual activity. Although usually applying on their face to all people regardless of sexual orientation, proscriptions of consensual sodomy historically have been selectively enforced against homosexuals.’ Daniel R. Pinello, *Gay Rights and American Law* (2003, Cambridge University Press), 54. [↑](#footnote-ref-64)
65. However, Norris gave examples of how the laws were used collaterally (Pinello *ibid* 224) in civil cases. Norris (n 23) 21. [↑](#footnote-ref-65)
66. Norris (n 23) 18. [↑](#footnote-ref-66)
67. [1998] IEHC 175; [1999] 2 IR 203. [↑](#footnote-ref-67)
68. The plaintiff’s homophobic argument was outlined by the judge argued in para 52 ‘an allegation of being  gay  is an allegation of deviant sexual practice which many people in Irish society find repellent. He therefore argues that it is clearly defamatory.’ [↑](#footnote-ref-68)
69. The High Court could have found for the applicant but based on a less homophobic rationale. The Court expressly stated that ‘homosexual acts between males would be deemed morally wrong by most of the citizens of this state’.(*Reynolds v Malocco* 74.) The Court should have instead found for the defendant in this particular case on the basis that calling the defendant gay, who was in a heterosexual relationship, would have raised sufficient innuendo that he was adulterous or a hypocrite, which would indeed lower one’s reputation. A change has been called for by Barrett on this basis. and there is still a need for an emphatic statement by the Irish High Court that ‘homosexuality is not per se defamatory.’ Barrett Pat Barrett, November 2010, 2010. *The Bar Review* 109. [↑](#footnote-ref-69)
70. ESRI (n 10) 124. On the other hand ‘47% of men and 59% of women believe that homosexual sex is ‘never wrong’. These proportions increase to 57% and 77% among under-25s.’ ESRI (n 10) 96. [↑](#footnote-ref-70)
71. ibid(n 10). [↑](#footnote-ref-71)
72. Section33 (1)S.I. No. 252/2007 - Prison Rules, 2007. <<http://www.irishstatutebook.ie/2007/en/si/0252.html>> accessed 29 March 2014. [↑](#footnote-ref-72)
73. In fact, this is reflective of the trend of poor health that exists for the LGBT population outside prison, a key reason for which has found to be the requirement to admit one’s sexual orientation during treatment or diagnosis. Sarma (n 28) 38. [↑](#footnote-ref-73)
74. Drug-taking amongst LGBT prisoners is another reason, the UK Department of Helath in the UK has expaplined it in the context of their tendency to be engaged ‘ in higher levels of risk-taking behaviour including drugs & unprotected sex’. Department of Health, *Improving health, supporting justice: The national delivery plan of the health and criminal justice programme board*. (2009, Department of Health). Due to the prevalence of drug taking and risky sexual behaviour amongst US prisoenrs, the prison has been described as a ‘Petri dish for the spread of HIV/AIDS’. Sabo, quoted in Peter Monagah, ‘Madness in Maximum Sexurity: When Scholars Get a Look Inside America’s Secretive Prisons, They See Chaos’, *Chronicle of Higher Education,*2004, June 18, A14-15 <<http://chronicle.com/free/v50/i41/41a01401.htm>> accessed 01 March 2014. [↑](#footnote-ref-74)
75. (n 11) para 4. [↑](#footnote-ref-75)
76. HG Kennedy, S Monks, K Curtin, B Wright, S Linehan, D Duffy, C Teljeur, A Kelly, *Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners*. (2005, National Forensic Mental Health Service), 84.

    <<http://www.drugsandalcohol.ie/6393/1/4338_Kennedy_Mental_illness_in_Irish_prisoners.pdf>>. Mental health illnesses was found to exist for 16% of male, and 41% of female committals; and 27% of men and 60% of women sentenced. [↑](#footnote-ref-76)
77. 25% of the participants in the same study were found to have engaged in self-harm. Mayock, Bryan, Carr & Kitching (n 26) 35 and 85. In a Northern Irish study, it has been found that there is an ‘increased risk of suicidality amongst sexual minorities’. Youthnet *ShOut report: research into the needs of young people in Northern Ireland who identify as lesbian, gay, bisexual and/ or transgender*’ (2003, Department of Education). [↑](#footnote-ref-77)
78. McClenaghan (n 49) 127. [↑](#footnote-ref-78)
79. C.A.R.Hills, ‘The Mens' Room’, *insidetime* June 2007

    <http://insidetime.org/articleview.asp?a=31&c=the_mens_room&cat=Gay>. [↑](#footnote-ref-79)
80. McClenaghan (n 49) 126. [↑](#footnote-ref-80)
81. ibid 127. [↑](#footnote-ref-81)
82. R. Edney, ‘To keep me safe from harm? Transgender prisoners and the experience of imprisonment.’ (2004)*Deakin Law Review*, 9, 327-338 [↑](#footnote-ref-82)
83. In relation to hormonal treatment, Australia persists with hormone treatment that has been started before entering prison but refrains from allowing transgender prisoners to start new treatment while in prison. R. Mann, ‘The treatment of transgender prisoners, not just an American problem. A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners an d a “universal” recommendation to improve treatment. (2006) *Law and Sexuality Review*, 91 (15), 92-134. In regards to sex reassignment surgery Australia progressively allow prisoners to undergo such medical surgery the expense of the prison. Canada has a similar policy following a Canadian Human Rights Tribunal decision. *Kavanagh v. Canada (Attorney General),* 2001 CanLII 8496 (CHRT) 41 CHRR 119. <<http://www.canlii.org/en/ca/chrt/doc/2001/2001canlii8496/2001canlii8496.html>> accessed 01 May 2014.} The US prohibits such surgery. Mann, note 84. [↑](#footnote-ref-83)
84. National Offender Management Service (NOMS), *The Care and Management of Transsexual Prisoners PS1 07/2011* (PSI 07). [↑](#footnote-ref-84)
85. Petersen, M., Stephens, J., Dickey, R. And Lewis, W.. ‘Transsexuals within the prison system: An international survey of correctional services policies’. (1996)*Behavioral Sciences and the Law*, 14, 219-229. [↑](#footnote-ref-85)
86. Prison Service Instruction 2011/07, The care and management of transsexual prisoners; Mann (n 84). [↑](#footnote-ref-86)
87. *Green, R (on the application of) v Secretary of State for Justice*, para 5. [↑](#footnote-ref-87)
88. Brown, G. & McDuffie, E ‘Health care policies addressing transgender inmates in prison systems in the United States.’ (2009). *Journal of Correctional Health Care*, 15 (4), 280-291. [↑](#footnote-ref-88)
89. *Green, R (on the application of) v Secretary of State for Justice*, para 22. [↑](#footnote-ref-89)
90. *Green, R (on the application of) v Secretary of State for Justice*, para 23. [↑](#footnote-ref-90)
91. *Green, R (on the application of) v Secretary of State for Justice*, para 25. [↑](#footnote-ref-91)
92. The importance of considering safe sex practices for LGBT is reflected in the fact that approximately 26% of UK LGBT prisoners are being treated for a sexually transmitted infection Corston, 75. [↑](#footnote-ref-92)
93. In regards to male prisoners, previous research has estimated that 2% of prisoners in the UK have homosexual sexual contact in prison {Strang J Heuston J and Gossop M 1998 ‘HIV/Aids Risk Beavhour Amont Male Prisoners’ Home Office}, and that between 1.6 and 3.4% of prisoner had homosexual sex. {Home Office Study 1994/1995 qouted in Prison Reform Trust and National Aids Trust (2005) *HIV and Hepatitis in UK prisons: addressing prisoners’ healthcare needs*. London: Prison Reform Trust and the National AIDS Trust. <http://www.nat.org.uk/Media%20library/Files/PDF%20documents/prisonsreport.pdf>}.It has been suggested that such estimates are conservative as many men deny homosexual activity or homosexuality on the basis of the stigma attached within such a heterosexual institution. Commission on Sex in Prison (n 10)4. [↑](#footnote-ref-93)
94. In terms of the UK female prisons a higher level of homosexuality has been reported in the UK, Commission on Sex in Prison (n 62) 4. One study reported that 11.3% of women prisoners had sex with another female prisoner within the first month of incarceration. Emma Plugge, Nicola Douglas, and Ray Fitzpatrick  *The Health of Women in Prison  : Study Findings (Department of Public Health, University of Oxford , 2006)*. <<http://birthcompanions.net/media/Public/Resources/Extpublications/Health_of_Women_in_Prison_Study.pdf>>Both the higher reported and actual higher prevalence is perhaps explained by the tolerance by other female prisoners of the comfort and care afforded by fellow prisoners. This attitude was reflected during the author’s discussion with female prisoners in the Irish Dochás prison. One prisoner noted that a number of lesbian relationships had developed in the past, but the staff reaction was to separate those prisoners once the relationship became physical. A similar practice exists currently in the UK. According to the Commission on Sex in Prison ‘the usual response on discovering intimate relationships was to separate women from each other.’ Commission on Sex in Prison (n 62) 3. [↑](#footnote-ref-94)
95. Commission on Sex in Prison, (n 10) 1. A similar statement was made during a submission to the Commission by Costetsos, (n 63). [↑](#footnote-ref-95)
96. As confirmed by a ‘Prison source’ Irish Mirror. [↑](#footnote-ref-96)
97. A similar mindset exists for the executive. The issue of safe sex in prison has been brought to the attention of the government in 2005. The then Minister for Justice Michael McDowell explained that ‘the issue of whether the provision of condoms to prisoners by prison authorities is (n)either necessary or appropriate. To date, I have not received any ‘reports’ on this … I am not aware that there is, in fact, any demand by prisoners that they be provided with condoms while in prison. I have no plans to distribute condoms in prisons.’ <http://debates.oireachtas.ie/dail/2005/06/30/00309.asp> Written Answers - Irish Prison Service.

    Thursday, 30 June 2005, Dáil Eireann Debate Vol. 605 No. 5 [↑](#footnote-ref-97)
98. Schedule 1 Breaches Of Prison Discipline (30), S.I. No. 252/2007 - Prison Rules, 2007 <http://www.irishstatutebook.ie/2007/en/si/0252.html> . This was previously the case in the UK before the removal of that phrase form the prison rules. (Commission on Sex in Prison (n 10)3.) This rule however was rarely if ever inforced in this context in the UK. Paul Laxton, former Deputy Governor of Lewes prison, speaking during the Commission on Sex in Prison’s Seminar on Consensual sex between prisoners, 2. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>. [↑](#footnote-ref-98)
99. Commission on Sex in Prison (n 62) 3. [↑](#footnote-ref-99)
100. Commission on Sex in Prison (n 10) 3 and 4; Human Rights Watch, *No Escape: Male Rape in U.S. Prisons*. (2001, Human Rights Watch) <[www.hrw.org/reports/2001/prison/report.html](http://www.hrw.org/reports/2001/prison/report.html)> accessed 21 March 2014. [↑](#footnote-ref-100)
101. Ian O’Donnell ‘Prison Rape in Context’ (2004) *British Journal of Criminology*, 44 :241-

     255, 245. http://bjc.oxfordjournals.org/content/44/2/241.full.pdf. [↑](#footnote-ref-101)
102. Prison Reform Trust and National Aids Trust (2005) *HIV and Hepatitis in UK prisons: addressing prisoners’ healthcare needs*. London: Prison Reform Trust and the National AIDS Trust. SUBMISSION by The NAT (2013) quoted in Commission on Sex in Prison (n 10) 3. [↑](#footnote-ref-102)
103. World Health Organization, UNAIDS and United Nations Office on Drugs and Crime (2007) *Effectiveness of Interventions to Manage HIV in Prisons: Provision of Condoms and Other Measures to Decrease Sexual Transmission.* (*2007,* World Health Organization.) [↑](#footnote-ref-103)
104. Commission on Sex in Prison (n 62) 4. [↑](#footnote-ref-104)
105. Ward (n 12). [↑](#footnote-ref-105)
106. Commission on Sex in Prison, (n 10) 4. Seealso World Health Organization, UNAIDS and United Nations Office on Drugs and Crime) *Effectiveness of Interventions to Manage HIV in Prisons: Provision of Condoms and Other Measures to Decrease Sexual Transmission*. (2007, World Health Organization.) [↑](#footnote-ref-106)
107. O’Donnell (n 102) 245. Drug-taking in prison is also a key cause of some of these diseases. Department of Health *Improving health, supporting justice: The national delivery plan of the health and criminal justice programme board*.( Department of Health,2009) [↑](#footnote-ref-107)
108. Plugge, et al (n 95). It is reported that prisoners have taken to use ‘makeshift condoms from clingfilm, cellotape or empty crisp packets’. Cahalane. [↑](#footnote-ref-108)
109. Ward (n 12). [↑](#footnote-ref-109)
110. Commission on Sex in Prison (n 10) 1. The provision of condoms has also been recommended by an Irish 1999 study funded by the Department of Justice on HIV and Hep C in prisons;  Dunn (n 4) 7; and by certain factions within the UK prison service as far back as 1995. {*R V Secretary Of State For Home Secretary Of State For Home Department Ex Parte Glen Fielding Department Ex Parte Glen Fielding*, para 10.} [↑](#footnote-ref-110)
111. Brent Staples, ‘Fighting the AIDS Epidemic by Issuing Condoms in the Prisons’ *New York Times*

     7th September 2004 [↑](#footnote-ref-111)
112. O’Donnell makes an interesting point in relation to the increased risk to such diseases for prisoners, that this risk it ‘is in direct contravention of a prisoner’s right to safe custody: they are sentenced to do time not die by lethal infection’ The author would extent this argument to state that LGBT prisoners in particular a grave and enhanced risk, and may constitute a form of indirect discrimination. O’Donnell (n 102) 245. [↑](#footnote-ref-112)
113. *R v Secretary Of State For Home Secretary Of State For Home Department Ex Parte Glen Fielding* (n X) para 13. [↑](#footnote-ref-113)
114. Non-consensual sexual activity can arise from pure brute force as outlined in the subsequent discussion. It can also arise from the practice of using sex for favours Logan (n 43) 34., or the practice of sex slavery {Dr Neil Chakraborti, speaking during the Commission on Sex in Prison’s Seminar on Sexual Health in Prisons, 4. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>.} Again, accounts of this in an Irish context are scant; but in the UK women prisoners sold sex in exchange for drugs {Paul Laxton, former Deputy Governor of Lewes prison, speaking during the Commission on Sex in Prison’s Seminar on Consensual sex between prisoners , 2. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>.} and goods in prison. {<http://birthcompanions.net/media/Public/Resources/Extpublications/Health_of_Women_in_Prison_Study.pdf> Emma Plugge, Nicola Douglas, and Ray Fitzpatrick  *The Health of Women in Prison  : Study Findings (Department of Public Health, University of Oxford , 2006);* Hanson (n 19). [↑](#footnote-ref-114)
115. *In the US prison rape has been described as a problem of* ‘near universality’ (Gilligan J 2000 *Violence: reflections on our deadliest epidemic,* 165*)*, and a ‘qoutidain experience’, that is an ‘inevitable secondary effect of incarceration’O’Donnell (n 102) 241. [↑](#footnote-ref-115)
116. The UK Prisons and Probation Ombudsman in 2012 referred to 108 complaints of a sexual nature, 47 of which were eligible for investigation. Learning Lessons bulletin on sexual abuse in prisons (2012). *See* also, O’Donnell (n 102) 241. [↑](#footnote-ref-116)
117. Lonergan believes that the reluctance of Irish prisoners to report such sexual assaults and rapes may mean that the amount of sexual attacks known to the IPS may be underestimated. On a separate point, Lonergan believes the ‘culture of sexual abuse is of particular concern in the women's prison’ which does not follow the international trend that would suggest male prison’s are more notorious for rapes and sexual abuse. Lesbian sex in the US has been described since the early 1900s are more likely to be consensual {Ottis M 1913 ‘A Perversion Not Commonly Noted *Journal Of Abnormal Pyshcology*} which has been confirmed a century later. Greer K 2000 ‘The Changing Nature Of Interpersonal Relationships In Women’s Prisons’ *The Prison Journal*. Greer found that there were proportionately less accounts of physical or sexual assaults in female prisons as women generally tend to be less associated with violence. **Niamh Horan, ‘** Doubling up in prisons 'creating culture of sex abuse', warns former Mountjoy governor’ 04 May 2014 the Sunday Independent <http://www.independent.ie/irish-news/doubling-up-in-prisons-creating-culture-of-sex-abuse-warns-former-mountjoy-governor-30242066.html>. [↑](#footnote-ref-117)
118. A number of recent Irish media reports have described sexual assaults on Irish prisoners by other prisoners {*Cormac O'Keeffe, ‘*Authorities investigate sex assault in jail’ <http://www.irishexaminer.com/ireland/authorities-investigate-sex-assault-in-jail-226495.html>} and by prison staff. { Anne Sheridan, ‘Invesigation underway into alleged sexual assults by Limerick prison officers’*,2 August 2013* <<http://www.limerickleader.ie/news/local-news/invesigation-underway-into-alleged-sexual-assults-by-limerick-prison-officers-1-5416217>>} In the Irish Mirror’s account of a ‘gang sex attack’ McManamy refers to a protocol that has developed for dealing with such sexual assaults in prison which would suggest that previous sexual assaults have occurred and this is not a new phenomenon. Emma McMenamy 'Gang sex attack' on inmate St Patrick's Mar 25, 2013, <http://www.irishmirror.ie/incoming/gardai-investigating-suspected-gang-sex-1784111> [↑](#footnote-ref-118)
119. O’Donnell (n 102) 243. [↑](#footnote-ref-119)
120. The Commission on Sex in Prison Seminar on Coercive Sex in Prisons, 3. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/final_minutes_of_seminar_on_coercive_sex.pdf> [↑](#footnote-ref-120)
121. While the penetrator of rape is not considered homosexual the victims are forced to feel feminised and weak, and are often forced to be both a sexual and domestic slave to the rapist for months. O’Donnell (n 102) 243 and 244. [↑](#footnote-ref-121)
122. Cahalane (n 108). [↑](#footnote-ref-122)
123. Cahalane (n 108). [↑](#footnote-ref-123)
124. [2013] IEHC 334. [↑](#footnote-ref-124)
125. (n 11) para 4. [↑](#footnote-ref-125)
126. Human Rights Watch (n 101). [↑](#footnote-ref-126)
127. Wortley R 2002 *Situational Prison Control*, 107 - 115; Horan (n 117). [↑](#footnote-ref-127)
128. Wortley *ibid* 108 - 114. [↑](#footnote-ref-128)
129. Dunn (n 4) 10. [↑](#footnote-ref-129)
130. European Court of Human Rights, May 27, 2008. [↑](#footnote-ref-130)
131. <http://www.insidetime.org/resources/pso/pso_4445_civil_partnerships.pdf> [↑](#footnote-ref-131)
132. There have been reports in the UK that love letters between homosexual partners have been censored. Cahalane (n 108). [↑](#footnote-ref-132)
133. UK LGBT prisoners are now allowed by the prison service to ‘embrace, hug and kiss their partners’ during visiting time. ibid. [↑](#footnote-ref-133)
134. LGBT prisoner support groups should be encouraged to be set up which has been recommended by academics and prisoners alike. Dunn (n 4) 7; McClenaghan (n 49) 126; National Prison Radio (n 19). Information should be provided on LGBT groups outside of prison. Dunn (n 4) 7; McClenaghan (n 49) 127. In regards to access to publications such as magazines,equal treatment should be ensured compared to heterosexual materials. For example in the UK ‘sexually explicit gay magazine Boyz has often been barred, whereas straight men are allowed equally explicit material.’ McClenaghan (n 49) 126. [↑](#footnote-ref-134)
135. Many prisoners have reported of being ‘very much afraid and worried about the reaction of the other prisoners’ to being homosexual. McClenaghan (n 49) 126. The LGBT prisoner support group and external organisations would help in this regard. [↑](#footnote-ref-135)
136. Hanson (n 19). [↑](#footnote-ref-136)
137. Dunn (n 4) 7. [↑](#footnote-ref-137)
138. ibid 10. [↑](#footnote-ref-138)
139. Dunn (n 4) 9. [↑](#footnote-ref-139)
140. Commission on Sex in Prison (n 10) 3. Including reported disciplinary actions for hugging. Dunn (n 4) 7. [↑](#footnote-ref-140)
141. The Irish Prison Service, ‘Staff and Corporate Services (Human Resources)’ <http://www.irishprisons.ie/index.php/overview-of-the-irish-prison-service?catid=14&id=74> [↑](#footnote-ref-141)
142. Dr Éamonn O’Moore, consultant in public health with Offender Health, speaking during the Commission on Sex in Prison’s Seminar on Sexual Health in Prisons, 4. Minutes available <http://www.commissiononsexinprison.org/fileadmin/howard_league/user/pdf/Commission_on_Sex_in_Prison/minutes_of_the_seminar_on_sexual_health_01.pdf>; Dunn (n 4) 10; Nat submission quoted in Commission on Sex in Prison (10) 6. [↑](#footnote-ref-142)
143. Dunn (n 4) 10. [↑](#footnote-ref-143)
144. ibid 7. [↑](#footnote-ref-144)
145. *Green, R (on the application of) v Secretary of State for Justice,* para 18; *Connolly v Governor of Wheatfield Prison* (n 11). [↑](#footnote-ref-145)
146. Dunn (n 5) 6. [↑](#footnote-ref-146)
147. ibid 6. [↑](#footnote-ref-147)
148. Dunn (n 4) 6. [↑](#footnote-ref-148)
149. R. Robinson, ‘Masculinity as Prison: Sexual Identity, Race and Incarceration’; 2011 *California Law review*, 99, 1308-1408, 1336. [↑](#footnote-ref-149)
150. Dunn (n 4) 9-10. [↑](#footnote-ref-150)
151. ibid 3. [↑](#footnote-ref-151)
152. Costetsos, (n 63). McClenaghan makes a similar statement. (n 49) 122. [↑](#footnote-ref-152)