



The Management of Sex Offenders

A Discussion Document

January 2009

Table of Contents

	page
Executive Summary	3
1. Introduction	4
Purpose	4
Background	4
Defining a sex offender	5
2. Situation in this jurisdiction	7
Introduction	7
Number of sex offenders	7
Procedures and provisions – Pre-trial and trial	7
Procedures and provisions – Conviction and sentencing	8
Procedures and provisions – Prison	9
Procedures and provisions – Post-release and community	11
Co-operation with other Jurisdictions	13
3. Situation in other Jurisdictions	14
Introduction	14
Northern Ireland	14
Vermont	16
US Centre for Sex Offender Management	17
4 Key Issues	19
Introduction	19
Risk of Re-offending	19
Critical Components of the Management of Sex Offenders	20
Risk and needs assessment	21
Risk management	24
Co-ordination	24
Information management	24
Interventions	25
The effectiveness of programmes	25
Cost-benefit in intervening with Sex Offenders	26
Post-release support and intervention for Sex Offenders	26
Intervention participation levels	27
Public notification of Sex Offenders	28
Release regimes	29
Temporary Release	29
Post-release supervision	30
Part-suspended sentences	31
Notification of Gardaí under Part 2 of 2001 Act	32
Sex Offender order	33
Protection of Persons Order	33
Voluntary Regime	33
Electronic tagging or monitoring	34
5. Victims	37
6. Developments	42
An integrated and co-ordinated approach	43
Pre-sentencing phase	44
Non-custodial sanctions	45
Custodial sanctions	46
Release into the community	47

Executive Summary

This is a Discussion Document which reviews the existing situation regarding the management of sex offenders, puts forward proposals for future developments and invites contributions and observations. It addresses relevant commitments in the Programme for Government.

The Document notes that:

- research both in Ireland and internationally indicates that the rate of recidivism for sex offenders is actually lower than the average for offenders who receive custodial sentences;
- sex offenders are not a homogeneous group, they have different characteristics and pose different levels of risk

and concludes that

- the most effective way to protect the public and prevent further offences is to identify high risk offenders and focus efforts on them (i.e. resources should follow the risk);
- there are tools that, although not foolproof, do allow the level of risk posed by sex offenders to be assessed on an objective basis;
- there are interventions which have the potential to reduce the risk of reoffending.

Having reviewed research and practice here and internationally what is envisaged is:

- a much more integrated approach involving the Garda Síochána, the Probation Service, the Irish Prison Service and possibly other agencies;
- the use of evidence based risk assessment tools to identify the higher risk sex offenders and to focus efforts on them;
- a throughcare approach to the management of sex offenders from conviction, through imprisonment and out into the community with a view to protecting the public and reducing the risk of reoffending by appropriate rehabilitative interventions combined with:
- protecting the public and reducing the risk of reoffending by appropriate rehabilitative interventions combined with a more active supervision and monitoring of higher risk sex offenders after their release from prison by local risk management committees involving the Gardaí and the Probation Service.

A number of possible legislative amendments are mentioned. The document also addresses questions such as the use of electronic monitoring, public identification of offenders (Megan's law), temporary release for sex offenders and compulsory treatment and invites input as to the role to be played by other agencies.

Chapter 1 Introduction

1.1 Purpose

1.1.1 This Document reviews the existing situation and recent developments in Ireland relating to sex offenders and their victims and the practice in other selected jurisdictions. It also explores possible future options for improving the management of convicted sex offenders. The document is intended to increase public awareness of developments in this area, to encourage an informed debate on the best options for the management of convicted sex offenders and to invite bodies and groups that may have a role to play to participate in the process and to achieve a consensus on the way forward.

1.1.2 **We would very much welcome observations and contributions from any interested parties on the issues raised in this document by 30 April 2009.** Should you wish to contribute you may write to the

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or e-mail to

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If you wish the content of your submissions or your name and address kept confidential, please tell us and we will respect your wishes in this regard.

1.2 Background

1.2.1 The management of convicted sex offenders who either do not receive a custodial sentence or who are released back into the community following completion of their sentence poses numerous challenges for the criminal justice agencies involved. **Key challenges** include protection and reassurance of the public, identification of offenders at higher risk of re-offending, provision of effective mechanisms for monitoring and controlling such offenders, integration of criminal justice responses, balancing the rights of offenders to privacy with the need for public protection, and reintegration of offenders through continuity of interventions and provision of adequate supports.

The Agreed Programme for Government of June 2007 included a number of commitments concerning the monitoring of sex offenders after their release from prison and providing increased powers to the Gardaí. These commitments need to be implemented in such a way that makes a real

contribution to public safety. In addition the Report of the Joint Committee on Child Protection of November 2006 recommended a review of the management and dissemination of information received in accordance with the Sex Offenders Act 2001, particularly in the context of interaction with other jurisdictions.

1.2.2 In the light of this, in late 2007, the Department of Justice, Equality and Law Reform invited the Garda Commissioner, the Director General of the Irish Prison Service, the Director of the Probation Service and the Director of Cosc (the National Office for the Prevention of Domestic, Sexual and Gender-based Violence) to nominate representatives to participate in a working group on the management of higher risk offenders. The Divisions within the Department with responsibility for crime policy, prisons and probation policy and criminal law reform were also invited to participate. The members of the group are listed at Appendix 1 and the terms of reference the Group agreed upon are at Appendix 2. This Document was prepared by the Group for discussion purposes only. The views expressed in the document do not necessarily reflect the views of the Minister or the Commissioner of the Garda Síochána, the Director General of the Irish Prison Service, the Director of the Probation Service or the Director of Cosc.

1.2.3 It should be said at the outset that the Group was conscious that convicted sex offenders give rise to particular concerns around public safety. Some sex offenders are highly dangerous and at high risk of re-offending. However **not all people convicted of a sex offence pose a high risk**. The term "sex offence" covers a very diverse range of offences. The circumstances, motivating factors and level of danger vary considerably. Research shows that recidivism rates (i.e. the proportion of convicted offenders that go on to commit a further offence after finishing their sentence) for sex offenders are lower than the average for most convicted criminals. High risk violent offenders who do not commit sex offences may pose a much greater threat to public safety than most sex offenders. The Group decided to focus initially on sex offenders in the light of the public's perception of the level of threat posed by sex offenders and because there are already statutory provisions in place for the monitoring of these offenders. In addition the availability of research on this subject facilitates an evidence-based approach. In due course some of the arrangements envisaged in this document for higher risk sex offenders may be adopted for higher risk non sexual, violent offenders as well.

1.3 Defining a Sex Offender

1.3.1 For the purposes of this document a sex offender is a person who commits a sexual offence defined as such by section 3 of the Sex Offenders Act, 2001 (no. 18 of 2001) as amended. The offences include

- rape
- sexual assault
- aggravated sexual assault
- rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990

- incest by males
- incest by females 17 years or older
- defilement of a child under 15 years
- defilement of a child under 17 years
- soliciting or importuning a child for the purpose of commission of a sex offence
- causing or encouraging a sexual offence upon a child
- buggery with an animal
- buggery of persons under 17
- gross indecency with a male under 17 (repealed)
- gross indecency (repealed)
- defilement of mentally impaired females (repealed)
- offences against mentally impaired persons (section 5 of the Criminal Law (Sexual Offences) Act 1993)
- trafficking for the purposes of sexual exploitation
- allowing a child to be used for child pornography
- producing, distributing child pornography
- possession of child pornography
- committing a sexual offence outside the State
- attempting to commit any of the above offences
- aiding, abetting, counselling, procuring or inciting the commission any of the above offences
- conspiracy to commit any of the above offences.

Many of these offences are extremely serious and can attract a penalty of up to life imprisonment. However the circumstances of individual offences can vary significantly and traverse the spectrum from very serious to relatively minor. Rape, rape under Section 4 and sexual assault account for the bulk of offences for which sex offenders are in prison at any given time (approximately four out of five).

1.3.2 The Document confines itself to **convicted** sex offenders. The Group was conscious that for a variety of reasons only a proportion of persons who commit sexual abuse are reported and convicted. As a result there are sex offenders living in the community who may pose a threat but who do not fall within the scope of this document. The nature of the measures discussed here could only be justified and applied to a person who, in a criminal trial, has been identified as and proven beyond all reasonable doubt to be a sex offender. Such trials attract all the necessary safeguards and rigours of proof to protect those who may be falsely accused or otherwise innocent of the charge.

Chapter 2

Situation in this Jurisdiction

2.1 Introduction

2.1 This chapter gives an overview of the numbers of convicted sex offenders, the provisions and procedures applicable to sex offenders and highlights links with neighbouring jurisdictions. The sections follow the normal path of an offender through the criminal justice system, viz. from court through prison and back into the community.

2.2 Numbers of sex offenders

2.2.1 The following figures give an indication of the size and nature of the sex offender population.

- The annual average number of persons convicted of a Scheduled Offence under The Sex Offenders Act 2001 in the years June 2003 to June 2008 was 130
- At any one time there are approximately 300 convicted sex offenders in custody. (On 31/12/2008 there were 305 sentenced sex offenders and 28 on remand for sex offences.) More than 50% have been imprisoned for the offence of rape (including rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990). Up to half have been imprisoned for offences that involved children as victims (Murphy, P. G. (2002). Offender Rehabilitation Programmes for Imprisoned Sex Offenders - Grounds for Optimism? In P. O'Mahony (Ed.), *Criminal Justice in Ireland*. Dublin: Institute of Public Administration).
- About 40% (127 offenders) of those in custody will be the subject of post release supervision orders on release.
- Currently over 100 sex offenders are discharged annually having completed their sentences.
- Over 1,000 convicted sexual offenders are obliged to notify the Garda Síochána of their names and addresses pursuant to the Sex Offenders Act, 2001. (On 31/12/2008 there were 1075 persons obliged to give notification)
- 130 sex offenders in the community are under supervision by the Probation Service (as at 31 December 2008).

2.3 Procedures and Provisions – Pre-trial and trial

2.3 As mentioned previously, this Document is concerned with convicted sex offenders. As with most offences, decisions regarding the investigation and prosecution of a person accused of a sexual offence are a matter for the Garda Síochána and the Director of Public Prosecutions. The decision as to whether an accused person should be remanded in custody or

on bail pending trial is a matter for the courts.

2.4 Procedures and Provisions – Conviction and Sentencing

2.4.1 If an accused person is found guilty of a sexual offence, it is a matter for the trial judge to decide upon the appropriate sentence. In making his or her decision, the judge may hear testimony on behalf of the accused and also evidence of the effect on the victim. The judge may also seek a pre-sanction report from the Probation Service on the offender and/or other reports. Data for 2006 and 2007 indicates that the Probation Service prepares about 100 pre-sanction reports on sex offenders for the courts each year (of which approximately 50 are for the District Court and the remainder for the higher criminal courts).

2.4.2 Pre-sanction reports are of particular relevance in assisting the formulation of conditions for community-based supervision and treatment. The reports are only prepared post conviction and at the direction of the Court. They address issues relevant to risk assessment and risk management. They may also point to offence-related work which should be undertaken by the offender in the course of a custodial sentence (e.g. participation in a sex offender treatment programme).

2.4.3 In assessing the risk of re-offending at the pre-sentence stage, the Probation Officer preparing the report considers such matters as attitude to the offence, victim awareness, issues related to substance abuse, the offender's own history of victimisation and protective factors such as family supports and capacity to maintain accommodation, relationships and employment. Pre-sanction reports draw on a wide variety of sources of information including the Garda Síochána, the Book of Evidence, other relevant professionals and associates or family of the offender, in addition to in-depth interviews with the offender. In some cases the Probation Service also has a substantial body of information from previous contact with the offender. Where the court also requests other reports, such as a report on the mental health of the offender, these are frequently incorporated in the pre-sanction report or associated with it.

2.4.4 A person found guilty in court of a sexual offence automatically becomes subject to the requirements of Part 2 of the Sex Offenders Act 2001. The sex offenders must notify the Garda Síochána of their name and address for a period, depending on the seriousness of the offence, even if no custodial sentence is imposed.

2.4.5 The court when deciding upon the sentence to be imposed on a sex offender may:

- postpone sentencing subject to certain conditions (e.g. attendance at treatment);
- apply probation;
- impose a fine;

- impose community service in lieu of imprisonment;
- impose a custodial sentence;
- impose a custodial sentence suspended in part or in full subject to conditions (section 99 of the Criminal Justice Act 2006, no.26 of 2006).

In addition to the above, the court may:

- impose a post-release supervision order (Part 5 of the Sex Offenders Act, 2001).

2.4.6 Part 5 of the 2001 Act introduced a new system for the supervision of sex offenders after their release from prison. The sentencing court is obliged to consider whether to impose a sentence involving post-release supervision. In making this determination, the court must consider a number of factors, including the offender's need for rehabilitation, the need to protect the public from serious harm and the prevention of the commission of further offences. There are constraints on the period of sentence and supervision: the aggregate length of the prison sentence and the supervisory period combined cannot exceed the maximum penalty provided by statute, but at the same time, the length of the term of imprisonment cannot be any shorter than if post-release supervision was not considered. The post-release supervision may be made subject to conditions, such as that the offender attend specified "psychological counselling or other appropriate treatment". The responsibility for supervision is assigned to the Probation Service. An offender or a Probation Officer may apply for the variation or discharge of a supervision order. The Court may grant such a discharge where to do so would be in the interests of justice or the protection of the public no longer requires its continuation. In less serious cases, courts sometimes impose a suspended sentence and a supervision order so that in practice the offender is subject to immediate supervision without any period in prison.

2.4.7 Chapter 4 of this Discussion Document explores the advantages and disadvantages of part-suspended sentences and post-release supervision orders

2.5 Procedures and Provisions – Prison

2.5.1 Imprisoned sex offenders vary as regards offence seriousness. This will normally be reflected in the length of sentence they serve. They also vary in terms of personal profile and level of challenge presented. The principal offences for which offenders are in prison are rape and sexual assault. The offences relate to a range of incident types, including child abuse and stranger and acquaintance rape. Offences may have been committed in the recent or more distant past. Offenders also vary significantly by age, with about a third aged 50 or over. The vast majority are Irish. Offenders generally serve lengthy sentences, with about two-thirds sentenced to terms of imprisonment of five years or more.

2.5.2 At any one time the IPS has in custody about 300 offenders who have been convicted of sex offences. An additional number of offenders, typically 20-30, who are not in custody specifically for sex offending, may also require or benefit from interventions addressing this type of behaviour. Sex offenders are, in the main, segregated from other offenders and are primarily held in Arbour Hill, Wheatfield, and the Midlands Prisons. In any given year in excess of 100 sex offenders may be released from custody.

2.5.3. It is the objective of the Irish Prison Service to ensure that all appropriate efforts are made to work with sex offenders while in prison to bring about changes in their lives that reduce the risk of re-offending and enhance public protection to the greatest extent possible. Interventions while in prison, in conjunction with community follow-up and support, have the potential to significantly improve community safety by reducing the risk of re-offending.

2.5.4 A range of interventions is currently in place for sentenced sex offenders while they are in prison. These include individual counselling and offence-focussed work from the Irish Prison Service Psychology Service and from the Probation Service. A Sex Offender Programme (SOP) was in operation from 1994 to 2008. Other interventions available to sex offenders include anger management, interventions for substance abuse and skills development. The SOP was an intensive programme undertaken by a relatively small number of offenders each year. A total of 136 offenders completed the programme between 1994 and 2008. An independent evaluation of the SOP carried out by Dr. Gary O'Reilly and Professor Alan Carr, University College Dublin, found significant, positive changes on a range of psychological factors associated with re-offending in men who had undertaken the programme compared with similar groups of men who had not. A study is currently under way to ascertain whether the positive psychological changes accruing from participation in the programme are translated into lower rates of re-conviction for participants. Preliminary findings suggest that the positive changes in a prison environment do not necessarily transfer into the community and highlight the need for continuity of interventions and support.

2.5.5 With effect from 2009 a new model is being introduced to replace the SOP. The new model encompasses three group interventions focusing on preparation, offence based work and maintenance. The individual modules will be shorter than the SOP but will be more comprehensive when combined together. The group work will be needs-led and more flexible. A higher participation level is envisaged. Studies indicate that this type of prison based intervention has a positive effect provided it is combined with appropriate community supports.

2.5.6 The new group interventions will be delivered in Arbour Hill Prison which will effectively become a national centre for imprisoned sex offenders. This will facilitate a positive therapeutic environment that supports offenders, focuses professional expertise and increases Prison Officer awareness. Significant numbers of sex offenders will continue to be accommodated in the

Midlands and Wheatfield Prisons where every effort will be made to maximise the therapeutic environment and provide appropriate interventions.

2.5.7 The Irish Prison Service works increasingly closely with the other criminal justice agencies as regards the management of sex offenders. The Probation Service is already an active partner in the delivery of services in prison and participates in Governor-led multi-agency case conferences. Protocols are being put in place to formalise arrangements for consultation and co-ordination at all relevant stages of sentence management (such as inter-prison transfers and prior to release). The Prison Service works closely with the Garda Síochána as regards early notification of pending releases. The steps outlined later in this discussion document will help to ensure a more integrated and co-ordinated approach, facilitating, among other things, the exchange of relevant information.

2.6 Procedures and Provisions – Post-Release and Community

2.6.1 Sex offenders released from prison are subject to various notification requirements and may be subject to supervision and other restrictions. These have been covered earlier and are discussed in more detail below. An additional protection in law is that they must advise their employer or any prospective employer of their conviction if the work involves unsupervised access or contact with children or mentally impaired persons. This is provided for under Part 4 of the Sex Offenders Act, 2001.

Monitoring by the Garda Síochána

2.6.2 All sex offenders are required to notify the Garda Síochána within 7 days of their release from prison that they have been convicted of a sex offence and give their name and address. They must also notify any change in address or name and must give notice if they intend to leave the State. Failure to notify is an offence punishable by up to five years imprisonment, which gives rise to a power of arrest without warrant (section 13 of the Criminal Law (Human Trafficking) Act 2008). The requirements in Part 2 of the Sex Offenders Act 2001 apply equally to sex offenders from other jurisdictions who visit or become resident in the State. Monitoring of compliance with the notification requirements is facilitated by the Irish Prison Service giving advance notice to the Garda Síochána that a sex offender is due for release.

2.6.3 The duration of the notification requirement varies, depending on the sentence received. It ranges from a five year period of notification for non-custodial sentences to an indefinite period for sentences of over 2 years. A person who is subject to the notification requirements indefinitely may petition the Circuit Court to have the requirements removed after a minimum of ten years. The Garda Síochána must be informed of the application and has a right to be represented at the court hearing.

2.6.4 Responsibility for maintaining the records of persons who are subject to the notification requirements rests with the Domestic Violence and

Sexual Assault Investigation Unit (DVSAIU), part of the Garda National Bureau of Criminal Investigation. The Unit liaises with nominated Garda Inspectors in each Division, informing them of convictions notified by the court or of imminent releases from prison and being informed in turn of any changes in the circumstances of offenders.

2.6.5 Sex offenders may be made subject to a court-imposed Sex Offenders Order, on an application by a member of the Garda Síochána, not below the rank of Chief Superintendent. The Order prohibits the offender from doing certain things, such as being in the vicinity of a school. The offender must have acted on one or more occasions in such a way as to give reasonable grounds for believing that an Order was necessary to protect the public from serious harm. The civil standard of proof applies in determining the application. Contravention of an Order is an arrestable offence, with a maximum sanction of five years imprisonment. (Part 3 of the Sex Offenders Act, 2001).

Supervision and Support by the Probation Service

2.6.6 If the sentencing court imposes a Post-Release Supervision Order (Part 5 of the Sex Offenders Act,) or any other requirement for supervision, the sex offender comes under the supervision of the Probation Service. The Probation Service has recently established a High Risk Offender Management Team to develop effective practice and supporting systems. The Service has published staff protocols regarding roles and responsibilities. A Sex Offender Handbook to assist Probation Officers in their work has been developed in conjunction with University College Cork and staff training is ongoing.

2.6.7 To supplement individual supervision and in conjunction with the Granada Institute, the Probation Service operates two community-based group programmes in Dublin (the Lighthouse Programme) targeting those who have sexually offended against children. Since its inception, 72 men have commenced the programme and 54 have successfully completed treatment. An additional programme is being implemented in Cork and the target offender population is being widened to include offenders who have sexually offended against adults. Consideration is being given to supporting a programme for offenders with learning difficulties who could not participate in the main programmes.

2.6.8 In addressing the issue of accommodation, and as part of the work of the Homeless Agency, the Probation Service participates in a Multi Agency Group on Homeless Sex Offenders (MAG). This group has twelve partner agencies including the Garda Síochána, Prison Service, HSE, local authorities and voluntary agencies and efforts are being made to develop an interagency strategy and associated protocols.

2.7 Cooperation with other Jurisdictions

2.7.1 The criminal justice agencies cooperate and exchange information formally and informally with a number of European and North American jurisdictions on a regular basis. In addition to this general cooperation on matters of mutual interest, specific links have been developed with our closest neighbours on the question of sex offenders. This is of particular importance given the ease of movement between Ireland, Northern Ireland and Britain.

2.7.2 A Registered Sex Offender Advisory Group has been established consisting of representatives of the Garda Síochána, the Police Service of Northern Ireland, the Department of Justice, Equality and Law Reform and the Northern Ireland Office. As part of its work, this Group evaluates the potential for sharing information, examining the registration criteria in both jurisdictions for sex offenders and identifying areas for further cooperation. An Agreement was signed in September 2008 to further facilitate the exchange of personal information between the Garda Síochána and the Police Service of Northern Ireland and arrangements are in train to facilitate the exchange of information relating to the management of sex offenders using the IT systems of both services. Garda officers attend meetings in Northern Ireland on the preparation of risk management plans and there is a high level of cross border cooperation with regard to sex offenders. Exchanges and joint training on dealing with sex offenders are envisaged.

2.7.3 A 'Protocol for the sharing of information on the management of sex offenders between the Probation Service and the Probation Board for Northern Ireland (PBNI)' was signed by the Heads of both Organisations in March, 2006. That Protocol established mutual arrangements for the management of sex offenders who are subject to supervision by the respective Services. This Protocol facilitates best practice and effective case management of sex offenders between jurisdictions by enabling exchange of relevant information on a structured and agreed basis.

2.7.4 A Memorandum of Understanding on information sharing arrangements between Ireland and the UK relating to sex offenders was signed on 27 November, 2006. The rationale for the Memorandum is that such information will be shared between police forces for the purposes of protecting the public from the risks presented by sex offenders and investigating serious sexual offences. The Memorandum covers the transmission of any information necessary to achieve these purposes.

Chapter 3 - Situation in other Jurisdictions

3.1 Introduction

3.1.1 The Group carried out a desk top review of arrangements in England and Wales, Scotland, Sweden, Norway, Spain, New Zealand, the USA, the State of Vermont and Canada and met with Northern Ireland officials. Some particularly useful material was obtained in respect of Northern Ireland, Vermont and the USA (Centre for Sex Offender Management) and an account of relevant points is set out below

3.2 Northern Ireland

3.2.1 The Group met with representatives of the Police Service of Northern Ireland (PSNI), the Probation Service of Northern Ireland and the Strategy and Policy Coordinator of the Northern Ireland Sex Offender Strategic Management Committee. The monitoring of sex offenders is a very high profile issue in Northern Ireland and considerable energy and resources have been invested in developing and implementing arrangements which are both sophisticated and comprehensive. The arrangements were known as **MASRAM - the Multi Agency Sex Offender Risk Assessment and Management**. MASRAM applied to all adult sex offenders required to notify under the terms of Sexual Offences Act 2003 and persons convicted of a sexually motivated offences about whom there are concerns. (They are now known as Public Protection Arrangements Northern Ireland - PPANI.)

3.2.2 The main features of MASRAM include

- a strong emphasis on inter-agency cooperation at all levels;
- using risk assessment to classify offenders into low, medium and high risk categories;
- detailed manuals, guidelines and protocols governing every aspect of the process, and
- pro-active case management of higher risk offenders.

3.2.3 MASRAM has a Strategic Management Committee chaired by an Assistant Chief Constable of the PSNI with senior representatives from the prison and probation services, social services, the Housing Executive, the Northern Ireland Office, Department of Health, Social Services and Public Safety as well as voluntary agencies such as the NSPCCC (child protection) and Nexus Institute (victims of sex offenders). The Committee oversees the overall operation of MASRAM, including research and evaluation. A sub-group of the Committee reviews all high risk cases. Below the Strategic Management Committee are Area Sex Offender Risk Management Committees, which deal with the cases of individual sex offenders. The PSNI normally provide the infrastructural support for such committees (room, secretariat) and the Probation Service provide a chairperson. All the relevant local services are represented on the Area Committees.

3.2.4 Risk assessment is an ongoing process. It is not seen as an exact science and assessment involves use of formal tools and professional input. The Northern Ireland authorities are currently reviewing new models of risk assessment. The PSNI carry out an initial risk assessment on all sex offenders who come to their attention. This information is passed to the relevant Area Committee who review the case using inputs from the various agencies. Risk assessment takes into account both static and dynamic factors. The risk classification system is based on three categories as follows:

- High risk – Someone whose sexual offending has been assessed as currently likely to lead them to seriously harm other people;
- Medium risk – Someone whose behaviour gives clear and current cause for concern with regard to his or her capacity to carry out a contact sexual offence; and
- Low risk – Someone whose behaviour gives no cause for concern with regard to their capacity to seriously harm other people or carry out a contact sexual offence.

In June 2008, 913 offenders fell within the MASRAM arrangements with a breakdown as follows:

Risk level	Total	In prison	In the community	Outside the jurisdiction
High	48	28	10	10
Medium	335	75	260	-
Low	530	4	526	-
Total	913	107	796	10

3.2.5 The principles underpinning MASRAM and the roles of respective agencies are well documented in manuals and guidelines. Key principles include:

- protecting the public and victims;
- the need for a pro-active multi agency approach;
- the need for suitable accommodation for sex offenders;
- the keeping of information on sex offenders confidential;
- sharing necessary information;
- encouraging offender participation; and
- using approved programmes both in custody and in the community.

The aim is to promote the offender's self-management as well as applying external measures designed to reduce risk.

3.2.6 The sharing of information is governed by protocols and guidelines. The confidentiality and security of the information must be guaranteed by the recipient agency, there must be lawful authority, and the sharing must be necessary and proportionate. It is not the practice to make public the identity of sex offenders unless, for example, a high risk person is evading monitoring and poses a real danger to the community.

3.2.6 Low risk cases are normally monitored by a single agency (e.g. PSNI)

or the Probation Board). For medium risk offenders, a multi-agency risk management plan is developed and a designated risk manager for that offender will be appointed. The plan may involve visits from the risk manager and police as well as other actions. The case is reviewed by the Area Committee on a regular basis. For high risk offenders, a more robust multi-agency risk management plan is developed and a designated risk manager for that offender is appointed. The plan may involve ensuring the offender has suitable accommodation, is treated for any learning difficulties or mental illness, is visited on a regular basis by the risk manager and the police (in plain clothes). The person may also be subject to civil orders imposing restrictions, for example on owning a car or a dog or being in the proximity of children's playgrounds or schools or on foreign travel.

3.2.7 The Group was impressed by the MASRAM approach to supporting and monitoring sex offenders in the community.

3.3 Vermont

3.3.1 Vermont is recognised as an international leader in the management and treatment of sex offenders. In 2005, Vermont had 420 sex offenders in custody, 574 on probation and 33 on parole (amounting to 1,027 in total). Treatment of sex offenders is based on an assessment of risk of re-offending and matching the level of treatment intensity to the risk level of the offender. The process of assessing an individual's criminogenic, educational, vocational and psychological needs begins when he or she is found guilty and a sentence management plan is formulated in conjunction with the offender and he or she is sent to a prison or prisons that can address those needs. Formal risk assessment tools are used, notably, the Static 99 and the Vermont Assessment of Sex Offender Risk (VASOR).

3.3.2 Great emphasis is put on continuity of prison interventions in the community upon release. Low risk offenders are released after serving their minimum sentence and they then receive sex offender treatment in the community. Treatment in prison is not mandatory but higher risk offenders are only eligible for parole when they have successfully completed the incarceration part of their sentence plan. On parole, the person is required to engage in community sex offender programmes and is strictly monitored and may be returned to prison for breaches of parole. Sex offender programmes in prison and in the community involve group and individual therapy and are conducted under contract to the Vermont Department of Corrections (which incorporates prison and probation functions). More serious offenders are subject to a combination of measures including:

- risk control activities such as surveillance, polygraph tests, restrictions on movements, drug and alcohol testing and visits to their job and home; and
- promoting activities likely to reduce the risk of re-offending or the severity of re-offending by re-establishing relationships with the community, treatment programmes and counselling.

There is a strong emphasis on working in the community using both professional officers as well as volunteers. A Correctional Services Specialist

Officer (similar to a Probation Officer) is assigned to monitor the offender's compliance in the community.

3.4 United States Centre for Sex Offender Management

3.4.1 The US Centre for Sex Offender Management, part of the Department of Justice, published a document in February 2007 entitled "*Managing the Challenge of Sex Offender Re-entry*" as a policy and practice brief. The Centre is of the view that while evidence is limited, the weight of current evidence suggests that cognitive-behavioural programmes can reduce recidivism by 15% to 30%. It recommends the use of specific sexual offender risk assessment tools to assess prisoners. High risk prisoners should be prioritised and receive intensive treatment as they benefit more from such programmes than lower risk prisoners. Shorter term services are appropriate for sex offenders at the lower end of the scale. Programmes should be delivered as close as possible to the release date and if completed much earlier, maintenance interventions may be appropriate. Other needs of prisoners essential to re-integration need to be addressed.

3.4.2 The Centre recommends a discretionary approach to determining release from custody (i.e. providing the possibility of early release) so as to provide an incentive for prisoners to participate in specialised programmes, to facilitate post release supervision and to distinguish between high risk and low risk offenders. It concludes that participation in community-based treatment programmes will also reduce recidivism.

3.4.3 The Centre emphasises the need to promote continuity of care, to establish community support and address matters such as housing. The lack of secure affordable housing can be the most significant barrier to avoiding re-offending and they encourage the involvement of housing authorities in the reintegration process. Driving sex offenders underground makes supervision and monitoring efforts futile. It observes that multiple restrictions and close monitoring have little impact on recidivism. Lower recidivism rates have been found, on the other hand, when supervision is combined with rehabilitative programmes. The Centre identifies the months and years following release as the critical adjustment period for sex offenders.

3.4.4 The Centre argues that victims should be recognised as key stakeholders in the re-integration process and that they should receive notification of decisions about the release of an offender even if victims do not actively opt into such notification processes.

3.4.5 The importance of a broad-based support and resettlement plan is very much supported by the Centre. It emphasises the need to consider the sentence and resettlement planning for sex offenders from a holistic perspective, so that as well as offending-related intervention, other psychosocial and practical needs are addressed. In its view, the transition and release process requires community partners who can provide essential programmes, services and resources in the community to which the individual will return, e.g. sex offender treatment, mental health services, substance

misuse services, educational services, vocational training. It sees it as essential to establish community support networks (e.g. family, concerned others) and address accommodation and employment issues.

3.4.6 The Centre encourages adoption of a success-oriented approach to post-release supervision and sees a need to balance risk management techniques with positive approach goals (whereby sex offenders can develop the necessary skills and competencies to live fulfilling, crime-free lifestyles) as a means of maximising successful outcomes and reducing recidivism. The Centre stresses the need to inform and engage the public.

Chapter 4 - Key Issues

4.1 Introduction

This chapter looks at some key issues relating to the management of sex offenders, notably evidence on the risk of re-offending, critical components of the management of sex offenders, the effectiveness of interventions, participation levels, public notification, and regimes for monitoring sex offenders after release (including electronic monitoring).

4.2 Risk of Re-offending

4.2.1 Sex offenders are not a homogenous group and it cannot be assumed that all sex offenders pose the same level of risk. For example a person convicted in the District Court of a non-contact sexual offence may pose little risk to the public while the same clearly could not be said about a person who has kidnapped and raped.

4.2.2 Research indicates that the level of reconviction by sex offenders is lower than for most criminal offenders. Irish research indicates that:

"in conformity with the international picture sex offenders released from Irish prisons were significantly less likely to be re-imprisoned than other types of offenders at least in the short term" (O'Donnell, I., E.P. Bauer and N. Hughes (2008) 'Recidivism in the Republic of Ireland' *Criminology and Criminal Justice* 2008: 8:123) (18% of sex offenders imprisoned within 3 years of release compared to 45% of persons who committed a violent or property offence).

4.2.3 The US Centre for Sex Offender Management, a Department of Justice project, cites research ((Langan, P.A., Schmitt, E.L. & Durose M.R. (2003) 'Recidivism of sex offenders released from prison in 1994, Washington D.C. : U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics) that shows that in the US, 43% of released sex offenders were rearrested within one year and over one third returned to prison within 3 years. However, of them, only 5% were rearrested for another sex offence and only 3.5% were convicted of another sex offence. The majority of returns to prison related to technical violations of release conditions.

4.2.4 A meta-analysis in 1998 found aggregate sexual re-offending rates of 13.4% based on average follow-up periods of 5-6 years, with a rate of 12.7% for child molesters and 18.9% for rapists. (Hanson, R.K. & M.T. Bussiere, (1998) 'Predicting relapse; a meta analysis of sexual offenders recidivism studies' *Journal of Consulting and Clinical Psychology* 66, 3 48-362)

4.2.5 These statistics and research findings have to be treated with a certain amount of caution. They relate only to sexual offences which have been reported and where the perpetrator was charged and convicted and therefore underestimate the actual rate of re-offending. Furthermore,

factors such as age on release are likely to impact on recidivism. In Ireland, a significant number of sex offenders have been convicted quite late in their life. Over 100 of the approximately 300 sex offenders in prison in this jurisdiction are over 50 years age and of these, more than half are over 60 years of age. The offences may have been occurred decades previously and they may be at a lower risk of re-offending on release because of their age.

4.2.6 The circumstances of individual offenders vary enormously. While most sex offenders may not re-offend, the concern is that there are sub-groups and individual sex offenders who are at a higher risk of re-offending and committing serious sexual offences. The challenge is thus to identify those higher risk sex offenders.

4.2.7 Convicted sex offenders represent only a portion of all persons who have actually offended in the past or will offend in the future. A recent cross border report (Therapeutic Interventions for Sexual Offenders September 2008) suggests that *"As it is estimated that as little as 10-20% of cases of sexual abuse are processed in the criminal courts the vast majority of individuals who may present significant risk to children and vulnerable adults are in fact in our communities."* Despite this, the opportunity for supervision in the community of the type envisaged in this Document realistically only applies to convicted sex offenders. There are legal and Constitutional reasons for this approach. The nature of the measures in question is such that it is necessary that (i) the persons to be subject to those measures can be identified very specifically and (ii) that those persons have been proved beyond all reasonable doubt to have committed an offence that justifies such measures.

4.2.8 The concept that sex offenders could be subject to certain measures after their release from prison was established in the Sex Offenders Act 2001. Those measures apply only to persons convicted of a sex offence. A question arises as to whether post release measures could also be applied to persons convicted of say a violent crime where there was a sexual element. This is being examined at present and it may be possible, in forthcoming legislation, to apply some of the provisions of the 2001 Act to persons convicted of an offence which was not sexual but which the court was satisfied had a sexual element to it.

4.3 Critical Components of the Management of Sex Offenders

4.3.1 To be effective, systems for managing sex offenders need to include:

- An assessment of risk of re-offending and potential harm;
- Monitoring and oversight arrangements for compliance with relevant court supervision orders;
- Engagement and motivation of offenders to effect positive change;
- and

- Collaboration between all relevant agencies in managing risk.

Consequently there is a need to consider at a national level how interventions can be delivered and, in turn, develop the necessary infrastructure to do so. This can best be considered under four primary areas, namely:

- Risk and needs assessment;
- Risk management;
- Co-ordination; and
- Information Management.

Risk and needs assessment

4.3.2 Formal risk and needs assessments are needed for many important decisions, including sentencing, intervention planning, sentence management, resettlement planning and supervision and monitoring in the community. It has to be accepted at the outset that no system of risk assessment is perfect. It is simply impossible to predict with 100% certainty how an individual will act in the infinite variety of situations that can present themselves in life. However, risk assessment has come a long way in the last number of years, primarily through the application of scientific research to the very difficult question of predicting the likelihood of future offending, including sexual recidivism. An important development in this process has been the use of research to guide the development of risk assessment instruments that combine both static and dynamic risk factors.

4.3.3 Static risk factors refer to historical factors (e.g. age at time of offence, criminal history) known to be related to recidivism. However, being historical, they are not amenable to change. Static factors are the most effective and accurate means of categorising offenders into different risk brackets. They contribute significantly to the more efficient distribution of resources, enabling services to be more intensively targeted at those who most require them. Dynamic risk factors are characteristics that can change and when changed, contribute to a corresponding increase or decrease in recidivism risk. Dynamic risk factors can be further subdivided into stable dynamic factors and acute dynamic factors. Stable dynamic factors are expected to remain unchanged for months or years. Thus, intervention programmes aimed at creating enduring improvements need to target stable dynamic factors (e.g. social competencies, attitudes tolerant of offending, problems with emotional/sexual self-regulation, substance misuse). In contrast, acute dynamic factors, such as alcohol intoxication or negative mood, change rapidly (in days, hours, even minutes). Acute dynamic risk factors are related to the timing of re-offending. However, they may have little relationship to long-term risk potential.

4.3.4 Studies indicate that empirically validated risk assessment measures have a moderate to high strength of prediction and are

significantly more accurate than clinical judgement alone ((Hanson, R.K. & M.T. Bussiere, (1998) 'Predicting relapse; a meta analysis of sexual offenders recidivism studies' Journal of Consulting and Clinical Psychology 66, 3 48-362, Hanson, R.K. (2000) 'Risk Assessment' Association for the Treatment of Sexual Abusers, Hanson & Mortan-Bourgon, 2004),

"These scales increase our ability to predict re-offending by 20 to 30 percent over chance and reliably classify individuals into risk levels to guide treatment programmes." Murphy. W.D., & R. McGrath (2008) 'Best Practices in Sex Offender Treatment' Prison Service Journal July 2008 No. 178 1-14.

4.3.5 The benefits of risk and needs assessment include the following:

- Risk must be identified before it can be reduced and managed. A risk and needs assessment is an integral part of this risk identification process;
- Risk assessment and management contribute significantly to public protection;
- Limited resources can be most appropriately targeted where risk and need are greatest;
- As regards therapeutic interventions, when based on the principles of involvement, collaboration and individualised support, risk assessment can be empowering for the offender and serve to aid his/her motivation to change and his/her level of engagement in change, by offering meaningful and clear goals;
- Risk and needs assessment is integral to deciding on the right level and type of intervention and support required by each individual offender; and
- Risk and needs assessment identifies the offender's strengths (and not just deficits or risk factors) which can subsequently be reinforced and developed.

4.3.6 A comprehensive risk and needs assessment should provide information on the following:

- The *likelihood* that an individual will re-offend;
- The personal and environmental *risk factors* that may increase this likelihood;
- The ways in which these *risk factors interact* to contribute to offending behaviour;
- What areas to target for *intervention, management and supervision*;
- The *strengths and protective factors*, both personal and environmental, that may reduce the likelihood of re-offending; and
- Early *warning* signs to re-offending.

4.3.7 The three main criminal justice agencies use formal assessment tools for different purposes. The Psychology Service of the Irish Prison Service (IPS) uses a wide variety of measures for purposes of assessing risks and needs and devising appropriate interventions. The Probation Service and the Garda Síochána are in the process of introducing instruments which will lead to an all Ireland approach to the risk

assessment of sex offenders.

4.3.8 The IPS Psychology Service uses the following measures:

- RM 2000 (Thornton et al., 2003);
- Violence Risk Scale – Sex Offender Version (Wong et al. 2003);
- Stable/Acute (Hanson & Harris. 2007);
- Personality Assessment Inventory (PAI) (Morey. 1991);
- State-Trait Anger Expression Inventory (STAXI-II) (Spielberger. 1991); and
- A battery of psychometric measures which explore locus of control, emotional loneliness, emotional congruence with children, cognitive distortions regarding children, self-esteem, impulsivity, victim empathy and problem-solving ability.

Where the need is indicated, the Psychology Service may also employ the following additional assessment measures:

- The International Personality Disorder Examination (IPDE) (Loranger. 1999);
- Psychopathy Checklist Revised (PCL-R) (Hare. 2003); and
- Comprehensive Assessment of Psychopathic Personality (CAPP) (Cooke, Hart & Logan. 2008).

4.3.9 The Probation Service has since 2005 used a standardised risk assessment instrument nationally, to assess risk of re-offending amongst generic offenders. The instrument, the Level of Service Inventory-Revised (LSI-R), is not the instrument of choice for assessing risk posed by sex offenders. However the Probation Service is in the process of introducing a combination of two risk assessment instruments: Risk Matrix 2000 (RM 2000) and Stable and Acute 2007 (Harris) to assess risk for sex offenders. The RM 2000 uses static risk factors to determine risk levels. Higher levels of supervision will be applied to those assessed as high risk using this instrument. This will facilitate the Probation Service by adding value to the professional assessment of the Probation Officer in determining the risk level of the individual offender. The RM 2000 instrument is not complicated to administer and provides a rating of very high, high, medium or low risk of re-offending, by placing the offender within an actuarially calculated group who share similar characteristics. The Stable and Acute 2007 assessment tool increases the Service's capacity to identify and respond to changes in risk levels over time. The intention is that this instrument will be completed in respect of those initially assessed as moderate or high risk through a combination of professional practice and RM 2000. People in the medium risk category can move into the high risk category so best practice strongly recommends that they be further assessed in this way. The Stable and Acute assessment will identify the dynamic risk factors which need to be targeted during supervision and gives a more accurate picture of immediate risk. It is thus carried out during each supervision session.

4.3.10 The combination of instruments is also being introduced as the standard for assessing risk and needs in Northern Ireland and Scotland and is under consideration for England and Wales. Use of the same approach in this jurisdiction and in Northern Ireland will lead to a shared understanding of what is meant by the terms 'low/medium/high' risk and will greatly assist in the protection of the public concerning offenders travelling between the two jurisdictions.

4.3.11 The Gardaí Síochána is also introducing the RM 2000 instrument to identify those most at risk of re-offending for purposes of monitoring offenders in the community. The Police Service of Northern Ireland also uses RM 2000, which will facilitate the ever-increasing cross-border management of sex offenders from a policing perspective. The Garda Síochána and the Probation Service are now engaged in joint training on the use of RM 2000.

Risk management

4.3.12 Risk management is a responsive and dynamic intervention which to be effective must be dictated by the ongoing assessment of risk. In turn it will inform the plan of supervision where the level of intervention is based on the level of identified risk as well as targeting the identified risk factors. In addition, a risk management strategy should contain a cross agency component based on agreed models of effective practice. This will ensure that on-going risk assessment and risk management is fully informed. It will also help to provide the practical assistance required to help offenders re-integrate into the community and live a more positive lifestyle. Structured cognitive behavioural intervention programmes targeting groups and/or individuals should form part of this strategy.

Co-ordination

4.3.13 To be effective in assessing and managing risk the major criminal justice partners (the Probation Service, the Garda Síochána and the Irish Prison Service) need to work collaboratively. This will involve the development of interagency protocols for the sharing of information. Equally the Health Service Executive, with primary responsibility for child protection and welfare, is an important partner with statutory responsibilities with whom the criminal justice agencies should share information and engage formally. In addition many organisations such as local authorities, homeless services, training and employment bodies, are engaging with sex offenders at different levels. Appropriate protocols for involvement with these agencies need to be put in place.

Information Management

4.3.14 Timely, accurate and accessible information is essential to ensure the effective management of sex offenders and to ensure quality risk assessment and risk management. The implications are two fold:

- the need to manage information internally in each organisation; and
- the need to ensure appropriate transfer of relevant information between agencies.

4.4 Interventions

The effectiveness of intervention programmes

4.4.1 An increasing body of research demonstrates that simply imprisoning offenders is not effective in reducing their risk of re-offending on release, but that well-designed, evidence-based rehabilitative approaches can have the effect of promoting positive outcomes for offenders and reducing recidivism (Lipsey and Cullen, 2007). It should be noted that interventions do not offer a “cure” for sex offenders. None offer a guarantee of success for every individual, many interventions have little or no effect and the success rate of even the best designed interventions can be reduced significantly due to a variety of factors.

4.4.2 Perhaps the most encouraging results to date in relation to sex offenders have emerged in two prominent meta-analytic studies conducted by some of the world’s leading clinicians and researchers in the field (Hanson et al. 2002; Lösel and Schmucker, 2005).

4.4.3 The Collaborative Outcome Data Committee (Hanson et al. 2002) reported from a meta-analysis of 43 independent studies dating from 1980 to 2000 that contemporary cognitive-behavioural oriented programmes had the most significant results in reducing recidivism compared to older or less developed approaches. The sexual offence recidivism rate for treated offenders was 9.9% (n=1638), compared with 17.4% among 378 untreated participants (n=1378). The general recidivism rate for those who had received interventions from contemporary programmes was 32.3% (n=709) compared with 51.3% for those in the untreated control groups (n=466). Older treatment approaches were not associated with a reduction in sexual or general recidivism. These findings were subsequently replicated in a larger review by Lösel and Schmucker (2005).

4.4.4 McGrath et al. (2003) demonstrated a significantly lower rate of sexual re-offending in offenders who completed a prison-based treatment programme compared with offenders who completed some of the programme and none of the programme respectively (5.4% vs. 30.6% and 30%).

4.4.5 Significant reductions in recidivism have been demonstrated across settings. However research has consistently demonstrated stronger effect sizes for community-based interventions than interventions provided in institutions (Alexander, 1999; Hall, 1995; Hanson et al., 2002; Lösel and

Schmucker, 2005).

Cost-benefit in intervening with sex offenders

4.4.6 Researchers have demonstrated through cost-benefit analyses that the costs associated with sex offender recidivism greatly exceed the costs associated with providing intervention (Aos et al., 2001; Marshall et al., 1991; Prentky and Burgess, 1990). Marshall et al. (1992) showed that the cost to society for a single sexual offender to undergo investigation, conviction and imprisonment, as well as the cost to assess and treat just one victim, amounted to approximately \$200,000 (Canadian). Prentky and Burgess (1990) estimated that the cost to society was \$67,000 (U.S.) less for a treated child molester than the untreated child molester. Cognitive-behavioural treatments specifically have been demonstrated to save more than they cost (Aos et al., 2001).

Post-release support and intervention for sex offenders

4.4.7 Research has clearly demonstrated the positive effects on recidivism of providing appropriate community supports for sexual offenders. In addition, prison-based intervention combined with appropriate community supports appears to be the best combination for helping to keep sexual offenders offence-free (Lowden et al., 2003; McGrath et al., 2003; Wilson et al., 2000).

4.4.8 Offenders released from prison with parole supervision had a significantly greater likelihood of remaining arrest-free compared to offenders released into the community without the support and structure of supervision according to an eight year follow-up of Colorado's therapeutic prison/community programme (Lowden et al., 2003). Critically, those offenders who completed the prison-based treatment programme, in addition to remaining under supervision once released, were demonstrated to have the greatest advantage. Thus, treatment combined with parole supervision was found to offer the best protection against relapse.

4.4.9 Similarly, McGrath and colleagues (2003) found lower rates of sexual recidivism among offenders who received aftercare treatment and community supervision. Just 9% of the total number of sexual recidivists re-offended while participating in community sexual offender treatment, while just 16% of recidivists re-offended while under community supervision. The study also found that the longer the offenders participated in community sexual offender treatment and the longer they were under community supervision, the less likely they were to re-offend.

4.4.10 An excellent example of the positive effects of community support in reducing recidivism has been highlighted by a recent evaluation of the Circles of Support and Accountability (COSA) approach in Canada. This approach, designed to target high risk sexual offenders who lack

natural supports in the communities to which they are returning, involves recruiting and training both professionals and volunteers to develop community support networks (Wilson and Picheca, 2005). Following release, the team work closely with the offenders, directing them towards required supports and resources and holding them accountable for their behaviours (Correctional Service Canada, 2002).

4.4.11 The most recent evaluation of the COSA model examined the recidivism rates of two matched groups of 60 high risk sexual offenders. One group had been involved in COSA, while the second group had not. The results revealed that the offenders who participated in the COSA approach had an overall reduction of 35% in all types of recidivism (including sexual and violent offending – 28.3% vs. 43.4%). Specifically, the COSA group showed a 70% reduction in sexual recidivism compared to the control group (5% vs. 16.7%). Additionally, the researchers found that the sexual re-offences perpetrated by the participants of the COSA group were significantly less severe when compared to the severity of their prior offences; a pattern of harm reduction that was not evident in the control group (Wilson et al., 2007). Due to its success, the model has been initiated throughout the Canadian provinces and similar COSA inspired programmes have been implemented in parts of the United States, as well as in other countries (Bumby et al., 2007)

4.5 Intervention participation levels

4.5.1 The Group was of the view that interventions in prison with sexual offenders have the potential to reduce the risk posed by such offenders. It will not reduce the level of risk in every case nor can it be viewed in isolation from the regime of supports, interventions and monitoring that the offender will be subject to on release. However the potential gain is such that a higher level of participation by sexual offenders would be a positive development. The level of participation in prison in the past has been disappointing and increasing the level of participation should be a priority.

4.5.2 The Group considered the question of "**mandatory treatment**". Regardless of the legal and ethical issues that mandatory treatment might present, the Group could find no evidence that mandatory treatment of sex offenders was either feasible or of any value in reducing recidivism. Involving a negative and disruptive prisoner in a group programme is likely to adversely affect other participants and the success of the programme as a whole.

4.5.3 The Group was of the view that there should be **extrinsic incentives**, positive or negative, that will motivate sex offenders to participate in programmes. The nature and effectiveness of such incentives is a matter that requires further consideration. The practice in Vermont was cited in which prisoners who do not participate in programmes are not deemed eligible for parole. It was also emphasised

that mere participation in a programme did not guarantee any lowering in the risk of re-offending. The view taken was that sex offenders who do not participate in programmes should not be eligible for any form of early release or additional privileges within the prison system. Participation in a programme should make them eligible for reward but such rewards should only be awarded where participation results in an observable lowering of the risk of re-offending.

4.5.4 The Group would welcome any views on the question of incentives to participation in treatment.

4.6 Public notification of sex offenders

4.6.1 The first law concerning the public notification of sex offenders, "**Megan's Law**", was introduced in Washington State in 1990. The murder and rape of a young girl, Megan Kanka, in 1994 by a convicted sex offender living in her neighbourhood in New Jersey led to a high profile campaign for such measures. Legislative provisions have now been introduced in all states in the US providing for the establishment of a register of the names and addresses of persons convicted of certain offences against minors or sexually violent offences. Many States make the material publicly available on the internet particularly in relation to the higher risk offenders. (Jacob Wetterling Crime Against Children and Sexually Violent Offender Registration Program 1994)

4.6.2 The UK have recently introduced a very restricted pilot scheme under which a parent or guardian of a child may ask the police about the record of an individual that has interaction with that child (e.g. a new partner or neighbour). The police will investigate the matter but are not obliged to provide any information to the person who submits the enquiry and it is a matter for the police to decide upon the appropriate action to take and what information, if any, may be provided.

4.6.3 Our primary objective has to be to minimise the risk posed to the public by convicted sex offenders. The Group was of the view that if the Garda Síochána have reason to believe that a particular high risk convicted sex offender poses a real and immediate danger, they should be free to tell individuals who need to know. Indeed in certain circumstances this may involve notifying the public through the media. Similarly if a sex offender has failed to notify the Garda Síochána of his or her address, they should be free to seek public assistance in locating that offender. However we do not believe that giving the general public unrestricted access to the names and addresses of convicted sex offenders, either high risk or low risk, would serve any useful purpose. Indeed it is likely to have the reverse effect, encouraging witch hunts, driving sex offenders underground and making it more difficult for the Garda Síochána and the Probation Service to monitor and supervise such offenders. It would also raise issues as to the rights of individuals who have completed their sentences and where there may be no evidence that they pose any future

threat.

4.6.4 The Group would welcome any views on the question of publicly identifying sex offenders.

4.7 Release Regimes

4.7.1 There is a balance to be achieved between respect for the rights of individuals and the level of control and monitoring required to minimise the risk they pose to others. While a convicted person may lose entitlement to certain rights (e.g. the right to liberty) for a period of time as part of their punishment, they still retain rights that the State is obliged to vindicate. They enjoy the same rights and are subject to the same restrictions as any other citizen once they have fully served the sentence imposed on them by the courts. The focus of this Document is on how best the public and victims of sexual offences can be protected when they are at liberty. The Group was mindful of the need for any measures proposed to be necessary and proportionate and consistent with the Constitution and the European Convention on Human Rights. In that context regimes which involve direct judicial supervision have certain advantages as the rights of all parties can be considered by the court and any conditions imposed have judicial authority behind them. Below we explore the different regimes that can be applied.

Temporary Release

4.7.2. The regime that gives greatest control and flexibility is "temporary release" from prison. The Minister has a statutory power to release prisoners for a temporary period or periods prior to the expiration of their sentence under the Criminal Justice Act 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003,. The Act specifies the purposes for which temporary release can be used, which include assessing a person's ability to reintegrate into society, preparing a person for release, assisting the Garda Síochána and humanitarian grounds. Temporary release is automatically subject to conditions set out in the Prisoners (Temporary Release) Rules 2004 and such other conditions as the Minister may direct. A person who breaches any of the conditions is deemed to be unlawfully at large and may be arrested without warrant and returned to prison. In effect the person remains a prisoner but is allowed serve part of the sentence in the community.

4.7.3 The advantages of the Temporary Release (TR) regime are as follows:

- a significant variety of conditions can be applied based on an up-to-date assessment of the prisoner and they can be amended as the prisoner progresses (such conditions can cover undergoing

interventions, supervision, restrictions on behaviour and reporting to a Garda station);

- TR can be applied incrementally (going from a few hours to an extended period);
- it is very flexible, and conditions and time periods can be changed easily; and
- if the prisoner is not compliant or there is evidence of increased risk, the prisoner can be returned to custody immediately.

4.7.4 The disadvantages are as follows:

- it is only applicable while the prisoner is still serving his sentence, once his sentence (including remission) expires the TR regime no longer applies;
- it is not subject to any direct judicial supervision;
- it means that a prisoner is being released from custody before he or she has completed the sentence determined by the court;
- it involves an element of risk that a prisoner may commit an offence.

4.7.5 Because of the risks attached, temporary release has only been used with sex offenders in a small number of cases.

Post-Release Supervision

4.7.6 The system of post-release supervision orders under Part 5 of the Sex Offenders Act 2001 has been described in paragraph 2.4.6. Provision for the Post Release Supervision Order was a major step forward in that it allowed court-sanctioned supervision of offenders after their custodial sentence had expired. The Probation Service has been involved to date in about 250 cases of the supervision of sex offenders in the community.

4.7.7 The advantages of the regime are as follows:

- it applies after the sex offender has finished his/her sentence and has been released back into the community;
- consideration must be given by the courts to impose a post release supervision order in the case of every sex offender convicted before the courts;
- the Probation Service are automatically involved;
- there is a penal sanction for non compliance; and
- there is judicial authority for the supervision.

4.7.8 The disadvantages which are mainly procedural are as follows:

- the decision to impose such an order and the conditions attached thereto are made at the time of sentencing which can be several years before the order takes effect; consequently the conditions

- may not be as relevant as they should be;
- while the order can be varied, it is unclear as to whether any new conditions could be imposed that could take account of developments and assessments in the intervening period; one option is to clarify this in new legislation;
- if the offender does not comply, a new prosecution has to be initiated in the District Court; The process can be slow and the outcome of a successful revocation not fully predictable. It is therefore not necessarily effective in motivating higher risk offenders and not necessarily responsive to more imminently dangerous situations; and
- post-release supervision orders are unlikely to act as an incentive for prisoners to undertake interventions, during their incarceration, aimed at addressing those factors that put them at risk of re-offending on release.

Part suspended sentences

4.7.9 The sentencing court has the power to suspend the execution of the sentence in whole or in part and make the suspension subject to conditions. The statutory provision for making an order to this effect is Section 99 of the Criminal Justice Act 2006. The person must be of good behaviour and the court may impose other conditions such as a requirement that the person cooperate with the Probation Service and undergo treatment or psychological counselling. The Probation Service may, at any time prior to the expiration of the sentence, apply to the court to impose new conditions. An example of a part-suspended sentence is a sentence of 8 years imprisonment with the last two years suspended. The offender would be released after serving the equivalent of a 6 year sentence and serve two years in the community subject to fulfilling the conditions set. A breach of the conditions results in re-imprisonment for the balance of the custodial sentence. Part-suspended sentences can apply to all categories of offender, including sex offenders.

4.7.10 The advantages of part-suspended sentences are as follows:

- they are flexible and the court has discretion to tailor them for individual offenders;
- they can be varied easily: if the latest assessment or other developments prior to release suggests a change is required, a Probation Officer can apply to court;
- the sanction for non-compliance is likely to be more effective. (This is because it is more flexible approach than bringing a criminal prosecution. An application to the court can be made by the Garda Síochána, the Probation Service or a Prison Governor and will be heard by the court that imposed the original sentence. Furthermore, the outstanding suspended part of the sentence in most cases will involve a longer period of imprisonment than the maximum 12 months that can be imposed in a prosecution for non-

- compliance with a Post-Release Supervision Order); and
- there is judicial authority for the supervision.

4.7.11 The disadvantages are as follows:

- there is no obligation on the court to consider imposing a part suspended sentence in sex offender's cases; and
- the Probation Service are not automatically involved.

Notification of the Gardaí under Part 2 of the Sex Offenders Act 2001

4.7.12 In addition to the above regimes, all sex offenders are subject to the requirements of Part 2 of the Sex Offenders Act 2001. Within 7 days of their release, offenders must notify the Gardaí that they have been convicted of a sex offence and give their name and address. They must also notify any change in address or name and give notice if they intend to leave the State. Failure to comply is an arrestable offence with a maximum penalty on conviction on indictment of 5 years imprisonment and/or €10,000. The notification system has been in operation for over 7 years and is currently being reviewed. Changes on the following lines are being considered:

- a reduction in the 7-day notification period to 3 days;
- the Irish Prison Service to include a recent photograph of the sex offender when informing the Garda Commissioner of the imminent release of an offender;
- Garda Síochána to have power to take fingerprints, etc., of sex offenders at the time of notification;
- notification to be at least on an annual basis, even where there has been no change of name or address;
- notification always to be made orally and in person at the appropriate Garda station;
- notification procedures to apply even where the sex offender is homeless;
- statutory backing for the circumstances in which information about persons on the register can be disclosed; and
- statutory backing for publication of details of convicted sex offenders who have failed to notify their names and addresses to the Garda Síochána or have failed to notify the Gardaí of changes to those names and addresses.

4.7.13 In effect the Garda Síochána should be aware of the addresses of all convicted sex offenders and a Garda Inspector in each Division is designated to monitor these sex offenders. However the notification regime conveys no special supervisory powers on the Gardaí although they can apply for a Sex Offender Order, discussed next.

Sex Offender Order

4.7.14 A member of the Garda Síochána not below the rank of Chief Superintendent may apply for a Sex Offenders Order in respect of a convicted sex offender prohibiting that person from doing certain things - see Section 2.6.5. This is not so much a regime as a preventive mechanism to address a specific behaviour that could be regarded as the precursor to a criminal act or a cause of concern that the risk of re-offending is escalating. Amendments to the Sex Offender Order are being considered at present in the context of the review of the 2001 Act. The changes being considered include:

- the application for an order to be made by a member of the Garda Síochána not below the rank of Inspector;
- application for an order to be made where the offence, although not sexual, had a sexual element to it; and
- application for an order to be made where there is a risk to the public and not just a particular member of the public.

Protection of Persons /Harassment

4.7.15 Protection of Persons Orders do not apply to sex offences *per se* but can apply to serious assaults, false imprisonment, aggravated burglary as well as crimes associated with organised crime. Section 26 of the Criminal Justice Act 2007 provides for the making, by the sentencing court, of a post-release Protection of Persons Order to protect the victim or other named person from harassment. Such orders may remain in force for up to 7 years after offenders have completed their custodial sentence. A person who fails to comply with such an order commits an offence.

4.7.16 Another provision, although again not directed specifically at sex offenders, is section 10 of the Non-Fatal Offences Against the Person Act 1997. Section 10 makes it an arrestable offence for any person without lawful authority or reasonable excuse to harass another by persistently following, watching, pestering, besetting or communicating with that person. In certain circumstances this provision may be relevant in addressing behaviour by a sex offender that is giving rise to concern.

Voluntary Regime

4.7.17 Some sex offenders are fully aware of their condition and actively welcome support and assistance in addressing their problem. The Probation Service has recently begun to provide for structured intervention with such offenders by means of voluntary supervision. These offenders are not subject to the supervision provisions of the Sex Offenders Act 2001 or part -suspended sentences. This may be because their offence predates the relevant legislation or they may not have been convicted of a sexual offence or the Court took the view that court-ordered supervision

was not necessary. Cases arise such as assault, unlawful detention, etc. which are not sexual offences per se but may be sexually motivated. Where offenders are assessed as being at a high risk of committing a sexual offence in the future and they are willing to engage in voluntary supervision, the Probation Service will offer to supervise and support the offender in the same manner as if subject to a statutory order.

4.8 Electronic monitoring

4.8.1 Electronic monitoring does not provide a supervisory regime as such but provides a tool that may support a particular regime. There are two main types:

- The most common type is telephone based. A base station is attached to a telephone line and a tag in the form of a bracelet is attached to the person to be monitored. If the bracelet is damaged or moves more than a specified distance (e.g. 20 metres) from the base station, an alert is sent by the telephone line to a central monitoring station. In the UK it is used for Home Detention Curfews for prisoners on early release and for Court Curfew Orders which normally require a person to spend up to 12 hours a day at home for about 90 days:
- There are also GPS based systems which show the location of the tag through a satellite based systems. The GPS systems are more expensive. They have been used in the UK to monitor that a person does not enter certain exclusion areas.

4.8.2 As with any system there can be technical and administrative problems such as equipment malfunction, battery recharging failures, failure to monitor or act on breaches. Some individuals have managed to remove tags without causing an alert. GPS equipment requires a clear view of the sky to operate effectively and to allow reasonable battery life, readings are normally only taken at intervals rather than continuously. The GPS tracking information is frequently recorded rather than transmitted live and then uploaded at specific times over land lines. However such systems can be programmed to issue an immediate alert if the subject enters an exclusion zone.

4.8.3 Electronic monitoring does not stop offending behaviour but it can have a deterrent effect and can enhance a supervisory regime. Research indicates that tagging becomes ineffective if it is prolonged for more than 6 months. There is a view that it requires the subject to have a stable home base and to have sufficient emotional intelligence and foresight to link breaches with possible consequences. It is unlikely to have much effect on dysfunctional or impulsive personalities and serious crimes have been committed by offenders while tagged. (In a pilot GPS electronic tagging programme in the UK, of 336 tracked offenders, 3 committed very serious offences. One committed murder and two others

committed offences receiving indeterminate sentences of imprisonment (similar to a life sentence) - (UK Ministry of Justice Research Summary August 2007). If an offender disables the tag by cutting it off, an alert is raised; the police then have to locate the individual by traditional police work.

4.8.4 There are cost and resource implications associated with electronic tagging. In 2004/2005 electronic tagging was used in the UK in 53,000 cases at a cost of £102 million sterling (£1,930 per case) (UK National Audit Office report 30 January 2006). Any system has to be monitored 24 hours a day for 7 days a week and then there has to be a system to decide what action should be taken to address any breaches detected. A certain minimum number of cases would be required before any form of electronic monitoring could be viable from a cost effectiveness point of view.

4.8.5 The Northern Ireland authorities have announced that electronic monitoring is to be introduced in Northern Ireland. Electronic monitoring may apply in the future to:

- persons granted bail;
- prisoners released on licence*;
- probation orders;
- youth conference orders; and
- Conditioned Early Release.**

*The general practice in Northern Ireland is that prisoners serving a prison sentence are released under licence after serving 50% of their sentence. "Released under licence" is a form of conditional early release for prisoners who if they breach conditions can be returned to prison to serve out the remainder of their sentence.

** The Conditioned Early Release scheme allows prisoners to be released under home curfew up to 135 days ahead of their normal release date with a view to assisting rehabilitation and providing an incentive to participate in programme regimes. Dangerous offenders are not eligible for Conditioned Early Release.

4.8.6 Any application of electronic monitoring has to take account of the diverse range of offences, risk factors, gravity and the nature of the offence and the impact on any person sharing accommodation with the offender. For example, imposing an electronically monitored night time home curfew may be of great value in the case of an offender who is at high risk of re-offending at night after he has consumed alcohol. However it would be of little value in the case of an offender who poses a high risk to young children (who are most likely to be at risk during the day) or to family members who may be living in the same residence.

4.8.7 Electronic monitoring would be of particular value when a higher risk offender who has not cooperated with the Irish Prison Service or the Probation Service in addressing his behaviour has to be released at the end of his sentence. Electronic monitoring, particularly a GPS based system, would facilitate intensive supervision by the Garda Síochána and the Probation Service at a key stage when the offender is adjusting to life outside prison.

4.8.8 Electronic monitoring has not yet been implemented in this jurisdiction but statutory provision for its use exists in a number of pieces of legislation. Sections 101 to 105 of the Criminal Justice Act 2006 allow a court to impose a Restriction on Movement Order as an alternative to imprisonment for scheduled offences (namely, certain types of public order and assault offences). The consent of the owner or any other person sharing accommodation with the convicted person is required before an order can be imposed. The Garda Síochána or authorised person may bring any breach to the attention of the court who will then decide the remedy. There is no automatic sanction but one option open to the court is to revoke the order and impose a custodial sanction. Section 102 allows electronic monitoring of Restriction on Movement Orders.

4.8.9 Sections 108 to 110 of the Criminal Justice Act 2006 allow the Minister to impose conditions restricting the movements of a prisoner on temporary release and allows such restrictions to be monitored electronically for up to six months.

4.8.10 Sections 11 to 13 of the Criminal Justice Act 2007 allow a person charged with a serious offence to be released on bail while subject to electronic monitoring and certain conditions. The court may issue a warrant for the arrest of a person who breaches conditions which may be proved by the electronic monitoring (i.e. the accused was absent from a certain district at a particular time).

4.8.11 The provisions in the 2006 and 2007 Acts do not provide a statutory basis for post-release electronic monitoring without court authority. There are two possibly complementary legislative approaches. First, it could be provided that electronic monitoring could be imposed as a post-release condition under the Sex Offenders Act 2001 or Section 99 of the Criminal Justice Act 2006 (part-suspended sentences). Second, stand-alone provision could be made for an application to be made to court for electronic monitoring for a specific period of a sex offender who is regarded as high risk because either (i) the offender did not participate in any interventions while in custody or because (ii) there are other factors indicating the offender may pose a higher risk if not monitored. As monitoring in this context is not imposed at the sentencing stage, it is unlikely that it could be accompanied by any restrictions on movement. However it could be used to monitor compliance with any conditions already imposed and could be used as evidence to obtain for example a Sex Offenders Order if, for example, it revealed a pattern of going to locations associated with particular risks.

Chapter 5 - Victims

5.1 The victims of sexual offenders have been subjected to traumatic and harrowing experiences and they, more than any other group, have an interest in the management of sex offenders. It has to be acknowledged that the focus of the criminal justice system has tended to be on the perpetrator. While our criminal law has its roots in a common law system which allows private individuals to bring criminal prosecutions, the State has now assumed primary responsibility for the investigation and prosecution of offences and for the implementation of sanctions decided upon by the courts. In a criminal trial, it is the accused who will be subject to punishment if found guilty and major developments have occurred both domestically and internationally in protecting the rights of such individuals against any arbitrary or unjust exercise of State power. However the rights of the victim have not received the same level of attention and it is only relatively recently that efforts have been made to redress the balance.

5.2 The Criminal Law (Rape) Acts 1981 and 1990 introduced measures to give some protection to the victims of serious sexual assaults. These measures were extended to victims of human trafficking in the Criminal Law (Human Trafficking) Act 2008. Restrictions were placed on the cross examination of victims about their sexual history and they were granted anonymity. The Sex Offenders Act 2001 granted the right to separate legal representation to complainants in serious sexual offence cases where the defence seeks leave to adduce evidence or cross-examine about the complainant's past sexual experience. Such applications are heard in the absence of the jury. The Criminal Evidence Act 1992 provided for evidence to be given through a live television link in certain cases, including those involving sexual offences. Special provision was made for evidence being given by children and changes made to the provisions restricting a person from giving evidence against his or her spouse. The Criminal Justice Act 1993 provided for appeals by the Director of Public Prosecutions against unduly lenient sentences and allowed for victim impact statements in sexual offence cases (as well as cases involving violence). The Civil Legal Aid Act 1995 provided a statutory basis for legal advice to be provided to victims of certain sexual offences. Legislation is being prepared to give effect to many of the recommendations of the Balance in the Criminal Review Group in their Report in 2007. The legislation will among other things address the reform of the victim impact statement and allow acquittals to be re-opened in certain circumstances. Legislation is also being prepared to amend and extend the Criminal Evidence Act 1992 so as to make it less traumatic for children to give evidence in certain cases, including sexual cases.

5.3 On the non-statutory front, a Victim's Charter was introduced in 1999. In 2005 the Commission for the Support of Victims of Crime was established to disburse funding for the support of the victims of crime. It has distributed over €3 million since 2005 to more than 40 non-governmental agencies supporting victims of crime. The Commission

supports the Crime Victims Helpline as a central point of contact for victims of crime offering emotional support to callers and providing information on the criminal justice system and on local victim support organisations. In June 2007 Cosc, the national office for the prevention of domestic, sexual and gender-based violence, was established as an executive office within the Department of Justice, Equality and Law Reform. In June 2008 the Minister for Justice, Equality and Law Reform launched his "Justice for Victims Initiative". In addition to the legislative measures mentioned above, a new full time Executive Office for the support of victims of crime has been established and in keeping with the commitment in the 2007 Programme for Government, the Minister has agreed to the establishment of a Victims' Consultative Forum.

5.4 Cosc has carried out a preliminary review of existing research in the area of victims of sexual offences and the common thread through many reports on victim experiences is the importance of a supportive and respectful environment surrounding the victim as the most important element in a prosecution:

"Victims do not want to be treated like witnesses but rather as individuals to whom the case is central...They find themselves caught in the middle, where the entire system works around them yet they are told they have no part in it." (MacGiolla 1007, cited in Garda Research Unit Research Report 3/05.)

5.5 There is growing evidence that there is a role for the victim in an offender management strategy (e.g., Carter, Bumby, & Talbot, 2004; D'Amora & Burns-Smith, 1999; English, Pullen, & Jones, 1996; Spencer, 1999). In a 2007 paper for the US Center for Sex Offender Management (CSOM), Dr. Kurt Bumby, Tom Talbot, and Madeline Carter suggest that:

"perhaps more than during any other phase in the criminal justice process, concerns about personal safety are likely to be heightened for victims when sex offenders are released from prison. The victims of sex offences must, therefore, be recognized as key stakeholders with an important role in re-entry efforts and whose needs and interests must be considered. This involves ensuring that appropriate safety plans, services, and supports are in place for victims, that they understand the various management strategies that are designed to protect them, and that they are provided opportunities to be involved in the processes pertaining to sex offender management and re-entry, if they are interested." (See paper at http://www.csom.org/pubs/reentry_brief.pdf).

The paper notes the challenges to the victim's involvement in the release decision-making process e.g. travel to the decision-making forum, reliving the crime experience, facing the assailant etc. They go on to point out the importance for the parole board to consider the impact of the offence on the victim and that "it is essential that interested victims receive timely

notification about whether and when an offender will be released.”

5.6 Research on the role of victims has been carried out for the US Office for Victims of Crime and the American Probation and Parole Association. (<http://www.appa-net.org/resources/pubs/docs/VROR.pdf>) The research explains the importance of taking account of the role of the victim in offender re-entry. It includes a survey carried out by the American Probation and Parole Association (APPA) to identify and prioritise crime victims’ rights, needs, and concerns with offender re-entry. The results are summarised below, showing the percentage of respondents that identified each category.

Information about whom to contact if victim has concerns	75%
Notification of offender location	75%
Notification of offender status	65%
Protective or “No contact” orders	64%
Input into conditions of release (Victim Impact Statement)	33%
Financial/legal obligations	29%
Information about referrals	22%
Offender programming that creates awareness	19%
Input into interstate compact	16%
Input into conditions of community service	15%
Victim/offender programming (mediation)	12%

5.7 According to the research, notification laws, policies, procedures and programmes serve ten important purposes for crime victims and witnesses, as follows:

- Inform victims of the scope and breadth of services available to them from the justice system, as well as from community-based victim assistance programs;
- Link victims to information about enforcing their other core rights, including participation, victim impact statements, protection, restitution, and information/referrals;
- Empower victims with vital information that allows them to know the status and location of their alleged or convicted offender;
- Enable victims to make informed decisions as to how they can

prepare for release hearings, as well as for offenders' potential or eventual release;

- Inform victims about criminal justice and corrections officials whom they can contact for information about rights and services;
- Provide victims with information, resources, and specified professionals who can help them address issues related to personal safety and security;
- Ensure that correctional agencies are in compliance with constitutional and legislative mandates specific to victims' notification rights;
- Increase the number of options that victims can pursue related to the status and location of their offender;
- Give victims a measure of control over their lives, and the crucial decisions they must make as they seek to reconstruct their lives in the aftermath of crime; and
- Inform victims of opportunities available to them to improve national and community approaches to justice and victim assistance.

5.8 This Document is confined to the specific topic of the management of convicted sex offenders. The question that needs to be addressed is the appropriate role for victims in that function. The research cited above suggests that victims are most interested in receiving information about the release of the offender, the location of the offender, the conditions that apply and where they can get further information. There is no doubt that the release of a sex offender at the end of his or her sentence can be very disturbing for the victim. The existing practice of the Irish Prison Service is that when a victim specifically so requests, the victim shall be kept informed by a victim liaison officer of any major development relating to the perpetrator (release date, temporary release, inter-prison transfer, etc.). The reasoning in making this facility available on request rather than automatic was that many victims either have no interest or do not wish to be reminded of the trauma they have suffered. There is also the practical detail that the contact details of the victim may not be available. There is no formal arrangement for any information to be passed to the victim post release. While there is a danger that the intrusion might be upsetting, consideration should be given to a more active approach. One option would be that every victim of a serious sexual offence would in future be automatically notified shortly after conviction of the likely release date of the offender and how they can get further information if they so wish. If they do indicate a desire to be kept informed, a mechanism could be put in place to advise them of the situation post-release as well.

5.9 If a prisoner is given temporary release, conditions are frequently imposed to ensure that the prisoner does not return to the area where the victim lives. This does not apply when the full sentence has been served. However there may be some scope for imposing conditions through the court to avoid contact with the victim when the offender is

subject to post-release supervision. If there is any perceived threat by the offender to the victim, the Garda Síochána may be able to apply for a Sex Offender Order.

5.10 The Group would welcome any views or input on what might be done to facilitate the interest of victims, particularly in the context of the management of sex offenders after release into the community.

Chapter 6 - Developments

6.1 The various criminal justice agencies are continuously striving to develop and improve the management of convicted sex offenders. The establishment of the Group was intended to facilitate this ongoing process, to promote a more integrated approach and to identify any structural or legislative impediments. The purpose of this Chapter is to raise awareness of recent developments, to indicate the possible future direction being taken and to invite interested parties to articulate views on how best to manage convicted sex offenders and the role different bodies should have.

6.2 At an early stage, members of the Group were asked to identify issues they would wish to see explored and developed. The main points raised are set out below:

- All the criminal justice agencies considered that a **more integrated and coordinated approach** would bring significant added value to the management of sex offenders. Consideration is currently being given to inclusion in legislation of a statutory duty to cooperate and exchange relevant information to protect the public and promote rehabilitation of sex offenders. Existing protocols for co-operation should be reviewed and extended where necessary, taking account of requirements for data privacy and protection. The Group took particular note of the highly integrated approach by agencies in Northern Ireland. A challenge is to determine which other Government and non-government organisations should be involved; how they should participate in the process of managing sex offenders; and what protocols should be put in place to guide interaction.
- In order to maximise our ability to effectively manage high risk offenders a **unified and coordinated system of risk assessment** is required. This should be underpinned by the sharing of appropriate information between agencies, as the quality of an assessment is only as comprehensive as the information on which it is based.

The principle of throughcare, **managing the transition from prison to community**, is of paramount importance, with continuity of interventions and supports into the community. The effective management of high risk offenders should commence on their committal to custody. Structured interventions aimed at identified criminogenic needs should be available, with the requisite ongoing risk assessment processes. Planned, phased and supervised release will maximise the throughcare process at the time of release.

There is a particular problem in **motivating sex offenders in custody** to engage with interventions aimed at their rehabilitation and this needs to be addressed. The potential use of temporary release for those who

show significant progress with respect to lower risk of re-offending needs to be considered, recognising that the greater value of temporary release is in assisting in the transition back into the community.

- **An integrated and comprehensive infrastructure** is needed to support offenders released from prison in their resettlement and to manage their risk of re-offending.
- The **Garda Síochána** play an **active role in the supervision of offenders** in the community and additional legislative provisions to support such a role may be required.

6.3 Based on experience in Ireland and on a review of the situation in other jurisdictions, the Group was of the view that:

- Although the rate of recidivism for sex offenders is lower than the average for offenders receiving custodial sentences, a limited number of sex offenders are at a high risk of committing further serious offences. The most effective way to protect the public and prevent further offences is to **identify high risk offenders and focus efforts on them**.
- It is **possible to manage the risk** associated with such offenders so as to reduce the risk of re-offending and of harm to the public. However it is not possible to totally eliminate the risk.
- Evidence-based tools are available that provide an objective and reasonably reliable method of **measuring the risk** posed by sex offenders.
- **Interventions and programmes** have been developed that **can reduce the risk** of a sex offender committing further sex offences
- To optimise public protection, sex offender **support, interventions and monitoring should continue in the community post-release**.

The paragraphs below explore how this might be best achieved and the implications and problems associated with the various stages.

6.4 **An Integrated and co-ordinated approach**

6.4.1 The Garda Síochána, the Probation Service and the Irish Prison Service are the key agencies in managing the higher risk convicted sex offenders. In order to achieve the optimum added value, the three agencies should be free to exchange, in a confidential and secure manner, all information that might be relevant to the protection of the public and the assessment, management, supervision and rehabilitation of convicted sex

offenders. Subject to the need to protect the public and not to prejudice criminal investigations, the rights of offenders to be aware of personal data being retained in respect of them and to correct any inaccuracies or mistakes have to be respected. **To avoid any doubt, it may be appropriate to impose a statutory duty on these three agencies to cooperate and exchange information to protect the public from sex offenders and to rehabilitate such offenders.**

6.4.2 The Garda Síochána, the Probation Service and the Irish Prison Service already work close together. One area where a unified approach is vital is in the **assessment of risk**, recognising the different instruments used and purposes of use. The Garda Síochána assess risk of sex offenders who are required under the Sex Offenders Act 2001 to notify them of their details so that they can focus maximum effort on higher risk offenders. The Probation Service carry out risk assessments for several purposes, including preparation of pre-sanction reports and supervision of offenders post-release. The Psychology Service of the Irish Prison Service carries out assessments primarily for purposes of interventions to address offending behaviour and offender needs. It is the intention that all sex offenders currently required to notify their details to the Garda Síochána and all sex offenders under the supervision of the Probation Service will be subject to an initial assessment using the same tool – RM 2000. The Probation Service uses an additional instrument in certain cases - the Stable and Acute 2007 instrument. The RM 2000 instrument is also used by the Probation and Police Services in Northern Ireland, which will greatly facilitate cross-border co-operation. The Psychology Service of the Irish Prison Service uses a range of instruments, including those just mentioned. See Para 4.3.2 above. The respective criminal justice agencies will continue to co-operate and share information about risk, whatever assessment method is used.

6.4.3 There are **other government and non government agencies** whose cooperation is vital to the support and rehabilitation of convicted sex offenders in the community. Information will have to be exchanged with these agencies but it may need to be subject to conditions (e.g. restricted to information required for the purpose of that agency, undertakings regarding confidentiality, storage and access). Until a clearer picture emerges as to which other agencies may be involved, it is not possible to fully explore all the implications.

6.5 Pre- sentencing phase

6.5.1 On conviction, the trial court will determine the offender's sentence, in particular if the offender is to be imprisoned and for how long. The court may also determine the regime that will apply to the offender on release from custody, whether, for example, the offender will be subject to a Post-Release Supervision Order or part-suspended sentence and what conditions will apply. Both of these issues have significant implications for the future management of that sex offender.

6.5.2 The determination of the sentence for the accused is solely a matter for the courts within the parameters established by the legislature and subject to any guidance given by higher courts. The Executive has no role in the matter. In determining such matters the court ideally needs to be aware generally of what options are available and also the particular circumstances of the offender. Pre-sentence reports prepared by the Probation Service provide a mechanism to provide information on options, including the possibility of varying conditions at a later date, and an assessment of the offender's risk at that point.

6.5.3 If a person is being tried in the Circuit Court or a higher Court, the sex offence is clearly regarded as serious and a pre-sentence report, including a risk assessment, should be offered to court before sentencing. In the District Court, where the maximum penalty that normally can be imposed is 12 months, such a pre-sentence report should be offered in certain cases, namely if either the Garda Síochána or the Probation Service or court have any information that the offender may be higher risk or if the court is considering imposing any community supervision obligations. The Garda Síochána should bring any special higher risk cases in the District Court to the attention of the Probation Service prior to the trial. It is a matter for the Court itself to decide whether it will avail of such a service. The Court of Criminal Appeal (DPP v Mulhall 8 Feb 2008) has referred to the importance of the sentencing court considering Probation Reports in advance of passing sentence in appropriate cases.

6.5.4 While it is a matter for the sentencing court to determine, the Group is of the view that any sex offender who is assessed as being of medium or high risk of re-offending should be subject to a court-mandated post release supervision regime with conditions. Consideration should be given to creating in statute an option of imposing **electronic** monitoring as one of these conditions.

6.5.5 The post-release supervision regimes are addressed in Chapter 4. The part-suspended sentence option provided for in the Criminal Justice Act 2006 has the particular advantage that new conditions can be imposed if necessary in the light of the progress or lack of progress made while the offender is in custody. It may be appropriate to **amend the Sex Offenders Act 2001 to allow application to the court for new conditions in the case of Post-Release Supervision Orders.**

6.6 Non custodial sanctions

6.6.1 In the majority of cases higher risk sex offenders will be given a custodial sentence. If an offender is sentenced to a community based sanction by the court, the level of supervision (if imposed) will be commensurate with the assessed level of risk and be managed in the multi-agency structures as described above.

6.7 Custodial sanctions

6.7.1 Prison provides for a very controlled and structured environment to identify and intervene with high risk offenders. The first stage has to be assessment of sex offenders. The assessment process in a prison setting is not just to assess risk of re-offending but to assess the particular circumstances of the individual offenders and what can be done to address any factors that may inhibit their rehabilitation and in particular what can be done to reduce the risk of future re-offending.

6.7.2 In that context and to facilitate the process, for higher risk offenders, a case conference should be hosted by the Irish Prison Service involving the Garda Síochána and the Probation Service. This will allow a full exchange of information and ensure all three services can initiate planning for the offender's future release back into the community.

6.7.3 Having assessed the level of risk and need associated with individual prisoners, consideration should be given to the interventions that might be taken to reduce the level of risk and meet needs. These should include specific sex offender programmes targeted for differing risk levels as well as interventions addressing other criminogenic factors. The interventions should take into account the prisoner's expected date of release.

6.7.4 The Irish Prison Service is introducing a range of therapeutic interventions for sex offenders in place of the Sex Offender Programme that was in operation from 1994 to 2008, as discussed in Section 2.5. The Prison Service is currently reviewing other aspects of its sex offender management policy. The types of issues addressed in the context of the review included the following:

- the need for an integrated sentence management plan for individual sex offenders from committal to reintegration into the community;
- the establishment of a national centre for sex offenders with a number of satellite centres;
- the need to find ways to motivate offenders to address the factors that put them at risk of re-offending; and
- a possible need to provide a different regime for sex offenders who are addressing their problem and those who are not participating.

6.7.5 The issue of temporary release was discussed in section 4.6.2 earlier. It is only rarely applied to sex offenders. Based on experience within the prison system, the prospect of being eligible for temporary release would be a strong motivator for participating in a sex offender programme. The Group was of the view that sex offenders who do not satisfactorily complete the programme assigned to them should not be considered for privileges such as temporary release, but positive consideration might be given to those who complete programmes and whose risk assessment shows a reduction in level of risk. Perhaps more

importantly, this would also facilitate structured, flexible and controlled reintegration into the community. See also paragraph 6.8.5 below.

6.8 Release into the community

6.8.1 The transition from prison to the community is a critical time in the life of offenders. Their experience in the first few months can set the pattern and may determine whether they reform and re-integrate into the community or whether they return to the behaviour that led to their imprisonment. In the case of sex offenders, it is desirable to reintroduce them in a structured way so that:

- they have the basic skills and provisions required by any offender to reintegrate into society (e.g. a place to stay, a job, etc.);
- there is a continuation of any necessary interventions provided in prison to address their criminal behaviour (e.g. counselling/treatment programmes);
- they are monitored and supervised to ensure compliance;
- positive behaviour is reinforced and becomes the norm, and
- sanctions exist to address any non-compliance or behaviour that gives rise to concern.

6.8.2 Preparation for release has to commence prior to release. A crucial step is to prepare an up-to-date risk assessment of the offender and the calling of a case conference for higher risk offenders that involves the Irish Prison Service, the Probation Service and the Garda Síochána to exchange information, to coordinate action and to allow the latter two agencies to prepare for their role in managing the offender in the community. The question of where the offender may reside and work, what type of interventions are required and what regime will apply should be addressed. All released sex offenders will have some initial involvement with the Probation Service and be subject to some level of monitoring by the Garda Síochána. The level of risk will determine the level of attention and management that the case should attract. To manage these cases, to ensure an integrated approach and to maximise the expertise in dealing with such cases, it is envisaged that **local risk management committees will be established** involving the Garda Síochána and the Probation Service. **A national steering committee will be established** and have responsibility for strategic oversight of the local committees. These committees will to some degree take on the tasks assigned to the equivalent committees in Northern Ireland. It would be a longer term objective that membership of these committees might be expanded to involve all agencies with a role in the management of sex offenders.

6.8.3 The Probation Service in partnership with the Granada Institute deliver a community-based group programme for sex offenders in Dublin and Cork (the Lighthouse Programme). One other community based programme exists for adult male offenders – COSC is a Donegal-based

sex abuse treatment and prevention service. The Ferns 5 report recommends the introduction of multi agency programmes on a national basis with interventions in two strands, one for adults and the other for adolescents. Such a development would significantly improve the management and reduction of risk of sex offenders in the community. While the Probation Service has a key role in providing interventions for sex offenders, other State agencies and non-government organisations also have an important role in reintegrating sex offenders back into the community and providing supports and treatment to prevent re-offending. **The Group would welcome any input and observations on what can be done to make improvements in the area of providing programmes for sex offenders in the community.**

6.8.4 While positive supports and interventions have the best chance of reducing the risk of re-offending, some offenders if not properly supervised may relapse and other offenders may simply refuse to participate in any positive efforts to address their criminal behaviour. The intention is that for this category of higher risk offenders there would be a much more proactive supervision and monitoring and where deemed appropriate and provided for by law, the imposition of restrictions and/or sanctions.

6.8.5 While aware of the risks posed, the Group is of the view that sex offenders who have actively participated in a programme to address their offending behaviour while in prison and whose level of risk has been diminished should be considered for short periods of temporary release nearing the completion of their sentence to facilitate their return to the community. We would make this recommendation for two main reasons:

- it will act as a motivator for sex offenders to participate in such programmes while in prison; and
- it offers the best and most controlled regime to reintroduce a prisoner to society, it can be incremental (e.g. release for a few hours, then day release progressing to overnights over a number of days), conditions suited to the particular individual at the particular time can be imposed and the person can be returned to prison immediately in case of non-compliance.

There is always the risk that an offender will commit an offence while on temporary release. It must be borne in mind of course that the offender will be released from prison in any event in a matter of weeks. However, the structured approach envisaged in this Discussion Document will be confined to offenders who have been assessed as at low risk of re-offending, usually as a result of having participated in interventions while in prison. The short periods of temporary release can be expected to further lower the risk of re-offending in the medium to long term. Nevertheless temporary release even for lower risk sex offenders will only be a viable option when the public accept that the benefit of a more structured reintegration process outweighs any short term risks posed. **In that context, the Group would be very interested in hearing the views of**

victims' groups and others on this issue.

6.8.6 Sex offenders who have completed their sentence and have been assessed as being of low risk will be subject to supervision and monitoring but the intensity of that activity will obviously reflect the lower level of the risk posed. Higher risk sex offenders who have completed their sentences and who have not participated in any meaningful interventions require more intensive supervision and monitoring. If the courts have imposed a post release supervision order or a part suspended sentence, the Probation Service and the Garda Síochána will have:

- a structured regime to apply to the offender;
- the possibility of applying to court to impose or vary conditions (an amendment to give the ability to impose new conditions in a post release order would mean the conditions can be updated to take account of the situation as exists at the time of release); and
- the potential to go to court to apply sanctions for non compliance.

6.8.7 If no Post-Release Supervision Order or part-suspended sentence have been imposed by the courts then obviously there are fewer mechanisms available to monitor and supervise that particular offender. That is a matter of serious concern where an offender is deemed to be in the higher risk category.

6.8.8 At present all sex offenders are subject to the requirements of Part 2 of the Sex Offenders Act 2001 and must notify the Garda Síochána that they have been convicted of a sex offence and give their name and address. They must also notify any change in address or name and give notice if they intend to leave the State. A nominated Garda Inspector in the Division in which the offender resides is responsible for monitoring the offender and reports back to a national office. In circumstances where the offender has acted on one or more occasions in such a way as to give reasonable grounds for believing that an order is necessary to protect the public from serious harm, the Garda Síochána may apply to court for an order prohibiting the offender from doing one or more things specified in the order.

6.8.9 The introduction of risk assessment will mean that the Garda Síochána will have an objective assessment of the risk posed by different individuals and the level of supervision required. They will also have the resources provided by the Local Risk Management Committees and the national steering committee, as well as relevant information from the Irish Prison Service prior to the release of higher risk offenders. Both the Garda Síochána and the Probation Service are upskilling in the area of sex offenders and this enhanced expertise will strengthen the monitoring and supervising role and the ability to present evidence to court that a particular behaviour by an offender does give reasonable grounds for believing that an order is necessary to protect the public from serious harm. **The Group was of the view that consideration should be given to enhancing the statutory powers of the Garda Síochána to monitor**

offenders (e.g. to obtain information, to record fingerprints, DNA photographs and identity changes including those of sex offenders coming from another jurisdiction, and making failure to notify an arrestable offence). Local Risk Management Committees will continue to monitor sex offenders and assess the level of risk posed while their registration requirement remains under the Sex Offenders Act 2001.

6.8.10 There may be benefit in introducing a statutory scheme of **GPS electronic monitoring of sex offenders** during the first six months of their release, if such monitoring is technically and economically viable and if constitutional considerations do not prevent a statutory scheme. It is envisaged that it would operate on the basis of an application to a court immediately prior to release of the offender. GPS monitoring would allow any disturbing pattern to be identified at an early stage and would provide objective evidence of same in the case of any Garda application to court for a Sex Offender Order.

Appendix 1

The Working Group on the Integrated Management of High Risk (Sex) Offenders is comprised of the following members:

- Mr. Jimmy Martin - Assistant Secretary, Prisons and Probation Policy and Criminal Law Reform Divisions, Department of Justice, Equality and Law Reform
- Mr. Brendan Callaghan - Principal Officer, Crime 1 Division, Department of Justice, Equality and Law Reform
- Mr. Richard Fennessy - Deputy Director, Cosc, Department of Justice, Equality and Law Reform
- Supt. John McCann - Detective Superintendent, National Bureau of Criminal Investigation, An Garda Síochána
- Mr. Mark Wilson - Regional Manager, Prisoners, Risk and Resettlement, The Probation Service
- Mr. Paul Murphy - Head of Irish Prison Service Psychology Service
- Mr. Kieran O'Dwyer - Deputy Director of Regimes, Irish Prison Service
- Mr. Paul Murray - Criminal Law Reform, Department of Justice, Equality and Law Reform
- Ms. Deirdre Reidy – Prisons and Probation Policy Division, Department of Justice, Equality and Law Reform (Secretary).

Appendix 2

Terms of Reference

1. In the context of reducing the risk to the public from high risk offenders the Group will review current practice in this jurisdiction and examples of best practice internationally in the identification, assessment and management of high risk offenders (particularly sex offenders) (including offenders from other jurisdictions.)

2. There will be a particular focus on:

- a) means of identifying and assessing high risk offenders prior to sentencing
- b) treatment programmes and services in custody and in the community
- c) pre-release preparations
- d) release decision-making processes
- e) post-release assessment, resettlement support, monitoring and managing risk.

3. To facilitate the optimal exchange of information and effective delivery of integrated and coordinated services as appropriate, regard will be had to

- a) information sharing and liaison arrangements between agencies,
- b) ensuring that the judiciary have access to information on the appropriate options,
- c) consultation with key statutory and voluntary stakeholders,
- d) developing protocols,
- e) reviewing legislation.