



Rape Crisis Network Ireland (RCNI)

Observations on the
Sex Offenders (Amendment) Bill 2021

To the Select Dáil Committee on Justice

January 2022



Introduction - Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction - These Observations

RCNI broadly welcomes this long-awaited Sex Offenders (Amendment) Bill 2021 which sets out many changes to the original Sex Offenders Act 2001. It does much to increase the range of measures available to Garda officers and Probation Officers to assess and manage any risks posed by convicted sex offenders who have been released back into the community. It also provides for the disclosure of information about these offenders in certain circumstances and gives the sentencing court powers to prohibit convicted sex offenders from seeking or taking up employment in any occupation involving contact with, or access to, children or vulnerable adults, among other things.

1 Available in electronic form as initiated via this web-link: <https://data.oireachtas.ie/ie/oireachtas/bill/2021/144/eng/initiated/b14421d.pdf>

2 Available in electronic form via this web-link: <https://www.irishstatutebook.ie/eli/2001/act/18/enacted/en/html>

In this document, RCNI sets out its observations on a small number of sections in the Bill. They are detailed below under each section heading in the same order in which they appear in the Bill itself, and any recommendations are included under the relevant section heading. These observations follow up on our earlier submission to the Joint Oireachtas Committee on Justice and Equality in 2018 as part of the pre-legislative scrutiny process relating to the General Scheme of the Bill³. It is hoped that they will assist members of the Oireachtas in their consideration of possible amendments to the Bill as it continues to make its way through both Houses.

Section 13, inserting a new Part 2A into the Principal Act viz. ASSESSMENT AND MANAGEMENT OF RISK POSED BY SEX OFFENDERS, pages 13-20 of the Bill as initiated, new proposed Sections 14A through 14I inclusive:

RCNI notes that none of these proposed new sections appears to contain any reference to a **formal** mechanism through which information from third parties (including, but not confined to, victims, witnesses and victim support organisations) about the behaviour of convicted sex offenders, may be shared directly with Garda and Probation Service officers responsible for the supervision of any such offenders residing or staying in their area, and/or with any risk assessment and management team convened under these provisions. Of course, it is now possible for such information to be shared **informally** with Garda and Probation Service officers as and when it becomes available to any third party. However, not many victims and others who may be affected by the presence of convicted sex offender in their neighbourhood – are aware that this is the case.

RCNI's view is that if there were an explicit procedure included in this Part of the Bill through which a third party acting in good faith could share information which is or may be relevant to the risk assessment and management of any convicted sex offender, with the relevant Garda and Probation Service officers and/or any risk assessment and management team, the community in general would feel safer, and might in fact be safer. In addition, public confidence in the system of sex offender monitoring and supervision would be increased dramatically.

We also think that it would be helpful to include a provision in this Part of the Bill which would impose a clear duty on risk assessment and management teams to engage in community liaison, so that both local communities in general as well as local organisations supporting victims of crime are kept informed about possible measures which may be taken to address potential risks from sex offenders in the community as

³ Available in electronic form via this web-link: <https://www.rcni.ie/wp-content/uploads/RCNI-Sex-Offenders-Amendment-Bill-General-Scheme-Submission-November-2018-1-1.pdf>



they arise. Having accurate and up to date knowledge about the various measures which may be taken in this regard is empowering and reassuring for local communities and most of all, for those victims residing in the same local area as the sex offenders who committed offences against them.

RCNI also notes that there is no criminal justice sanction in this Part for the misuse of any information shared by a risk assessment and management team about any sex offender, with any third party. As it is so important for the effective reduction of risk to the community in general that this information is not misused, it seems to us that it is appropriate to include such a sanction in this Bill.

RCNI Recommendations:

1. Include an additional section in this Part which sets out clearly the right of any third party acting in good faith to share information which may come to their attention about any matter which is or may be relevant to the effective risk assessment and management of any convicted sex offender living in the community;
2. Include an additional section in this Part which would set out a clear duty on risk assessment and management teams to engage in community liaison to ensure that local communities and victim support organisations are kept informed about the range of measures which may be taken to address any concerns in relation to the behaviour of sex offenders resident in the local area;
3. Consider whether to include an additional section in this Part which would create a criminal sanction at least for the **intentional and/or malicious** misuse of information shared by any risk assessment and management team with a third party – by that third party, and/or other members of the community.

Section 17: Amendment of Section 19 of the Principal Act (discharge or variation of a sex offender order), pages 22-23 of the Bill as initiated:

RCNI notes that there is no mention in the Bill of any duty to inform the victim(s) of a sexual offence of any intention to apply for discharge or variation of a sex offender order made against the sex offender convicted in their case. In our respectful submission, victims of the original sexual offence should be given sufficient notice of any such application, should be given an opportunity to make their views on that application known to the court, and that court should take these views into account in deciding whether to discharge or vary the order.

RCNI Recommendation

Section 17 should be amended to include a new subsection providing for victims of the original offence to be informed about any proposed application to discharge or vary a



sex offender order, to be given an opportunity to make their views known to the court deciding the application and finally, imposing a duty on the court to take these views into account in making its decision on discharge or variation.

Section 20, inserting a new Part 4A: Prohibition on Working with Children and Vulnerable Persons, new proposed Sections 26A through 26G, pages 23-27 of the Bill as initiated:

Proposed new Section 26C, page 25:

RCNI's view is that the general rule should be that prohibition orders preventing convicted sex offenders from seeking or taking up work with children or vulnerable people, should be the norm, ie mandatory, unless the circumstances are so completely exceptional as to justify no order being made, and that this proposed Section should be amended accordingly. In our respectful submission, there is really no acceptable level of risk to children and vulnerable people from convicted sex offenders engaged in "relevant work" with them.

RCNI recommends that Section 26C be reworded to create an obligation on the court to impose a prohibition order in every case to which the Principal Act applies, unless the circumstances are exceptional.

Proposed new Section 26D, page 25 – see subsection (2) cited in full below:

"(2) The aggregate of the sentence of imprisonment referred to in subsection (1)(a) and the prohibition period shall not exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned"

We remain concerned that the effect of this provision is that whenever the court imposes a relatively long sentence for an offence with a statutory maximum which is less than life imprisonment (e.g. sexual assault: 10 years), the maximum prohibition period which can be imposed will be relatively short – that is, relative to the actual period of time post-release during which children and vulnerable people should be protected from any possibility that a convicted sex offender could pose a risk to them because s/he is engaged in "relevant work". The sex offenders with the longest determinate sentences will be the very ones subject to the shortest prohibition periods. With great respect, this cannot be right.

RCNI recommends that Section 26D(2) be amended so that prohibition orders, once made, run for as long as the convicted sex offender is subject to notification obligations under the Principal Act, ie in common parlance, for as long as s/he remains on the sex offenders' register.



An alternative possibility would be to empower the court to make a “stand-alone” prohibition order on the application of a senior Garda officer or Probation Service officer for a fixed period which could be renewed if necessary, and which would also be capable of being discharged or varied.

Proposed new Section 26F, Discharge or variation of prohibition, page 26:

RCNI notes that there is no mention in this Section of any duty to inform the victim(s) of a sexual offence of any intention to apply for discharge or variation of a prohibition order made against the sex offender convicted in their case. In our respectful submission, victims of the original sexual offence should be given sufficient notice of any such application, should be given an opportunity to make their views on that application known to the court, and that court should take these views into account in deciding whether to discharge or vary the order.

RCNI Recommendation: Section 26F should be amended to include a new subsection providing for victims of the original offence to be informed about any proposed application to discharge or vary a prohibition order, to be given an opportunity to make their views known to the court deciding the application and finally, imposing a duty on the court to take these views into account in making its decision on discharge or variation.

Additional Section amending Section 32 of the Principal Act: Discharge or variation of requirements relating to supervision period:

RCNI notes that there is no mention in this Section of any duty to inform the victim(s) of a sexual offence of any intention to apply for discharge or variation of supervision requirements made against the sex offender convicted in their case. In our respectful submission, victims of the original sexual offence should be given sufficient notice of any such application, should be given an opportunity to make their views on that application known to the court, and that court should take these views into account in deciding whether to discharge or vary the order.

RCNI Recommendation: Section 32 of the Principal Act should be amended to include a new subsection providing for victims of the original offence to be informed about any proposed application to discharge or vary supervision requirements, to be given an opportunity to make their views known to the court deciding the application and finally, imposing a duty on the court to take these views into account in making its decision on discharge or variation.



Proposed new Sections 16A et seq (electronic monitoring of compliance with sex offender order) and 30B (electronic monitoring of compliance with a post-release supervision order condition) to be inserted into the Principal Act:

RCNI notes that there is no electronic monitoring provision in respect of compliance with conditions upon which a sentence is part-suspended. In our respectful submission, there is no logical basis for this omission.

RCNI Recommendation: A new section or series of sections should be added, providing for the electronic monitoring of convicted sex offenders who are released under a part-suspended sentence to which appropriate conditions are attached.

Conclusion

The point of this new, stricter legislation is to help reduce the risk to the general public, to victims and to others, especially children and vulnerable people, from convicted sex offenders. This legislation cannot achieve this aim unless those implementing it have enough resources: not only money, but also expert training, ongoing support, research and development which all strive to reach the best international standards. Accordingly, RCNI recommends that these resources are put in place as soon as possible.

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