



Submission on White Paper on Crime
Discussion Document No 2:
Criminal Sanctions

Introduction

Rape Crisis Network Ireland welcomes the opportunity to contribute to the debate on criminal sanctions as part of the White Paper on Crime process.

This Submission should be read in conjunction with the RCNI Submission on the Management of Sex Offenders (April 2009), available online at the RCNI website, <http://www.rcni.ie/uploads/RCNIsubmissiononthemanagmentofsexoffenders29thApril2009.pdf>. That submission should be considered as part of this one, and the aim of this paper is to supplement it rather than repeat it.

The extra points to be made in this Submission will follow the order in the Criminal Sanctions Discussion Document, and the same headings will be used for ease of reference.

Remand in Custody

RCNI is concerned at the level of serious sexual crime still being committed by persons on bail. We welcome the Minister's intention to examine the extent to which further guidance could be given to the courts on the need to have regard to public safety when making bail decisions as well as guidance on identifying those who present unacceptable risk of committing serious offences if granted bail. We would urge him to do all in his power to identify a means of giving judges power to remand in lawful custody those who are **not** charged with serious offences, but whose criminal record discloses serious violent offences grave enough to give rise to a reasonable fear that they would commit a serious offence if released. At present, only persons charged with a serious offence may be remanded in custody on the basis that it is necessary to prevent the commission of a serious offence.

When is Imprisonment Appropriate?

RCNI Member Centres overwhelmingly work with clients against whom crimes of serious sexual violence have been committed, and therefore which merit custodial sentences. It is

important for the future safety of their victims and others that while these offenders are serving their sentences, they have access to appropriate programmes to reduce their level of risk to the community when they are released. While many sex offenders serve lengthy sentences, most are released eventually. It follows that resources to provide such programmes should be available, and that these scarce resources should not therefore be over-used to punish less serious, non-violent offending behaviour meriting a custodial sentence of a year or less.

Sentence Remission

The Parole Board has criticised repeatedly the lack of supervision for serious offenders, including sex offenders, who are released because of remission of their sentences.¹ RCNI endorses this criticism and submits that **any sex offender** released because of remission should be subject to the supervision and direction of the Probation Service. In addition, their level of risk should be monitored, ideally by Local Risk Management Committees, as proposed by the Working Group on the Management of High Risk Sex Offenders Discussion Document, published in January 2009 and attached hereto.

Sentencing Policy

RCNI supports the introduction of non-statutory sentencing guidelines, as recommended by the Law Reform Commission in its 1996 report on sentencing. This would make the sentencing system easier to negotiate for judges, and does not at all mean that their discretion in a particular case would be compromised. It would also make the criminal justice system more predictable and therefore less stressful for victims of sexual crime and others involved in the process. Sentencing guidelines should encompass all levels of criminal court, so that the same principles are applied regardless of geography or hierarchy.

Court of Appeal Report

¹ Parole Board Annual Report, 2008, at page 5, point 12

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RCNI endorses the recommendation by the Working Group on a Court of Appeal that a general Court of Appeal should be established, to include the remit of the present Court of Criminal Appeal. A dedicated, permanent panel of judges will quickly develop and then maintain specialised expertise in the criminal law relating to sexual offences. Their judgements will then form part of a coherent body of law, predictability will be increased, and as a result, the confidence of survivors of sexual violence in the criminal justice system will also be increased. This is important, as lack of faith in the criminal justice system generally has been identified as a reason for deciding not to report rape.²

Victims and Sentencing

RCNI submits that compensation of the victim of sexual crime should always be considered by the sentencing judge, and that where his/her means allow, such an order should routinely be made to reflect the gravity of the assault and to provide some recompense to the victim, who may be at a financial disadvantage as a result of her/his experience³. Where the offender's identify is unknown (and therefore no prosecution can be brought) it is possible for a victim of sexual crime to make a claim to the Criminal Injuries Compensation Board. RCNI's view is that the rules governing eligibility to make such a claim are unnecessarily and unfairly restrictive, and should be reviewed as a matter of urgency⁴. The scheme should also be far more widely publicised. Once again, the confidence of survivors in the criminal justice system will be increased as a result of these measures.

² See the research findings reported in "Rape and Justice in Ireland", Hanly et al, December 2009, Liffey Press on behalf of RCNI, Chapter 4, page 140.

³ "Rape and Justice in Ireland", cited above, Chapter 6, page 276.

⁴ For example, Rule 10 precludes compensation to any victim who was a member of the same household as the perpetrator. It is difficult to see any logic and/or fairness to victims in this.