



RCNI Submission to the *Working Group on the Integrated Management of High Risk Sex Offenders* on the Management of Sex Offenders

RCNI Submission

29th April 2009

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Introduction

Rape Crisis Network Ireland welcomes very much the opportunity to make observations and contributions on the issues raised in the Discussion Document published by the Working Group in January 2009 [1]. Indeed, RCNI also welcomes the Document itself, which provides a clear overview both of the current situation in relation to sex offenders in this jurisdiction and in several other jurisdictions. It also proposes evidence-based new solutions, which recognize the need for a flexible, individual approach to sex offenders and their crimes.

RCNI welcomes and endorses in particular the recognition in the Document that the management of sex offenders is complex and demands a range of integrated and co-ordinated responses from the State and other agencies, which will vary according to the specific characteristics of sex offenders, their crimes and their victims. Also most welcome is the recognition that all possible solutions should be both evidence-based and subject to (re)evaluation.

RCNI views the management of sex offenders as an issue of the first importance to victims and their families, not least because the reality is that most people imprisoned for sexual offences do return to the community, either when their sentences end or they are granted temporary release following a successful application to the Parole Board. We are acutely aware through our work in supporting victims, that they and their loved ones find it extremely difficult to come to terms with the release of perpetrators in sexual crimes: this submission is an attempt to explain and address their concerns as far as possible, and thereby to help further the protection of victims and the general public after release as far as possible.

RCNI would also submit that the implementation of the proposed co-ordinated multi-agency strategy in relation to the management of sex offenders, in prison and in the community, **must be afforded adequate, appropriately trained and where necessary, expert** resources in all areas, otherwise it risks not being effective in preventing further offending [2].

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RCNI agrees with the Working Group that high risk sex offenders in particular should be identified through an effective Risk Assessment process before release, and be managed after release through an intensive multi-agency Risk Management process, co-ordinated by the proposed Local Risk Management Committees. It makes sense to target the most resources where they are most needed, that is, with high risk offenders. Of course, as the nature of risk assessment and management is dynamic, the risk management process needs to be sensitive enough to pick up changes in each individual's risk factor profile and alter the level of supervision as necessary.

RCNI also agrees with the Working Group that any temporary release should be denied to those sex offenders who do not satisfactorily complete the prison program assigned to them, but should be considered for those prisoners who complete their assigned program **and** whose risk assessment shows reduced levels of risk.

This submission will also address the specific requests for observations on issues raised in the Discussion Document, namely

- Incentives to participate in treatment, particularly in prison, and the related issue of
- Temporary release of sex offenders into the community and its effect on victims
- The public identification of sex offenders, after their release into the community
- The interests of victims, in relation to the management of sex offenders after release into the community
- Improvements in the area of providing programs for sex offenders in the community

Finally, the submission will address the issues of **electronic monitoring** and possible **polygraph recording**, which have both been used extensively in other jurisdictions to supervise and help control the behaviour of sex offenders after release. It will also address briefly the role of the **Parole Board** and discuss possible **Restorative Justice** initiatives.

I. The Victim's Perspective:

(a) Pre-release

While the term of imprisonment can represent a period of respite and recuperation for the victim after a long period of distress and uncertainty before and during the court proceedings, all too often its positive effect is mitigated by continued uncertainty and anxiety about the options available to the judge on any appeal, about the exact length of the sentence, about the parole process, if that applies in their case, and about the negative effect on their lives when the offender is finally released, as he almost always will be, eventually. In addition to the trauma of the sexual offence itself and the stress of the ensuing court proceedings, many victims feel unimportant and disempowered by their lack of knowledge about the future. Few victims have any general knowledge either about post-release procedures and orders, supervision by probation of released prisoners, or post-release treatment programs. They do not always know "their" offender's conditions of temporary release, or what to do if they know of or suspect a breach of those conditions.

RCNI endorses the suggestion at paragraph 5.8 of the Discussion Document that every victim of a serious sexual offence be automatically notified shortly after conviction of the likely release date of the offender, and how he/she may obtain further information if they so wish, only recommending that the obligation to inform the victim be extended to **all** sexual offences: it is not the case that the victim of a sexual offence regarded **by the sentencing court** as less serious would be any less anxious, uncertain and in need of information than a victim of a sexual offence identified as more serious by the criminal justice system.

There should be very clear and unambiguous arrangements in place to ensure that one agency has responsibility to provide this information to the victim no later than the date of sentence. It would seem appropriate that this would in practice be the member of An Garda Síochána who has been most regularly in contact with the victim, as that member would have available to them full information on the details of the sentence, any post-release conditions, and so on.

The logical agency to provide ongoing information to the victim as the situation evolves after the sentence in relation to e.g. temporary release being recommended by the Parole

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Board, any intra-prison transfer, or any escape, is the Irish Prison Service, as this is now done by them on request on behalf of a victim.

In addition, RCNI recommends that the views of the victim be sought as a matter of course as part of the risk assessment process **immediately before release**. Not only does it help to empower the victim, but also valuable information on the level of risk may be gained in this way. Victims, however, should have the right not to receive any more information than they wish.

(b) Post-release

Fears for their own safety, or fears for family members, or others in similar situations who could also become victims of sexual crime, are likely to be added to existing feelings of anxiety, uncertainty and helplessness. RCNI recommends that in line with the arrangements in Northern Ireland, each victim be given a detailed and comprehensive **information pack relevant to their own particular circumstances**. This should explain the options open to the judge, the Guards, the Probation Service and indeed the victim him/herself, in the event of any breach of condition of post-release supervision, part-suspended sentence. It should also explain the risk assessment and ongoing risk management processes, and give the victim the name and telephone of the member of An Garda Síochána who will act as the link between them and the Local Risk Management Committee. Very importantly, it should contain a clear outline of what to do in the event of any actual or suspected new offence and/or breach of condition(s) by the offender [3].

RCNI recommends again that there should be one agency responsible for putting together this pack and ensuring that the victim receives it. Clearly, that agency should be one of those represented on the Local Risk Management Committee.

Providing all this information will help to reduce victims' feelings of fear and disempowerment. If the victim wants help to understand some of the information, or to act upon it, that is available from support organisations. If the information is not there, and the situation develops in a way the victim did not expect, he/she may not know from whom or how it might be possible to seek help or information. This could be a devastating personal set-back for him/her.

RCNI recommends in addition that there should be some mechanism, such as a

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questionnaire, to monitor the accessibility and effectiveness of these information packs. It is also vital that the member of An Garda Síochána with responsibility for liaising between the victim and the LRMC should be a person skilled in dealing with people in vulnerable situations, and their own performance should be subject to periodic evaluation.

II. Specific Issues on which comment is invited in the Discussion Document

(a) Incentives to participate in treatment in prison (positive and negative)

It is of the first importance that every incentive is provided to sex offenders to participate as fully as possible in effective treatment programs in prison [4], and that the programs and other interventions offered form part of an integrated sentence management plan whose overall aim is the **reduction of risk** once the prisoner is released. It is difficult to see how such plans could be effective if participation in treatment programs and/or other interventions, were mandatory instead of discretionary. Indeed, the RCNI view is that to make sex offender program attendance mandatory is to risk a very serious waste of precious expert resources in return for a small chance of a positive outcome for a very few individuals. However, the RCNI also agrees with the Working Group that any incentive or reward should be linked to **measurable progress resulting in reduced risk to the public on release** rather than to participation on its own without such progress (see paragraph 4.5.3 of the Discussion Document). The ability of any integrated sentence management plan to deliver reduced risk should be kept under review, and the effectiveness of any treatment program should be regularly re-evaluated over time after release.

It is difficult to identify any other incentive to participate and make progress in treatment as powerful as the prospect of temporary release, however short. The RCNI would certainly agree with the Working Group that there should be no question of consideration for temporary release without full and active participation in appropriate treatment and other interventions, as identified in the integrated sentence management plan, and that temporary release itself should be reserved for prisoners identified as low-risk.

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(b) Temporary release of sex offenders into the community and its effect on victims

RCNI notes the Working Group's view that short periods of temporary release, which could be incremental, would provide a positive incentive to participate in treatment programs in prison, subject to appropriate conditions in each case. Short periods of temporary release with appropriate conditions also provide a mechanism through which a prisoner near his release date may be gradually reintegrated into society, as the Working Group explains at paragraph 6.8.5 of the Document. It is fair to say also that once a prisoner is in the community, an analysis of the **acute dynamic** [5] factors affecting his level of risk may be carried out, providing the LRMC with more information on which to carry out risk management in his case. However, there are also risks involved, to the original victim or victims as well as to the wider public. In addition, even in the case of offenders assessed as low-risk using the best available instruments, victims will suffer increased fear and anxiety. What can be done about this?

- There needs to be a very careful, considered assessment of the level of risk involved, on an inter-agency basis, with input from all interested parties, not least the victim (see below);
- It needs to be communicated very clearly to **both** sex offenders about to begin a period of temporary release **and** their victims that **no** deviation from the specific conditions attached to the release period will be tolerated, but will result in an immediate return to prison;
- No deviation from conditions of any kind of release **should in fact be tolerated**, and the official process to address any breach of conditions should work quickly and efficiently and be accessible to those who need to use it. To put it another way, anyone in breach of his conditions should be aware that there will be **predictable swift and certain** sanction(s). This is critical, as without effective enforcement the whole risk assessment and risk management initiative will itself risk failure.
- It should also be specified, and then made clear to the sex offender, that any attempt to intimidate the victim and/or others into not reporting or dropping the breach of condition or other misbehaviour to the proper authorities, is itself a breach of the conditions resulting also in a return to prison, **or** intimidation in such circumstances should itself be made a specific offence;
- It should be made clear to victims that the process for returning someone in breach of their condition(s) is quick, simple and accessible to them, and they should be actively encouraged to report any actual or suspected breach of conditions

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immediately;

- Victims themselves will need support in the form of information and reassurance from official agencies. Consideration should be given to making information leaflets available on the internet in accessible language, in addition to the information pack suggested above; there should also be an official whose job is liaison between the prison authorities and the victim, who has responsibility for maintaining contact with the victim and providing them with information on request.
- It is vitally important that the **conditions attached to the period of temporary release** are appropriate to the circumstances of both sex offender and victim and address as far as possible the specific fears of the victim in a particular case. RCNI therefore recommends that in order to ensure this, the victim should be informed about any proposal for temporary release and invited to give their views on conditions that would go at least some way to meet their fears;
- Victims should then be informed of those conditions, and invited to give their views again if there is any change in circumstances where a change in conditions might be appropriate;
- Victims should also be given the start and finish dates of the period of temporary release, and some indication of the offender's address;
- Prisoners on temporary release should be subject to some form of regular monitoring and/or supervision at all times, such as daily reporting to the local Garda station and/or weekly appointments with their probation officer. Electronic monitoring is considered separately in this submission. Ideally, all appointments should be with probation or Garda personnel specially trained in dealing with sex offenders, so that on each appointment, they will be alert to any indicator of a changed "acute dynamic" risk factor [6]. In addition, spot checks at the offender's home and/or workplace by Gardai or Probation Service personnel could be used as a monitoring and deterrent mechanism, particularly where a breach is suspected [7].
- Any period of temporary release should provide proper supports for the sex offender as well as for the victim, and should address **specific** risk factors for that individual, such as alcohol or other substance abuse; in addition, general factors such as housing, family and social network supports have been identified as important in reducing risk levels for sex offenders[8]. Therefore, each Local Risk Management Committee should establish formal links with the relevant local individuals and agencies. Where an official agency is involved, it should be possible to ensure that a representative may be called to attend a Local Risk Management Committee meeting when necessary, and where individuals, such as family members are concerned, their views should be sought whenever appropriate, in person for part of the meeting if that is necessary [9].

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- Public figures, such as politicians and clergy, should be seen and heard to respond in a rational manner to the temporary release, properly considered and monitored, of sex offenders into their communities;
- More generally, there is an important role here for increased education and public awareness campaigns which would address the prevailing mythology about sex offenders and counter it with facts. That is a task not just for official agencies, such as those involved in the criminal justice system, but also for informal groupings such as “Stop It Now” Ireland (a coalition of statutory and non-statutory agencies in process of setting up helpline for offenders and others concerned about their behaviour), and private and/or voluntary providers of perpetrator programs. Initiatives such as Stop it Now! As well as awareness programs in schools, should be adequately resourced by the State.
- **Where there will or may be contact between offender and victim, for instance where they are members of the same family** and neither wishes to have a permanent estrangement, the situation should be handled with all due consideration for the wishes and needs of the victim. Extra support, perhaps in the form of specialist counselling, may be indicated and should be identified to the victim. This is a situation which illustrates the importance for Local Risk Management Committees of seeking and maintaining contact with victims, their families, and those supporting them. Their views should be a central part of the Risk Management process: RCNI recommends that in addition to local contacts, there should be rape crisis sector representation at the national committee level.
- **RCNI also recommends** that there be representation from the broader community on the National (Risk Management) Steering Committee, in the form of one or two volunteers. They will give the Committee, and thus the overall risk management strategy, a valuable extra perspective on the impact of sex offenders’ presence in local communities. To have both rape crisis sector and community representatives on the national body would be an important means of empowering local communities including those most affected by the release of sex offenders. This in turn is likely to lead to increased **acceptance** of the **properly managed temporary release** of sex offenders.

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(c) The public identification of sex offenders, after their release into the community

RCNI does not recommend that sex offenders should **normally** be universally identifiable on release into the community, as we are conscious of the importance for the reduction of risk of re-offending of the effective reintegration of sex offenders into communities. We note that studies in Washington State, USA, have not demonstrated that the introduction of community identification of sex offenders to the general public (popularly known as “Megan’s Law”) has had any positive effect on recidivism rates [10]. The same discussion paper points out the disadvantages of such a policy [11]:

- Increased risk of vigilante activity against the offender by some people in the community;
- Increased failure of the sex offender to form community ties and reintegrate into the community in a legitimate way, not least because they may very well be unable to access housing;
- Victim identification;
- Sex offenders “going underground”, by refusing to comply with reporting and residence requirements, resulting in increased supervision difficulties and a reduction of official support, such as treatment programs; and thereby
- Increased risk of re-offending, (not least in the view of the RCNI, because the only social support available to the offender stressed by the absence of any legitimate ties to the community and perhaps also by threats to his safety, is likely to come from other released sex offenders)

In the view of the RCNI, community notification can also lead to false reassurance of the general public: it is not the case that identifying a sex offender necessarily prevents their re-offending.

However, RCNI also recommends that those people and organisations who have a legitimate interest in knowing the identity of released sex offenders within his local community should be told his identity. The offender is of course under an obligation to provide accurate information on Garda Central Vetting Unit forms and in any event to any actual or prospective employer about his sexual crime convictions. The appropriate LRMC will of course also be informed automatically. In addition, RCNI recommends that the victim

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(s) should automatically be informed, as should any individual or organisation with whom the sex offender is being linked as part of his post-release supervision. Such information should be accompanied **in every case** by additional material setting out the options available to the person or organisation concerned in the event of specified misbehaviour and providing them with a simple and quick channel through which any concerns may be addressed.

In addition, RCNI recommends that there should be national guidelines produced and operated by the LRMCs on procedure for disclosure of released sex offenders' identities in all cases, but in particular in all cases **other than those already identified** in which a request for disclosure is received.

RCNI also recognises that there will be some occasions where a sex offender's behaviour on release presents such a danger to the general public, **OR** where a sex offender with a record of such appalling violence escapes from prison or absconds, that the only appropriate response is to publish his identity in the national media, so that the chances of arresting him as soon as possible are maximised. The importance of clear guidelines to be operated in such a case is obvious.

It is vitally important that there are adequate safeguards in place to protect the rights of all involved, so that appropriate and necessary disclosure of identity is not delayed or prevented by resource-intensive challenges in our national courts and elsewhere.

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(d) The interests of victims, in relation to the management of sex offenders after release into the community

The first priority in the effective management of sex offenders is the **protection of victims and the general public, not least vulnerable people such as children and those with a disability**. In order to achieve this as far as possible, the following should be implemented:

(i) Effective Risk Assessment and Risk Management:

RCNI agrees with the Working Group that a **unified system** of pre-release and post-release ongoing risk assessment and management of convicted sex offenders which is sufficiently resourced is key to the reduction of re-offending after release, and stresses that post-release supervision and management of sex offenders should address appropriately the protection needs of the public, particularly where high risk offenders are concerned, and should acknowledge the need of victims for protection and information.

RCNI also welcomes very much the detailed examination in the Document of the Northern Ireland system of risk assessment and management of sex offenders, the Public Protection Arrangements in Northern Ireland, or PPANI [12], which put on a statutory basis the original Multi Agency Sex Offender Risk Assessment and Management arrangements, or MASRAM. These arrangements are complemented by a **flexible and detailed system** of statutory incentives and deterrents, for example provisions for release on licence (our temporary release) subject to conditions, recall to prison following any breach of licence, and further re-release from prison, again subject to conditions. There are also, as has been proposed here, provisions for electronic monitoring of prisoners on licence [13]. In addition, there are various civil orders available in Northern Ireland to address specific behavioural problems. These include Sexual Offence Prevention Orders, Risk of Sexual Harm Orders, Notification Orders and Foreign Travel Orders. Any breach may result in arrest and a sentence of up to five years.

RCNI endorses the proposal in the Document to implement a unified system of multi-agency risk assessment and management, similar to PPANI, and underpinned in a similar way by Local Risk Management Committees, or LRMCS.

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However, the system of incentives and deterrents which should complement the work of the proposed LRMCs in this jurisdiction is not nearly so flexible and responsive as it is in Northern Ireland. There is no means, for instance, of **adding new conditions** as the need arises, to post-release supervision orders which are only made at the time of sentence and so are likely to be outdated by the time the sex offender is released. The RCNI recommends therefore that it should be expressly provided that on any application relating to conditions of post-release supervision and/or temporary release or sex offender order, new conditions may be added, old ones deleted, and existing ones continue or be varied, as otherwise, there will be no way to carry into effect the **dynamic** nature of risk assessments. At present, there is no way of legally **prolonging post-release periods of supervision, except in the case of prisoners serving a life sentence**. Even if one could do that, our current law states that the sentence itself combined with the post-release period of supervision must not total more time than the maximum allowed under statute for that offence [14]. To help circumvent those difficulties, the RCNI proposes that:

- existing penalties for breach of post-release supervision and/or any condition of post-release supervision **be increased and expanded**, so that in addition to return to prison, any **breach may** result in an **increased period of post-release supervision, subject to appropriate conditions, on application by the Probation Service**. The maximum penalty for breach of a post-release supervision order and/or breach of a condition of that, for example for attending programs, is 12 months (Section 33 (1) SOA 2001). This penalty therefore is unlikely to be a significant deterrent for any offender breaching his supervision order.
- Any breach of **temporary release** should also attract the possibility of a **separate** prison sentence and/or an increased period of probation supervision on release, subject to appropriate conditions, again on application by the Probation Service, and this should not affect the current system of prompt return to prison on breach;
- There should be increased penalties for the more serious cases of **non-compliance with Sex Offender Orders and/or notification requirements under the Sex Offenders Act 2001, (Sections 22 and 26 of SOA 2001 respectively)** as well as a possible extra period of supervision and/or

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monitoring subject to appropriate conditions, on application by the Probation Service. Currently the maximum penalty on indictment for either type of offence is five years, which might not reflect the seriousness of a particular case.

The RCNI recommends that **all custodial sentences imposed for sexual offences as defined by the Sex Offenders Act 2001, should be followed by a period of post-release supervision, with appropriate conditions.** As the law stands at present, the trial judge has a discretion not to impose any such period. This would have the effect of ensuring that **all sex offenders** were both subject to supervision and would also have the benefit of the support of the Probation Service. It is submitted that it is important to underpin the proposed new Risk Assessment and Management arrangements with statutory obligations upon **all** released sex offenders to remain subject to the direction, supervision and support of the Probation Service, whether or not they had already served the maximum prison term for the offence committed, and whether or not they were temporarily released before the end of their sentence.

It would also mean the end of the current situation deplored by the Parole Board [15] whereby prisoners not subject to post-release supervision orders but released automatically under remission provisions [16] are under no obligation to submit to any form of supervision or direction from the Probation Service.

(ii) Victims' Rights

- Victims should have the formal right to be informed by An Garda Síochána and/or any other member of the proposed LRMCS, of support services appropriate to their situation;
- Victims should have the formal right to contribute to the risk assessment and management processes both before and after release, if they so wish;
- Victims should have the formal right to be told where and for how long the sex offender in their case will be imprisoned, and to be kept informed of any proposed release in time to make observations thereon;
- Victims should have the formal right to be told of any escape from lawful custody of the sex offender in their case, and/or of any breach of post-release

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supervision or temporary release conditions;

- Victims should have the formal right to information about any conditions of temporary release or post-release supervision in the case of the sex offender in their case, and about how they can trigger the response of the risk assessment and management authorities, if they have concerns about the behaviour of the sex offender(s) in their case post-release, and such responses should be evaluated regularly so that any failure to respond results in improvements to the system;
- Victims should have the formal right to be given notice of and contribute their observations to any application for a Sex Offender Order; and
- Victims should be told that they can choose not to be informed and/or involved all or any of these processes;
- Victims should be informed of all these rights in the first instance by the member of An Garda Síochána responsible for all communication with them;
- The information given to victims should include a list of these rights, as well as details of the complaints procedure if any of these rights is not complied with

(iii) Other provisions which would address concerns of victims

Enactment of **statutory vetting provisions**, as recommended by the Joint Oireachtas Committee on the Constitutional Amendment on Children in its Interim Report, published in September 2008:

- which capture and use “soft” [17] information as well as “hard”, and
- which have statutory authority and responsibility to make use of any known parallel lists kept by statutory and/or other bodies, for example the Department of Education;
- Adequate, clear and comprehensive statutory protection against proceedings for defamation for any information giver providing information to Garda Central Vetting Unit in good faith.

In this context, it is vital to ensure that the Garda Central Vetting Unit is properly resourced to carry out vetting quickly and efficiently (at the moment it is under-resourced);

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Sex Offender Orders: These were introduced in the Sex Offenders' Act 2001, as a means whereby any senior member of An Garda Síochána (Chief Superintendent or above) who became aware of any act of a sex offender which he had reasonable grounds for believing could result in serious harm to the public, could apply to the court for an order restraining him from so acting. It is submitted that there is scope for expanding these provisions to allow for preventative orders, and for applications by interested persons other than senior police officers. The Sexual Offences Prevention Orders available in Northern Ireland might provide a useful model.

In addition, the RCNI would endorse the suggestion in the Discussion Document at paragraph 4.7.14 that Sex Offender Orders should be made more accessible by enabling a member of An Garda Síochána not below the rank of Inspector to apply for one, allowing them to be made where the offence, although not sexual, has a sexual element to it, and/or where there is a risk to the **public** and not just a particular member of the public.

(e)Improvements in the area of providing programs for sex offenders in the community

RCNI sees the provision and proper resourcing of a unified, standardized and nationally coordinated and evaluated program, for the ongoing treatment of convicted sex offenders after their release from prison, as **central** to the effective implementation of the proposed new national risk assessment and management model. At present, there are very few publicly funded community treatment programs available: two in Dublin, one in Cork, and one in the North West of the country [18]. This situation must change without delay. It appears from the NOTA report that the provision of adequate treatment programs across the country would not be inordinately expensive, and would be **cost-effective** [19].

The HSE needs to be an active partner in this process, and needs also to be involved in risk assessment and risk management at local level. Very often, the HSE through its Child Protection work is in a position to be aware of and to share information vital to the risk assessment and management processes. In addition, the HSE has a duty to provide treatment as appropriate, whether those undergoing sex offender treatment programs have ever been convicted or not. It may be objected that the HSE should not be asked to

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provide sex offender programs in several locations across the country for a small number of released convicted sex offenders. It is submitted that there already exists a large cohort of **unconvicted sex abusers within the community**, who may never get near a courtroom, much less a prison cell, and that these large numbers easily justify the relatively modest expense involved, in addition to the powerful moral argument that everything possible should be done both to prevent sexually harmful behaviour in the first place, and to reduce the risk of more harm being caused to victims already traumatized by earlier offences, by repeat sexual offending.

NOTA Ireland, the National Organisation for Treatment of Abusers, has very recently made detailed recommendations [20]. These recommendations are based on national research which demonstrated the current scarcity of services and highlight the inconsistency of approach, the lack of standardised training and the lack of outcome assessment. Current service provision is failing to meet the assessment and treatment needs of those who present significant concerns.

The Northern Ireland LAPPP model is being extended to consider non-custodial offenders. This is very significant, as the majority of offenders will never be convicted.

RCNI recommends that mechanisms for dealing with Offenders in the community who do not have, and are unlikely to have, any criminal conviction must be developed and resourced. These should include education for prevention programs from primary school onwards.

RCNI also recommends that there should be a standardized national model of service delivery in the area of assessment and treatment of services for children, teenagers and adults who have exhibited sexually harmful behaviour. Policies and Procedures should be formulated and implemented at a National level to ensure a standardised approach, and should be regularly evaluated so that they can be improved in line with international best practice.

Services should be accessible at several different locations throughout the country, and should be publicly funded and advertised. There should be specialist assessment and treatment teams for children and adolescents, distinct from those for adults [21]. NOTA Ireland supports the recommendation that there should be at least one in each of the four HSE areas of the country [22].

III. Extra Observations

(a) Electronic Monitoring

RCNI feels that there is a role for electronic monitoring of some sex offenders within the community as one part of an overall strategy for their effective risk management and monitoring, depending on the circumstances, and depending most of all on the individual pattern of offending. It is in no way a panacea, and for a small number of determined and/or impulsive individuals, it will not prevent re-offending at all. It does not and cannot replace the foundation of all effective treatment of sex offenders, that is, **positive changes in behaviour resulting from internal changes in outlook.**

The issue of electronic monitoring illustrates very well the importance of an **individualised approach** to the treatment, risk assessment and risk management of sex offenders. For instance, someone with a pattern of grooming of children and young people, who is excluded from areas where they gather such as certain schools and playgrounds, as a condition of their release, might be supervised through GPS electronic monitoring, and this may work very well as a deterrent for a time. Suppose that his risk of re-offending increases, for unrelated reasons, **and** that he then decides to circumvent the GPS system: he may then begin to invite young people and even children to his home, where the system will not work. No stratagem will work for ever, and the risk management system must be extensive and sensitive enough to pick up on and react to changes, especially negative changes, in the sex offender's **whole** environment.

RCNI is also concerned that there is a danger of **false reassurance**, not only for the victim but for the public at large, if there is an over-reliance on electronic systems as a means of monitoring the behaviour of sex offenders. However, it is clearly valuable as the Document says, as a means of gathering evidence of breach(es), particularly for those individuals who have had to be released at the end of their sentences but who have refused to engage in any way with treatment in prison and/or supervision outside prison.

Finally, RCNI is concerned also about the cost of electronic monitoring: while there is clearly a role for it in the case of some high risk sex offenders who have refused to co-operate with the authorities in prison and out of it, this will be a small number only. The risk posed by the majority of released sex offenders might be better managed by increased **supervision, support and treatment** initiatives than by extensive electronic monitoring.

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(b) Polygraph (“Lie Detector”) Testing: UK Pilot Program

A three-year pilot program in the East and West Midlands areas of England has just started by the UK Ministry of Justice to establish whether polygraph testing should be extended throughout England and Wales as a post release probation condition [23]. It will be confined to released sex offenders, and will be mandatory: anyone who refuses to be tested will be returned to prison. It is expected that by the end of the pilot period, 350 to 450 offenders will have been tested. It is intended that the disclosures made will not allow police and others to intervene to reduce risk, but will help offenders to “focus on, and avoid, the sorts of behaviours that make re-offending more likely”(Professor Don Grubin, the administrator of the tests). There will be a pre-test interview to allow the offender to make any disclosures in advance of the test. The same questions will then be asked during the polygraph test. In the post-test interview, the results will be given to the offender, who will then be asked to explain any failures. A voluntary pre-pilot scheme in 2003 prompted admissions in 80% of cases, and 90% of probation officers said “the testing was helpful in assessing..risks...to the public” [24].

RCNI regards polygraph testing as one more useful monitoring and risk assessment tool among others, which **properly administered** may very well succeed in preventing at least some offending. It may be that its greatest value is as an aid to offenders themselves to focus on their own risky patterns of behaviour. While the results of the voluntary pre-pilot scheme are impressive, it remains to be seen whether they translate as effectively into a **mandatory** setting.

RCNI recommends that developments during this pilot scheme are monitored by our own responsible bodies, particularly COSC, the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence, and the results fed through to all other agencies working with sex offenders after release. If they are positive, consideration should be given to such an initiative in this jurisdiction.

(c) Role of Parole Board

At present, the Parole Board is already involved in detailed risk assessment of prisoners serving life sentences and prisoners serving sentences of at least 8 years who apply for temporary release (often but inaccurately called “parole”), before the end of their sentences. The approach used is thorough, cautious and involves all relevant agencies, such as the Probation Service and the Prison Review Committee. Reports are sought from both these bodies, in addition to any relevant psychological and/or medical assessments, and to quote its current Chairman, Dr Gordon Holmes, “the impact a prisoner’s release may have on a victim or victim’s family [are] given the most careful consideration by the Board” [25].

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As to temporary release, an incremental approach is very often used by the Board, as suggested in the Discussion Document. For the initial short periods of release especially, great attention is paid by the Board to the offender's living arrangements and family support, and conditions may be attached as appropriate to any period of temporary release. The Board has now gained several years of experience in dealing with offenders, including sex offenders (around 10% p a, according to their 2007 Annual Report cited above).

RCNI recommends that the advice of the Parole Board be sought as part of the final risk assessment of individual sex offenders prior to their release, wherever possible. Because of their valuable experience, RCNI also recommends that the Parole Board should be asked to supply a Member to sit on the proposed National Steering Committee with responsibility for strategic oversight of the local risk management committees.

(d) Community and Victim Advocate involvement in Sex Offender Risk Management

Victims and their families are no more homogeneous than sex offenders. While many will want to know absolutely nothing about the offender in their case on release, many will want to know much more, including what to do about any future misbehaviour. A small number will want not simply to know more, but to do more within their community to ensure that the risk of re-offending is reduced as much as possible. Other people who have never been victims of sexual crime, or been involved with it at all, will want to make a positive difference within their own communities, by engaging on a volunteer basis with sex offenders themselves [26].

In addition, some victim advocates in other jurisdictions are part of multi-agency risk management initiatives[27]. They can contribute valuable knowledge and understanding of the difficulties facing victims and their families to the team, thereby ensuring that any probation conditions or other risk reducing measures actually address the real concerns of victims. There are also restorative justice initiatives, such as Circles of Support and Accountability, as identified in the Discussion Document at paragraphs 4.4.10/11. That particular model of community initiative would not be very expensive, and the results on the recent Canadian evaluation are very impressive by any standards, 70% reduction in sexual recidivism compared to the control group, and the actual new offences were less severe than those committed by the control group [28].

RCNI is aware that there are several current COSA inspired programs running in the UK, and would

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recommend that their development and evaluation be closely monitored in this jurisdiction, with a view to examining and piloting an Irish model which draws on best practice in the UK and elsewhere. An Irish pilot COSA scheme has also been recommended in the NOTA “Closing the Gaps” report [29]. The indications from a UK review are that this approach might work best with low to middle risk offenders [30]. It would be interesting to do a longitudinal study in tandem with regular risk management processes, to determine whether the COSA approach might have any discernible positive effect not only with low to middle risk offenders, but also with **high risk** offenders, and thereby to identify at least some of the characteristics of those high risk offenders who would be most likely to benefit from such an approach.

29 April 2009

Rape Crisis Network Ireland

ENDNOTES

1. It can be found on the Department of Justice website, see www.justice.ie/prisons
2. See “Closing the Gaps”, the NOTA Ireland report on services in Ireland for those with harmful sexual behaviour, December 2008, at pages 35, 48, 49 inter alia
3. The Northern Ireland leaflet, “Our link with you”, might provide a useful starting point. It can be accessed at www.nisosmc.com
4. Not least because participation in treatment programs is associated with reduced recidivism: see for example, US meta-analysis of 79 sex offender treatment outcome studies involving 11,000, which had a re-arrest rate of 7.2% for new sex offences by participants in a relapse prevention program, considerably lower than the re-arrest rate of 17.6% for untreated offenders: “Sexual Offender Treatment Efficacy Revisited”, (Alexander, M A):Sexual Abuse: A Journal of Research & Treatment 11(2), 1999.
5. A phrase from the Stable Acute Dynamic (2007) Risk Assessment tool, which refers to those factors which can and do change (“dynamic”), and are also “**acute**”, meaning they are associated with recidivism and refer to factors which can change very quickly. See page 52 et seq of “A Risk Assessment and Risk Management Approach to Sexual Offending in the Irish Probation Service”, O’Dwyer, G, August 2007 (Dissertation)
6. In a US study of sex offender supervision practices conducted in 1996, it was found that “policies which

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promote the specialization of job duties for [probation and parole] officers who manage sex offenders were found to accompany practices associated with the effective management of sex offenders”: (Pullen, C and Pullen, S), cited in *Managing Adult Sex Offenders: A Containment Approach (1996)*, American Probation and Parole Association, Lexington, KY, USA.

7. Spot checks are sometimes used in North Wales: see North Wales Multi Agency Public Protection Arrangements (MAPPA) Annual Report 2007-2008, at page 9

8. In North Wales, MAPPA works with a number of “Duty to Co-operate Agencies”, which include all North Wales Housing Associations and Jobcentre Plus (page 8 NW MAPPA Annual Report 2007-2008, cited at note 7 above) and as part of the risk management plan, uses probation hostels for specific periods when necessary, to accommodate offenders. Further, 12 MAPPA offenders in North Wales to date have benefited from the training provided to 30+ volunteers forming Circles of Support and Accountability (COSA), to provide a measure of social support and means of integration to offenders (pages 4, 5 *ibid*)

9. On a practical note, North Wales MAPPA circumvents the need to travel long distances by video conferencing (see page 4, *ibid*)

10. Schram, D and Cohen, F (2000): Community Notification: A Study of Offender Characteristics and Recidivism. Olympia, WA: Washington State Institute for Public Policy

11. Center for Sex Offender Management (CSOM) Document, “Community Notification and Education”, April 2001, at pages 8 through 10

12. PPANI are underpinned at local level by Local Area Public Protection Panels (LAPPs), and by regional and national structures

13. See the newly enacted Criminal Justice Order (Northern Ireland) 2008 (SI 2008 No 1216) and its Explanatory Memorandum, in particular **Chapter 4**

14. Section 29(2) of the Sex Offenders Act 2001

15. See the Parole Board Annual Report 2007

16 i.e. once they had completed 75% of their sentences, subject only to good behaviour in prison

17. “Soft” information refers to information gathered in encounters with the Gardaí (or others) which do not result in a conviction or other formal record of misbehaviour, while “hard” information refers to convictions, cautions and/or other formal findings of misconduct by e.g a former employer.

18. See NOTA Ireland Research Report published December 2008: “Closing the Gaps: Services in Republic of Ireland for Those with Harmful Sexual Behaviour”, Corbett, A, Turner, R and Erooga, M, at page 34 (*inter alia*)

19. See “Closing the Gaps”, *op cit*, at pages 36, 37

20 *Ibid* page 33 *et seq*

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21. In line with the Ferns 5 Report recommendation to that effect, endorsed by NOTA in its own research report cited above (page 35)
22. The recommendation was made in the Ferns 5 Report and was endorsed by NOTA in its own research report cited above (page 35).
23. See BBC News Report online at http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk_news/7983... See also generally UK Ministry of Justice website, www.justice.gov.uk
24. Ibid
25. The Parole Board Annual Report 2007, at page 4
26. As happens in Vermont, USA: often the specially trained volunteers are recruited through the churches. They provide vital social support for some very isolated sex offenders. See CRB Report cited below, at pages 19, 20. Interestingly, Vermont also has a tough release regime (“no program in prison, no parole”), **and** it uses citizen volunteers extensively to serve on reparative boards determining and overseeing the sentences of many non-violent offenders (see CSOM document, “Public Opinion and the Criminal Justice System”, April 2000
27. For example, in Connecticut, USA, victim advocates serve as part of the sex offender supervision team: See California Research Bureau report by Marcus Nieto, “Community Treatment and Supervision of Sex Offenders: How It’s Done Across the Country and in California”(December 2004), at page 17; for a good overview see CSOM document “Engaging Advocates and other Victim Service Providers in the Community Management of Sex Offenders”, March 2000
28. Reported in Wilson et al, May 2005 (Correctional Service of Canada publication)
29. See page 45, “Closing the Gaps”, op cit
- 30.** “Restorative Justice as a Response to Sexual Offending Addressing the Failings of Current Punitive Approaches” (McAlinden, AM), Sexual Offender Treatment, Vol 3 (2008) Issue 1