RCNI Submission on the Strategic Review of Penal Policy

February 2013

1.0 Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland is the national representative body for the rape crisis sector. It 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 including expert data collection, supporting Rape Crisis Centres to reach best practice standards, and using our expertise to influence national policy and social change. We are the representative, umbrella body for our member Rape Crisis Centres who provide free advice, counselling and support for survivors of sexual abuse in Ireland, including a growing number between the ages of 14 and 18.

For those survivors who report sexual crime to An Garda Siochana in particular, penal policy is an important issue. As a matter of justice, survivors are entitled to expect that our penal policy marks the gravity of convicted offenders' behaviour appropriately. They are also entitled to expect that effective measures are put in place to ensure that the risk of any recurrence of such behaviour is minimised. While there have been some significant improvements, many more can and should be made.

1.1 Introduction – RCNI Submission on the Strategic Review of Penal Policy February 2013

Rape Crisis Network Ireland welcomes very much the opportunity to make submissions on the Strategic Review. We make these submissions on behalf of our clients, survivors of sexual violence and their supporters, as the Terms of Reference of the Review indicate that the perspectives of victims of crime and also those of society in general, should be taken into account. The Terms of Reference also list some areas which should be the focus of particular attention, namely:

(i) The role of penal policy in crime prevention;

(ii) Sentencing policies;

(iii) Alternatives to custody;

(iv) Custodial accommodation and regimes;

(v) Reintegration and rehabilitation;

(vi) Any special issues relating to female offenders and prisoners.

This submission will focus on (ii), Sentencing Policies, and (v), Reintegration and Rehabilitation, with some reference to (iv) (Regimes).

1.2 (ii) Sentencing Policies:

1.2.1 Consistency and Transparency in Sentencing of Sex Offenders

RCNI's view is that the principles which guide our judges on the sentencing of sexual crimes, should be clear and transparent and should reflect the seriousness of the offending behaviour, not least as it affects its victims. The approach taken to assessing the effect of both aggravating and mitigating factors should be **consistent** and should be made clear by the judge, so that it is possible not only for legal practitioners or academics to analyse whether a particular sentence is in line with that approach, but also for victims and society in general to work out whether it is broadly appropriate, unduly lenient or too severe, given the circumstances.

Our system allows our judges considerable leeway on sentencing, provided s/he does not exceed the statutory maxima. For certain drugs and firearms offences, mandatory minimum sentences have been introduced, in addition to the longstanding mandatory life sentence for murder. These new sentences have not resulted in reduced levels of criminality through deterrence, though the sentences handed down for these offences have increased in severity[1]. Should similar sentencing be introduced for sexual crimes?

This is a difficult question. We are aware from our own research[2] as well as from our daily experience of listening to our clients, that crimes of sexual violence can have a *devastating* impact on survivors. This impact usually lasts a long time and is multi-faceted. Some sexual violence is accompanied by other violence causing serious injuries, even disability and disfigurement. Much of it involves very young victims and serious breaches of trust. Some survivors are victims of multiple perpetrators, and many endure repeated sexual violence over many years. While negative psychological consequences are the most common, also common after recent sexual violence are negative financial consequences, as survivors find themselves unable to continue working full time or at all and/or may need to change jobs (and home) altogether. Serious damage is often done to relationships with friends and family, with intimate relationships often breaking down altogether in the wake of the sexual violence.

It is important to realise that sometimes, the offences on the charge sheet or indictment are only a very poor reflection of the gravity of what has been done to the victim. Where there have been multiple incidents of sexual violence over a long period, a small number of sample counts only might appear on the indictment. Each one of these might be charged as sexual assault, or even indecent assault, which has a lower maximum. If the accused is convicted on all these counts, the sentencing process including the Victim Impact Statement

[1] This point is made by the Law Reform Commission in their Consultation Paper on Mandatory Sentencing (LRC CP 66-2011), available online at www.lawreform.ie. The Commission recommended provisionally that mandatory sentencing legislation should not be extended to any other offences.

[2] "Rape and Justice in Ireland" (2009), Hanly & ors, commissioned by RCNI from NUI Galway and published by Liffey Press, Dublin. RAJI Executive Summary can be downloaded from our website via this link: [paste it in]

itself, can only refer to these counts, not the entirety of the offending behaviour from which these counts were extracted. This is extremely difficult to accept for the victims of that behaviour. As each count might have only a low maximum penalty, and the whole sentence must follow the established principles of proportionality and totality, the resulting sentence can appear to the victim unacceptably lenient.

For all these reasons, **mandatory** minimum sentences for certain crimes of sexual violence might seem attractive, from the point of view of the victims and their advocates. However, this does not sit well with the key sentencing principles of proportionality and totality in our criminal justice system[3]. Proportionality requires that the length of sentence should be proportionate to the nature of the crime **and** to the circumstances of the offender, while the related principle of totality means that the "total aggregate period to which the offender is sentenced should be assessed in terms of proportionality".[4]

RCNI does not recommend that mandatory minimum sentences be introduced for sexual crimes, as such sentences are neither in line with established principles of sentencing, nor a very sensitive instrument to address the complexity and difficulty of the many factors surrounding sexual crime, which should form part of the sentencing decision.

1.2.2 Development of Sentencing Guidelines (on Sexual Offences in particular)

What can be done instead to ensure that our sentencing system recognizes the harm done to victims of sexual violence? RCNI notes the LRC Consultation Paper's [5] provisional recommendation, similar to that in the 2011 Report of the Thornton Hall Review Group, that the proposed Judicial Council should develop and publish suitable guidance and guidelines on sentencing, and that these would have regard to decisions of the Court of Criminal Appeal, to established sentencing principles, and to database information such as that in the Courts Service's Irish Sentencing Information Systems (ISIS).

RCNI agrees with the general principle that it would be desirable to establish sentencing guidelines which would take account of both the gravity of the offence and the personal circumstances of the offender. We would add that in our view:

(i) the victim's circumstances should also be taken into account in any such guidelines, and these should include the impact which the offending behaviour has had on him/her already, and will continue to have into the future;

[3] For a recent case setting out the principle of proportionality, see DPP vs P O'C [2009] IECCA 116, per Denham J (available online at www.courts.ie)

[4] page 306, "Rape and Justice in Ireland" (2009), Hanly & ors, Liffey Press, which in turn cites DPP v TB [1996] 3 IR 294 on the totality principle. This is the report in book form of research into the reasons for attrition in rape cases in Ireland, commissioned from NUI Galway by RCNI.

[5] Law Reform Commission Consultation Paper on Mandatory Sentencing LRC 66-2011, see note 1 above;

(ii) the development of such guidelines should include input from others besides judges, not least representatives of victims' interests. When the Sentencing Advisory Panel was created in England & Wales in 1999, it contained 14 members, two Circuit Judges, two Judges at District Court level, three academics, four representatives from the police, prison, prosecution and probation respectively, and three lay people from outside the criminal justice system. Their job was to produce proposals for guidelines and submit them to the Court of Appeal for consideration, after a period of consultation with others, including the public, so that the senior judges remained in overall control of the process. In most cases, they did adopt the guidelines put forward by the advisory body. When the Sentencing Guidelines Council took over this role from the Court of Appeal some years later, its membership included not only eight judges at various levels but also the DPP, a senior police officer, a defence solicitor and a victims' groups representative. When this body in turn gave way to the present Sentencing Council, the new body also contained a similar spread of representatives. [6]

(iii) RCNI submits that what may work best in an Irish context is a process which allows our judges to retain control of any sentencing guidelines which are produced by a multi-agency advisory body, in other words that it remains our judges who decide whether to adopt the guideline advised, or not;

(iv) RCNI submits that there is no merit in producing guidelines which are overly prescriptive, to the point of being mechanistic, as these will not be accepted or implemented by our judges;

(v) Similarly, there is little merit in producing guidelines which are too vague and general. The range of sexual offences, surrounding circumstances and victim impacts is extremely wide, and the nature of sexual violence itself is complex and many-faceted. The guidelines must address this complexity as well as possible;

(vi) RCNI is conscious that our judges need support on sentencing, and puts forward the suggestion of the development of comprehensive, detailed and flexible sentencing guidelines to assist judges in their heavy responsibility towards both victims and convicted persons. Our view is that such assistance is needed particularly at Circuit Court level, where most crimes of sexual violence are tried, and where there is a greater spread of different sexual offences than at Central

[6] The whole process is described in some detail in a paper given by Judge Colman Treacy to the Irish Penal Reform Trust in September 2012, available online from www.iprt.ie

Criminal Court level. At the same time, Circuit Court judges have responsibility for sentencing a very wide range of other crimes;

(vii) Judges at every level should also be supported in their decision making by having regular information sessions made available to them on specialist subjects, such as the impact of sexual violence on its victims, and RCNI would be happy to do all in its power to facilitate that;

(viii) RCNI submits that it would be appropriate for any sentencing guidelines advisory body to consult with those with specialist knowledge in any specific area, such as sexual violence and its impacts;

(ix) RCNI submits that once any such guidelines are introduced, the sentencing rationale should be explained by the sentencing judge very clearly to both accused person and victim with reference to these guidelines as appropriate, and a copy of the sentencing remarks should be made available readily to anyone affected by the sentencing process, including the victim;

1.3: Sentencing Law in Relation to Sex Offenders:[7]

RCNI produced a detailed submission on sex offender issues in 2009, as part of the consultation process undertaken by the Working Group on the Integration and Management of Sex Offenders, led by the Department of Justice. This part of the present document should be read in conjunction with this submission, which is available online[8]through the link below. The following points are made, in addition to those already made in that submission.

1.3.1 Penalties: RCNI submits that the following reforms are appropriate:

- Increase 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). Currently the maximum penalty on indictment for either type of offence is five years, which might not reflect the seriousness of a breach in a particular case;

- Increase the maximum penalty for breach of a post-release supervision order, currently 12 months (Section 33 (1) SOA 2001). This penalty therefore is unlikely to be a significant deterrent for any offender breaching his supervision order;

[7] This section is an edited extract from RCNI Submission to the Law Reform Commission on the Fourth Programme of Law Reform (November 2012), available from: RCNI, 4 Prospect Hill, Galway.

[8] Through this web link:
http://www.rcni.ie/uploads/RCNIsubmissiononthemanagmentofsexoffenders29thApril2009.pdf

- Align the maximum penalty for incest by an adult female from seven years with that for males (life imprisonment);

1.3.2 Part V of the Sex Offenders Act 2001 as amended (SS 27 to 33): Post Release Supervision Orders and Related Matters

1. Pre-sanction reports containing as much information in relation to risk assessment as possible, should be ordered by the sentencing judge wherever s/he is considering making **either** a post-release supervision order OR imposing a part-suspended sentence –

2. Part V of SOA 2001 should contain a clear definition both of what is meant by "supervision", and what constitutes a breach of a (post-release) supervision order. The difficulty is that at present under the Act, an offender can only be breached for failure to comply with a condition of the PRSO, but there is no obligation on a judge making such an order to specify any conditions. This means that an application for breach of a supervision order can fail because the nature of the breach alleged cannot be identified clearly, although the supervising officer bringing the prosecution knows very well that, for example, a particular offender has not attended his appointments/complied with other directions – but neither obligation is spelt out clearly in the original supervision order.

1.3.3 Consecutive versus Concurrent Sentencing of Sex Offenders:[9]

In theory, consecutive sentences may be imposed where two offences of which the offender is convicted on the same occasion do not arise out of "a single transaction". In practice, consecutive sentences are very unusual in the Irish criminal justice system. "Rape and Justice in Ireland"[10] reported that only 2% of all sentences for more than one offence in its sample were consecutive, and the proportion of consecutive sentences for sexual offences has not changed materially since then. Concurrent sentencing for sexual offences is the norm, whether or not the offences arose out of a "single transaction".

Concurrent Sentencing for Multiple Sexual Offences: What is the Victims' Perspective?
Concurrent sentences in respect of two or more different victims of the same offender can be a very bitter pill to swallow for those victims. It often seems to them that the harm done to them by the offender is not reflected adequately or fairly by a sentence which runs concurrently to another. This translates for many victims into the sense that society as a whole has not acknowledged fully the extent of that harm. Another common experience for

[9] The material under this subheading is an edited extract from the "RCNI Legal Recommendations Position Paper", available online through this web link:
http://www.rcni.ie/uploads/RCNILegalRecommendationsPositionPaperMay12.pdf

[10] "Rape and Justice in Ireland" (Hanly et al), published by the Liffey Press in 2009, is the report in book form of the attrition research project commissioned by the RCNI and undertaken on its behalf by an NUI Galway led by Conor Hanly

victims is the feeling that if the offender only got a concurrent sentence after they themselves have been put through the mill of prolonged, hostile and demeaning cross-examination, - it was hardly worth putting themselves through such an ordeal. A case which illustrates this point very clearly is one cited in "Rape and Justice in Ireland", *DPP vs Byrne* (1995), in which the offender was sentenced to ten years for the rape of one woman, and ten years for the unrelated rape of another woman, the two sentences to run concurrently. Of course, concurrent sentencing can also arise in relation to two or more offences against the same victim. Indeed, sexual violence against a child often takes the form of a long series of offences over months or years. The effects of such abuse are extremely damaging and far-reaching for the victim. Concurrent sentencing, where only a small sample of the offending behaviour is represented, does not reflect the seriousness of these effects for many victims. It is difficult for them to feel that society has acknowledged the true extent of the wrong done to them in these circumstances, and difficult also for them to feel that their courage in coming forward has been rewarded. Such reactions are entirely valid, natural and understandable. It hardly needs saying that none of them is likely to encourage more victims of sexual violence to come forward and report what has happened to them to the Gardai.

Concurrent Sentencing for Multiple Sexual Offences

This question is more difficult. In addition to the concerns of victims, there is a public policy argument that to impose concurrent sentences in virtually all circumstances in effect encourages multiple offending, as there is little risk that each separate offence would result in a discrete sentence on conviction. While this is impossible to measure scientifically, we can say with some confidence that concurrent sentencing regardless of circumstances sends out the wrong message to prospective and actual perpetrators of sexual violence. That message is that multiple sexual violence offences, which in any event are reported and prosecuted in small numbers relative to their prevalence, can be committed without the fear of a greatly increased prison sentence as compared to that imposed for a single offence.

RCNI recommends that current sentencing practice be modified to this extent at least: where different victims are concerned, consecutive sentencing should be the norm, to vindicate and recognise the harm that has been done to all these victims. The proportionality and totality principles can then be applied to the overall length of sentence, so that individual victims can be confident that the harm done to him/her is acknowledged by our criminal justice system. It is clear from the RAJI findings and from our more recent sentencing cases that our judiciary is willing to impose a lengthy overall sentence in an appropriate case. However, the harm done to every victim concerned also needs to be recognized clearly at the sentencing stage, both in the overall length of sentence imposed and in the reasons given by the judge for his/her decisions on sentence.

The cumulative damaging effect of many offences in relation to the same victim should be reflected in the overall length of sentence imposed and in the reasons given by the judge for his/her decisions on sentence. While American-style "multiple lifetime" sentencing is alien to the Irish system, nevertheless it is possible for our own sentencing system to reflect the increased gravity of multiple offences against a single victim, while still respecting the proportionality and totality principles. RCNI recommends that new sentencing guidelines for sexual offences should cover this situation in some detail, not least because it is a very

common one. A starting point might be to consider consecutive sentencing for offences of different types against the same victim, particularly when the gravity of the offences has increased over time. This would go some way towards recognizing the extent of the harm done to the victim in the sentence.

1.3.4 The interaction between suspended sentences and post-release supervision orders

The authors of RAJI make the point that part-suspended sentences and post-release supervision orders may be imposed on the same offender, and question whether it is necessary to have two separate regimes in respect of the same need for control and supervision of the behaviour of sex offenders after release from prison. These two regimes were not designed in the first place to complement each other and when they are both imposed on the offender, the results can seem illogical. For example: if an offender is obliged to be of good behaviour during the period of suspension in accordance with Section 99 of the Criminal Justice Act 2006 which governs part-suspended sentences, does it make sense for the Court to impose a period of post-release supervision on him also? As the authors of RAJI put it,

"..if such supervision is necessary, is this not tantamount to an admission that the offender's bond to be of good behaviour is insufficient? If so, it is surely
arguable that [the offender] was an unsuitable candidate for a suspended sentence in the first place".

Post-Release Supervision Orders and Part-Suspended Sentences Contrasted

(1) The first and most obvious answer to this charge is that it does not consider an important purpose of probation supervision in general, that is, to provide supports to the offender to help him/her in the process of rehabilitation and reintegration into society after release. In addition, the Sex Offenders Act 2001 sets out the factors which the judge must consider when deciding whether to impose a post-release supervision order on a sex offender. These include "the need to rehabilitate or further rehabilitate the offender" (Section 28(2)(d) of the Sex Offenders Act 2001 as amended).

(2) Part-suspended sentences and post-release supervision orders are different in terms of duration. A part-suspended sentence is a term of imprisonment whose length is fixed in accordance with the long-established principles of proportionality and totality described above. It is part-suspended on conditions for which the penalty is the activation of the remaining portion of the sentence. However, the original sentence cannot be extended by the imposition of a new sentence as a sanction for the breach. Post-release supervision orders, on the other hand, begin once the fixed term of imprisonment comes to an end. The sum of the term of imprisonment and the supervision period cannot exceed the maximum sentence for the offence concerned, but there is no other automatic restriction on the length of the supervision. As the offences of rape and aggravated sexual assault all carry maximum life sentences, the post-release supervision order can extend for a very long time after release.

(3) Procedure in the case of breach of each kind of sentence is different. In the case of part-suspended sentences, the procedure is flexible, in that any new conditions which suit

the circumstances of the case may be imposed, and swift, in that any detected breach of conditions of the suspension can trigger a rapid hearing in front of the sentencing judge and a rapid return to prison, if the breach is proved. If a breach of a post-release supervision order is suspected, it has to be investigated, charged and tried as a summary offence. This means that the procedure on breach is slow and the sanction imposed, if any, does not necessarily reflect the seriousness of the breach. It has some flexibility, in that existing conditions may be varied or removed, but not added to. It does mean that in effect, the original sentence can be extended by a maximum of twelve months as a sanction for the breach.

The same subsection also lists the prevention of further sexual offences and the protection of the public from serious harm from the offender as other factors to be taken into account.

(4) The Probation Service is not necessarily involved when part-suspended sentences are imposed, but always is when post-release supervision orders are included in the sentence.

(5) The sentencing judge is under no obligation to consider whether any term of imprisonment involving a sex offender should be part-suspended, but he/she must consider whether to impose a post-release supervision order when sentencing a sex offender.

Part-Suspended Sentences and Post-Release Supervision Orders: Unnecessary Duplication?

It is clear that these two kinds of sentences may be imposed on the same sex offender, and that he/she could be subject to supervision on two separate bases on release from prison. Each kind of sentence can have a wide variety of different conditions attached, and there is no requirement that they be the same, or that they should complement each other. Of course in practice, a sex offender would not be expected to attend two sets of probation appointments or two identical treatment programmes, after release – even if this were desirable, the resources are unlikely to be made available for such duplication.

As in practice there would not be duplication of supervision and/or treatment resources, the issue becomes whether there is any risk management advantages to the present sentencing regime? RCNI believes that there are, and that there is also more which could be done to ensure that these two sentences work better together.

Risk Management Advantages of Part-Suspended Sentences imposed with Post-Release Supervision Orders:

(1) Continuation of supervision, treatment, and other conditions necessary to prevent further offending and to further the rehabilitation and reintegration into society of the sex offender – these two sentences when imposed together, provide a framework through which such continuation is possible if appropriate, for a lengthy period beginning from the time of release;

(2) Part-suspended sentences, like temporary release following a positive recommendation by the Parole Board, provide a powerful incentive for compliance with their conditions, as the sex offender can have the remainder of his sentence activated on proof of breach of any of these conditions, quickly and simply. As has been pointed out, the

activation period of a part-suspended sentence is likely to exceed 12 months, the maximum additional penalty for breach of a post-release supervision order, in many cases. This incentive comes into play at a challenging time for most sex offenders, the period immediately after release.

(3) In turn, compliance with supervision, treatment and other conditions means that risk management should be straightforward for the Guards and the Probation Service, and that new problems can be dealt with swiftly as they emerge. This in turn will reduce the level of risk to the community in general from that offender;

(4) The flexibility of the part-suspended sentencing option means that new conditions can be added on to the original sentence if the need arises, quickly and simply. This has obvious advantages from a risk management perspective.

(5) While the current post-release supervision order regime is less flexible and more cumbersome, especially when a breach is suspected – and therefore may be less effective as an incentive towards compliance with its conditions – nevertheless it is useful from a risk management perspective, as it can extend a long time after the fixed term of imprisonment comes to an end.

(6) This also means that the overall period of judicial supervision of the sex offender can extend many years after the sentence is imposed, if necessary.

1.3.6 RCNI Summary of Recommendations in relation to Sentencing of Sex Offenders:

RCNI recommends that the following changes be made to our sentencing laws in order to ensure that effective risk management of released sex offenders is facilitated by our sentencing regime as much as possible:

(1) There should be an obligation on sentencing judges to consider whether a part-suspended sentence with appropriate conditions, should be imposed on a sex offender, in every case;

(2) In the case of sex offenders, the criteria to decide whether such a sentence should be imposed should be the same as those which the judge must consider when deciding whether to impose a post-release supervision order;

(3) Where the judge does decide to impose both a part-suspended sentence and a post-release supervision order, he/she should consider the conditions for both sentences together and make clear why he/she is imposing each condition in open Court;

(4) To enable the judge to make his/her decision on sentencing on as well-informed basis as possible, there should be an obligation on the sex offender to co-operate with any pre-sanction assessment by the Probation Service necessary for the preparation of its Pre-Sanction Report, or other pre-sanction report directed to be prepared by the judge by another person or body which the judge decides is necessary;

(5) if the offender does not comply with this requirement to co-operate, his sentence could be increased as a consequence;

(6) Any set of conditions attached to either a part-suspended sentence or a post-release supervision order, should include as standard a general condition that the offender comply with all of the specific conditions imposed

Where there is no Part-Suspended Sentence and/or Post Release Supervision Order imposed, and the Sex Offender is not subject to Temporary Release conditions:

It is important to note that there is a cohort of released sex offenders who are not subject to any supervision regime after release, but who should also be supervised and supported effectively to ensure that in their case, the risk of re-offending is also managed and if possible, reduced. RCNI recommends therefore that:

(7) All sex offenders should be subject to a minimum period of supervision on release from prison, if they have not received a part-suspended sentence and/or no post-release supervision order has been imposed;
(8) It should be possible for the Probation Service to apply to add, vary or remove any condition at any point during that period;
(9) The Probation Service should have the option to apply to have this minimum period of probation extended, in an appropriate case; and
(10) There should be appropriate penalties for failure to comply with such supervision.

These changes will mean that over time, there will be a more unified system of Court, Probation and Garda supervision of sex offenders from the point of release until many years later, if necessary.

1.4 Sexual Offences as Spent Convictions – should these crimes ever become capable of being spent?

RCNI made observations on the Criminal Justice (Spent Convictions) Bill in 2012, the full document is available online. [11] In summary, RCNI agrees with the Law Reform Commission in its Report on Spent Convictions (2007)[12] that sexual offences should not be included in any list of offences which can become spent. The LRC recommendation at paragraph 3.19 of that Report reads: "*The Commission recommends that any offence which must be tried in the Central Criminal Court and all sexual offences should be excluded from the application of the proposed spent convictions scheme*". RCNI's view is that sexual crimes are so serious by their nature and so devastating in their effects on victims that they should never be capable of becoming spent.

2.0 (iv) [Custodial] Regimes and (v) Reintegration and Rehabilitation

It seems appropriate to consider these two together, as the principles involved are similar. This part of the submission should be read in conjunction with the RCNI Submission on the Management of Sex Offenders, available online through the link below[13]. The RCNI view is that genuine reintegration and rehabilitation of convicted sex offenders are desirable if they can be achieved, because they are associated with **reduced risk of future offending.** The

[11] Through this weblink: http://www.rcni.ie/uploads/RCNISpentConvictionsBill.pdf

[12] Available online at: www.lawreform.ie

[13] http://www.rcni.ie/uploads/RCNIsubmissiononthemanagmentofsexoffenders29thApril2009.pdf

sooner the positive process of reintegration and rehabilitation can begin, the better, and for this reason, RCNI would support in principle the idea of dedicated sex offender programs in prison as part of the regime. While it is probably too soon to assess the full impact of the new Building Better Lives program for sex offenders, it seems to us encouraging that participation in these programs is so much more extensive than it was for its predecessor.

RCNI also submits that **incentives** to participate in Sex Offender programs in prison are important. While for a large number of sex offenders, early release may not be appropriate on public safety grounds, nevertheless other incentives such as suitable prisoner privileges, may help to convince sex offenders that it is worth their while to decide to attend a sex offender program. However, it is also vital that bare participation in such programs without real engagement of the offender, which does not show real and measurable changes in behaviour and attitude as indicated by a robust Risk Assessment process – is not rewarded.

RCNI submits, as in our 2009 Submission, that a **unified system of pre-release and ongoing risk assessment and management of convicted sex offenders, adequately resourced, is key to the reduction of re-offending after release**. We would also stress that post-release supervision and management of sex offenders should address the protection needs of the public, particularly where high risk offenders are concerned, and should acknowledge the need of victims for protection and information.

When it comes to the release of convicted sex offenders into the community, public safety concerns and **the safety of the victim in particular** must be paramount. For this reason, RCNI advocates that the present system of joint Garda and Probation Service Risk Assessment and Risk Management of released sex offenders, through a number of local cross-agency committees (SORAMs – Sex Offender Risk Assessment and Management), be continued and expanded, to enable effective risk assessment and risk management of these offenders. It could include, for instance, HSE social workers with child protection expertise and therefore, knowledge of sexual offending in their local area, and could also develop links with other relevant bodies, such as local rape crisis centres. The RCNI view is that it is important that ongoing risk assessment and management is informed not only about the movements etc of the sex offenders in its remit, but also about the viewpoint of victims.

While the safety of the victim is extremely important of course, it is also very important that survivors can feel as much in control as possible and as comfortable as possible in their own communities once the perpetrator has been released. For this reason, RCNI submits that a general direction on sentencing that the convicted sex offender should not contact in any way, directly or indirectly, any victim(s), is very helpful. Failure to comply with such a direction could be made a separate criminal offence.

RCNI submits that accurate and timely information helps survivors regain a sense of control once sex offenders are released into the community. We include here the following list of

proposed victims' rights, extracted from our 2009 Submission, some of which have been included in the new EU Directive on the Rights of Victims of Crime (November 2012)[14]:

- Victims should have the formal right to be informed by An Garda Síochána and/or any other member of the [SORAMs], 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 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 Siochana 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.

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[14] Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available online at: http://register.consilium.europa.eu/pdf/en/12/pe00/pe00037.en12.pdf