

Trinity College Dublin

**Should a Megan's Law be Considered
in the Irish Context?**

**for partial fulfilment of the
Postgraduate Diploma in Child Protection and Welfare**

Emma Clerkin

Tutor: Dr. Eoin O' Sullivan

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Abstract

This project presents findings of an explorative study to identify if there is need for a Megan's Law in the Republic of Ireland. The project looks at relevant research and studies on Megan's Law and Community Notification of personal details of Sex Offenders being accessed by the public.

The research undertaken is from the prospective of An Garda Siochana, who have a statutory responsibility to promote the health and safety of children, but also to monitor and register sex offenders who reside within the community.

The project will show that the current legislative provision for monitoring sex offenders is inadequate; however despite this the introduction of a Megan's Law may place children and the public at greater risk. The project will make recommendations to improve current organisational practices within An Garda Siochana when monitoring sex offenders.

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Introduction

Sexual crimes can be considered to be some of the most serious and heinous crimes that can be committed against a person within society. Evidence suggests that the effects on the victims are life long, sometimes both physically and mentally (Hall and Hall, 2007; Finklehor, 2008). In the case of sexual crimes against children, such acts robs them of their childhood, their dignity and their confidence and the consequences of this type of abuse has far reaching effects on the victim, on a family, on a community and society as a whole.

Child sexual abuse is not a new phenomenon. Sexual crimes against children have been perpetrated for years, and recent public enquiries such as The Commission to Enquire into Child Abuse (2009) – better known as the Ryan Report, establishes the existence of child sexual abuse for decades in the Republic of Ireland. Legislation criminalising sexual offences against children have been established for over a century in Ireland. Irish law has also witnessed an evolution of the language used to describe sexual offences, and legislation has moved from regulating children to protecting them (O’ Sullivan, 2002).

The 1990’s witnessed a growing interest developing methods to respond more effectively to risks posed by sex offenders in the community, largely as a result of the increased reporting of child sexual abuse and the sentences imposed by the courts (O’Sullivan, 2002). The climate in Ireland and internationally was changing, with an increase in public scrutiny and accountability and with a focus on protecting the public from sex offenders was a priority. Increased media attention in relation to sex offenders residing within the community and those that were due for release were being monitored, added to this heightened awareness of sex offending.

The Sex Offenders Act, 2001 created separate offences that offenders could commit if they fail to co-operate with the probation service, the Gardai and court orders. The Act also gave power to impose sanctions on the movement and location of offenders upon application to the court by a member of An Garda Siochana not below the rank of Chief Superintendent.

I am a member of An Garda Siochana and as part of my role I am involved with the registration and monitoring of sex offenders residing within my district. My interest in this subject arises out of this role, and the lack of guidelines and protection one is assumed to have to execute this role. This project will endeavour to outline the current policy in place to manage sex offenders in the Republic of Ireland; in particular it will highlight the role of the Probation Service, the Prison Service and An Garda Siochana.

It will look to international methods of risk management, specifically sex offender notification law usually referred to as 'Megan's law' to establish if this type of law would be effective in the Republic of Ireland. Megan's Law is a law that was introduced to facilitate in the registering of sex offenders and community notification of personal details of the sex offender that is details of where the offender lives, works, photographs etc., is available to the public. This project will look critically at Megan's Law and if these laws have been beneficial in the reduction of sexual crimes against children. This project will also briefly look at 'Sarah's Law', introduced in the United Kingdom, a version of the United States Megan's Law.

Project Overview

This project will outline findings of research that was conducted to ascertain opinions with regards management of sex offenders and the notion that a Megan's Law would be feasible in Ireland, from a Garda perspective. This project is broken into separate sections;

Section 1 will look at the relevant literature and policy surrounding this topic, with particular emphasis on the Irish context. It will look at the approach taken by California in its implementation of Megan's Law; the policy and legislation regarding the monitoring and interventions with sex offenders in the Irish context; and history of child sexual abuse in Ireland, taking into account definitions.

Section 2 will look at the methodology adapted in the research, outlining the recruitment and limitations to the research process.

Section 3 will aim to outline the findings of the field research that was undertaken, and will be discussed with information drawn from relevant literature and policy outlined in section 1 of this project.

Section 4, will summarise and conclude the overall project identifying the policy adopted by both the United States and the United Kingdom as being an overly punitive response to child sexual abuse and the current policy in place in Ireland is unrealistic and wholly inadequate.

Section 5 will endeavour to make relevant and realistic recommendations for future policy, both Nationally and within an agency context that might empower the role of An Garda Siochana in relation to sex offenders residing within the community.

1 – Literature Review

Introduction

Data on the extent of child sexual abuse in Ireland is limited as it largely reflects reported sexual abuse. However as shown in the SAVI Report, 2002 ‘almost one third of women and a quarter of men reported some level of sexual abuse in childhood’ (McGee, et al, 2002 Executive Summary:5), but disclosure of these offences to professionals was very low and does not reasonably resemble the extent of child sexual abuse. Referrals to Social Work Departments by category, as outlined in Table 6 of the Review of Adequacy of Services for Children and Families, 2008 showed that the number of referrals for sexual abuse was 2,379 for the year 2008. However in the same year a total of 72 persons were tried in the Central Criminal Court; and 2,017 offences with 567 defendants were tried in the District Court in relation to Sex Offence committed (Courts Service: Annual Report, 2008). There were different outcomes for these offenders and some cases were dismissed or struck out. There were a total of 1,407 sexual offences recorded by An Garda Síochána in 2008, with 795 of these offences being detected and a total of 29 males being convicted for crimes in 2008 (Central Statistics Office, 2009).

The Granada Institute, a private centre for treatment of sex offenders, victims and families. The Granada Institute receives some of its referrals from the criminal justice system, also receives referrals from private individuals and the HSE of people who have concern about inappropriate sexual thoughts or experiences but who have not been convicted. In a report presented by Travers, 2007 it states that 60% of perpetrators worked with by COSC were not convicted at the time of their referral. COSC - The National Office for the Prevention of Domestic, Sexual and Gender Based Violence, is the only HSE funded service for perpetrators.

By no means is sexual offending confined to one gender, however the prevalence of female sexual offenders in this country and even internationally is very low. Therefore for the purpose of this project I will be referring only to male sex offenders.

Therefore with the very low numbers of people reporting sexual abuse; figures in relation to sex offenders are only relative to those that have been convicted of such crimes and the extent of abuse inflicted by sex offenders is not reflected equally in conviction rates, with over 1,000 convicted sex offenders that have to comply with the requirements of the Sex Offenders Act 2001 living within the Irish community; and approximately 280 (Irish Prison Service, 2008) convicted sex offenders serving custodial sentences for sexual crimes. There is a considerable discrepancy between numbers of convicted offenders and the rates of which sexual abuse is reported to the HSE. Therefore the offenders that are compelled to register have been convicted of a crime but, 'convictions do not provide a true picture of sexual offending patterns.' (Kernsmith et al., 2009:291)

Definitions

To discuss sex offenders and sexual offences, I will first look at the definitions. There is a distinction between sex offenders and paedophiles. Ignorance still prevails as to the difference between a sex offender and a paedophile. Simply because an adult that sexually abuses a child, does not make then a paedophile.

A paedophile is an adult who is fixated and sexually attracted primarily to pre-pubescent children, 'a paedophile is an individual who fantasizes about, is sexually aroused by, or experiences sexual urges toward prepubescent children (generally <13 years) for a period of at least 6 months. Paedophiles are either severely distressed by these sexual urges, experience interpersonal difficulties because of them, or act on them.' (Hall and Hall, 2007:457). It is unusual for a paedophile to forcibly have sex with a child rather they use other means and methods, (Hall and

Hall, 2007). Whereas a sex offender, may be able to successfully engage with and is sexually attracted to adults. Furthermore paedophiles 'can be neighbours and relatives, social workers, childcare workers and teachers, church leaders, politicians, judges and doctors' (Hector, 2002:30).

A 'child molester' is a different category also. This is a person who has sexual contact with a child; they may or may not be a paedophile. A Child molester can be defined as 'used for a person who has had sexual contact with children. The sexual act, as well as the definition of what is a child, is legally based.' (Feelgood and Hoyer, 2008:34).

Law and Legislation

Within the suite Sexual Offences Legislation in the Republic of Ireland, there is no definition of a sex offender. Persons who have been convicted of an offence as set out in the schedule of the Sex Offenders Act 2001 (attached at Appendix A) are sex offenders by virtue of the act. The Sex Offenders Act 2001 is the main piece of legislation to date dealing with sex offenders. Contained within its provisions, is an onus placed on the offender by Section 10 of the Act to inform An Garda Síochána of his name and address within seven days, of taking up residence in that location. This can be done in person or by letter to the Garda Station. There have been a few amendments to the act, by virtue of Sex Offences Act 2003, Criminal Law (Sexual Offences) Act, 2006 and Criminal Law (Human Trafficking) Act, 2008.

There is no provision contained within any of the acts governing Sex Offender Management in the community by An Garda Síochána. There are provisions that the Court may determine a post release order which is executed and monitored by the Probation Service, this however is for convicted offenders that have served a custodial sentence. However the probation service does not extend to those offenders who a) have not served a custodial sentence and b) offenders who have not been convicted of a sexual offence.

An Garda Siochana

The current and updated mission statement of An Garda Siochana is '*working with communities to protect and serve*' (www.garda.ie). The policy in relation to child protection and welfare is adopted from the Children First National Guidelines for the Protection and Welfare of Children, 1999 (these guidelines have been revised in 2010, but are not yet operational). These guidelines sets out how to respond with regards to child protection issues and to liaise with the HSE – Health Service Executive to promote better outcomes for children who are subject to or are at risk of abuse.

The Child Care Act 1991 and subsequent legislation gives the statutory power to An Garda Siochana to take responsibility for child welfare. However the role of working with sex offenders in the community is restricted somewhat, in that this is not legislated for and there are no policy guidelines.

In every aspect of police work human and civil rights are of utmost importance to uphold. The Sex Offenders Act 2001, does not legislate for management of sex offenders living within the community, but rather is a monitoring function. The onus is placed on the offender to 'register' with the Gardai within seven days of taking up residence in an area or informing the Gardai if they intend to leave their normal place of residence for more than seven days. This function only allows An Garda Siochana access to information in relation to offender's movements throughout the country, and that is if the offender complies.

An additional aspect of the Sex Offender Act 2001, is outlined in Section 16 of the Act, a Sex Offender Order may be obtained from the courts which restricts the offenders movement which may in the member of An Garda Siochana not below the rank of Chief Superintendent, be seen as necessary to protect the public. An example of this order may be to direct the offender not to linger or frequent a national school. The offender has to be a convicted sex offender.

Risk Assessment

In 2009, a risk assessment tool made accessible to An Garda Síochána. The 'Scoring Guide Risk Matrix 2000.9/SVC' developed by David Thornton, (2007), is a statistically driven risk classification designed for males over the age of eighteen that have been convicted of a sexual offence. It is based on static factors in the offenders life; such factors that rarely change, such as age grouping, sexual offences sentencing, crime ordinary sentencing, sex of victim, age of victim, if victim was a stranger or known and if the offender is single. On completion of the scoring guide developed by Thornton, sex offenders can be categorised into risk groups, low, medium, high and very high. The Thornton model of risk assessment was reviewed by Grubin, (2008) in his report to Risk Management Authority 'Validation of Risk Matrix 2000 for use in Scotland' to validate it as a model to be used in Scotland. Grubin (2008) highlighted the importance that all information in relation to the offender is essential to obtain an accurate risk assessment and this information should be gathered from all relevant agencies, Health, Prison, Probation and Police.

This new risk assessment tool has also been adopted by Probation Service and acts as a positive tool for risk management. Another risk assessment tool, which looks at stable and acute factors in an offender's life is currently being piloted in five Garda Divisions in the country. This assessment tool has been developed by Harris and Hanson, (1998) 'Dynamic Predictors of Sexual Recidivism' and it allows the risk assessor to look at all aspects of the offenders life and influences on his life to identify if there is an increased risk of recidivism and allow the risk assessor to put in place interventions and supports at this time of the offenders life. These risk assessment tools recognises that not all offenders pose the same level of risk within society.

Operational Guidelines – An Garda Siochana

An Garda Siochana has introduced in April 2010 ‘Garda Siochana Policy on the Investigation of Sexual Crime, Crimes Against Children, Child Welfare’; which amalgamated all existing and new policy in relation to the investigation of sexual crimes and concerns about child welfare. Contained within this guide are four sections outlining operational policy for management of Sex Offenders living within a Garda District area; a new Sex Offender Management Plan will be put in place which aims to manage the risk posed by offenders within the community. This policy document also creates The Sex Offender Management & Intelligence Unit, which is an off shoot of the Domestic Violence Sexual Assault Investigation Unit which is the central authority on Sex Offenders living within the community.

This is the first guideline document to become available to members of An Garda Siochana with regards to sex offender management within the community. However the section of the guidelines in relation to sex offenders is only applicable to those members who have completed operational courses in risk assessment and management and not to the entire force.

The Probation Service

The role of the Probation Service in the management of sex offenders is also limited as the services of the probation service team has an expiry date, unlike the provisions of the Sex Offenders act 200; their services are not engaged in the event of a non custodial sentence and expire prior to the offender’s term to comply with Section 10 Sex Offender Act 2001.

Section 28 of the Sex Offenders Act 2001, allows the court when sentencing a convicted offender to post release supervision that is done by the probation service, and certain provisions are contained within this order.

The '*Lighthouse Project*', a project that was developed specifically for sexual offenders who have committed offences against children and is based in the community (it has expanded its remit in recent times to treat offenders who commit other sexual offences). It is a treatment programme for people over the age of 13 who have committed sexual offences against children. The referral to this project is through the Criminal Justice System. There is an assessment process which must be completed before admittance onto the project. If a person referred is not deemed suitable then alternative interventions may be considered. This project and treatment is delivered by the probation service joint with the Granada Institute, and the aim of this project is to reduce risk 'This treatment enables participants to live more constructive and offence free lives, it reduces recidivism and increases child protection'. (Lighthouse Programme – Information Leaflet). Treatment recognises that there is no 'cure' for sex offenders, but interventions are needed to manage any risk posed, the Lighthouse Project is one such intervention.

The Prison Service

According to the 2008 Annual Report of the Irish Prison Service, Arbour Hill Prison, Dublin has the highest number of sex offenders in custody in the prison; at the time of this report all of the inmates detained for sexual offences were male. The total number of men in Irish Prisons in 2008 for sexual offences was 275, and 88 of who were in custody in Arbour Hill Prison.

A new policy document developed within the Irish Prison Service 'Sex Offender Management Policy – Reducing Reoffending, Enhancing Public Safety' establishes a national centre in Arbour Hill Prison and the prisons population will be primarily sex offenders, and satellite centres based at Wheatfield and Midlands Prisons. 'The management of sex offenders in prison has two clear dimensions – security and rehabilitation, including interventions to address their offending behaviour.' (Irish Prison Service, 2009:5). Its aim is to bring about change on offenders lives and thus reduce the risk of reoffending and enhance public safety. Treatment programmes

have been established and operating in the Prison Service for sex offenders for a number of years. These programmes have been delivered by the staff of the Granada Institute and are aimed at reducing the risk of recidivism and re-integration into the community upon release.

‘The measures must target as many areas as possible of an offender’s functioning that reduce the risk of re-offending’ (Irish Prison Service, 2009:8) This programme is being introduced on a phased basis and the effectiveness is not yet known; however long term and sustained support upon release have been identified as essential for its effectiveness.

Megan’s Law – History

Megan’s Law is a Federal Law that was introduced in the United States in 1996. This law was introduced following the sexual assault and death of seven-year-old Megan Kanka, who was raped and killed by a known child molester who had moved across the street from the family without their knowledge. In the wake of this offence, Kanka’s family sought to have local communities warned about sex offenders in the area.

In May 1996, President Clinton then signed into the Federal Law, Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 1994 as amended in 1996; which stated that every individual state had to set up a system of community notification which encourages states to register sex offenders and give information about these offenders to the public. Each state took slightly different approaches as to how to do this, with regards how much information will be made available, to whom and how to disseminate the information.

California – Community Notification

Looking specifically at California State, whom by their own admission has been registering sex offenders for over 50 years prior to the introduction of Megan's Law. 'California's Megan's law allows law enforcement to notify the public of serious and high risk sex offenders who reside in, are employed in, or visits a community.' (Violent Crime Information Centre, 2000:1).

California's law enforcement authorities, disseminates this information by digital format on a CD-ROM which can be accessed via the internet or at law enforcement offices. This law allowed law enforcement agencies give personal information about sex offenders residing within their communities to the public.

Varying states throughout the United States, have adapted other ways of dissemination of information of sex offenders such as poster and media campaigns. Details of the offenders can include, photograph, name, address, date of birth, details of employment, etc... In addition to this there are restrictions placed on residential options available to sex offenders for example they are not allowed reside within a certain distance of a school.

Sarah's Law

A 'Sarah's Law' has recently been introduced in the United Kingdom, again as the result of lobbying after eight year old Sarah Payne was raped and murdered by a known sex offender in 2000. However policy makers in the UK have legislated for a facility for parents to request information on risk posed to their children in everyday activities, however as opposed to Megan's Law no personal details of the sex offender is provided to the people making enquiries.

Critique of Megan's Law

There has been much criticism of the laws introduced in individual states and there is no supported research or empirical evidence documenting if these laws may have reduced sexual offending. Anecdotal reports in relation to how these laws have prevented sexual crimes occurring have been reported, (Violent Crime Information Centre, 2000). A report compiled by Human Rights Watch, 'No Easy Answers: Sex Offender Laws in the US', in 2007 is critical of the Megan's Law's adopted in the United States. The report acknowledges and understands the public's desire for safety in a world that has proven time and time again to be unsafe for both adults and children. However on the other hand it looks at the undesired effect these laws may have on a sex offender, and the risk posed to their civil liberties and too communities as a whole.

A sex offender failing to register may be compounded by the risk posed to that offender, 'Registered sex offenders face ostracism, job loss, eviction or expulsion from their homes, and the dissolution of personal relationships. They confront harassment, threats and property damage. Some have endured vigilantism and violence. A few have been killed.' (Human Rights Watch, 2007:78). Shannon (2007) 'Report of the Special Rapporteur on Child Protection – A Report Submitted to the Oireachtas' outlined that the introduction of such law would in fact place children at more risk due to the risk of sex offenders failing to register with authorities. The fear posed by registration may result in offender's failure to link in with supportive services and treatment once remaining in the community. (Long, 2009; Levenson, 2003; Edwards and Hensley, 2001).

There is a risk which has been highlighted during the campaign for the introduction of Sarah's Law in the UK, is that if information of sex offenders becomes public knowledge this still only relates to convicted offenders who have complied with registration. The fallout from this is that parents become too preoccupied with known sex offenders that they are not so vigilant about their children's safety against risks posed by offenders who have not been convicted and as stated above

conviction recording is not a true reflection of offending patterns (Kernsmith et al., 2009).

'Illusion of Empowerment'

Jeremy Sare, for the Newstatesman in 2008, discusses the risk of parental rights for information is '*an illusion of empowerment*', this is supported and reiterated by Levinson, 2003. Kernsmith et al., 2009 also looked at the unrealistic expectations that focus on one group of offenders in society may mean, they stated '...notification leads to an unrealistic sense of security and also may reflect the incorrect assumptions by the public that they should be more concerned about sexual abuse by a stranger than by someone known to them.' (Kernsmith et al., 2009:292) The risk proposed by this, may be parents and communities being less vigilant about respected members of the community or the family who are not convicted sex offenders. Grubin, (1998) in his article on sex offending against children also highlights the risk posed by concentration on one group of offenders, '...while sexual abuse by a stranger is what tends to be of most concern to the general public and is of most interest to the media, it is actually abuse within the family, or by an individual who has a relationship of trust with the child, that is not only more common...' (Grubin, 1998:13).

Recidivism

Another common myth is that sex offenders will always reoffend. However, while the criminal justice system and society as a whole may be driven by repulsion and fear of offenders who commit sexual offences against children, but this group of convicted offenders have a lower recidivism rate than ordinary criminals. Grubin, (1998) argued that sex offender's recidivism rates are low comparatively to other

criminal offenders, but that the media interest in such repulsive cases creates the illusion that it is higher.

In a study conducted by O' Donnell, Baumner and Hughes (2007) which explores recidivism in Ireland also highlights that sex offenders are amongst the lowest group to be reconvicted. The results of this study showed 'again in conformity with the international picture, sex offenders released from Irish prisons were significantly less likely to be re imprisoned than other types of offenders, at least in the short term'. (O' Donnell, Buamer and Hughes, 2007:135).

Interagency Cooperation

An examination of the current service provisions to protect sex offenders and protect the communities was carried out by NOTA – The National Organisation for Treatment of Abusers. Their document 'Closing the Gaps: Services in Republic of Ireland for those with Harmful Sexual Behaviour', (2008) identified a lack of interagency cooperation with regards sharing of information on sex offenders. It was very critical, of the entire system as a whole 'Considering the important role that treatment of sexual offenders has in the protection of children and our communities, the variation in levels of provision, lack of national statistics, absence of standards, and inconsistent assessment frameworks (some of which are being misused) is entirely unacceptable – indeed it could be regarded as a national disgrace.... the Irish System is currently inadequate for the purpose of promoting adequate standards of Child Protection practice; specifically in relation to the monitoring, assessment, treatment and aftercare of those who have exhibited harmful sexual behaviour'. (Corbett, 2008:35-36)

There have been steps taken since the publication of the above report to 'close the gaps' in service delivery. The risk assessment tools, Risk Matrix 2000 and Stable and Acute, as mention earlier have been delivered and are only now being used by

both the Gardai and the Probation Service to identify and intervene with high risk offenders.

A discussion document, published in 2009 by the Department of Justice, Equality and Law Reform has made several recommendations to improve the delivery of service to treat sex offenders and promote and protect the communities in which they reside. One recommendation made was to promote interagency cooperation and facilitate the free exchange of information. The document stated ‘To avoid any doubt, it may be appropriate to impose a statutory duty on these three agencies to cooperate and exchange information to protect the public from sex offenders and to rehabilitate such offenders.’ (Dept. of Justice, Equality and Law Reform, 2009:44).

Moves are being made to introduce a National Sex Offender Risk Management Committee to resemble the MAPPA – Multi Agency Public Protection Arrangements system in the UK. MAPPA was set up to protect the public and previous victims from harm. Its aims are to, identify high risk offenders, create robust risk management plans, complete risk assessments and engage in coordinated approach to information sharing across relevant agencies and focuses resources towards violent and sexual offenders who pose the highest risk to the public (National Offender Management Service Public Protection Unit, 2009).

2 - Methodology

This study is a small study that looked at collecting information by adopting both qualitative and quantitative dimension. The aim of this study was to focus on a single ‘phenomenon or concept’ (Creswell, 2003).

This approach allowed me to obtain information in a semi-structured, flexible and open manner. This approach best suited this study as the purpose of the study was to ‘describe a situation, phenomenon, problem or event.... an account of the different opinions people have about an issue’ (Kumar, 2005:12)

The research was carried out using a questionnaire. The target group of respondents were members of An Garda Síochána, which sought to look at the Garda perspective. The respondents were chosen at random, both sex and rank were diverse. The questionnaire was distributed by e-mail and on receipt of completed questionnaire there was a presumed consent. Accompanying the questionnaire was details of how the data was to be used and the confidentiality that was to accompany names. There was a brief detail of the subject at hand, Megan’s Law as a background to inform respondents when completing the questionnaire. It was a brief questionnaire and is attached at appendix 2.

Open – ended and closed ended questions were used in the questionnaire. This method was chosen to ascertain both factual and opinion related answers, ‘closed – ended questions are extremely useful for eliciting factual information and open – ended questions for seeking opinions, attitudes and perceptions.’ (Kumar, 2005:134).

The data collected is being presented as an exploration of the opinions of the respondents concerned. As will be shown, many respondents completed the questionnaire from a Garda perspective, but this sampling also considered that An Garda Síochána are members of society and gave respondents an opportunity to reply from a personal perspective.

Limitations

The sample used was small and I do not claim that the study is not representative of An Garda Siochana as a whole but rather an analysis of those who responded. The questionnaires were distributed amongst colleagues who may know have me personally, and therefore there was a risk of interviewer bias that may be unintentionally directed at the respondent.

There were two questions posed in the questionnaire, this could be seen as a limitation to the research study, the questions allowed for an answer and was left open ended to gage the opinion of the respondent. However this was a limitation as it did not allow me to probe further on the source and cause of these opinions or to expand on the opinions.

3 - Research Findings

There were thirty five questionnaires distributed amongst members of An Garda Siochana of various ranks and gender. The respondents were distributed via an internal internet e-mail. The respondents were chosen randomly, by accessing the address book on the internal e-mail system. There were twenty four questionnaires' returned. Of the respondents there was five females all of Garda rank.

Of the respondents there were three Garda Inspectors, four Garda Sergeants and the remaining seventeen respondents were of Garda rank.

The first question of the questionnaire was 'Would you agree with the introduction of a Megan's Law in the Republic of Ireland?' Only five of the respondents replied no, and gave their opinions and reasons. A resounding majority of the respondents were of the opinion that a version of Megan's Law is introduced in the Republic of Ireland.

Opinions of the No Category

For both categories there are varying reasons why the respondents made their decisions. The factors that influence their opinion are both professional and personal. One respondent, stated that

'As part of the fundamental principles which underpin the garda organisation (protection of life and property), Gardai would owe a duty of care to offender as a citizen' Garda Inspector. This reason was stated that owing to public knowledge of where an offender may reside, socialise or work resources would have to be put in place for the protection of that said person. Resourcing is an issue that is highlighted in all the respondent's returns who decided that Megan's Law would not be beneficial.

The risk, as already discussed above, would be that the idea of ‘naming and shaming’ sex offenders would further remove them from society and accessing services and interventions that would enable to live within the community. Thus driving them under ground and making risk assessment and monitoring more difficult for the authorities.

There was a fear that community notification would see an increase in vigilantism and escalating violence within communities should a sex offender take up residence. Not only would this compound criminality among non-criminals but it would also create the fear that innocent people may be victimised such as friends and families of the sex offender.

It is felt among this category that society and parents have a responsibility for their children that extends beyond convicted sex offenders, and community notification may in essence relinquish them of this responsibility. This is reiterated on an internet ‘blog’ page at Boards.ie whereby the author stated, ‘I don’t think anything beats parental vigilance, teaching kids what is acceptable and what is not...’ (www.boards.ie/vbulletin, 03/04/2010).

Opinions of the Yes Category

The majority of the respondents of this research replied in the yes category. Many respondents quite simply put it that parents should be informed if there is a risk posed to their child.

As referred to above, legislation and law in this country affords every citizen the right to privacy, to life and to property. Respondents to this survey, feel that the rights of a convicted sex offender should not outweigh the rights of society and the right of a parent to protect their child. Therefore the introduction of a Megan’s Law would protect communities from harm or the risk of harm, ‘sex offender policy, specifically in relation to offender registration, is based on the idea that offenders need to be punished and that the community needs to be protected.’ (Kernsmith,

et.al., 2009:298) There is a resounding emphasis amongst this group of respondents that this information is necessary for parents to protect their children. Some of the respondents have informed their opinion, that only high risk offenders details should be made public knowledge.

If the details of registered sex offenders were publically available there is a consensus among the respondents that this may reduce the scare mongering and sensationalist tactics of the media and journalists. As can be seen in a recent headline article on the News of the World, '*RAPE BRUTE MURRAY LIVING BESIDE GIRLS SCHOOL: We track down serial sex beast to secret hideout*' (Williams, News of the World, 04/04/2010:1). This article sets out the offences for which Murray was convicted of and his address location. This particular journalist has made it a mission to identify and highlight sex offenders residing in communities. However I do not know how much of the article is accurate and how much is sensationalism. The respondents felt that this would be minimised should a Megan's Law be introduced.

Recommendations made by respondents

Although not expressly asked, some respondents, from both categories suggested possible alternatives or additions to a Megan's Law that should be introduced in Ireland. One male sergeant suggested that the answer lies in strengthening legislation to monitor sex offenders.

Three of the respondents suggested a grading of offences, in that the high risk offenders are monitored more closely and that their details only should be made public knowledge.

Four of the respondents, suggested electronic tagging of all sex offenders when they are residing within the community. That this form of monitoring would ensure child protection or apprehension should an offence be disclosed and assist Gardai in their investigations.

The majority of respondents appeared to be well informed and answered honestly. The recommendations made by the respondents were very passionate. With one male Garda rank respondent stating *'The Catholic Church, An Garda Siochana and the Public in general which includes you and I all failed to protect children of the past. I believe it is time to unveil these sex offenders for what they are and where they are living'*.

4 - Summary and Conclusions

Sexual crimes and offences against children give rise to a very emotional and fearful response amongst society and individuals. The attitude towards those who are responsible for these crimes is one of fear, revulsion and damnation. However a sexual offender is a person who lives among us, they are a father, brother, son and more rarely a mother and daughter.

There has been renewed focus on sexual crimes and sexual offenders in Ireland since the early 1990's. 1990 saw the first piece of legislation introduced as a reaction to the realisation that legislation dealing with sexual offences was inadequate to deal with the burgeoning problem of sexual offences now being disclosed. The Commission to Enquire into Child Abuse, (2009) brought with it a heightened awareness of sexual crimes being perpetrated against children. The legislation developed since the 1990's, including changes to forensic evidence legislation, has apportioned greater powers to An Garda Síochána to assist with investigations of a sexual nature.

While research has shown that recidivism of sex offenders, as a category of offenders, is relatively low; it does not mean no risk exists. The Sex Offenders Act 2001, was enacted and contained powers to the Courts, the Probation Service and An Garda Síochána in the monitoring and rehabilitation of sex offenders. The Act, placed an onus on a convicted sex offender to provide to An Garda Síochána details of their name and address; and created a separate offence of those who did not notify An Garda Síochána of these details.

Since the introduction of the Sex Offenders Act 2001, there has been further developments in the treatment of sex offenders, there has been a move away from trying to cure sexual offenders to trying to treat and manage their risk, the introduction of the 'Sex Offender Management Policy – Reducing Reoffending, Enhancing Public Safety' developed by the Irish Prison Service is one such example of this. However legislation has not mirrored this move.

There is an ever growing concern about the risk posed by sex offenders within the community this is heightened by the current media trend of ‘hunting down’ sex offenders living within communities and a call for the introduction of a Megan’s Law as the way forward and have now undertaken to provide these details as a public service.

‘Megan’s Law’ was introduced in the United States and ‘Sarah’s Law’ in the United Kingdom as a response to two incidents of sexual abuse and death of two young girls. Both countries are renowned for the punitive measures imposed on criminals within their society. Ireland has long been seen as a society that used extreme punitive responses as a last resort (O’Donnell, Baumer and Hughes, 2008).

There are huge differences between population and policing methods. In the Irish context there is one Police Force and the sharing of information among its members is easy. In the United States and Kingdom, there are several law enforcement agencies in operation throughout the country. The implications of a Megan’s Law in Irish society may have negative effects of policing, resources, costs and protection of every bodies right to privacy and protection, ‘right to equality before the law, the right to a good name, the right to privacy and the right to earn a livelihood’ (Shannon, 2007:11) are all constitution protected rights that every citizen are entitled to.

Research shows that sex offenders reintegrating into society are more at risk when they are isolated and have no structural supports, integration is therefore key for reduction of risk ‘additional variables such as.... the contextual risk factors of the post release environment in relation to the offender’s history of offending behaviour are considered in this individualised assessment of risk.’(Skelton et.al, 2006:284-285). There is a need to look at the risk and not at the offender and the approach adopted in the Irish Context does not victimise the offender but endeavours to manage the risk.

From the literature review it is acknowledged that the Sex Offenders Act 2001 is inadequate and does not provide An Garda Siochana with the powers or tools required to properly manage the risk posed by sex offenders within the community.

The act was initially introduced as ‘An Act to require, in the interests of the common good. The notification of information to the Garda Síochána by persons who have committed certain sexual offences: in those interests to impose or enable the imposition of, certain other requirements on such persons (including requirements the purpose of which to assist in their rehabilitation)’ (Sex Offenders Act 2001). The act relies heavily on the co-operation of the offender, only in the Criminal Justice (Human Trafficking) Act 2008, were there deterrent sanctions put in place if an offender failed to comply.

The research findings show a majority of the respondents agreeing to the introduction of a version of Megan’s Law in the Republic of Ireland. The majority of respondents, stating that the public’s right to this information exceeds the rights of the offenders. However those that disagreed with Megan’s Law, discussed the risk of vigilantism and exclusion of offenders and their families.

I have outlined above some of the critical approaches to this type of policy that research has shown may undermine the aims of such a policy. In a study conducted by Levenson and Cotter, (2007) aimed to look at Megan’s Law through an offender perspective. This study gained opinions from sex offenders, who detailed both positive and negative experiences as a result of Megan’s Law, but the startling conclusion was that less than one third of the offenders surveyed stated that this type of law safeguarded reoffending. A Megan’s Law may see further marginalisation of offenders making intervention and support less accessible to them, which may amplify the risk of re-offending.

5. Recommendations

In order to successfully monitor, manage and reduce the risk of sex offenders re-offending and in turn provide public protection a number of legislative changes alongside organisational proposals have to take place:

- Recommendations made in The Management of Sex Offenders – A Discussion Document 2009, need to be put into practice.
- Continue to exclude members of the public having personal details of sex offenders, and not create a community notification system as is seen by the Megan's Law
- Development of a set of guidelines to be published for An Garda Síochána detailing how sex offenders are to be managed within the community, both those that are engaged with probation service and those that are not
- Allowing every member of An Garda Síochána access to details of sex offenders (excluding personal details of the victim) but of details of the crime, residence, picture, employment etc. To assist them in a monitoring function, and not just certain members who will be directly involved in management of sex offenders.
- Developing an aspect on internal Garda network site that members can view sex offenders, as it is not acceptable that a minority of members have the details when it is the responsibility of the organisation as a whole to protect the communities and every member should be aware and vigilant of offenders residing in the district where they work and of those who don't. Ireland is a small country and has a small population; the numbers of registered sex offenders residing within the confines of the borders are small.
- Develop policy to detail protocol to be adopted between information sharing between the prison service, probation service, and An Garda Síochána and the active involvement of the HSE in minimising risk to children and families.

Bibliography

- An Garda Siochana (2008). 'Annual Report of An Garda Siochana 2008' www.garda.ie last visited 22/05/2010
- An Garda Siochana (2010) 'Garda Siochana Policy on the Investigation of Sexual Crime , Crimes Against Children, Child Welfare' Internal Garda Document
- Central Statistics Office (2009). 'Garda Recorded Crime Statistics 2004-2008' Stationary Office, Dublin
- Child Care Act, 1991 www.irishstatutebook.ie last visited 23/05/10
- Corbett, A. (2008). 'Closing the Gaps: Services in Republic of Ireland for those with Harmful Sexual Behaviour' NOTA Ireland
- COSC (2010). 'National Strategy on Domestic, Sexual and Gender Based Violence 2010-2014'. COSC and Department of Justice Equality and Law Reform
- Court Service (2008). 'Court Service Annual Report' www.courts.ie
- Creswell, J., (2003) 'Research Design: Qualitative, Quantitative and Mixed Methods Approaches 2nd Edition' Sage Publications Ltd., California
- Criminal Law (Sexual Offences) Act, 2006 www.irishstatutebook.ie last visited 20/05/2010
- Criminal Law (Human Trafficking) Act, 2008 www.irishstatutebook.ie last visited 20/05/2010
- Department of Equality, Justice and Law Reform (2009). 'The Management of Sex Offenders: A Discussion Document' Unpublished
- Department of Health and Children (1999). 'Children First: National Guidelines for the Protection and Welfare of Children' Stationary Office, Dublin
- Elliott, M., Browne, K., and Kilcoyne, J. (1995). 'Child Sexual Abuse Prevention: What Offenders Tell Us'. Journal of Child Abuse and Neglect, Vol. 19 No. 5 p.p. 579 – 594
- Feelgood, S. And Hoyer, J. (2008). 'Child Molester or Paedophile? Sociolegal verses Psychopathological Classification of Sexual Offenders Against Children' Journal of Sexual Aggression, 14:1 p.p. 33-43

- Finkelhor, D. (2008). 'Childhood Victimization: Violence, Crime and Abuse in the Lives of Young People.' Oxford University Press, New York
- Grubin, D. (1998). 'Sex Offending Against Children: Understanding the Risk' Crown Copyright
- Grubin, D. (2008). 'Validation of Risk Matrix 2000 for use in Scotland: Report Prepared for the Risk Management Authority' Unpublished
- Hanson, K., and Harris, A. (1998) 'Dynamic Predictors of Sexual Recidivism' Canada
- Hall, Ryan and Hall, Richard (2007). 'A Profile of Paedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes and Forensic Issues'. Mayo Clinic Proceedings, 2007 82(4) p.p. 457-471
- Health Service Executive (2008). 'Review of Adequacy of Services for Children and Families' available at www.hse.ie
- Hctor, E. (2002) 'Managing Sex Offenders in the Community – An Observational Perspective' Communique December 2002
- Human Rights Watch (2007). 'No Easy Answers: Sex Offender Laws in the United States' Human Rights Watch, Volume 19 Number 4
- Irish Prison Service (2009). 'Sex Offender Management Policy – Reducing Reoffending, Enhancing Public Safety'. Irish Prison Service available at www.irishprisons.ie
- Jacob Watterling Crimes Against Children and Sexually Violent Offender Registration Act, 1994 as amended in 1996 <http://www.ojp.usdoj.gov/BJA/what/2a1jwacthistory.html> last visited on 24/05/2010
- Kernsmmith, P., Craien, S., and Foster, J. (2009) 'Public Attitudes Toward Sexual Offenders and Sex Offender Registration' Journal of Child Sexual Abuse, 18: 3 p.p. 290-301
- Kumar, R., (2005). 'Research Methodology: A Step by Step Guide for Beginners' Sage Publications Ltd., London
- Levenson, J. (2004). 'Policy Interventions Designed to Combat Sexual Violence: Community Notification and Civil Commitment'. Journal of Child Sexual Abuse 12:3 p.p. 17-52

- Levinson, J. And Cotter, L. (2005). 'The Effect of Megan's Law on Sex Offender Registration' Journal of Contemporary Criminal Justice, 21: 1 p.p.49-66
- Long, A., (2009). 'Sex Offender Laws of the United Kingdom and the United States: Flawed Systems and Needed Reforms' Transitional Law and Contemporary Problems, Volume 18:145 p.p. 145 – 168
- McGee, H., Garavan, R., de Barra, M., Byrne, J., and Conroy, R. (2002). 'The SAVI Report Sexual Abuse and Violence in Ireland: A Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence' Royal College of Surgeons in Ireland in association with Rape Crisis Centre, Dublin
- National Offender Management Service Public Protection Unit (2009) 'MAPPA Guidance 2009 Version 3.0' Crown Copyright
- Office of the Minister for Children and Youth Affairs (2010). 'Children First: National Guidelines for the Protection and Welfare of Children' Government Publications, Dublin
- O' Donnell, I., Baumer, E. and Hughes, N. (2008) 'Recidivism in the Republic of Ireland' Criminology and Criminal Justice Vol. 8 No. 2 p.p. 123-146
- O' Sullivan, E. (2002) 'This Otherwise Delicate Subject: Child Sexual Abuse in Early Twentieth Century Ireland' in P. O' Mahony editor (2002) 'Criminal Justice in Ireland' Institute of Public Administration, Dublin p.p. 176-201
- O' Toole, M. (2010) 'We Need Sex Beast Law to Keep Tabs on Scum like Murray' The Star 22nd May 2010 p.12
- Probation Service in association with Granada Institute 'Lighthouse Programme – Information for Professionals' Information Leaflet
- Sex Offenders Act, 2001 www.irishstatutebook.ie last visited 23/05/2010
- Sexual Offences Act, 2003 www.opsi.gov.uk last visited 25/05/2010
- Smallbone, S., Marshall, W. and Wortley (2008). 'Preventing Child Sexual Abuse: Evidence, Policy and Practice '. Willan Publishing, Cullumpton
- Shannon, G., (unpublished). 'Report of the Special Rapporteur on Child Protection – A Report Submitted to the Oireachtas' 2007
- Skelton, A., Riley, D., Wales., D . and Vess, J. (2006). 'Assessing Risk for Sexual Offenders in New Zealand: Development and Validation of a Computer-Scored Risk Measure' Journal of Sexual Aggression, 12:3 p.p.277-286

- The Commission to Enquire into Child Abuse (2009) – Ryan Report
- Thornton, D. (unpublished) ‘Scoring Guide for Risk Matrix 2000.9/SVC February 2007 edition
- Violent Crime Information Centre (2000). ‘California’s Megan’s Law’ California Department of Justice
- Wagner, Lindsay (2009) ‘Sex Offender Residency Restrictions: How Common Sense Places Children At Risk’. Drexel Law Review, 2009 1 p.p. 175 -209)
- Ward, T. and Connolly, M. (2008) ‘A Human Rights Based Practice Framework for Sexual Offenders’ Journal of Sexual Aggression 14:2 p.p. 87-98
- Williams, P. (2010). ‘Rape Brute Murray Living Beside Girls School: We Track Down Serial Sex Beast to Secret Hideout’ News of the World April 4, 2010 p.p.1, 4-5
- www.boards.iev/bulletin last visited on 03/04/2010
- www.garda.ie last visited 23/05/2010

Appendices

Appendix A

Schedule of Offences as set out in Sex Offender Act 2001

1. Rape.
2. Sexual assault (whether the offence of which the person was convicted was known by that name or by the name “Indecent assault upon a female person” or “Indecent assault upon a male person”).
3. Aggravated sexual assault (within the meaning of section 3 of the Act of 1990).
4. Rape under section 4 of the Act of 1990.
5. An offence under section 1 of the Act of 1908 (incest by males).
6. An offence under section 2 of the Act of 1908 (incest by females of or over 17 years of age).
7. An offence under section 1 of the Act of 1935 (defilement of girl under 15 years of age).
8. An offence under section 2 of the Act of 1935 (defilement of girl between 15 and 17 years of age).
9. The offence of buggery with a person or with an animal referred to in section 61 of the Act of 1861.

10. The offence of an attempt to commit such buggery referred to in section 62 of the Act of 1861.

11. An offence under section 3 of the Act of 1993 (buggery of persons under 17 years of age).

12. An offence under section 4 of the Act of 1993 (gross indecency with males under 17 years of age).

13. An offence under section 11 of the Criminal Law Amendment Act, 1885 (acts of gross indecency).

14. An offence under section 5 of the Act of 1993 (protection of mentally impaired persons).

15. An offence under section 4 of the Act of 1935 (defilement of mentally impaired females).

16. An offence under any of the following provisions of the Child Trafficking and Pornography Act, 1998 —

- a) section 3 (child trafficking and taking, etc., child for sexual exploitation),
- b) section 4 (allowing child to be used for child pornography),
- c) section 5 (producing, distributing, etc., child pornography),
- d) section 6 (possession of child pornography).

17. An offence under section 2 of the Sexual Offences (Jurisdiction) Act, 1996 (sexual offences committed outside the State).

18. An offence consisting of attempting to commit an offence referred to in any of *paragraphs 1 to 17* of this Schedule (other than such an offence that itself consists of an attempt to do a particular act).

19. An offence consisting of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in any of *paragraphs 1 to 18* of this Schedule.

20. An offence consisting of conspiracy to commit an offence referred to in any foregoing paragraph of this Schedule.

The Schedule of the Sex Offenders Act 2001 is amended by

(a) The substitution of the following paragraph for paragraph 7

“7. An Offence under the Criminal Law (Sexual Offences) Act 2006” and

(b) The deletion of paragraph 8

Appendix B

Questionnaire

Rank:

Sex:

Would you agree with the Introduction of a Megan's Law in the Republic of Ireland?

Yes – If yes please state reasons

No – If no please state reasons

