

CRIMINAL LAW (TRAFFICKING IN PERSONS AND SEXUAL OFFENCES)

BILL 2006

GENERAL SCHEME

(...)

Head 9 Harassment order

Provide that –

(1) A court may, when imposing sentence on a person who has been convicted of a sexual offence, as well as sentencing that person, impose an order under this head on that person.

(2) The court may consider making an order under this head on its own motion or following an application from the victim or any other person.

(3) An order under this head may, for the purpose of protecting the victim or any other person named in the order from harassment, prohibit the person convicted of the sexual offence from doing anything, or going anywhere, described in the order which the court is satisfied would cause the victim or the other person fear, distress or alarm or which would amount to intimidation.

(4) In making an order under this head, it is only necessary for the court to be satisfied that there is a reasonable expectation that the person convicted of the sexual offence may –

(a) harass the victim or any other person, or

(b) that the victim or other person has a genuine fear of being contacted or intimidated in any way by the offender

such as would cause the victim or other person fear, distress or alarm.

(5) The order shall have effect for a specified period or until a further order is made under subhead (6).

(6) At any time after the order has been made, the person in respect of whom it was made, the victim or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(7) If the court makes an order varying the order or discharging the person in respect of whom it was made from the obligation to comply with its requirements, the court shall cause the Garda Síochána to be notified of the variation or discharge.

(8) If without reasonable excuse the person in respect of whom the order was made does anything which he or she is prohibited from doing by the order, he or she is guilty of an offence.

(9) A person guilty of an offence under this head is liable –

(a) on summary conviction to a fine not exceeding €3,000 or a term of imprisonment not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €10,000 or to a term of imprisonment not exceeding 5 years or both.

(10) In this section –

“sexual offence” has the meaning assigned to it by section 3 of the Act of 2001.

Head 10: Jurisdiction

Provide that-

(1) Offences under heads 3 to 9, an offence under sections 5 and 6 of the Child Trafficking and Pornography Act 1998 and a rape offence and a sexual assault offence, as defined at section 1 of the Criminal Law (Rape) Act 1981, or anything done

outside the State which if done in the State would constitute one or more of the above offences apply to an act committed outside the State if the act -

- (a) is committed for the benefit of a legal person established in the State,
 - (b) is committed by a citizen of Ireland,
 - (c) is committed on board a ship or aircraft registered in the State,
 - (d) is committed by a person who is habitually resident in the State, or
 - (e) is committed against a person who is a citizen of Ireland.
- (2) In this head "ship" includes any vessel used in navigation.

Head 11: Proceedings relating to offences committed outside the State

Provide that -

Proceedings for an offence to which head 10 applies in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Head 12: Double jeopardy

Provide that-

A person who has been acquitted or convicted of an offence outside the State shall not be proceeded against for an offence under this Act consisting of the acts that constituted the offence of which that person was so acquitted or convicted.

Head 13: Entry, search and seizure

Provide that -

(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under heads 3 to 6 and 8 and 9 is to be found at a place specified in the information, the judge may issue a warrant for the search of the place and any persons found at that place.

(2) A warrant issued under this head shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary -

(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under Heads 3 to 6 and 8 and 9.

(3) A member of the Garda Síochána acting in accordance with a warrant issued under this head may require any person or persons found at the place where the search is carried out to give the member his or her name and address.

(4) Any person who -

(a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under subhead (1),

(b) fails or refuses to comply with a requirement under this head, or

(c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3000 or to imprisonment for a term not exceeding 12 months or both.

(5) A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under subhead (4).

(6) In this head "place" includes any dwelling, any building or part of a building and any vehicle, vessel, structure or container used or intended to be used for the carriage of goods by road

(...)

Head 16: Amendment of Criminal Evidence Act, 1992

Provide that -

1. The Criminal Evidence Act, 1992, (as amended by section 10 of the Child Trafficking and Pornography Act 1998) is hereby amended in section 12-

(a) by the deletion of "or" in paragraph (c) where it last occurs and by the insertion of "or" after paragraph (d), and

(b) by the insertion of the following paragraph after paragraph (d):

"(e) an offence under section 3, 4, 6, 8 or 9 of the Criminal Law (Trafficking in Persons and Sexual Offences Act 2006).".

Head 20

Provide for -

New Part in Sex Offenders Act 2001

20.- The Act of 2001 is hereby amended by the insertion of the following Part

after section 37:

"Part 7

PROHIBITION FROM WORKING WITH CHILDREN AND MENTALLY

IMPAIRED PERSONS

(...)

Duty of Court to consider imposition of sentence involving a prohibition

Provide that-

39.- (1) In determining the sentence to be imposed on a sex offender in respect of the sexual offence concerned, the court shall consider whether to impose a sentence that includes a condition prohibiting the offender from doing work (including State work or service) a necessary and regular part of which consists, mainly, of the offender having unsupervised access to, or contact with, a child or children or a mentally impaired person or persons..

(2) In considering that matter, the court shall have regard to –

(a) the need to protect children and mentally impaired persons from serious harm from the offender, and

(b) the need to prevent the commission by the offender of further sexual offences.

(3) For the purposes of this section, the court may, if it thinks it necessary to do so, receive evidence or submissions from any person concerned.

Power of court to impose prohibition

Provide that –

40. - (1) A court may impose on a sex offender in respect of the sexual offence concerned a sentence involving a prohibition condition, that is to say a sentence which consists of –

(a) the imposition of a sentence of imprisonment for a specified term (whether in addition to the imposition of a fine or not), and

(b) a condition that during a specified period commencing on the date of the offender's release from prison, the offender shall be subject to a prohibition as provided for in subhead (1) of section 21.

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

(3) In determining the period to be specified as the period of prohibition, the matters to which the court shall have regard shall include the matters referred to in section 39(2).

(4) The reference in this section to the date of the offender's release from prison is a reference to the date on which the offender's sentence of imprisonment referred to in subsection (1)(a) expires, or as the case may be, the offender's remission from the sentence begins.

(5) When imposing a condition under subsection (1)(b), the court may specify a particular work or service to which the prohibition applies.

(6) The court shall not impose a condition under subsection (1)(b) unless it is satisfied that it is in the best interests of children or mentally impaired persons to do so.

(7) The court may impose a condition under this section in addition to imposing a sentence involving post-release supervision under Part 5.

Duty of court to explain effect of sentence to offender.

Provide that –

41.- In imposing a sentence involving a prohibition condition on a sex offender, the court shall explain to him or her –

(a) the effects of the sentence, and

(b) the consequences provided for under section 43 if he or she fails to comply with the prohibition condition.

Discharge from obligation to comply with requirements of this Part

Provide that –

42.- (1) A person who is subject to a prohibition condition under this Part for a period of an indefinite duration may apply to the court for an order discharging the person from the obligation to comply with all or part of the condition on the grounds that-

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender no longer requires that the condition should continue either fully or partially, as the case may be, in force.

(2) An application under this section shall not be made before the expiration of the period of 10 years from the date of the applicant's release from prison.

(3) The applicant shall, not later than the beginning of such period before the making of the application as may be prescribed, notify the superintendent of the Garda Síochána of the district in which he or she ordinarily resides or has his or her most usual place of abode of his or her intention to make an application under this section.

(4) That superintendent or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application

(5) On the hearing of an application under this section, the court shall, if satisfied that -

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender no longer requires that the condition should continue in force make an order discharging the applicant from the obligation to comply with all or part of the prohibition condition.

(6) In considering an application under this section, the court may require to be adduced, in such form as it thinks appropriate, evidence (including expert evidence) with regard to whether -

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender would any longer be served by the applicant's continuing to be subject to the prohibition condition.

(7) If the court makes an order discharging the applicant from the obligation to comply with all or part of the prohibition condition, the court shall cause the Garda Síochána to be notified, in writing, of that discharge.

(8) The jurisdiction of the court in respect of an application under this section may be exercised by the judge of the circuit where the applicant ordinarily resides or has his or her most usual place of abode.

(9) Where a prohibition condition is partially discharged following an application under subsection (1), the applicant may, at any time at least 2 years following the application, make a further application to discharge the remaining parts of the condition and any such application shall be in accordance with the provisions of this section.

(10) In this section-

"applicant" means the person referred to in subsection 1;

"court" means the Circuit Court:

"date of the applicant's release from prison" means the date on which the applicant's sentence of imprisonment referred to in section 22 (1) (a) expires or, as the case may be, his or her remission from the sentence begins.

Non-compliance with requirements relating to prohibitions

Provide that -

43.- (1) A person who fails to comply with a prohibition condition shall be guilty of an offence and shall be liable -

(a) on summary conviction to a fine not exceeding €3,000.00 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 5 years or both.

(2) Subject to subsection (3), the conviction of a person for an offence under this section shall not prevent the period during which he or she is subject to a prohibition condition from continuing to have effect

(3) If a sentence of imprisonment is imposed on a person for an offence under this section, that sentence shall, for the period the person spends in prison on foot of that sentence, operate to suspend the period of the prohibition condition and the period for which the condition is suspended shall not be reckoned in calculating the date on which the period of prohibition expires.

(...)