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## 1415<sup>th</sup> meeting, 20 October 2021

10 Legal questions

### 10.2 European Committee on Crime Problems (CDPC)

b. Draft Recommendation CM/Rec(2021).. of the Committee of Ministers to member States regarding the assessment, management and reintegration of persons accused or convicted of a sexual offence

Item to be considered by the GR-J at its meeting on 12 October 2021

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**Draft Recommendation CM/Rec(2021)..  
of the Committee of Ministers to member States  
regarding the assessment, management and reintegration of persons accused or convicted of a  
sexual offence**

*(adopted by the Committee of Ministers on ... 2021  
at the .... meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15. b of the Statute of the Council of Europe,

Having regard to the European Convention on Human Rights (CETS No. 5) and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in particular the standards it has developed in its general reports;

Noting that sexual offences cause significant and lasting harm, including physical and mental harm, to victims and their immediate environment and that therefore it is vital to reduce sexual reoffending through targeted risk assessment and individualised treatment and intervention plans in order to achieve successful social reintegration;

Noting further that sexual offences also have a serious impact on society in terms of health and wellbeing and the cost to public services in the areas of both health and criminal justice, and increasingly have national, international and transnational implications;

Aware that assessment, treatment and interventions in the management as well as the reintegration of persons who are accused or convicted of a sexual offence are a challenge for many prison services and probation agencies of the Council of Europe member States and beyond;

Noting that there are disparities among jurisdictions regarding the definitions of different sexual offences, the age of sexual consent and the types of sanctions applicable, which have developed over time due to cultural, social and legal differences; there are nevertheless universally accepted principles across the Council of Europe member States regarding assessment, treatment and intervention in the management and the reintegration of persons accused or convicted of a sexual offence;

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<sup>1</sup> This document has been classified restricted until examination by the Committee of Ministers.

Having regard to the standards contained in the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (CETS No. 201) and in the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) and in the Convention for the protection of individuals with regard to automatic processing of personal data (CETS No.108 as amended by its Protocol CETS No. 223);

Having also regard to the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to specific aspects of penal policy and practice and in particular Recommendations: Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules and CM/Rec(2010)1 on the Council of Europe Probation Rules;

Further taking note of the following Recommendations: No. R(97)12 on staff concerned with the implementation of sanctions and measures; Rec(2003)22 on conditional release (parole); Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners; Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse; CM/Rec(2012)5 on the European Code of ethics for prison staff; CM/Rec(2014)3 concerning dangerous offenders; CM/Rec(2014)4 on electronic monitoring; CM/Rec(2017)3 on the European Rules on community sanctions and measures; and CM/Rec(2018)8 concerning restorative justice in criminal matters.

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this Recommendation;
- ensure that this Recommendation and its explanatory memorandum are translated and disseminated as widely as possible and specifically among judicial authorities, the police, prison services and probation agencies, victim protection agencies and relevant professional organisations and associations.

*Appendix to Recommendation CM/Rec(2021)..*

## **I. SCOPE AND DEFINITIONS**

This Recommendation applies only to adults accused or convicted of a sexual offence, including when they are managed in relation to the execution of a sanction or measure imposed following a sexual offence; it does not apply to children accused or convicted of a sexual offence.

### ***Definitions used for the purpose of this Recommendation***

***Sexual offence:*** any act or behaviour of a sexual nature or intent that is subject to criminal sanctions or measures under national law. A sexual offence may involve physical, emotional or psychological pressure or violence and may be a contact offence (such as rape, or sexual assault, including touching) or a non-contact offence (such as grooming, exhibitionism, voyeurism or creating, downloading or viewing child sexual abuse imagery).

***Accused of a sexual offence:*** a person who has been charged with a sexual offence but has not yet been convicted or sentenced and who may or may not be remanded in custody pending possible conviction.

***Convicted of a sexual offence:*** a person who has been prosecuted and sentenced for a sexual offence.

***Risk:*** The likelihood or threat of future commission of a sexual offence or any other offence.

**Risk assessment:** the formalised process by which risk is assessed by professionals (individuals appropriately trained and qualified to work with persons accused or convicted of a sexual offence): it examines the nature, seriousness and pattern of offences; it identifies the characteristics of the individual, including risk-related and protective factors that may have had an impact on offending behaviour; and it informs appropriate decision-making by the responsible authorities with the aims of facilitating and evaluating their interventions and/or treatment and their management of persons in detention and under probation and reducing the risk of future commission of a sexual offence or any other offence.

**Risk management:** the process of selecting and applying a range of interventions and/or treatment measures in prison and probation settings, including in the post-release period or in the context of preventive supervision, with the aim of reducing the risk of future commission of a sexual offence or any other offence and supporting reintegration into society.

**Intervention and/or treatment:** any action taken to support, treat, assist or guide persons accused or convicted of a sexual offence in order to facilitate their cognitive and behavioural change and their social reintegration and prevent them from committing future sexual or any other offences and to help them lead law-abiding lives.

**Prison service:** a public body designated by law to deal with persons remanded in custody or deprived of their liberty in relation to a conviction by a judicial authority.

**Prison:** a facility reserved for holding persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty in relation to their conviction.

**Probation:** a range of activities and interventions, which involve supervision, guidance and assistance aiming at reducing reoffending, facilitating the social inclusion of persons accused or convicted of a sexual offence and contributing to community safety.

**Probation agency:** a body designated by law to implement tasks and responsibilities relating to probation, particularly the management of community sanctions and measures. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to persons accused or convicted of a sexual offence, while they are in custody, in order to prepare their release and resettlement; monitoring of and assistance to persons subject to early release; carrying out restorative justice interventions; and offering assistance to victims of crime.

**Sentence plan:** a plan containing the details of the execution of a given sentence (whether or not involving deprivation of liberty), which should be agreed at the start of such execution. It is based on dialogue between a professional and a convicted person and on assessment of individual risks and needs factors. It provides a structure and timeline of the sentence, sets targets to be achieved by the convicted person, lists activities and interventions and/or treatment in order to provide support and assistance with a view to reducing the likelihood of future offending and improve the prospects of rehabilitation and reintegration into society. The sentence plan should be regularly reviewed to adapt it to the progress/regress made by the convicted person while serving their sentences.

## II. BASIC PRINCIPLES

1. Prison services and probation agencies should manage and seek to reintegrate persons accused or convicted of a sexual offence in line with the risk they pose and in accordance with the same standards and principles applied to other persons under their responsibility.
2. Positive steps should be taken to meet the distinctive needs of persons accused or convicted of a sexual offence, including their separate accommodation while in prison, where deemed necessary, and special management while in prison and under probation.
3. Preventing and responding to sexual offending are most effective in a multi-disciplinary setting, involving partner agencies and facilitating sharing of information, expertise and resources in order to build a common vision of risk management and effective social reintegration.

4. Offending behaviour should be considered in a comprehensive manner, which takes account of behavioural, social, psychological and health factors.
5. Interventions and treatments should be evidence-based, proportionate and part of a comprehensive approach which helps individuals to address their offending behaviours.
6. Facilitating the co-operation of persons accused or convicted of a sexual offence is central in all aspects of effective reintegration, including risk assessment, risk management, treatment and interventions.
7. Individually tailored sentence plans should be agreed at the beginning of the sentence, should continue until the end of the sentence and should be regularly updated. When drafting and implementing the sentence plan, the opinion and the co-operation of the person concerned should be sought, as far as practicable, to create a shared vision for their social reintegration.
8. Agencies managing persons accused or convicted of a sexual offence should work with local communities where appropriate, to facilitate risk management approaches and the social reintegration of individuals.
9. As far as possible, arrangements should be made to avoid disruptions of treatment or interventions, particularly when an accused or convicted person is moved between prison and probation services.
10. International co-operation should be facilitated where appropriate, in conformity with data protection rules and international agreements, with the aim of ensuring public protection while guaranteeing an appropriate level of protection of personal data.

### **III. RISK AND NEEDS ASSESSMENT**

11. Risk assessment should be carried out as early as possible in the criminal justice process by using identified formal procedure and validated risk assessment tools, in order to inform sentence- and management plans, as well as pre-sentence reports where required by the courts.
12. Risk assessment should be comprehensive and updated regularly as a prerequisite for taking informed decisions regarding the management, interventions and/or treatment of individuals accused or convicted of a sexual offence.
13. Where there are concerns regarding psychiatric disorders, risk assessment should be carried out after taking into account any psychiatric assessment, diagnosis and treatment.
14. Risk assessment professionals should be impartial and objective in providing their assessment.

### **IV. MANAGEMENT, INTERVENTIONS AND TREATMENT IN PRISON**

15. Risk assessment should be conducted or updated upon admission to prison. Where possible and deemed necessary, prisoners accused or convicted of a sexual offence should be accommodated in a separate assessment and referral unit to facilitate this process.
16. If the risk assessment suggests that community sanctions or measures could facilitate rehabilitation and reintegration, a prisoner should be considered, in conformity with national law, for a suspended sentence or early conditional release which may be combined with supervision and may include an obligation to attend interventions or undergo treatment.
17. Where necessary, protective measures should be available to prisoners accused or convicted of a sexual offence where necessary in order to prevent their victimisation and enhance their motivation for change.

18. Persons convicted of a sexual offence should, as part of their sentence plan, be offered access to interventions and/or treatment addressing their offending behaviour, the positive engagement in, and successful completion of which should be considered in early release decisions. Where possible, persons accused of a sexual offence may also consent to benefit from relevant interventions and/or treatment while in detention.

## **V. MANAGEMENT, INTERVENTIONS AND TREATMENT UNDER PROBATION**

19. Sentence plans should be individually tailored. All sentence plans should take into account any restrictions which might be imposed on the person, the services available locally, and should focus on multi-agency co-operation so that the person's compliance with the plan is facilitated as much as possible.

20. The probation staff developing an individual's sentence plan should be responsible for ensuring their part of its implementation and should be accountable for it. Probation staff should meet with persons under their care and/or supervision at regular intervals in accordance with their risk and needs.

21. Persons convicted of a sexual offence who are under probation supervision should be offered access to interventions and/or treatment aimed at addressing their offending behaviour and needs.

22. Persons under probation supervision should be informed of requirements and obligations that apply to them during their probationary period, as well as of any restrictions to which they may be subject, and of any subsequent changes.

23. At the end of the period of probation supervision, the sentence plan should be reviewed, if necessary, in relation to any restrictions still in place, or should be finalised, and the records appropriately stored or destroyed in accordance with national law.

## **VI. DATA COLLECTION, INFORMATION SHARING AND WORK IN PARTNERSHIP**

24. Only relevant data should be processed in relation to a person accused or convicted of a sexual offence and any data processing should be in conformity with the relevant international and national data protection rules.

25. Particular attention should be paid to strictly regulating the processing and sharing of data in the framework of criminal investigations and proceedings, including specific rules on the accountability of the organisations involved.

26. Internal guidelines and a system of effective sanctions should be put in place to combat careless handling or intentional misuse of such data.

27. There should be strictly regulated, periodically reviewed procedures for the storing and destroying of data.

28. In countries where there are registers or community notification schemes related to persons convicted of a sexual offence, the person concerned should be informed of the full extent of these policies. Such persons and the relevant agencies should be informed when someone has received a disclosure about them.

29. There should be bilateral and multilateral information sharing agreements for public protection purposes, in conformity with existing national and international data protection regulations.

## **VII. VICTIMS AND COMMUNITY SUPPORT**

30. The rights of victims to receive information as to the release of persons convicted of a sexual offence should be established and clarified in national law.

31. Where appropriate, prison services and probation agencies should liaise with other criminal justice agencies as well as with victim support services and other agencies as appropriate, to ensure that the needs of victims are met and in order to avoid continuing victimisation.

32. Interventions aimed at community support and engagement may be used when appropriate. However they should be approved by the probation agency, and are not a replacement for probation supervision itself.

33. Participation in restorative justice interventions, where available and appropriate, should be facilitated by providing information on the nature, relevance and availability of these interventions.

#### **VIII. STAFF SELECTION AND TRAINING**

34. Recruitment and selection criteria for staff working with persons accused or convicted of a sexual offence should take into consideration personal capacities and professional qualifications of candidates, in order to ensure competency for dealing with such persons.

35. Prison and probation staff should be trained to facilitate the rehabilitation and social reintegration of persons accused or convicted of a sexual offence by using an evidence-based programme of intervention and/or treatment-related activities, professional interaction, and assistance.

36. Treatment and intervention programmes should be implemented by specially trained prison and probation staff and be closely supervised by qualified professionals.

37. Staff should receive adequate and ongoing training to ensure that they are updated and able to perform their roles to a high standard.

38. Continuous support and assistance should be provided to staff working with persons accused or convicted of a sexual offence as such staff may experience increased vicarious trauma and stress-related symptoms and can be stigmatised.

#### **IX. MEDIA AND COMMUNICATIONS STRATEGY**

39. Policies and practices linked to the assessment, management and reintegration of persons accused or convicted of a sexual offence should be available and accessible in the public domain.

40. Prison services and probation agencies should have a clear communication strategy and should appoint a staff member to be the service's spokesperson.

41. No member of staff should engage with the media on the assessment, treatment or management of a person accused or convicted of a sexual offence without managerial approval.

42. All high-profile communications should have a clear, well-defined media information strategy, which has been developed in advance and is compliant with data protection rules.

#### **X. RESEARCH, EVALUATION AND DEVELOPMENT**

43. Research on and evaluation of the sentencing and management of persons accused or convicted of a sexual offence, as well as any treatment and/or interventions, should be supported and funded in order to develop and regularly update established good practice.

44. Prison services and probation agencies should collect statistical data and carry out research and evaluation. Where possible and appropriate, this should take place in partnership with external researchers including academic institutions and other bodies with expertise and experience in the field of such research.