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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

DRAFT RECOMMENDATION REGARDING THE ASSESSMENT, MANAGEMENT AND REINTEGRATION OF PERSONS ACCUSED OR CONVICTED OF A SEXUAL OFFENCE AND ITS DRAFT EXPLANATORY REPORT[1]

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[1] The text in black is the text of the draft Recommendation, the text in blue belongs to the explanatory report

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2020)XX
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 XX XX 2020 at the XXX 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 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 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;

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

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

Noting that there are differences 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. Nonetheless there are universally accepted principles across the Council of Europe member States regarding the assessment, treatment, management and reintegration of persons accused or convicted of a sexual offence;

Endorsing 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 Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data: ETS No.108 as amended by its Protocol CETS No.223;

Endorsing also 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)2rev of the Committee of Ministers to member States on the European Prison Rules; CM/Rec(2010)1 on the Council of Europe Probation Rules;

Further endorsing 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; Recommendation Rec(2006)2-rev on the European prison Rules; Rec (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Rec (2012)5 on the European Code of Ethics for Prison Staff; CM/Rec(2014)3 concerning dangerous offenders, Rec(2014)4 on electronic monitoring; Rec(2017)3 on the European Rules on community sanctions and measures; and 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 the explanatory report are translated and disseminated as widely as possible and more specifically among judicial authorities, police, prison services and probation agencies, victim protection agencies, as well as relevant professional organisations and associations.

BACKGROUND

The Recommendation was drafted by the Council for Penological Co-operation (PC-CP) between 2019 and 2020. The elected members of the PC-CP Working Group who took part in this work were Martina BARIĆ (Croatia); Nathalie BOISSOU (France); Annie DEVOS, Chair of the PC-CP in 2020 - 2021 (Belgium); Anna FERRARI (Italy); Robert FRIŠKOVEC (Slovenia); Vivian GEIRAN (Ireland); Attila JUHÁSZ, Vice-Chair of the PC-CP 2018-2019 (Hungary); Manfred KOST (Germany); Nikolaos KOULOURIS (Greece); Dominik LEHNER, Chair of the PC-CP 2018-2019 (Switzerland); Maria LINDSTRÖM (Sweden); Laura NEGREDO LÓPEZ (Spain); Nadya RADKOVSKA, Vice-Chair of the PC-CP in 2020-2021 (Bulgaria). The PC-CP was assisted by three Scientific Experts: Dr Kieran McCartan, Professor in Criminology, Department of Health & Social Sciences, University of the West of England (United Kingdom), Marianne Fuglestved, Specialist in Psychotherapy and Clinical Sexology, Psychologist, Directorate of Danish Prison and Probation Service (Denmark) and Harvey Slade, Consultant (United Kingdom). In the meetings representatives of the Confederation of European Probation (CEP) and of the European Organisation of Prison and Correctional Services (EuroPris) also took part, alongside Kresimir Kamber from the Registry of the European Court of Human Rights and Hugh Chetwynd from the Committee for the Prevention of Torture Secretariat (CPT).

INTRODUCTION

Standards developed at the Council of Europe level are to be found in the case law of the European Court of Human Rights (ECtHR) and reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), covering aspects of the management of adults accused or convicted of a sexual offence, including in relation to treatment and other interventions. Further standards and guiding principles exist 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) but none of these conventions deal directly with the assessment, management and treatment of persons who are accused or convicted of a sexual offence.

This Recommendation has been developed based on the work of the Council of Europe as well as of other relevant organisations, including the European Union, the United Nations, Confederation of European Probation (CEP), EuroPris, the International Association for the Treatment of Sexual Offenders (IATSO), the National Organisation for the Treatment of Abuse (NOTA), Les Centres Ressources pour les Intervenants auprès des Auteurs de Violences Sexuelles (CRIAVS), NL-ATSA (Netherlands chapter of Association for the Treatment of Sexual Abusers) and the Association for the Treatment of Sexual Abusers (ATSA).

I. SCOPE AND DEFINITIONS

Sexual offending negatively impacts the lives and development (psychological, social and physical) of victims, and has a wider impact on peers, family members and social groups, as well as on those who have offended. This Recommendation responds to a need for clarity and consistency in responding to sexual offending across the Council of Europe member States, to ensure that treatment and interventions are appropriate and focused on the avoidance of further offending.

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 following a sexual offence, but does not apply to children accused or convicted of a sexual offence. There are additional considerations, including specific policies and practices, and the distinctive needs of children, that must be taken into account and for this reason children are outside the scope of the present Recommendation as they require separate and specific attention. 'Children' refers to those under 18 years of age, in line with Article 1 of the United Nations Convention on the Rights of the Child.

It is important to recognise that a sexual offence may be motivated by a number of factors that may or may not include a sexual, power or aggression related motivation. The primary motivation may instead be economical gain, for instance, as in the case of some forms of human trafficking for purposes of sexual exploitation. For the purposes of this Recommendation, the focus is on adults who have committed any offence designated as sexual, whatever the motivation.

Definitions used for the purpose of this Recommendation

Sexual offence: any act or behaviour of a sexual nature or intent 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.

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

Risk**:** The likelihood or threat of committing a future 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 impacted upon their offending behaviour; and it informs appropriate decision-making by the responsible authorities with the aim of reducing the risk of committing a future sexual offence or any other offence.

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

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.

Prisons*:* facilities 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. It is important to note that treatments and interventions for people accused or convicted of a sexual offence may be provided in a prison (or other custodial location).

Probation: a range of activities and interventions, which involve supervision, guidance and assistance aiming at reducing reoffending, the social inclusion of persons accused or convicted of a sexual offence, as well as at 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 in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

Throughout this Recommendation the term 'person accused or convicted of a sexual offence' is used, rather than the commonly used term 'sex offender'. This is because, based on emerging research, policy and practice in Europe and elsewhere, the use of first-person-language puts the accent on the person as an individual to be dealt with and on the prevention of further harm. It also highlights that persons accused or convicted of a sexual offence are not a homogenous group, and successful treatment, interventions and avoidance of further offending require engaging with the individual themselves. This Recommendation focuses on the individuals accused or convicted of a sexual offence, rather than the offence per se.

The inclusion of both 'accused' and 'convicted' in the scope of this Recommendation is important as in some Council of Europe member States, people who are accused of a sexual offence may be held on remand for an extended period of time and therefore may have access to treatment, interventions and/or be subject to risk management plans during this period.

There are specific legal and policy challenges in the field of sexual offending. Many countries may not have specific laws, or policies focused on child sexual abuse, for instance, and instead may prosecute individuals under more general child abuse or child neglect legislation, including general sexual offence legislation. Different aspects of actions or behaviours are criminalised (or not criminalised) in different ways across the Council of Europe member States.

A further challenge in responding to sexual offending, and sexual offending behaviours, is that urges on the one hand and actions on the other are not necessarily synonymous. An individual may be diagnosed as paedophilic but have never committed a contact sexual offence. Equally, a gang member may have committed a sexual offence for a mixture of motivations, including wider anti-social and problematic behaviours and perhaps including coercion by other individuals. This emphasises the importance of looking at the person who has offended as an individual.

There are further important considerations when responding to sexual offences. It is important to realise that preventing reoffending is a multi-stage process, the first step of which is to stop further reoffending while recognising that complete desistence is a much longer process that needs support and treatment interventions over a period of time. Because of this, assessment and management need to be individualised, designed for the particular context, and consider the holistic needs of the individual, including their biological, psychological and social needs. The role of risk assessment is to identify risk and inform the selection and implementation of treatment and/or interventions, not necessarily to provide behaviour change itself.

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.

The role of prison services and probation agencies is to execute penal sanctions and measures, manage and reintegrate individuals in line with the risk they pose, and the intervention needs that they have. This rule should be read alongside Rule 2, which recognises that persons accused or convicted of a sexual offence have distinctive needs which require management on an individualised basis; this rule emphasises that such management should be focused on individual risks, rather than on perceived risks stemming from a designated category of offences being committed. The implementation of a sentence should be fair, proportionate and balanced based on an individual's risk of causing further harm. This requires assessing individuals based on the risk they present and what is needed to reduce that risk, as well as assessing what kinds of environments and interventions would best prevent recidivism.

Access to treatment and interventions for individuals accused or convicted of a sexual offence should not be dependent on the acknowledgement of guilt. This is particularly important for people accused but not yet convicted of a sexual offence where they might have access to treatment or interventions while on remand. Nonetheless, treatment or interventions related to sexual offences should require the cooperation of the individual in question - see Rule 6.

Risk management can involve, in some jurisdictions, preventive detention. If preventive detention is used, this must adhere to national policies and practices, strictly apply principles of risk assessment and should be informed by evidence-based risk assessment tools that use dynamic indicators, and a strong professional culture informed by best practice. If an individual's assessed level of risk changes, this should trigger a review of their risk management plan and their detention.

The ECtHR has found that preventive detention may be justified owing to an individual's dangerousness. The failure to secure appropriate interventions and/or treatment during an individual's sentence does not in itself render subsequent preventive detention unlawful, where sufficient attempts to secure such interventions and/or treatments have been made[2]. Where an individual is subject to preventive detention, authorities are obliged to take all appropriate initiatives to secure adequate interventions and/or treatment[3]. The ECtHR has found that indefinite or prolonged detention in a prison environment without suitable treatment, and with no prospect of integration back into the community, may amount to degrading treatment in breach of Article 3 ECHR[4]. It has further stated that, where an individual is subject to preventive detention linked to a mental disorder under Article 5(1)(e) ECHR, their detention must be "effected in an appropriate institution for mental-health patients" (para 164). For such detention to be lawful, the deprivation of liberty must also be shown to have been necessary in the circumstances (169) - which may include considerations of public safety[5].

The CPT has stressed that "requiring persons in preventive detention to give a blanket waiver regarding most of their rights otherwise provided for by law in order to benefit from a specialised treatment programme appears to be disproportionate. These rights should only be restricted, with the informed consent of the person concerned, insofar as it is strictly necessary for the creation of a therapeutic environment and the effective provision of treatment measures[6]".

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 custody and in the community.

This rule recognises that there are circumstances in which individuals accused of or convicted for sexual offences should be accommodated or managed in distinct ways, on an individualised basis, including in order to protect their safety or reduce their risk of harm. This may include accommodation in special wings in prison, or the assignment of

[2] *De Schepper v. Belgium*, no. 27428/07, 13 October 2009.
[3] *De Schepper v. Belgium*, no. 27428/07, 13 October 2009; *Swennen v. Belgium*, no. 53448/10, 10 January 2013.
[4] *W.D. v. Belgium*, no. 73548/13, 6 September 2016.
[5] *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, 4 December 2018. Paras 164, 169.
[6] CPT, Germany: Visit 2013. [CPT/Inf (2014) 23]. Para 21.

specially trained prison or probation staff. This rule must be read alongside Rule 1; the focus should always be on an individual's distinctive needs and characteristics, which necessitate distinct responses, rather than the type of offence an individual has committed in itself.

This should not prevent persons accused or convicted of a sexual offence from taking part in certain activities with others, including use of shared common areas inside a prison. In this light, the CPT has stressed the importance of "out-of-unit activities", to which persons accused or convicted of a sexual offence are sometimes given less access, while in custody[7]. However, if they are identified as being vulnerable or need additional protection during their time in prison, this should be taken into account and they should be accommodated separately. Decisions in relation to separate accommodation should only ever be made on an individual basis; rather than applied as a general measure to groups of individuals accused or convicted of a sexual offence. In addition, any individual subject to separation should be offered at least two hours a day of meaningful human contact to ensure that their separation does not amount to solitary confinement (see Rule 53A.1 of the European Prison Rules).

3. Preventing and responding to sexual offending is 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.

Effective risk management helps to ensure public protection. Persons accused or convicted of a sexual offence often have complex characteristics that require engagement and management in a multi-disciplinary setting in order to be fully effective. An effective response should therefore include involvement of a range of professionals, including police; probation; prison; housing; education; restorative justice; and health care services, from the start of the criminal justice process and continuing throughout. It should also include services of professionals such as psychiatrists and psychologists, and other professionals with formal education and experience in the field of risk assessment, risk management, treatment and/or interventions of persons who committed sexual offences.

4. Offending behaviour should be considered in a comprehensive manner, which takes account of behavioural, social, psychological and health factors.

The reasons behind sexual offences and their aetiology are complex and potentially include biological, behavioural, clinical, cultural, developmental, health, social and neurological factors. This means that to understand sexual offending, organisations need to understand the persons who have committed the sexual offence as individuals, examine them holistically and respond in a balanced and appropriate manner. The aetiology of sexual offences is rooted in the life course and developmental pathway of the individual, therefore the most appropriate response to preventing as well as responding to sexual offences should be based on a holistic, life course approach. Such an approach, which should also be integrative and health-based in nature, enables a successful prevention of sexual offending and an effective response to it.

5. Interventions and treatments should be evidence-based, proportionate and part of a comprehensive approach which facilitates individuals addressing their offending behaviours.

This rule emphasises that only evidence-based interventions and treatments should be implemented for persons accused or convicted of a sexual offence. Those implementing the interventions and/or treatments should be mindful of up-to-date research in the area to ensure that only interventions and/or treatments with a chance of success are used, and are not disproportionate for the individual in question This means that a treatment or intervention appropriate for a high risk individual should not be used for a low risk individual, particularly where evidence suggests that a low risk individual may be more likely to relapse as a result of such a treatment or intervention.

Interventions and/or treatments should always be part of a comprehensive approach, whether this is done with a person accused or convicted of a sexual offence individually or as part of a group. The emphasis should always be on assisting individuals to address their offending behaviours and change relevant cognitive mindsets.

An intervention and/or treatment that is inhuman or degrading will never be proportionate. The CPT has stated in several reports that the use of surgical castration, which is a "mutilating, irreversible intervention" may amount to degrading treatment and "cannot be considered a medical necessity" in the treatment of persons who have committed sexual offences. The CPT has therefore called on member States to "put a definitive end" to its use[8]. The ECtHR has found that while protective sexological treatment, and the restrictions entailed, can cause discomfort, it may nonetheless be justified by the state of health, and conduct, of the individual concerned[9].

[7] CPT, Turkey: Visit 2013. [CPT/Inf (2015) 6]. Paras 61, 62.
[8] Committee for the Prevention of Torture (CPT), Czech Republic, Visit 2018. [CPT/Inf (2019) 23]. Para 135-6; CPT, Germany: Visit 2015. [CPT/Inf (2017) 13]. Para 131-2; CPT, Czech Republic: Visit 2014. [CPT/Inf (2015) 18]. Para 181-4; CPT, Germany: Visit 2013. [CPT/Inf (2014) 23]. Para 49-51.
[9] *Dvořáček v. the Czech Republic*, no. 12927/13, 6 November 2014.

The ECtHR has stated that, in order to comply with Article 5 ECHR, "the proportionality of a continuing placement in a psychiatric hospital should be subject to particular scrutiny the longer the detention lasts", whereby an individual's interest in being released must be balanced against the safety interest of the public. Decisions to continue such placement must also not be arbitrary[10].

In relation to chemical castration (anti-androgen treatment), the CPT has made clear that this should only ever be given on a "purely voluntary basis", based on a "thorough individual psychiatric and medical assessment" (see further the commentary to Rule 6). It has stressed that the administration of such treatment, if it is given, "should be combined with psychotherapy and other forms of counselling in order to reduce the risk of reoffending". The ECtHR has found that chemical castration may be justified where it is a therapeutic necessity. Moreover, the Court has accepted that an individual may also voluntarily participate in such treatment. In connection with this, the ECtHR has noted that a specific form setting out an individual's consent, notifying the individual of their right to withdraw their consent at any stage, and informing the individual of benefits and side-effects of the treatment may be helpful, though failing to include such a procedure is not in itself sufficient as to amount to a forcible medicinal treatment and a breach of Article 3 ECHR[11].

Regarding sexual preference tests (including biomedical tests), which measure an individual's arousal to illegal sexual behaviour as part of treatment, the ECtHR has acknowledged that participation in such tests may be humiliating for individuals. However, it has accepted that authorities may reasonably consider such evaluations as necessary when deciding appropriate future therapeutic treatment and appropriate sentence planning as well as reintegration strategies. Where this is the case, such evaluations may not amount to degrading treatment under Article 3 ECHR. In establishing the necessity of such evaluations, the reliance on "alternative and less invasive forms of assessment" until behaviour demonstrates that "more precise analysis" is required by way of sexual preference testing may be an important factor[12].

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, and treatment and interventions.

This rule recognises that the relationship between the service user, in this case the person accused or convicted of a sexual offence, and the service provider, whether it be the court, prison service, police, probation agency or another organisation, is essential in developing effective assessment, management and integration plans. If there is no trust and respect between the parties involved, then the process will be more likely to break down. It is important to recognise that cooperation does not necessarily mean that the person in question admits guilt, but rather that they fully engage in the risk assessment and any treatment or interventions that result as a consequence. The CPT has previously emphasised the importance of individual treatment plans being drawn up, or reviewed, while consulting the individual in question[13]. This rule should be read in particular alongside Rules 1 and 3 but underpins all of the basic principles outlined.

In the case of chemical castration, the formally expressed free and informed consent of the person must be obtained. The CPT has stressed that "the free and informed written consent of the patient concerned should be obtained prior to the commencement of anti-androgen [chemical castration] treatment, it being understood that consent can be withdrawn at any time; in addition, the patient should be fully informed of all the potential effects and side-effects of the treatment, as well as the consequences of refusal to undergo such treatment. No patient should be put under pressure to accept anti-androgen treatment[14]". It should "always be based on a thorough individual psychiatric and medical assessment and…should be given on a purely voluntary basis[15]".

7. Individually tailored sentence plans should be agreed at the beginning of the sentence, should continue until the end and should be regularly updated.

A person's journey through the criminal justice system needs to be fluid, streamlined and well organised; there needs to be clear, consistent management and throughcare. This is especially important given the particular challenges faced by those accused or convicted of a sexual offence (See Rule 1). Clear and streamlined throughcare requires communication within and across agencies, multi-agency working and agreed targets (see further Rule 22), and a clearly laid out procedure running through the criminal justice system process that is linked to the person's sentence plan. The need for clear throughcare is essential at points of transition, whether it is from one service to another (for instance, police, to prison to probation) or within the same service (a change in accommodation, probation officer or relocation to another part of the country). During such periods of change, it is vital that thought is given to updating individually tailored sentence plans in line with their changing environment. In some instances, especially for more

[10] *Bäcker v. Germany*, no. 44183/12, 21 October 2014. Paras 35-38.
[11] *Dvořáček v. the Czech Republic*, no. 12927/13, 6 November 2014.
[12] *Toomey v. the United Kingdom*, no. 37231/97, 14 September 1999.
[13] CPT, Germany: Visit 2015. [CPT/Inf (2017) 13]. Para 97.
[14] CPT, Germany: Visit 2015. [CPT/Inf (2017) 13]. Para 97.
[15] CPT, Austria: Visit 2015. [CPT/Inf (2015) 34]. Para 113; see also CPT, Czech Republic: Visit 2014. [CPT/Inf (2015) 18]. Para 158.

challenging individuals, they may move back and forth between prison and probation multiple times. If an individual's throughcare is not managed appropriately this can result in delays, breakdowns in interventions and/or treatments, the development of poor relations between them and the system; all of which can impact on rehabilitation.

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 reintegration of individuals.

This rule reinforces Rules 3 and 5, by emphasising that there needs to be effective multi-agency working in the assessment, management and integration of a person accused or convicted of committing a sexual offence. Agencies responsible for the management of persons accused or convicted of a sexual offence may change over time, and may include police, prison services, probation agencies or - where appropriate - restorative justice agencies (for more information, see Recommendation Rec(2018)8 concerning restorative justice in criminal matters, as well as Rule 32a). Where it is agreed that data will be shared, it is important that this is underpinned by detailed policies to ensure the right to data protection and well as to ensure the security of information relating to persons accused or convicted of a sexual offence. It is important that data sharing is carried out in full respect of confidentiality and is in line with wider data protection requirements foreseen in Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data: ETS No.108 as amended by its Protocol CETS 223 (modernised Convention 108) as well as in Recommendation No. R(87)15 regulating the use of personal data in the police sector and in its Explanatory Memorandum; and more specifically in the Practical guide on the use of personal data in the police sector (document T-PD(2018)01).

Multi-agency working should be mindful of how agencies interact with the broader community in disclosures and through information sharing to make sure that public protection and protecting the rights of the individual are always adhered to in a balanced manner. At all times information sharing shall consider the individual right to a private and family life, as protected under Article 8 ECHR and the modernised Convention 108.

9. International cooperation 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.

This rule recognises that there should always be effective communication and information sharing in international and transnational cooperation between police, investigative and other criminal justice agencies and border control services either directly or through third parties (i.e. Interpol, Europol) and where an appropriate level of protection of personal data is guaranteed as established by article 14 of the modernised Convention 108. However, this should not negate the principle of Rule 1, in that when persons have completed their sentence and are not subject to licence requirements then this information should not be passed on, except if essential and appropriate safeguards have been put in place, to facilitate public protection and prevention of victimisation. The aim of this rule is to help public protection, protection of individuals concerned and safeguarding their rights, not to further penalise the individual.

III. RISK ASSESSMENT

Risk assessment is necessary to determine risk management arrangements, and helps inform sentencing, sentence planning, and appropriate interventions to reduce the likelihood of reoffending. Risk assessment and management should always consider the individual case circumstances. 'Persons accused or convicted of a sexual offence' is a broad classification and persons within this category demonstrate a variety of features which should be taken into account, including: specific personal characteristics and underlying reasons for offending behaviour, as well as general risk- factors (such as criminal history, education and employment, or problematic drug use) and specific risk factors (such as a paraphilic disorder, for example paedophilia or exhibitionism).

Risk assessment identifies the person's risk and need factors as well as resources and strengths. Resources and strengths are protective factors, which together with the interventions offered, contribute to the individual's positive development and subsequent reduction of risk and need factors.

Risk assessment should be a key component of case management in prison and probation and be conducted by trained staff.

Risk gives the impression that individuals will always be at risk of committing another sexual offence and that said risk is stable (i.e. does not change). However, research and professional practice indicate that this is not the case as risk is dynamic and individualised, which means that a person's risk of re-offending can, and does, change and even reduce over time, particularly when the individual is well motivated and managed, and appropriate interventions are provided.

10. 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 sentencing, management and intervention plans.

This rule emphasises the need of a planned and evidence-based risk assessment procedure, which may include a forensic psychiatric or psychological examination, to assist decisions in relation to the type of measure or sentence to which an individual convicted of a sexual offence is subject. The purpose is to establish a sentence-and-intervention plan allowing the individuals convicted of sexual offences with longer as well as shorter sentences to benefit from treatment according to their needs.

The Court may decide to give a sentence involving treatment, or a suspended sentence with conditions of treatment, in cases where the individual is evaluated as having a low risk-need level and is assessed as being motivated for community supervision and treatment.

Validated risk management tools should be included as part of a research-based, professional approach to risk assessment. The accuracy of estimating risk increases when evaluators use structured, empirically based and, if possible, validated risk instruments that aim to explore dynamic as well as static risk-needs. The instruments assist in ensuring that the professional focuses on and examines evidence-based key areas for risk considerations.

11. Risk assessment should be comprehensive and updated regularly as a prerequisite for taking informed decisions regarding sentencing, management, interventions and treatment of individuals convicted of a sexual offence.

This rule recommends an ongoing, comprehensive risk assessment procedure from the start of the criminal proceedings, during imprisonment and under probation supervision. It applies, too, where restorative justice services are involved. Individuals who are accused or convicted of a sexual offence and who are assessed as presenting low risk of reoffending may be treated and managed in the community, which can enhance the chances of their reintegration. In contrast, individuals who are at medium or high risk of sexual reoffending may require specific interventions in secure environments, such as prison and special hospitals. The aim of this dual approach is to reduce the likelihood of new sexual offences. See also Rule 7 on sentence plans.

12. Where there are concerns regarding psychiatric disorders, risk assessment should be carried out after taking into account any psychiatric assessment, diagnosis and treatment.

This rule recognises that sexual offending behaviour may co-exist with mental illness and disorders. Since sexual fantasies and offending behaviours can be a form of coping with negative emotions or mood states related to an individual's psychological or psychiatric conditions, understanding an individual's forensic history is fundamental for decisions concerning treatment and sentencing. Assessing an individual's forensic, psychiatric and developmental history contributes to a coherent evaluation of an individual's risks and needs and should be carried out by recognised experts and ordered by the judiciary or other competent authority or agency. Before an offence-related risk assessment can commence, the individual's mental state should be stabilised as much as possible.

13. Risk assessment professionals should be impartial and objective in providing their assessment opinion.

Impartiality and objectivity are integral components of professional ethics and practice. When assessing the risk of a person accused or convicted of a sexual offence, the assessor should be aware of the potential implications of their assessment for community safety in restricting the liberty of the person accused or convicted of a sexual offence. Invariably, risk management necessitates some restrictions on liberty, but these should be proportionate and justifiable, as well as dynamic according to changing levels of risk and need. So long as an assessor is properly trained and independent, as required under this rule, then these requirements will, most often, be met. At all stages of the risk assessment process key decision makers should be impartial in their decision making and should not be involved in carrying out the risk assessment itself, in order to maintain their impartiality.

IV. MANAGEMENT, INTERVENTIONS AND TREATMENT IN PRISONS

Across the Council of Europe, prison is the primary means for managing persons convicted of a sexual offence, particularly in relation to contact sexual offences. An important goal of prison is to prevent further offending and to help prisoners lead meaningful and social lives away from crime. Prison, therefore, should strive to be a reintegrative and rehabilitative environment that facilitates positive change.

14. Risk assessment should be conducted or updated at 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.

This rule is linked to Rule 11. Throughout the criminal justice process, it is important that a comprehensive risk and sentence management plan is in place. As stressed by Rule 11, this will need to be updated at regular intervals - as an individual's risk (to others and to self) and other relevant features invariably change over time. Individuals accused or convicted of a sexual offence may be in contact with various agencies and individuals through their criminal justice process, including prison services and probation agencies. They may be in contact with these agencies on more than one occasion: for instance, an individual may leave prison on licence to be managed by the probation agency, only to act in breach of their licence conditions, and be returned to prison - then, once released again, returned to the management of the probation agency. Equally, an individual may be subject to probation prior to contact with the prison. A prison should be mindful of this and bear its own responsibility for ensuring that risk assessment is comprehensive by referring to previous risk assessments in order that these may inform updated risk assessments. This, too, may involve close working with the probation agency to ensure continuity between providers - see further Rule 19. Relevant assessment carried out at the pre-sentencing stage should be made available as soon as possible to the prison services when a person receives a custodial sentence.

Effective risk assessment in prisons prevents the implementation of inappropriate regimes (for example stricter than necessary) that may hinder rehabilitation and preparation for release. It should be conducted by an interdisciplinary team of specially trained staff who develop contact and professional relationships with the prisoner characterised by mutual trust, respect, empathy and engagement, but without minimising the offence committed. Risk assessment requires the stability of the prisoner's motivation for change to be evaluated, alongside the suitability of different intervention options.

The CPT has previously noted with concern in its reports that "newly-arrived prisoners sentenced for sexual offences were ill-treated by other inmates in the admission unit". As part of the solution for such problems, it has stressed the importance of individualised risk and needs assessment[16]*. Where an individual's risk is such as to justify special high security or safety measures, the European Prison Rules outline in Rule 53.8 that such measures should only be based on the current risk that a prisoner poses, should be proportionate to that risk, and should not entail more restrictions than are necessary to counter that risk.*

The ECtHR has found that prolonged detention in a facility ill-suited to an individual's condition (for instance, the psychiatric wing of a prison purely owing to a structural lack of alternatives) is contrary to Article 5(1)(e) ECHR[17]*.*

Prison staff should be involved in this assessment process and in motivational work as they have daily contact with the prisoners. The aim is to ensure progress in the journey from imprisonment to the community.

15. If risk assessment suggests that community sanctions or measures can enhance rehabilitation and reintegration, a prisoner should be considered for a suspended sentence or early conditional release which may be accompanied by supervision and may include an obligation to attend interventions or undergo treatment.

Rehabilitation and reintegration should be key aims of any sanction or measure. This rule emphasises the diversity among persons accused or convicted of a sexual offence and gives attention to the multiple causes underlying sexual offending behaviour, the different risk levels and individual treatment needs that must be addressed, to reduce individual risk for reoffending.

Where an individual's continued detention is justified by the risk they pose to the public, evidenced by a validated risk assessment tool, member States should nevertheless facilitate access to programmes aimed at enhancing rehabilitation and reducing risk. However, the ECtHR has stated that a delay in access to assessments and rehabilitation programmes does not in itself render unlawful continued detention in prison under Article 5 ECHR[18] *so long as such a delay is not unreasonable and a real opportunity for rehabilitation is provided.*

16. 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.

Stigmatisation by other prisoners and prison staff increases the likelihood that persons accused or convicted of a sexual offence engage in defensive behaviour and denial of the committed offence. There is a risk that a prisoner accused or convicted of a sexual offence suppresses concerns about their own behaviour, and need for intervention, in order not to be labelled, for example as a paedophile.

An effect of this may be that persons who are accused or convicted of a sexual offence are less motivated to accept treatment, and as a result attempts to reduce their risk of reoffending may be hindered. Denial of an offence is a common responsivity issue that affects negatively the relationship with staff and the individual's motivation and capacity for change.

[16] CPT, The former Yugoslav Republic of Macedonia: Visit 2016. [CPT/Inf (2017) 30]. Para 9, 11.
[17] *W.D. v. Belgium*, no. 73548/13, 6 September 2016.
[18] *David Thomas v. the United Kingdom*, no. 55863/11, 4 November 2014. Paras 54-55.

This rule emphasises the right of the prisoner to a safe imprisonment, without risk of being harmed physically or mentally. This may include the risk of harm posed by an individual to themselves. Protective measures can be positively used for observation and enhancing an individual's motivation to engage in treatment and/or interventions.

Prisoners accused or convicted of a sexual offence are often at a particular risk of inter-prisoner violence. The ECtHR has stated that prison authorities "have an obligation to take all steps reasonably expected to prevent real and immediate risks to prisoners' physical integrity, of which the authorities had or ought to have had knowledge". It considers that, in order for a preventive mechanism to be effective, "it should allow the authorities concerned to respond as a matter of particular urgency, in a manner proportionate to the perceived risk faced by the person concerned". The absence of such a measure may lead to "protracted fear and anguish" of imminent ill-treatment and a violation of Article 3 ECHR[19].

The implementation of protective measures may involve the separation of an individual from the general prison population. The CPT regards all forms of separation of individual prisoners as needing justification. It outlines that all separation must be "proportionate", "lawful", "accountable", "necessary" and non-discriminatory" (PLANN)[20]. This is the case even where separation is voluntary, as a protective measure. As outlined in Rule 53A.4 of the European Prison Rules, prisoners who are separated should not be subject to further restrictions beyond those necessary for meeting the stated purpose of such separation. In the case of separation for protective purposes, severe restrictions are much less likely to be justified as the intention is to remove a prisoner from a situation of potential harm, rather than to prevent them causing harm to others. While separation may help reduce this risk of harm, isolation poses a separate risk of harm in itself, which should be correspondingly monitored and mitigated. Rule 53A of the European Prison Rules provides further detail on requirements for separated prisoners.

It is therefore important that the person accused or convicted of a sexual offence is not unduly isolated from other prisoners or prevented unnecessary from taking part in certain activities with other prisoners. As outlined in Rule 53A of the European Prison Rules, any separated individual should be offered at least two hours a day of meaningful human contact. Where an individual is separated for a long period of time as a protective measure, the CPT has stressed that special efforts should be made to enhance their prison regime[21].

The ECtHR has found that "Moving a prisoner away from a cell in which he has been exposed to threats would certainly be an appropriate and, at least in the short term, adequate measure". However, the Court has emphasised that "if such transfers take place frequently and on a regular basis without any clearly identified purpose" then this appears to be at odds with the principle of protecting vulnerable prisoners from the general prison population. In any event, the application of the special measures of protection should not amount to unjustified and prolonged solitary confinement[22].

17. Persons convicted of a sexual offence should 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 treatment and/or interventions while in detention.

This rule emphasises that support and desistance work should start early with a sentence plan, where: (1) individuals' risks, needs and resources are assessed; (2) interventions are available (in prison and/or in the community); (3) competent and responsible staff are identified and involved at an early stage; (4) the treatment/intervention-plan is coordinated with the probation agency involved; and (5) no service provider leaves the case, before another has taken over the preventive work while securing the rights of the individual.

Admitting guilt should not necessarily be a prerequisite for attending treatment and/or interventions (see further Rule 6). Denial is common in persons accused or convicted of a sexual offence, in part due to stigma. An individual's ability to learn from an intervention and/or treatment should be maximised by tailoring the intervention and/or treatment to the learning style, motivation, abilities and strengths of the person. Reduction of denial and promotion of accountability should be pursued as therapeutic goals.

Treatment and/or interventions should be planned according to an individual's identified risk level, with more intensive programmes applied only to higher risk individuals (see further Rule 5). Interventions should target the individual's risks and needs.

Treatments and/or interventions should be evidence-based, proportionate and should never be inhuman or degrading (see further Rule 5). While the completion of any treatment and/or intervention should be considered in early release decisions, as stressed by this rule, the CPT has further stressed that the completion of chemical castration treatments "should not be a general condition for the release of sex offenders, but…administered to selected individuals based

[19] *D.F. v. Latvia*, no. 11160/07, 29 October 2013. Paras 84, 91, 95.
[20] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 61.
[21] 21st General Report of the CPT [CPT/Inf (2011) 28], paragraph 61.
[22] *D.F. v. Latvia*, no. 11160/07, 29 October 2013. Para 87.

on an individual assessment".[23]

V. MANAGEMENT, INTERVENTIONS AND TREATMENT UNDER PROBATION

Not everyone convicted of a sexual offence is sentenced to immediate imprisonment. Instead, some persons convicted of a sexual offence are managed solely in the community by probation or equivalent services. Even where someone serves a custodial sentence, this may be followed by a period of community-based supervision. In some member States, probation agencies also supervise and assist persons who are not yet convicted. Regardless of whether individuals enter probation from prison or not, the role of probation does not change.

An individual convicted of a sexual offence and under the management of probation may be subject to a community sanction or measure, without prior imprisonment, or may have been subject to a prison sentence first. The role of probation, or equivalent services is to supervise and help facilitate a prosocial change in persons convicted of a sexual offence and reintegrate into society, particularly if they were subject to a prison sentence. Probation, therefore, has both a public protection and an offender management role. Treatments and/or interventions are an important way of reducing risk of re-offending, as well as improving reintegration of persons convicted of a sexual offence. Persons convicted of a sexual offence are potentially at risk of committing both non-sexual and sexual offences. The probation agencies in managing such persons have an active role in recommending and facilitating appropriate treatment and/or interventions, based on and addressing individual needs to enable such persons to desist from crime.

18. As far as possible, arrangements should be made to avoid disruptions of treatment or interventions, particularly when a person is moved from custodial to community-based services.

This rule states that persons under probation should have a sentence plan with clear provision for transition as they move from one service to another (i.e., prison to probation and vice versa). This rule emphasises the importance of throughcare and of multi-agency co-operation, communication, shared processes, shared language and a shared vision for offender management. An effective transition plan requires the sharing of all relevant information between prison, probation, police, healthcare and other services, in compliance with data protection rules.

This rule should be read in conjunction with Rule 7, which focuses on ensuring continuity of an individual's sentence plan between providers at each stage of the criminal justice process, as well as Rule 8, which requires agencies managing persons accused or convicted of a sexual offence to coordinate closely with local services and communities, as appropriate. This can be a key tool in ensuring effective transition and case management. Ultimately, transition will be to the local community, so their involvement from an early stage maximises the chances of desistence in the longer term. Sentence plans should be communicated to the local services available to the individual upon release, so that they can be offered or can be placed in an area that has access to the most appropriate interventions, in order to help in their effective risk management. In addition, individuals should not be recommended an intervention as a condition for their release if they cannot access it or it is not available in their area, as failure to attend may be assessed as a breach of release conditions. Further, requirements to travel long distances to attend interventions may disadvantage an individual's integration in their own community, as well as potentially cause financial hardship.

As discussed in Rule 7, the sentence plan should be based on an individual risk assessment. At the centre of any risk management plan should be the consideration of risks, public protection and the needs of multi-agency working. Effective multi-agency working does not require the sharing of all information, but rather all relevant information about the individual in question, so that professionals are able to make informed decisions about the community management of said individuals.

The development of a risk management plan for probation should include (1) ongoing assessment of an individual's risks, needs and resources; (2) the identification of treatment and/or interventions relevant to an individual's needs; (3) the identification and involvement of competent and responsible staff from an early stage; (4) the coordination of the treatment and/or intervention plan by the probation agency involved; (5) the continued adherence to relevant policies, including in relation to registration, disclosure, housing, employment and internet access; and (6) clear and comprehensive consideration of victim protection. The emphasis of this rule is that no agency leaves an individual's case before another has taken over, therefore ensuring that the appropriate level of supervision and assistance is provided at all times throughout the duration of the sentence.

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

[23] CPT, Austria: Visit 2015. [CPT/Inf (2015) 34]. Para 113.

Rule 19 acts in conjunction with Rule 18, emphasising the importance of framing risk management plans within the context of relevant laws and policies so that the person under probation does not breach by accident the conditions or gets recalled by default. The aim of this rule is to make sure that individuals' risk management plans place them in the best position to live offence-free. Focusing on existing restrictions in particular means paying attention to regulations limiting or restricting the movement, employment, or housing of a person convicted of a sexual offence. This is particularly important at the end of an individual's custodial sentence, as probation agencies have a key role in helping prepare an individual for what may be a challenging transition back to the community, and which may be greatly affected by what local services are available to the individual. This rule should be read in light of Rule 7 on individual sentence plans.

The multi-agency work in the community with persons convicted of a sexual offence requires appropriate policies, lines of communication and accountability to be in place. Approved standards of working with persons at different risk levels are needed as the intensity and scale of multi-agency working depends on this. This emphasises Rules 3, 5, 17 and 18 by acknowledging that all the relevant authorities and third parties should have appropriate policies, lines of communication and accountability to be in place. The intensity and scale of multi-agency working depends on the individual's level of risk; it is recommended that multi-agency teams have codified standards of working with individuals at different risk levels with shared terminology and includes the remit of meetings, length of shared supervision, who the responsible/lead authority is and back-up plans. All standards and terminology used should be developed in collaboration, agreed upon, be written down, be accessible and publicly available within the jurisdiction in question.

20. When drafting and implementing the sentence plan, the opinion and the co-operation of the person under probation should be sought, as far as practicable, to create a shared vision for their reintegration.

This rule reinforces Rule 6, emphasising that participation and engagement with the person under probation, is central. This rule seeks to ensure that the service user voice is heard and that the management plan, while achievable from a criminal justice perspective, is attainable by the individual in question; therefore, ensuring procedural fairness. Additionally, this rule seeks to encourage clear guidance for service user feedback, questions and complaints.

21. Probation staff should meet with persons under their care and/or supervision at regular intervals and respond, if needed, to requests and complaints in a professional and timely manner.

The aim of this rule is to emphasise the importance of professional and timely practice in working with persons accused or convicted of a sexual offence. Persons accused or convicted of a sexual offence should be subject to the same procedures, and treated with the same care, as other individuals under the care or supervision of the probation agency. There should be, as with all individuals under the care of probation staff, clear guidelines on procedures, etiquette and guidelines for responding to challenging meetings or clients.

More detailed provisions on requests and complaints, which apply equally to prisoners accused or convicted of a sexual offence, are contained in Rule 70 of the European Prison Rules. Rule 70 stresses the importance of prisoners being given ample opportunity to make requests or complaints, without censorship as to substance, to the director of a prison or other authority in the prison system, as well as to a judicial or other independent authority with reviewing and remedial power (Rule 70.1). Rule 70 further stresses, among other things, that practical information about request and complaint procedures shall be communicated effectively to all prisoners (Rule 70.4); that all requests and complaints shall be dealt with as soon as possible and through a process that ensures, to the maximum possible extent, the prisoners' effective participation (Rule 70.6); that any rejection reasons are provided to the prisoner without delay and that right of appeal is available (Rule 70.7); that measures are in place to ensure that prisoners can make requests or complaints confidentially, if they choose to do so (Rule 70.8); and that prisoners shall not be exposed to any sanction, retaliation, intimidation, reprisals, or other negative consequences as a result of having submitted a complaint (Rule 70.9).

22. The probation staff developing an individual's sentence plan should be responsible for ensuring their part of its implementation and are accountable for it.

This rule highlights the responsibility of those overseeing an individual's risk management. If there is a change in the probation staff and, or the person on probation moves to live elsewhere, there should be a handover of information and documentation, ensuring an effective chain of accountability. This is good practice and should be happening in accordance with existing prison and probation guidelines. This rule further emphasises the importance of the multi-disciplinary team surrounding the individual which may include criminal justice agencies, social care and social welfare agencies, health organisations and relevant charitable organisations.

23. The person under probation supervision should be informed of requirements and obligations that impact them during their probationary period, the availability of restorative justice interventions, as well as restrictions to which they may be subject, and of any subsequent changes.

This rule builds upon and complements Rule 6, stating that the individual under the care of probation should be made aware of all policies and practices that impact them across the time that they are in the care of probation (or longer if necessary), including the registration of persons convicted of a sexual offence, the potential disclosure of their information, any housing restrictions related to their conditions, or any employment restrictions. They should be updated if policies change. They should be made aware of the availability of restorative justice interventions, and informed of how they work, to decide if they would like to participate in such programmes (see further Rule 32a).

The ECtHR has previously accepted that, while registration measures may feel punitive to individuals subject to them, this in itself is insufficient to establish that registration requirements have a "punitive" nature or purpose so as to amount to a penalty within the meaning of Article 7 ECHR. This includes cases where failure to comply with registration requirements is a criminal offence. The ECtHR has highlighted that the primary aim of registration requirements is to prevent reoffending, including through police being able to trace those suspected of reoffending[24]. It has found that obligations arising out of registration have a "preventive and deterrent purpose and cannot be considered to be punitive in nature or as constituting a sanction". An obligation to provide proof of address "every six months and to declare any change of address within fifteen days at the latest" even for a period of thirty years, "is not sufficiently severe to amount to a "penalty" within the meaning of Article 7 ECHR[25].

Registration measures and notification requirements may amount to an interference with an individual's private life within the meaning of Article 8(1) ECHR. However, any interference must be assessed against the aims of such measures and may be justified as part of member States' duties to protect individuals from the serious harm caused by sexual offences provided it is a proportionate response[26]. Requirements may be justified under Article 8(2) ECHR, provided that they are in accordance with the law, in pursuit of a legitimate aim and necessary in a democratic society. The ECtHR has found that indefinite notification requirements may be justified where they are proportionate to the aim pursued[27]. It has further found that the storing of individual data for registration purposes for long periods of time "could give rise to an issue under Article 8 of the Convention", but that this may be proportionate where the individual has a "practical opportunity" to have this data removed when its retention is no longer necessary[28].

It should be made clear to the individual what data sharing is required as part of their risk-management plan and the underlying data protection regime that governs it. The person in question should be informed of their rights in relation to their personal data and complaint procedures relating to data sharing, should they wish to exercise their rights or to make a complaint. In addition, a data protection policy should be put in place which might include clear safeguards for protecting the person on the register, their family and victims given the nature of public and media interest and concerns regarding sexual offending; and a clear procedure for responding to and investigating data registration breaches.

24. At the end of the period of probation supervision, the sentence plan should be re-examined, if necessary, in relation to any ongoing restrictions, or finalised, and the records appropriately stored or destroyed in accordance with national law.

This rule describes the ending of statutory supervision and community release conditions, all of which is good practice and should be happening in accordance with national law and practices. However, if aspects of the individual's risk management still occur after the end of supervision (i.e., being on the register or the use of their data in Criminal Records Checks) then they should be made aware of this as appropriate, and in line with national standards, and informed when they have reached the end of this period.

VI. DATA COLLECTION, INFORMATION SHARING AND WORK IN PARTNERSHIP

25. 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.

No unnecessary data should be processed on a person accused or convicted of a sexual offence. The only data that should be collected is that being used by the courts, police, or prison and probation agencies for the assessment, management and reintegration of the person accused or convicted of a sexual offence. "Data" in this context may include personal data, assessment data, and intervention and/or treatment data. In addition, data collected by partner organisations should only be shared in line with general data protection principles and rules as detailed below and furthermore only where necessary; data should not be shared inappropriately or without a legitimate basis, and should only be shared on a need-to-know basis either to reduce risk of reoffending, ensure effective management of an individual's integration back into the community or to protect the public. Data collection and sharing should be in

[24] *Adamson v. the United Kingdom*, no. 42293/98, 26 January 1999.
[25] *Gardel v. France,* no. 16428/05, 17 December 2009. Para. 43.
[26] *Adamson v. the United Kingdom*, no. 42293/98, 26 January 1999.
[27] *Minter v. the United Kingdom*, no. 62964/14, 2 May 2017.
[28] *Gardel v. France,* no. 16428/05, 17 December 2009. Para 68-71.

line with data protection regulations and be in the interests of public protection, community safety and effective risk management. There should be clear and transparent rules on how law enforcement and other organisations grant access to data held by them and on which grounds and how they share data with other public and private organisations.

This rule speaks to the fact that data processing shall be tailored in line with the modernised Convention 108 as well as with Recommendation No. R(87)15 regulating the use of personal data in the police sector and in its Explanatory Memorandum; and more specifically with the Practical guide on the use of personal data in the police sector (document T-PD(2018)01). All data processing has to comply with the necessity, proportionality and purpose limitation principles. This implies that personal data processing should be based on predefined, specific, clear and legitimate purposes set out in the law; it should be necessary and proportionate to these legitimate purposes and should not be processed in a way incompatible with those purposes. Data processing should be carried out lawfully, fairly and in a transparent manner. Personal data should furthermore be adequate, relevant and non-excessive in relation to the purposes. Finally, they should be accurate and up to date to ensure the highest data quality possible.

26. 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 organisations that are taking part in it.

This rule builds on the necessity in Council of Europe member States for law enforcement organisations to adhere to high standards of data processing as set forth by the modernised Convention 108. In this, other standard setting instruments, such as the Recommendation No. R(87)15 regulating the use of personal data in the police sector and in its Explanatory Memorandum; as well as the Practical guide on the use of personal data in the police sector (document T-PD(2018)01) can help to further build on the effective multi-agency work emphasised throughout this recommendation. No unnecessary data in relation to an individual accused or convicted of a sexual offence should be shared and all data in the possession of private organisations should be held to the same rigour as data shared by, and with, state organisations. This includes the use, and sharing, of such data by private agencies responsible for the supervision of persons in custody and in the community.

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

All organisations and agencies, as a matter of good practice, should have a clear policy and framework in place for responding to data mismanagement and breaches. This framework should involve internal guidelines, training and disciplinary actions and mechanisms to reduce the impact of data mishandling. In addition, these policies and frameworks should be explained to staff upon their induction to the organisation and made available to them as a matter of course. If policies and frameworks are updated or changed, staff, as well as partner agencies, should be informed of this.

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

This rule emphasises the importance of clear data storage and data destruction policies. These should be made clear to the person concerned at the start of the criminal justice process as well as at the end of it and when the data are destroyed. All agencies involved with persons accused or convicted of a sexual offence should have such rules and policies, not just prison services and probation agencies. This rule should be tied to relevant national criminal records guidance and should include a periodic review of the storage of data. As stated elsewhere in this recommendation, the involvement of the service users is important in assessment, treatment and reintegration (Rule 6) and they should be informed on how their data is used and when it is destroyed (Rules 25 and 26) in line with the modernised Convention 108 and relevant data protection regulations.

29. 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.

The aim of this rule is not to advocate for either a registration or a disclosure scheme for persons who have been convicted of a sexual offence. It is recommended that policy makers look to the existing evidence base when making such decisions. Registration and notification rules and practices are different in different countries, but it is important that countries adhere to their national law and implement schemes consistently.

If a country has a registration and/or a notification scheme for persons convicted of a sexual offence, they should follow these policies consistently, train staff and related agencies, inform the individual placed onto these schemes and make sure that these policies work towards public protection, while safeguarding and assisting the individuals in their reintegration and desistence from further sexual offending. It is important that where such schemes are in place, affected individuals are informed precisely of who has access to this information, how they might be using this, and why it is necessary for them to have such access.

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

This rule reinforces Rules 3, 8, 9 and 25. Research highlights issues in data sharing across jurisdictions which may pose problems for risk management and preventing sexual abuse. Therefore, countries should aim to work together to facilitate the sharing of this data where appropriate and in conformity with existing regulations. The aim of data sharing should be to protect the public, protect individuals, safeguard and maintain existing risk management plans.

VII. VICTIMS AND COMMUNITY SUPPORT

31. Victims should have the right to be informed of release dates and plans for post-release management, in conformity with general data protection rules guaranteeing an appropriate level of protection for the personal data.

The rights of victims should be respected in the management and integration back into the community of persons convicted of a sexual offence. The aim of this rule is to continue to protect and safeguard the victim in line with the data protection standards established by the modernised Convention 108. It should be implemented in line with public protection, safeguarding and victims' rights policies. Any disclosures made to the victim about the person accused or convicted of a sexual offence should be done in a safe, protected and empathetic way by a trained professional.

The rights of any person convicted of a sexual offence should not be breached by this rule, and if additional safeguards or additional information disclosure limitations need to be put in place, this should be considered as part of the risk management plan and agreed by a senior member of staff. This is especially important, given the nature of a sexual offence, as there has often been a prior relationship between the victim and the perpetrator (i.e., family member, friend, colleague or peer) and it is realistic to predict that in certain circumstances they could, directly or indirectly, encounter one another.

It is important to state that the aim of this rule is to support victims. It is not to enable victims to influence the journey of the person convicted of a sexual offence through the criminal justice process. This rule is not limited to the final release of the individual from prison, and may also include prison leave, end of licence, work-related release or a change in detention facility (for instance moving from a closed, secure prison to an open prison or hostel).

32. Where appropriate, prison services and probation agencies should liaise with other criminal justice agencies and victim support services to ensure that the needs of victims are met.

The Rule reinforces Rules 8 and 31. Probation, and related services, should work with victim services in an appropriate and professional way to safeguard and protect the rights of victims. This is particularly important in cases where the victim is part of a vulnerable or protected group, or where they have an ongoing relationship, direct or indirect, with the person accused or convicted of the sexual offence. As outlined in Rule 31, this rule aims to support victims' journeys, rather than enabling victims to influence the sentencing or release of the person convicted of a sexual offence. In terms of restorative justice, the victim can ask for a restorative justice-based intervention if it is part of the suite of outcomes available to them upon or after sentencing.

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

Risk management is the remit of trained professionals; however, community integration schemes involving trained members of the public (i.e., Circles of Support and Accountability or a community Restorative Justice programme/intervention, see Rule 33a) can be used if the appropriate safeguarding measures are in place.

The use of such community-led integration schemes is to support the responsible authorities, not replace them, and therefore they should work in combination and in parallel with them. There should be clear national policy directives, inter-agency co-operation guidelines, codes of practice and communication strategies in place. All persons being integrated back into the community post-conviction using these schemes should be appropriately risk assessed and have the required level of risk management put in place. The responsible agencies (including police and probation) should work together to enable public safety and community protection.

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

"Restorative justice" refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party. It often takes the form of a dialogue (whether direct or indirect) between the victim and the person who has committed the offence, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and persons convicted of a sexual offence, relevant professionals and members or representatives of affected communities (see further Rules 3 and 4

of Recommendation Rec(2018)8 concerning restorative justice in criminal matters and their commentary).

While restorative justice is typically characterised by a dialogue between the parties, in many cases interventions which do not involve a direct dialogue between the victim and the person who has committed the offence may be designed and delivered in a manner which adheres closely to restorative justice principles. This includes a variety of innovative approaches to reparation, victim recovery and reintegration of persons accused or convicted of a sexual offence, if undertaken in accordance with basic restorative justice principles (see Rule 59 of Recommendation Rec(2018)8 concerning restorative justice in criminal matters).

Where victims wish to participate in restorative justice interventions, following informed decisions, access to such interventions should be facilitated. In such instances, referrals to restorative justice interventions may be made by judicial authorities, criminal justice agencies as well as victim support and restorative justice services — or by self-referral. For such interventions to take place, the informed participation of the person convicted of a sexual offence is also required. All parties should be adequately prepared for such interventions by trained restorative justice professionals, and the outcome of such interventions should be taken into account in the reintegration plans of persons convicted of sexual offences.

VIII. STAFF SELECTION AND TRAINING

34. Additional recruitment and selection criteria for staff working with persons accused or convicted of a sexual offence should be put in place, taking into consideration personal capacities and professional qualifications, to ensure competency for dealing with such persons.

Assessment, management, interventions and treatment of persons accused or convicted of a sexual offence depend on the quality of the staff delivering them. This rule emphasises that the competent authorities have the tasks of selecting and recruiting sufficient staff of best possible quality, of ensuring they receive adequate training and of facilitating their professional development to enable them to work in a high ethical manner in order to provide just and effective supervision, positive care and assistance to accused and sentenced persons, that can enhance their prospects of reintegration and social inclusion on which desistance from crime usually depends.

Selecting, training and supporting staff is central and a specific recruitment protocol that assesses knowledge, performance and attitudes towards individuals who are accused or convicted of a sexual offence, and personal characteristics associated with resilience, may be used. Further provisions on recruitment, selection, training and professional development of staff in prison services and probation agencies, including relevant educational levels, advertising of vacant posts and entry assessment procedures, are detailed in the Council of Europe Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (CM(2019)111-add).

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

This rule underpins that individuals who are accused or convicted of a sexual offence are given evidence-based management, interventions and/or treatment. Research on evidence-based rehabilitation and reintegration models is developing over time and it is important that the prison services and probation agencies are committed to using this knowledge in their work. The importance of prison and probation staff facilitating rehabilitation and reintegration is emphasised by the Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (CM(2019)111-add). They state in their key principles that "the mission of staff of prison services and probation agencies is to significantly contribute to public safety through the safe, secure and humane management of suspects and offenders and the provision of opportunities for rehabilitation and reintegration".

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

Due to the complexity and potentially traumatising nature of working with persons accused or convicted of a sexual offence, supervision and support, including peer support are essential – including when conducting risk assessments and as part of treatment and intervention programmes. Ongoing supervision is also required to ensure that there is a chain of accountability to maintain the competency of work by staff members. It is also important that professionals supervising such work are sufficiently qualified. Such supervision should be overseen by professionals including psychologists, psychiatrists, social pedagogues, social workers and sexologists who have extensive knowledge of the theory and practice of the treatment of persons accused or convicted of a sexual offence. This rule acknowledges the need for formal qualifications to undertake or perform interventions and/or treatment specific to persons accused or convicted of a sexual offence (see further Rule 35).

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

It is vital that staff in all areas working with persons accused or convicted of a sexual offence are adequately trained, to ensure the competency of their work, which is essential in ensuring the effective management, rehabilitation and reintegration of persons accused or convicted of a sexual offence. Ensuring that training is ongoing and regular helps ensure that staff are updated on recent developments that better position them to fulfil their roles (see also Rule 13 on risk assessment). In all cases, the management, treatment and reintegration of persons accused or convicted of a sexual offence are areas which require specific training as to the dynamics behind sexual offences.

Detailed provisions on the education and training of prison and probation staff are contained in the Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (CM(2019)111-add).

Detailed provisions on the operation of restorative justice services, including the development of procedures for the selection, training, support and assessment of restorative justice facilitators, are contained in Section VI of Recommendation Rec(2018)8 concerning restorative justice in criminal matters. Rule 42 of that Recommendation specifically requires that "Facilitators should be experienced and receive advanced training before delivering restorative justice in sensitive, complex or serious cases", which applies also to sexual offence cases (see further the commentary to Rule 42).

Learning may occur through formal training courses or through an apprenticeship type model and may be delivered in house or may require the assistance of experts from other competent agencies. Staff training should focus on the most up-to-date evidence-based research and practice. This requires regularly revisiting literature and research, for instance on recidivism and risk assessment, to implement the most appropriate procedures and programmes. In this light, the CPT has noted in its country reports the importance of staff receiving "the requisite initial and advanced training throughout their careers". All professionals who work with persons accused or convicted of a sexual offence should be aware of new tools and developments in the field, including contemporary research, and should have sufficient training and expertise. Sufficient training necessitates a good theoretical understanding of the nature, causes, and management of sexual abuse and violence.

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.

The rule acknowledges that prison and probation staff working with individuals who have been accused or convicted of a sexual offence can experience stigmatisation or rejection from colleagues and from the society in general. Working with this group of individuals can be considered a "critical occupation" which contains an increased risk of the worker encountering traumatic events. "Emotion-evoking" information relates both to the offences they learn about and the impact on victims, the life stories of the persons accused or convicted of a sexual offence themselves and the emotional processing that takes place in group or individual work sessions. In this respect, the Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff (CM(2019)111-add) emphasise that an important part of professional development includes the provision of support and supervision of staff to assist them in their role (Guideline 11).

The nature of the work presents the potential for vicarious traumatisation, a response to indirect exposure to trauma with symptoms that can mirror posttraumatic stress disorder; feelings of vulnerability, lessened trust in others, excessive vigilance, constant worry, changes in behaviour with children, emotional hardening, and intrusive imagery affecting sexual health, gender shame, compassion fatigue and burnout.

Services that provide treatment for persons convicted of a sexual offence have a responsibility to address the potential risk of staff being negatively affected. Supervision ought to be offered, where staff are enabled to reflect on their work, review their recent encounters, and develop their skills. Supervision should be facilitated by an experienced therapist who can train, model and develop the practice of their colleagues. Supervision provides the main source of professional development for those conducting risk assessment and treatment and/or interventions but should also be available to prison and probation staff having a daily contact with individuals accused or convicted of sexual offences.

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.

This rule states that all criminal justice agencies involved with persons accused of or convicted for a sexual offence should make their risk management policies publicly available through existing and approved channels, including

both online and printed materials.

Policies including those linked to the assessment, sentencing, treatment and/or interventions, prison management, management under probation, related community management policies (i.e. registration, disclosure, community notification, housing, employment and health policies) and staff policies or codes of practice should be available online or upon request. This enables the public, professionals and other interested parties to see and understand the risk assessment tools, risk management procedures and policies, and treatments and or interventions in use. This transparency is important for the development of good service user engagement (see further Rule 6), good multi-agency working (Rule 3), good media working (Rules 40, 41 and 42) and building public confidence.

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

This rule states that prison services and probation agencies should have clear communication and media strategies. They should have a clear communication hierarchy, including but not limited to a media/public relations team and a clearly identifiable spokesperson. The aim of this rule is to reinforce the importance of having a clear communication strategy in respect of sexual offences given public attitudes and media reporting of these offences and the need to respect the rights of the individuals who are accused of or have been convicted of them. Such communication strategies must be in compliance with data protection standards, as outlined in Section VI.

All official media communications should be done by persons specifically appointed and trained for that purpose It is nonetheless important that media relations are incorporated into the development and training of all key staff members, including the spokesperson. The role of communications and media relations staff should be clearly defined in their contract and they should be trained in this area. All other members of prison and probation staff should be made aware of these appointments, what their role is and how to contact them.

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.

This rule is linked to Rule 40, which emphasises the importance of prison services and probation agencies having a key spokesperson to deal with media issues, as well as a communication strategy. The purpose of this rule is to ensure that the principles of Rule 40 are not undermined by individual members of staff, well-meaning or not, engaging with the media. When deciding whether it is appropriate to engage with the media, the rights and interests of the person accused or convicted of a sexual offence and those of the victim should be taken into consideration. This is especially important in respect of high profile or pending sexual offence cases including, but not limited to, extremely violent sexual offences, institutional sexual offences or cases with significant media attention (in relation to either the victim or the perpetrator), and large criminal networks; these cases are likely to be in the public interest and, therefore, more likely to be reported in the press.

All staff should be made aware of their organisation's procedures and guidelines for engaging with the public, including the press, on issues related to the assessment, management and integration of persons who have committed sexual offences, as well as the consequences for breaching these procedures.

42. All high-profile media releases should have a clear, well-defined media information strategy developed in advance and in compliance with data protection rules.

There is a broad public and media interest in sexual offences, which needs to be taken into consideration when managing persons accused or convicted of a sexual offence. For high risk individuals, as well as high profile individuals or cases, the corresponding media strategy should be developed in advance. In such cases the media strategy should be an integral part of the individuals' risk management plan, being developed across the period of their engagement with prison services and probation agencies. Hence, the media strategy should be developed from a multi-agency perspective with the lead organisation, at that point in time, taking the responsibility for it. The strategy should cover all aspects of the individual's assessment, management and integration back into the community and should be regularly reviewed and updated. The development of this media strategy should be rooted in risk management, public protection and safeguarding the rights of the victim, perpetrator and related staff.

X. RESEARCH, EVALUATION AND DEVELOPMENT

43. Research 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 to develop and regularly update established good practice.

The purpose of this rule is to ensure that learning and evaluation are carried out to improve practices and policies in all areas of managing persons accused or convicted of a sexual offence and integrating them back into the community. This should be regularly carried out to ensure that established good practice can be developed on the

basis of a well-rounded evidence base.

This rule acknowledges that research and evaluation need to be a central component of the work that prison services and probation agencies, as well as other agencies, do with persons who have been accused or convicted of a sexual offence. Prison services and probation agencies must develop their own evidence base in respect of what works well, so that they can review, adapt and update their policies and practices as necessary. This research and evaluation, therefore, needs to be considered as part of the core business of these services and should be resourced as such.

Research and evaluation should be carried out by trained staff who are given the time, space, access and resources to do the work properly; in some instances, this research may be multi-agency and therefore data sharing agreements should be worked out in advance. The outcomes of such research should be reviewed and incorporated into the agencies' planning rounds, relevant risk management plans, staff training, multi-agency working and media relations/communication. In addition, new assessment tools, interventions and/or risk management strategies should be evaluated as a matter of course.

Prison services and probation agencies, as well as other agencies that work with persons accused or convicted of a sexual offence, should develop a research and evaluation strategy. This should include the development of a research timeframe, the creation and maintenance of good ethical practice, a peer review strategy (internal and external) as well as a publishing strategy and should pay due attention to data protection considerations. All research and evaluation reports should be in line with data protection principles and rules and accessible on the relevant websites or made available upon request.

Research and evaluation should be outcome-driven, taking into account the success of interventions, behaviour change, desistence and reducing reoffending. This means that there is not one research methodology that should be used; rather the research question should determine the research method. There should be a clear and consistent approach to collecting data across the time of the individual's engagement with the criminal justice system, which should only be processed in line with section VI of this Recommendation. Given the complexity of assessing, managing and reintegrating this population it is important to have accurate and robust data points and data collection tools. Such data should include:

- *Demographic data*
- *Offence data (including type of offence, victims(s), sentencing)*
- *Risk assessment data, initial and ongoing;*
- *Treatment outcome data, including pre-, during and post-;*
- *Reconviction, breach and recall data;*
- *Data linked to their time in prison and on probation;*
- *Data linked to their exit from the criminal justice system.*

This list is not exhaustive but gives an indication of the type and scope of data that is necessary to effectively research and evaluate success within the criminal justice system for working with persons accused or convicted of a sexual offence. Where possible, each jurisdiction should collect the same or equivalent data, so that cross-jurisdictional comparisons can be made. Research and evaluation reports can be shared via national and international organisations. The sharing and publication in related reports must adhere to data protection policies laid out in in section VI.

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

It is important that research and evaluation related to persons accused or convicted of a sexual offence within prisons and under probation should be done, as outlined by Rule 44. To help achieve this aim, these services should collect relevant, appropriate, data and put in place necessary safeguards to protect these data as detailed in the modernised Convention 108. Research and evaluation will help the development of a robust evidence base in respect to sexual offending, treatment and management as well as assist in case of movement of individuals who have offended across agencies and/or jurisdictions. When appropriate, police, probation and prison should conduct research with external, recognised partners.